PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION

BAN ON COLD CALLING IN RELATION TO PENSIONS: RESPONSE FROM THE PLSA

AUGUST 2018

EXECUTIVE SUMMARY

The cold calling ban will be a useful step towards making life more difficult for pension scammers and should be introduced as soon as possible, but we should recognise that there is no 'silver bullet' solution to pension scams.

The ban does not address the central problem – that being a *registered* pension scheme is no proof of being a *legitimate* pension scheme, as opposed to a vehicle for scams.

We need a much tougher approach to stop rogue firms from entering the market and to tackle those using existing schemes as a vehicle for their activities.

The PLSA continues to propose a risk-based authorisation regime for pension schemes. Starting with Small Self-administered Schemes (SSASs), the Government should require the schemes covered by the regime to have an independent professional trustee. This would be supported by an accreditation system for independent professional trustees, operated by the Pension Regulator. An alternative would be for schemes to have a trustee who is a recognised professional (such as a lawyer or accountant). In either case, the new trustee would have a ‘whistle-blowing’ duty.

There is no need to take urgent action on larger schemes, as authorisation is already being introduced for master trusts and the risks in large multi-employer and single-employer schemes are relatively low.

The main benefit of the cold calling ban is that it will enable pension schemes, regulators and government to unite behind a clear message that savers should put the phone down on a pensions call from anyone other than one of their providers.

The ban will not stop scammers from calling from overseas, so a great deal will depend on the effectiveness of collaboration between the UK Information Commissioner’s Officer and authorities in other countries.

The PLSA is concerned that the ban only covers telephone calls and does not extend to other forms of contact, such as email and text messages. Current measures covering these channels are not proving effective.

It will be important to put in place a mechanism for keeping the way the Regulations are enforced under review. This will help the authorities and industry to respond as scammers’ techniques evolve.

We are not aware of any legitimate activity that will be caught by the ban.

ABOUT THE PLSA

The Pensions and Lifetime Savings Association helps people to achieve a better income in retirement. We work to get more people and money into retirement savings, we look to help them get more value out of those savings and we help them strengthen their understanding of how saving works so they feel more confident about it.

We represent:

- over 1,300 pension schemes with 20 million savers. These include defined benefit and defined contribution schemes, master trusts and local government funds;

- major investors with over £1 trillion in assets; and

- some 400 businesses that provide essential services and advice to UK pensions providers.

We bring together the industry and other parties to raise standards, share best practice and support our members. We work collaboratively with our members, government, Parliament, regulators and other stakeholders to help build sustainable policies and a regulatory framework that allows our members to help people get better incomes in retirement.

THE PLSA'S APPROACH TO PENSION SCAMS

Cold calling ban welcome….

Pension scams are a major threat to people's hard-earned savings and the PLSA has been urging the Government to tackle the problem as a priority.

The cold calling ban will be a useful step towards making life more difficult for pension scammers and should be introduced as soon as possible, but we should recognise that there is no 'silver bullet' solution.

The cold calling ban will, however, enable pensions schemes, regulators and government to unite behind a clear message that savers should put the phone down on a pensions call from anyone other than one of their providers.

…. but we still need a more ambitious approach

The Government's current approach does not address the central problem – that being a *registered* pension scheme is no proof of being a *legitimate* pension scheme, as opposed to a vehicle for scams. We need a much tougher approach to stop rogue firms from entering the market and to tackle those using existing schemes as a vehicle for their activities.

The PLSA has consistently made the case for a more ambitious approach that would introduce an authorisation regime for pension schemes. We think this would be a major step towards protecting pensions savers from scams.

A RISK-TAILORED APPROACH

The PLSA is proposing that savers would only have the right to transfer their pension to a scheme that had been authorised. The nature of the authorisation system and the pace with which it is introduced should depend on the risks presented and the challenges associated with putting it in place.

As a priority, authorisation should be introduced as soon as possible for schemes that present the greatest risk. The PLSA agrees with the DWP and the Pension Regulator that the greatest risks arise in the case of transfers to small schemes and to overseas schemes.

