

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**

**WORK AND PENSIONS
COMMITTEE INQUIRY: NORTON
PENSION SCHEMES AND THE
FRAUD COMPENSATION FUND**

PLSA RESPONSE

OCTOBER 2023



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ABOUT THE PENSIONS AND LIFETIME SAVINGS ASSOCIATION

The Pensions and Lifetime Savings Association (PLSA) is the voice of workplace pensions and savings. We represent pension schemes that together provide a retirement income to more than 30 million savers in the UK and invest more than £1.3 trillion in the UK and abroad. Our members also include asset managers, consultants, law firms, fintechs, and others who play an influential role in people's financial futures. We aim to help everyone achieve a better income in retirement.



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EXECUTIVE SUMMARY

The PLSA sees supporting victims of pension scams as directly related to our mission to help everyone achieve a better outcome in retirement. We therefore greatly appreciate the opportunity to further engage¹ in this work through our response to the [Work and Pensions Committee's inquiry](#) on Norton pension schemes and the Fraud Compensation Fund (FCF).

The PLSA has only responded to the specific questions where we have feedback, which includes questions one, five and six. Below is a summary of the main points included in the body of our response. Please contact Krista D'Alessandro, senior policy adviser, at krista.dalessandro@plsa.co.uk with any questions or concerns.

- The PLSA believes that TPR has sufficient powers to prevent trustees from acting dishonestly and in breach of their trustee duties, which could lead to the loss of pension scheme assets, as happened in the Norton case according to the Pensions Ombudsman. TPR should deploy its resources so that it can both quickly identify trustees acting dishonestly and effectively take action to protect savers in these instances.
- The PLSA supports TPR's new anti-scam campaign aimed at reminding stakeholders – particularly scheme administrators and trustees – of the importance of being vigilant and reporting any suspicious activity.
- Following the decision in *The Board of the PPF v Dalriada Trustees Ltd*, the remit of the FCF is much wider than it was at its inception. Some have argued that policy shifts of this magnitude should be a matter for parliament rather than the courts. Nevertheless, given this change in remit, we recommend a widescale, strategic review of fraud compensation overall, including eligibility for the FCF. Government should use this review to build a more robust compensation regime with the saver in mind. We suggest that any new regime to be reviewed at regular intervals.
- As a part of this wholistic fraud compensation review, consideration should be given to streamlining the services of the FCF and the Financial Services Compensation Scheme (FSCS), possibly even unifying the two into a single entity responsible for looking after victims of pension scams.
- The Government should consider strategies to protect savers against evolving pension scams and other forms of pension fraud. This includes consideration of how the Government detects individual scams. Specific work should be also done with the industry to review individual transfer processes.
- Post the decision in *The Board of the PPF v Dalriada Ltd*, savers in DC Master Trusts are required to pay for a compensation regime that they have no realistic prospect of ever benefitting from. Furthermore, schemes serving the lower end of the market pay disproportionately more because of the FCF's per member levy formula. This scenario places an unfair burden on such schemes and the savers within them, as they often have many more members with small pots compared to other types of schemes, which have many fewer members with more substantial pensions entitlements.

¹ See the PLSA's [December 2021 response](#) to the DWP's Review of the Fraud Compensation Levy ceiling and its [September 2022 response](#) to the DWP's Technical Amendments to the Pension Protection Fund and Fraud Compensation Fund regulations.

- Consideration should be given to excluding small pots from the levy formula – keeping the definition of small pots consistent with the Government’s current wider approach, which is stated to be less than £1,000 – even if only in the short term before a resolution to the small pots problem is found.
- A strategic review of the scheme types included in the levy should be conducted to analyse where pension scam victims are transferring from, as it seems plausible that they are just as likely to originate from contract-based schemes as trust-based schemes. If this were found to be the case, contract-based schemes should pay their proportionate share of the outstanding claims.

RESPONSES TO CALL FOR EVIDENCE QUESTIONS

1. Does TPR have the powers it needs to prevent trustees acting dishonestly and in breach of their trustee duties, leading to the loss of pension scheme assets, as happened in the Norton case according to the Pensions Ombudsman? a) Are the right regulatory arrangements to prevent a similar case happening again?

