



Department
for Work &
Pensions

GUY OPPERMAN MP
Minister for Pensions

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

6 October 2020

Dear Stephen,

Thank you for our discussion last week about clause 125 of the Pension Schemes Bill. As agreed, I am writing to update you ahead of second reading of the Bill.

I fully appreciate the Committee's concerns on the issue of pension scams; it is also one of my priorities to ensure that savers do not fall victim to callous scammers. I am encouraged by our conversations to date on this issue and hope that we can continue to work collaboratively, and pragmatically, to protect pension savers. I hope this update will reassure you and the committee that the clause, as drafted, is a positive and significant step forward.

Following further consideration of clause 125, I can confirm that, although broad, the powers are not without limits. As drafted, they do not fully cover the top four 'red flags' that PSIG and [Committee staff] highlighted during discussions with officials. I have addressed each of the 'red flags' below and explained to what extent these fall within scope of the existing clause.

The 'red flags'

1. *The receiving scheme or parties in the transfer not having the required permissions from the FCA.*

We believe this is achievable under clause 125. Regulations could require trustees to ensure that the "destination" organisation has the required authorisations under FSMA. Therefore, this would achieve a similar policy outcome to the inclusion on the FCA warning list of an entity operating without permission which the FCA believe is a scam. This 'red flag' would remove the need to make explicit reference to the FCA list, which cannot be achieved under these powers.

The clause only provides for the Secretary of State to set the transfer conditions – it does not allow for sub-delegation. Reference to the FCA warning list would be considered as sub-delegation. The FCA have confirmed, in writing, that the warning list on its own should not be seen as a comprehensive measure of consumer protection. I have attached the correspondence from the director of Consumer Investments Supervision at the FCA on this issue. We will continue to consider what role the FCA, alongside other regulators, could play in the wider protection regime.

2. *The member was contacted via social media, email or by cold calling or was offered “free pension reviews” or “early access” to cash.*

We also believe this is achievable under the powers of clause 125 as drafted. Regulations could set conditions relating to the type of person or organisation who contacts the member about the transfer. Regulations could also set conditions on the platform by which such contact is made. As an example, these could stipulate that the person or organisation must be a regulated financial advisor.

3. *The member was pressured to transfer quickly.*

Again we think this is deliverable based on the powers in clause 125. We will need to define what we mean by ‘quickly’ to ensure we are not asking trustees or administrators to use their judgement. However, we are confident that this is achievable through further technical discussions with relevant parties.

4. *The receiving scheme is not registered with HMRC.*

Under the powers in clause 125, we could prescribe that the receiving scheme must be registered with HMRC. However, we would need to explore with HMRC whether there is a strong enough link between whether a scheme is HMRC registered and the risk of scams. Registration can rely on self-declaration and we would not want to suggest that being registered or not is a clear signal of whether a scheme is a scam or not.

In addition to what is within scope of the clause, we intend to introduce an information and guidance requirement where additional ‘red flags’ are identified in the transfer process. We will work with PSIG and others to develop these proposals.

I appreciate that the clause as drafted does not satisfy the specific proposals set out by the committee and the PSIG however, this is a significant step forward in protecting members from falling victim to scams. Most importantly, the clause enables regulations to prevent trustees from using the cash equivalent sum unless specified

conditions are met – in practice, removing the statutory right to transfer. This is a significant power which I'm sure you will welcome.

I propose our teams continue discussions to develop regulations based on the above and would be happy to discuss this issue further.

A handwritten signature in blue ink, appearing to read 'Guy Opperman', with a large, stylized flourish underneath.

**Guy Opperman MP
MINISTER FOR PENSIONS AND
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5 October 2020

Dear Guy,

RE: Use of the FCA Warning List to reduce pension scams

Thank you for your time on 21 September where we discussed the FCA's work on scams, and the Department of Work and Pensions' (DWP) ambitions. I committed to writing to you with some more information, including on our Warning List.

First and foremost, we welcome the Government's commitment to reducing pension scams, building on the work we have been doing over the last few years. One route you are exploring in this context is setting conditions on members' statutory right to transfer, which are aimed at providing additional protections for people where there are indications of a possible scam, such as when a firm appears on the FCA's Warning List.

The presence of an investment or a firm on our Warning List will tend to provide reasonable grounds for believing that any pension transfer involving the investment or entity may result in the misappropriation of funds. We therefore consider that pension funds should not be transferred to an investment or an entity that is on our Warning List, and that a trigger to that effect may have some limited impact. However, on its own such a trigger should not be held out as a comprehensive consumer protection due to the nature of the Warning List; which I explain further below.

The FCA's Warning List

In the UK, a firm must be authorised and regulated by the FCA to do most financial services activities (although there are some activities which are regulated by other entities, e.g. The Pensions Regulator). Consumers who use an unauthorised firm cannot access the Financial Ombudsman Service or Financial Services Compensation Scheme so they are unlikely to get their money back if things go wrong.

We use our Warning List to publish details of unregulated entities which appear to us to be carrying on an FCA-regulated activity without the requisite FCA authorisation or permission. We do this to warn consumers and third parties, such as banks, financial advisers, and tech companies which may be facilitating these entities' online activities, not to deal with them. Publishing warnings on our Warning List also allows us to prevent consumer harm swiftly, in circumstances where our prospects for taking successful enforcement action may be limited. For example, where the entity is based overseas and has no assets in the UK, and we are unable to identify the people behind it.

The entities we issue warnings against engage in a wide range of regulated activities, from investments in forex trades and crypto assets, to credit management and debt advisory services. An increasing number of warnings on our Warning List concern unauthorised firms communicating financial promotions to the public which have not been approved by an FCA authorised firm, whose role it is to ensure that the promotion is compliant with FCA rules.