AUTHORISATION REGIME: TAILORED TO RISK

TYPE OF SCHEME	NUMBERS (APPROX.)	SCAMS RISK	PROPOSED ACTION: EXISTING SCHEMES	PROPOSED ACTION: NEW SCHEMES
Master Trust (DC)	100	Low	Continue with introduction of Pension Schemes Act 2017 regime	Continue with introduction of Pension Schemes Act 2017 regime
Multi-Employer DB	25+	Low	Introduce authorisation regime at a later date for schemes wishing to receive transfers	Introduce authorisation regime at a later date
Large single-employer Scheme	6,000 DB 3,000 DC	Low	Introduce authorisation regime at a later date for schemes wishing to receive transfers	Introduce authorisation regime at a later date
Small schemes (fewer than 100 members but more than 12)	13,000	Medium	Introduce authorisation regime now for schemes wishing to receive transfers	Introduce authorisation regime asap
SSASs (fewer than 12 members)	24,000	High	Introduce authorisation regime now for schemes wishing to receive transfers	Introduce authorisation regime asap

Single Member Schemes	760,000	High	Introduce authorisation regime now for schemes wishing to receive transfers	Introduce authorisation regime asap
Overseas Schemes		High	Tougher HMRC checks required, including more liaison with overseas regulators	Tougher HMRC checks required, including more liaison with overseas regulators

TAILORED AUTHORISATION

Authorisation would operate in different ways for different types and sizes of scheme, but the objective in each case would be the same – to ensure savers and trustees can be confident that a robust system of regulation is ensuring that the pension schemes in which they save – or to which they might transfer – can be trusted.

- For *Master Trusts*, an authorisation regime is already being introduced through the Pension Schemes Act 2017.

- For *large schemes (whether multi-employer DB or single-employer DB or DC)*, while an authorisation regime would be desirable in the medium-to-long term, the risks are relatively low, so the introduction of a new regime for such schemes is not an immediate priority.

- For *small schemes with fewer than 100[1] members, including SSASs*, we propose that immediate action be taken. The exact nature of the authorisation regime need not be as onerous as for Master Trusts, but it would need to ensure that such schemes are operating for *bona fide* reasons and are non-fraudulent. We propose that the regime should be based on one of the following options:

    - no small scheme would be allowed to accept transfers in unless it has appointed an independent professional trustee who is compliant with a new and comprehensive framework to ensure these individuals meet demanding standards; or

    - no small scheme would be allowed to accept transfers in unless it has appointed a trustee who is a registered professional, such as a lawyer, an accountant or an actuary. (This would build

[1] 100 members is chosen as it is an existing threshold in pensions regulation. The EU Directive on workplace pensions (the Directive on Institutions for Occupational Retirement Provision or 'IORP Directive') does not apply to schemes with fewer than 100 members.

on, but strengthen and modernise, the pre-2006 requirement for SSASs to have a 'Pensioneer Trustee').

- Regarding *single-member schemes,* of which there are 760,000, we do not see any good reason for a member to wish to transfer to such a scheme. In cases where a single-member scheme has been set up specifically to receive a transfer, this should ring a loud warning bell for the transferring scheme's trustees. These schemes would also be covered by our new authorisation regime.

- Regarding o*verseas schemes*, which are by definition beyond the reach of a UK authorisation regime, the PLSA's view is that HMRC should make more rigorous checks, stepping up its liaison with overseas regulators.

HOW AUTHORISATION WOULD WORK

The key innovation in the PLSA's proposals would be the introduction of an independent professional trustee or a registered professional.

- The independent professional trustee or registered professional would be given a 'whistle-blowing' duty in cases where there is a risk of scamming. This would include inappropriate investments, which might be legal, but unwise.

- 'Whistle-blowing' would mean reporting the scam-related activity to TPR and HMRC.

- The independent professional trustee or registered professional would also be expected to tell the other trustees to stop making the inappropriate investments and, if they persist, to tell them to cease accepting transfers into the scheme.