The PLSA's view is that TPR does have sufficient powers to address these issues. We note that under the Pensions Act 2004, TPR already has the power to:

- seek an injunction where there is a reasonable likelihood that a person will do any act which constitutes a misuse or misappropriation of scheme assets (s.15);
- seek restitution of scheme assets that have been misused or misappropriated (s.16);
- freeze scheme assets, where there is an immediate risk to the interests of members under a scheme or the assets of a scheme (s.23);
- suspend, prohibit and disqualify persons from acting as a trustee (s.33, 34 and 37); and
- appoint replacement trustees (s.35 and 36).

We believe that these powers are sufficient to enable TPR to tackle dishonest/fraudulent behaviour when it becomes aware of it, though we recommend TPR review the process to applying them to ensure that they are streamlined and efficient.

The real question then becomes whether TPR has the capacity to identify fraudulent incidences quickly enough to take preventative action and/or to recover scheme assets.

To become aware of dishonest or fraudulent behaviour, TPR is largely dependent on whistleblowing reports as well as on its own intelligence gathering. Regarding intelligence gathering, TPR should ensure this work is resourced so as to increase its chances of proactively and effectively identifying instances where dishonest behaviour may be taking place.

TPR has recently launched an important anti-scams campaign, which is aimed at reminding stakeholders (particularly scheme administrators and trustees) to be vigilant and report any suspicious activity. This campaign is designed to complement the Financial Conduct Authority's 'ScamSmart' campaign, which is aimed at savers/individuals.

The PLSA supports TPR's new anti-scam campaign and was involved in the workshops hosted by TPR in June 2023, providing feedback on the early stages of its creative design/development.

5. How could the process for applying to the Fraud Compensation Fund (FCF) be simplified and sped-up?

As part of our mission to ensure better retirement outcomes for everyone, the PLSA fully supports the fair compensation of victims of pension scams. To achieve this, there must be an effective regime in place to both protect members and to compensate them if they fall victim to dishonest behaviours.

However, the current fraud compensation regime is confusing for savers and industry alike, and the Government should consider building a more straightforward and robust compensation regime that offers protection for all pension savers. This could be done by merging the FCF and the Financial Services Compensation Scheme (FSCS), thereby creating a single entity responsible for compensating consumers of all financial services firms against claims, including pension schemes that fall victim to scams.

While this is considered, the PLSA is supportive of the Pension Protection Fund's (PPF's)² continued efforts to progress eligible claims quickly and fairly. In terms of the current claims process,³ the PPF is currently exploring several options to ensure the fastest possible route to payment for eligible claims, including:

- the use of 'in principle' decisions for dishonesty, where the eligibility conditions have not been met but it is thought that they could be;
- the potential for claims to progress to payment despite having an outstanding potential recovery; and
- working with trustees on the possibility of 'asset assignment' (where the value is minimal), which could allow the FCF to progress more quickly to paying a claim whilst ensuring the FCF/levy payers benefit from recovery in due course.

We support these and other efforts by the PPF, though continue to encourage the Government to consider merging the FCF and the FSCS into a single entity to build a more robust fraud compensation regime.

6. What claims might the FCF expect in future and are there schemes which might be eligible but do not have the support to make a claim?

It is difficult to determine exactly how much the FCF might expect in future claims from occupational schemes that have suffered financially because of dishonesty. While the claims against the FCF have historically been low, we note that following the High Court ruling in November 2020 in *The Board of the PPF v Dalriada Trustees Ltd*, which clarified that occupational pension schemes set up as part of a scam were eligible to claim on the FCF, the FCF received claims totalling over £47.3m. We also note that the FCF is expecting many more claims to come and is aware of around 130 pending applications, totalling £429 million as of 31 March 2022.

The FCF had insufficient assets to cover the total of all these claims. It has previously been suggested that the PPF should fund the FCF shortfall considering its strong financial position and current reserves of over £12 billion. However, PPF funds are entirely separate from the FCF funds, and relate to the protection the PPF provides to savers with a DB pension when their employer becomes insolvent. Under current legislation, there can be no lawful transfer of funds between the PPF and the FCF.