When we issue a warning on our List, we liaise with Google, social media companies, and internet service providers over the removal of websites and social media accounts promoting these entities. However, we lack powers to compel action by these parties.

We assess all reports about unauthorised business we receive. A consistent methodology is employed in which every matter is assessed and triaged against a number of risk measures. We only issue a warning on the Warning List if we have satisfied ourselves that doing so would help consumers, and that we have a proper evidential basis for believing that an unauthorised entity is carrying on a regulated activity. In some cases, we decide not to issue a warning because we, or another agency, are investigating and we want to avoid tipping off the subject. We can provide more detail about our process for issuing warnings, using case studies, if you or your officials would find this helpful.

As investment fraud has moved online in response to changing consumer habits, the number of reports of unauthorised business we have received in the last 3 years has grown by 89%. Last year we received over 20,000 reports. This year we are on track to receive well over 24,000. In the first 6 months of this year, we assessed over 11,000 reports and issued more warnings on our Warning List than in the whole of 2019.

There has also been a proliferation of online scams outside our remit. Importantly, our Warning List is not a one-stop shop central public register of all scams, including all the different facets of pension scams. We do not have the power to publish details on the Warning List about unregulated entities that are not conducting any regulated activity, because they are outside our jurisdiction. Nor do we have the power to publish warnings on behalf of other agencies and regulators.

Currently, the public and industry have no single website to refer to, where they can find all scams identified by regulators and law enforcement. We think that a central register may help improve consumer protection and disrupt scams. We would be open to discussing with you, other regulators and our law enforcement partners how one might work.

ScamSmart

In addition to the Warning List, we take proactive steps to ensure consumers are vigilant about spotting possible scams. We work in partnership with The Pensions Regulator (and Project Bloom) to run the ScamSmart website which has information for consumers to help them avoid being scammed.

On 1 July, we re-launched our ScamSmart campaign, focusing specifically on pensions scams. It ran until the end of September and uses broadcast channels, including TV and radio, to provide savers with the knowledge and tools to avoid pension scams. We have since launched a further campaign focused on pension transfer scams this September. The campaign-based approach is designed to reduce the number of victims and supplements our enforcement approach to disrupt and prosecute scams where we are able to.

Our written evidence¹ to the Work and Pensions Select Committee's inquiry into the impact of pensions freedoms and protection of pension savers sets out in greater detail the work we are doing to reduce pension scams.

Parties involved in a pension transfer

Whilst consumers can refer to our Warning List, a number of professional parties are typically involved in a pension transfer (i.e. a transfer from a defined benefit (DB) scheme to a defined contribution (DC) scheme) or a pension switch (from a DC scheme to another pension product). As your legislative proposals have set out, these professionals may be able to help consumers avoid scams by prompting them or interrupting a transaction. But they vary greatly in nature.

These include pension providers, Self-Invested Personal Pension (SIPP) operators, platforms, wealth managers and financial advisers, unregulated investment vehicles, appointed representatives and introducers – to name a few. We have regulatory remit over some, but not all, of these parties.

In the context of a DB to DC transfer, qualified pension transfer specialists provide regulated advice. The receiving scheme would usually come under our remit as an authorised firm, but again, this is not always the case. For example, Small Self-Administered Schemes (SSAS) and Qualifying Recognised Overseas Pension Scheme (QROPS) are not FCA regulated, nor are trust-based schemes, which fall under the remit of The Pensions Regulator. In addition, it is worth noting that DB scheme trustees and pensions administrators are also not in our remit.

Our experience is that the majority of pension transfer misconduct has historically involved unsuitable transfer advice, as opposed to a transfer into a scam. As you will be aware, we have taken action to prevent and address harm to consumers that arises from poor advice.

Based on our understanding of the market, consumers are more likely to be affected by scams when they transfer from a DC scheme to another pension investment, including into the unregulated schemes and investment propositions mentioned above.

DWP proposal for the Pensions Bill

While we strongly support publicity for our Warning List, requiring the public and industry to check the List during a pension transfer may not result in a substantial reduction in the number of victims of pension scams. As I have set out, the List contains only limited information on whether a pension transfer is to a fraudulent entity.

Many of the firms on our Warning List are promoters and lead generators for products and services but are not the entities to which financial transfers are made for the underlying product or service. We tend not to issue warnings about the underlying products or services that may have been promoted or about the providers of these products or services because we regulate specified activities, not specific products or services. As well, there are several activities in the pension sphere which we do not regulate, and therefore cannot issue warnings about on our Warning List.

We do think there are potential indicators that DWP could use to develop triggers for a pause on the statutory right. We would welcome a DWP hosted roundtable with key industry and regulatory bodies to develop those indicators. We would be happy to take part in such an event.

¹ <https://committees.parliament.uk/writtenevidence/11389/default/>

In addition to the above, and as highlighted in our Perimeter Report², it is worth noting that online platforms, such as search engines and social media platforms, play an increasingly significant role in consumers being more readily exposed to adverts. These can range from scams and promotions of high-risk investments to false or misleading adverts (falling either side of the regulatory perimeter). This directly or indirectly can lead consumers onto paths resulting in harm. As the digital world continues to develop, the potential harms to consumers change in both nature and severity. To effectively reduce the harm to consumers, we think that it is important that online platform operators, like Google, bear clear legal liability for the financial promotions they pass on – at least to the same extent as traditional publishers of financial promotions.

A handwritten signature in black ink that reads "Debbie Gupta". The signature is written in a cursive, flowing style.

Debbie Gupta
Director of Consumer Investments Supervision

² <https://www.fca.org.uk/publication/annual-reports/perimeter-report-2019-20.pdf>