- The proposed authorisation regime would significantly reduce the due diligence required from schemes. Under these proposals, the scheme would simply check whether the receiving scheme had been authorised and, if so, would pay the transfer. Transfers would be made more quickly.

- This approach would remove the discretion that trustees currently have to pay transfers even where the member does not have a statutory *right* to a transfer.

ANSWERS TO CONSULTATION QUESTIONS

Q1: Do you agree that the proposed regulations achieve the aim of restricting all unsolicited direct marketing calls in relation to pensions, bar the exemptions outlined, without restricting legitimate non-marketing calls?

We certainly expect the cold-calling ban to restrict cold-calling about pensions in the UK context, although, given scammers' ability to adjust their business models to stay 'one step ahead' of the authorities, we must expect some of them to find ways of working around the ban.

By definition the ban will not stop scammers from calling from overseas, so a great deal will depend on the effectiveness of collaboration between the UK Information Commissioner's Officer and authorities in other countries cited in section 6.3.

We are not aware of any legitimate activity that will be caught by the ban. The proposed application of the ban to marketing-relating calls only means the ban will not affect legitimate contacts between schemes (or their administrators) and their members.

Q2: Do you agree that the proposed regulations capture the wide range of activities through which people could be encouraged to use their pensions savings in order to invest in inappropriate or scam investments?

The proposal does appear to catch the full range of conversations and approaches used by scammers when cold-calling potential victims, although it is difficult (as mentioned in answer to question 1 above) to be completely confident that they will not find a way around the new rules.

The PLSA is concerned that the ban only covers telephone calls and does not extend to other forms of contact, such as email and text messages. We note that the consultation says the Privacy and Electronic Communications (EC Directive) Regulations 2003 already cover these other channels, but these measures are not proving effective at the moment.

Q3: Do you agree that the proposed regulations are sufficiently flexible and future proofed to prevent the evolution of scam pensions cold calls that circumvent the ban?

It will be important to put in place a mechanism for keeping the way the Regulations are enforced under review, in order to respond to 'fleet-of-foot' scammers.

Obviously it will be more difficult to adjust the Regulations themselves, but the PLSA notes that this might also be necessary to keep up with the scammers.

There are other steps – aside from adjusting the regulatory framework, that would help to strengthen the battle against the scammers. For example, the Government could simplify the process for reporting suspected scams. At present, anyone who wishes to report a suspected scam has to:

- find the ICO website;

- find the link entitled 'scam calls and messages';
- be redirected to the Action Fraud website (where the ‘pension scams’ page focuses on pre-55 pension liberation, whereas the scammers now focus just as much on parting people over 55 from their pensions, either DB or DC); and
- submit an account of their experience.

Even after taking all these steps, the individual does not get any response or call back, so there is a risk that people will feel their submission has fallen into a ‘black hole’. Making this experience simpler and more user-friendly would be a significant advance.

Q4: Do you agree that the proposed regulations prevent ‘workarounds’?

It is only realistic to assume that the most persistent scammers will find ‘workarounds’.

For example, a scammer might ask and obtain consent in an initial call and then engineer a reason for a call back very shortly afterwards; the second call would then be made with the scammer having been 'previously notified' of consent.

Scammers will undoubtedly find other ways of circumventing the ban.

Despite these cautionary points, we would note that the Regulations will certainly underpin a stronger message from the Government and the industry advising savers to put the phone down if they get a call about their pension from anyone other than their own provider/s and this is to be welcomed. However, the ban is not a ‘silver bullet’; it should be seen as part of a wider programme of government and industry activity to tackle scams.

Q5: What will be the quantifiable impact of the ban on the legitimate business of firms which undertake pensions cold calling?

- **how many legitimate pensions cold calls are taking place?**
- **how many legitimate pensions cold calls lead to a successful transaction and what is the average value of these transactions?**
- **how many legitimate pensions cold calls will be captured by the ban?**

There is no pensions cold calling from organisations with no link to the saver that could be described as legitimate. The Government should be wary of framing the regulations in a way that ends up providing loopholes for the scammers.

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The PLSA is content for this response to be published.

