Government consults on measures to combat pension scams

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Introduction

HMT and the DWP are jointly consulting on a package of measures aimed at tackling three different areas of pensions scams:

- a ban on cold calling
- limiting pension scheme members' statutory right to transfer
- making it a requirement that only active companies can register a pension scheme, to discourage inappropriate use of single-member occupational pension schemes.

Key points

- As pension scam activity is particularly focused around transfers to apparently legitimate pension schemes, the government proposes tightening up the transfer process in order to protect individuals' savings.
- The consultation also proposes measures to make it more difficult to open fraudulent schemes and queries whether additional steps should be taken to regulate SSASs.

Ban on cold calling

The DWP is focusing on cold calling, as statistics suggest this is the most common method used to initiate pension fraud.

The proposed ban is intended to send a clear message to consumers that no legitimate firm will ever cold call them regarding their pension. The government considers this will cut off the main mechanism used to persuade people that they are offering legitimate pension investments and services, and reduce the number of consumer requests to transfer to illegitimate schemes.

The ban will be enforced by the ICO, which currently regulates firms that make direct marketing calls.

Tightening the rules on pension transfers

The current legislation gives trustees little scope to refuse to transfer a member's benefits, even if the receiving scheme displays characteristics of a scam.

For this reason, the government is proposing changes to restrict members' right to transfer in certain circumstances, with the aim of protecting individuals' savings

Statutory transfers

The government proposes that a statutory right to transfer will only exist where:

- the receiving scheme is a personal pension scheme operated by an FCA authorised firm or entity
- a genuine employment link to the receiving occupational pension scheme can be demonstrated, with evidence of regular earnings from that employment and confirmation that the employer has agreed to participate in the receiving scheme; or
- the receiving occupational pension scheme is an authorised master trust.

Whilst the government considers that such an approach would help to weed out scam transfers, and at the same time enable the majority of transfer requests to continue to be agreed by trustees, it recognises that these proposals would come with implementation challenges. For example:

- a regular earnings link could prove difficult to demonstrate in some legitimate circumstances, such as zero-hours contract workers who may not receive or be able to demonstrate regular earnings, or self-employed individuals who have been previously employed and who are looking to consolidate their pension pots
- a requirement to demonstrate a scheme member's regular earnings may place an additional burden on the participating employer if they are required to evidence this.

The government recognises that these proposals would need to be carefully balanced with ensuring that trustees are not refusing transfers in order to retain pension pots to the benefit of the scheme and to the detriment of members. It will also consider whether it might be appropriate to provide some form of statutory discharge for trustees in such circumstances.

Non-statutory transfers

Where an individual does not have a statutory right to a transfer (because, for example, they are a member with non-flexible (DB) benefits and within one year of their scheme's normal pension age), they may still have a right to transfer under the scheme's rules. More individuals are likely to fall in this category if the proposed changes to statutory transfers are adopted.

The consultation notes that "[T]he government would expect trustees or managers to make all reasonable efforts to agree a transfer request if there was no reason not to do so (i.e. if the receiving scheme did not appear to be a scam)".

Alternative approaches

Acknowledging that providing trustees with greater scope to block transfers is a "challenging proposition", the government also suggests:

- requiring “insistent” scheme members (those who wish to continue with a transfer, despite having been warned of the risks) to sign a declaration similar to the discharge letter in the Industry Group code of good practice on combating pension scams. The government suggests that the letter could confirm that the member has understood the scam warnings given to them and the nature of the risks they may be exposed to. It also suggests that the letter could be used to limit any recourse the individual has to the transferring scheme, in the event of a scam

- a statutory cooling off period, under which the transferring scheme would delay all transfers, for example by 14 days, to allow the member to reconsider their decision to transfer.

Making it harder to open fraudulent schemes

The consultation notes that there are currently around 800,000 registered pension schemes in the UK, the majority of which are single member SSASs. There is a common perception that schemes which are registered have in some way been “approved” and that investments made by them are appropriately regulated. TPR’s view is that SSASs are increasingly marketed as products that offer “exotic investments and unrealistic returns and that there is evidence some consumers have lost their pension savings as a result”.

Despite the tightening of HMRC's registration processes in recent years, the government is investigating whether more can be done to make it harder for schemes to be opened for fraudulent purposes. Changes proposed, include ensuring that only active (ie non-dormant) companies can be used for scheme registration.

The consultation also notes the call from some commentators to reintroduce the requirement for SSASs to have a pensioneer (ie professional) trustee and asks more widely what steps could be taken to regulate SSASs and what further restrictions could be placed on the opening of new small schemes, with a view to limiting pension scams.

Next steps

The consultation closes on 13 February 2017.

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com