Sackers

New measures to tackle pension scams

Alert | 24 August 2017

Introduction

The DWP and HMT have issued the response to their joint consultation on a package of measures aimed at tackling three different areas of pension scams: cold calling, pension transfers, and the inappropriate use of single member occupational pension schemes.

Key points

- The Government has confirmed that it will ban cold calls in relation to pensions, as well as cold approaches using electronic communications such as texts and emails.
- Measures will be introduced to limit the scope of statutory transfers with a view to protecting members' pension savings, but without impeding legitimate transfer requests.
- The Government is also keen to ensure that legitimate non-statutory transfers can be made, subject to sufficient due diligence being carried out.
- Legislation will be introduced to ensure that only active companies can generally register a pension scheme.

Ban on cold calling

The Government has confirmed that it will introduce a ban on cold calling, the most common method used to initiate pension fraud.

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

The ban will not be limited to transfers between pension schemes. It will also cover calls where fraudsters encourage individuals to release funds from their pension and transfer them to a bank account, before investing them in inappropriate products (referred to as "investment fraud").

Following feedback on the consultation, the ban will not just cover telephone calls but will be extended to all electronic communications about pensions, including emails and text messages.

Next steps

The ban will be enforced by the ICO, which currently regulates firms that make direct marketing calls. The Government will work with the ICO to ensure that consumers will be able to report cold calls easily.

The Government plans to work on the "final and complex details" of the ban during the course of 2017, and will introduce legislation to implement the ban "when Parliamentary time allows".

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 proposed changes to restrict members' right to transfer in certain circumstances, with the aim of protecting individuals' savings.

Statutory transfers

The Government has confirmed 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.

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. An increased number of transfer requests are likely to fall into this category once the proposed changes to statutory transfers are adopted.

The Government is keen to ensure that legitimate non-statutory transfers can continue, subject to sufficient due diligence being carried out. It therefore intends to make sure that such transfers are not blocked because a scheme is unable or unwilling to carry out the necessary due diligence.

Alternative approaches

The Government had suggested requiring "insistent" scheme members (those who wish to continue with a transfer, despite having been warned of the risks) to sign a statutory discharge letter. It also considered introducing a statutory cooling off period under which the transferring scheme would delay all transfers to allow members to reconsider their decision. However, following the consultation, the Government concluded that these measures would not ultimately benefit scheme members. They will therefore not be adopted.

Next steps

The Government plans to engage further with the pensions industry during 2017 to:

- work out specific details of the employment link requirement for a statutory transfer to ensure that it will work in practice

- consider how best to extend the criteria under which there is a statutory right to transfer to include legitimate transfers to QROPS
- coordinate the introduction of these changes with the roll-out of the master trust authorisation regime
- consider whether there is a need to provide a power for schemes to amend their rules if they currently block legitimate non-statutory transfers, and
- examine whether the need for trustees to undertake due diligence should be underlined in legislation.

Making it harder to open fraudulent schemes

The consultation noted 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".

To address the issue of SSASs being registered with a dormant company as the sponsoring employer of a scheme, the Government will require all new pension scheme registrations to be made through an active company. This will be subject to certain exceptions for legitimate circumstances, where HMRC will be given discretion to register schemes with a dormant sponsoring employer. Examples given of legitimate circumstances include the consolidation of former schemes into one new special purpose vehicle, or the establishment of a new trust scheme to take employees from a company which is yet to be established.

The requirement for pension schemes to be registered with an active company will apply equally to existing schemes. However, where an existing pension scheme is registered with a dormant company, HMRC will have discretion not to de-register a scheme where there are legitimate circumstances.

Next steps

- The Government plans to introduce legislation in a Finance Bill "later in 2017" aimed at ensuring that generally only active companies can register a pension scheme.
- It will also introduce additional changes to the pension scheme registration process.
- The Government intends to look at options for professionalising SSASs.

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

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should speak to your usual Sackers contact. © Sacker & Partners LLP August 2017