



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Rt Hon Stephen Timms MP
Work and Pensions Committee
House of Commons
London
SW1A 0AA

21st April 2022

Dear Stephen,

Thank you for your letter of 21 March regarding the Work and Pensions Committee concerns about the tax treatment of those involved in pension scams and pension liberation.

I thank the Committee for their continued work on this important issue and recognise the impact this has on individuals. The government is committed to safeguarding pension savings and has already taken a number of steps to help achieve this. The importance of this work is represented in the continued efforts of Project Bloom. For its part, HMRC continues to make progress on a number of areas highlighted by the Committee, including improvements to its communications and published guidance, and working with industry to understand some of the recommendations made.

I also welcome the opportunity to provide further clarity following the government's detailed response to the Committee's report. The government was clear that HMRC aims to treat all its customers with sympathy and that customers are supported according to their specific circumstances. I am more than happy to provide more information on how HMRC uses its discretion when dealing with those affected by pension scams and pension liberation. It may be useful if I expand on some of the points made in our previous response.

It is important to note that HMRC is responsible for administering pension tax legislation and ensuring that the valuable tax relief provided on contributions to, and the growth of, pension savings is used for its intended purpose (i.e. to support savings towards an income in retirement) and not abused. This ensures fairness and prevents those who access their savings in a manner other than the way legislation permits from unfairly benefitting.

HMRC has a duty to collect tax which is lawfully due under the laws enacted by Parliament. That includes collecting tax charges from people who have entered into arrangements where they received, or intended to receive, their pension savings outside of the specific circumstances approved by Parliament such as through pension liberation schemes.

HMRC carefully considers each case to ensure the tax treatment is correct. Where, based on the facts in its possession, HMRC seeks to collect tax from pensions savers, it does so as it has determined there is sufficient evidence to show that the individual has received,

or expected to receive, an unauthorised payment by entering into a scheme which was designed to circumvent the tax rules. Many people involved in pension liberation claim publicly they are victims of pension scams and did not set out to avoid tax. However, when checking against HMRC's records, HMRC will often find differences between what the individuals say publicly and the established facts.

You ask about discretion and how it is used. HMRC Commissioners are sometimes able to exercise discretion when undertaking their duties. In exceptional cases this means it may be justifiable for them to refrain from collecting tax that is legally and strictly due under the law. However, this discretion (often referred to as 'Collection and Management' discretion) does not allow the Commissioners to refrain from collecting tax that is lawfully due simply on the basis that the tax charge could be perceived as being unfair or unpalatable. The scope of the Commissioners' discretionary powers has been the subject of case law decisions over the years. This case law has framed the limits of the discretionary powers and set out the kind of exceptional circumstances in which they may be justifiably exercised.

While HMRC has used its discretion in some pension scam cases, based on a considered assessment of all the facts in its possession, there is no justifiable basis for doing so in these pension liberation cases as the facts of the case demonstrate that the person involved received or expected to receive a payment from the scheme which was not authorised by the laws enacted by Parliament. If anyone considers that HMRC has applied the incorrect interpretation of legislation or arrived at an incorrect result following an assessment of the facts available, they can challenge HMRC, either through requesting a reconsideration or through the Tax Tribunals.

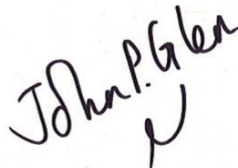
On the subject of tribunals, and in response to your question about changing legislation, HMRC maintains the view that pension liberation schemes such as the Ark schemes, were set up with the aim of circumventing the tax charges on unauthorised payments from a registered pension scheme to members. The government does not consider it would be appropriate to change legislation on the collection of any tax charges arising from these schemes as to do so would be unfair on people who have left their savings in a pension scheme or accessed their pensions only in accordance with the tax rules.

Appeals relating to the Ark schemes are due to be heard by the First-tier Tax Tribunal later this year. As is often the case with such appeals, volunteers were sought by HMRC and the trustee of the Ark schemes, to become test appellants and have their cases examined. Whilst initially there were volunteers covering different factual categories, some of these volunteers have now withdrawn. It was agreed at the case management hearing that where a category of member is unrepresented by a test appellant, the Tribunal will consider that category using documents from an example member. The decision of the Tribunal will establish the principles that should apply to all members. The outcome of these appeals will guide how HMRC should deal with all other members in the relevant category going forward.