Rather than the transfer of funds between the PPF and FCF, Parliament instead approved legislation⁴ in October 2021 to allow DWP to give the FCF a loan, which would allow the FCF to pay compensation to schemes⁵ whose members were victims of occupational pension scheme fraud. However, this loan was only designed to cover any shortfall arising after FCF collects the maximum levy amount available to it (as set by DWP). As a result, following the increase in the levy ceiling, the FCF raised a levy in 2022/23 of £1.80 per member of eligible schemes, and £0.65 per member for DC Master Trusts.

² The PPF administers the FCF.

³ It is worth noting that there are several eligibility conditions (as set out in legislation) which must be met before the PPF can receive and progress a formal application for FCF compensation. Several further requirements, including the need to make any recoveries of value, must be met before compensation can be paid.

⁴ Compensation (London Capital & Finance plc and Fraud Compensation Fund) Act 2021.

⁵ This includes "pension liberation" schemes, or those "set up with the aim of persuading people to transfer their pension savings from legitimate schemes to fraudulent schemes with promises of high investment returns." See [9 March 2022 House of Common Research Briefing](#).

Per member levy structure burdens DC Master Trusts

The per member levy structure places a disproportionate burden on those schemes with mass membership, like DC Master Trusts. Although per member caps apply, the scale at which many Master Trusts are now operating means that the burden of the levy falls disproportionately on its members – many of whom will likely have much lower pensions savings than in previous generations or those who are still in DB schemes. We have concerns that if demands on the FCF increase, corresponding rises in levy charges would directly impact the savings and overall value for money of members of large Master Trusts – ultimately either through higher member charges or lower levels of service.

Furthermore, given the stringent stipulations around governance and financial sustainability of DC Master Trust authorisation, there is very little prospect for Master Trust members to make claims to the FCF. This, combined with the disproportionate levy burden on these members, places an unfair burden on a developing part of the industry.

Consideration should be given to excluding small pots from the levy formula, keeping the definition of small pots consistent with the Government's current wider approach, which is stated to be less than £1,000. Excluding small pots from the formula would reduce the disproportionate burden on mass market automatic enrolment schemes of all types, even if only in the short term before a resolution to the small pots problem is found.

In addition, we believe a strategic review of the scheme types included in the levy should be conducted. This would allow for additional analysis of the scheme types that pension scam victims are transferring from, as it seems plausible that they are just as likely to originate in contract-based schemes as trust-based schemes. If this were found to be the case, contract-based schemes should pay their proportionate share of the outstanding claims. This strategic review would also help to determine how best to cover any shortfall created from the exclusion of small pots from the levy formula.

Widescale review of the fraud compensation regime

The outcome of The Board of the PPF v Dalriada Trustees Ltd ruling has produced a situation that is materially different to the policy intent of the FCF at inception. The FCF was intended to compensate members in the event of "Maxwell" style fraud at the level of the employer. Its remit now runs much wider and includes schemes that have the form of an occupational pension scheme but the substance of a fraud.

Further, some have suggested that policy shifts of this magnitude should be a matter for parliament rather than the courts. We see a strong case for a wider review of fraud compensation, including eligibility for the FCF. This is especially important when considering that many DC members are disadvantaged compared to DB members, as the levy fee applies directly to the pots of DC members, whereas DB members avoid payment of an equivalent fee because of the way DB schemes are structured.

Following this wider, strategic review of fraud compensation, Government should build a more robust compensation regime with the saver in mind, and we suggest that any new compensation regime should be reviewed at regular intervals. As a part of this strategic review, consideration should be given to streamlining the services of the FCF and the Financial Services Compensation Scheme (FSCS), possibly even unifying the two into a single entity responsible for looking after victims of pension scams.

A more robust compensation regime would help current funding issues, and particular consideration should be given to the proportion of claims paid for by the FSCS where regulated advice was provided or there was some other such regulated activity carried out by a firm.

The Government should also consider strategies to protect savers against evolving pension scams and other forms of pension fraud. As a part of this, consideration should be given to how the Government detects individual scams. The Government should work with the industry to review individual transfer processes, as the burden is currently on pension administrators and the process is quite onerous for members. Given the increase in consolidation generally, and coupled with the small pots issue, the Government should review preventing individual scams while enabling transfers (DC transfers in particular).

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