Finally, you asked about the amount of unauthorised payment charges levied on people involved in pension liberation between April 2009 and April 2014. HMRC does not record unauthorised payment charges by cause. Accessing funds before the normal minimum pension age is only one example of where the unauthorised payment charge arises.

I hope you find this further information useful. HMRC continues to work on the recommendations made in the Committee's report and I would be happy to provide a further update on HMRC's progress in due course.

Yours sincerely,

A handwritten signature in black ink that reads "John P. Glen" with a stylized flourish underneath.

JOHN GLEN



Work and Pensions Committee

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John Glen MP
Economic Secretary to the Treasury
HM Treasury

21 March 2022

Dear John

Tax treatment of pension liberation victims

As you know, the Work and Pensions Committee made a number of recommendations in relation to supporting pension scam victims in its March 2021 report, [Protecting Pension Savers - Five years on from the Pension Freedoms: Pension Scams](#). One of those recommendations related to the continuing unfair treatment of victims of pension liberation schemes. The Committee said:

Pension liberation scams often involve scammers claiming that there are legal loopholes, such as loans or cash incentives, which can allow a person to access their pension early, before the age of 55, without the victim having to pay tax. This is not correct. Someone who accesses their pension early faces an unauthorised payment charge of 40% and an unauthorised payment surcharge of 15%. These penalties are intended to act as a deterrent, but do not work in cases where a scammer has convinced a potential victim that the charge will not apply.

The Committee noted that HMRC had been described as “unrelenting and uncompromising” in the pursuit of unauthorised payment charges. It said that while the position taken by HMRC was legally correct, it had often lacked empathy or understanding of impact that its demands have on victims. The Committee recommended that HMRC should make greater use of its current discretion to waive tax charges:

Recommendation 27. We recommend that HMRC should make greater use of its current discretion to support pension scam victims left owing large tax bills and that it should do its utmost to provide them certainty where possible. HM Treasury should recognise that, in some clearly defined circumstances, where the saver has been the victim of a crime and made no financial gain from the early access, it may not be in the public interest to demand payment of tax due. Where someone seeks to access their pension before the age of 55 without being eligible for one of the exemptions, we recommend that the pension schemes be required to withhold the Income Tax and surcharge and pay this to HMRC. In the event that the tax is not due, the individual could reclaim it from HMRC. This would ensure that victims of scams would not be subject to a tax bill on top of their pension loss. If a person has made a financial gain from

early access, but can demonstrate that they have been the victim of a crime, they should be given the option to return the gains to an approved scheme within three years of the point at which they ought to have realised they have been scammed. If HMRC is unable to make greater use of its current discretion to waive the tax due by pension scam victims, then the Government should consider whether legislation is required to give HMRC the option not to pursue the tax penalties of pension scam victims.

The Government's [response in July 2021](#) did not respond directly to this recommendation. It said that "where customers access their tax privileged pension savings before they are 55, HMRC has to collect the unauthorised payment charge that is due under the law" but also that, "where HMRC accepts that a pension scheme member is defrauded of their tax-privileged pension savings as part of a pension scam, they are not taxed on the money they have lost as a result of the fraud."

We would be grateful for clarification on the following:

1. What treatment should victims of pension liberation scams expect from HMRC? Is HMRC monitoring the quality and consistency of the service and treatment it provides to pension scam victims?
2. What discretion does HMRC have to waive unauthorised payments tax charges and how does it use this?
3. How many unauthorised payments charges were levied on people who were victims of pension scams between April 2009 and April 2014? In how many cases was the charge reviewed and what was the outcome?
4. If HMRC is unable to make greater use of its current discretion, will the Government consider changing the legislation to allow HMRC the option not to pursue the tax penalties of victims of pension liberation fraud?

We would be grateful for a response by Tuesday 12 April, if possible.

Yours sincerely,



Rt Hon Stephen Timms MP
Chair, Work and Pensions Committee