Department for Work & Pensions

Paul Maynard MP
Minister for Pensions

Sir Stephen Timms
Chair
Work and Pensions Select Committee

10th May 2024

Dear Stephen,

I said in my letter earlier this year that I would provide a full update on work around providers' concerns that the Privacy and Electronic Communications Regulations act as a barrier to communicating helpful information to their members.

As I said in my evidence to the committee in January I agree that regulations should not get in the way of the free and fair functioning of the pensions system. To help people to exercise choice and take charge of their pensions it is vital government, industry and others work to increase engagement with all aspects of pensions and saving for later life.

We have demonstrated our commitment to encouraging engagement and making it easier for people to engage with pensions by simplifying annual statements, developing pensions dashboards, and consulting on plans to make engaging with choices about decumulation easier for individuals.
Schemes clearly have an important role to play, and need to be able to communicate with their members in a way that will engage them. Schemes are well placed to experiment with different messages and tailor communications to maximise engagement. The legal framework should allow and encourage schemes to do this, not prevent it.

However, we also need to protect individuals from unwanted marketing emails. Any legal framework must strike an appropriate balance between protecting individuals from unwanted spam and enabling schemes to engage members by directly marketing their products and services to them electronically. I believe that, in respect of the vast majority of commercial transactions, the Privacy and Electronic Communications Regulations strike an appropriate balance.

I have some sympathy with the view that the interaction of PECR and the process of automatically enrolling someone into a pension has created an anomaly that puts schemes at a disadvantage compared to equivalent commercial transactions. However, I also recognise the perspective that inertia selling is not equivalent to other

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commercial transactions, and that it is not appropriate to allow firms to send direct marketing electronically where the individual has not had direct contact with them previously.

Identifying potential changes to the legal framework that would meet the policy intent and allow schemes to send direct marketing electronically is therefore not straightforward. I can reassure you my officials are working with relevant government departments and regulators to explore options and aim to find a solution that would strike a balance between protecting consumers from unwanted marketing and allowing pension schemes to market their services where the individual was automatically enrolled.

It is important that we maximise the positive impact of any changes, particularly on lower earners. This may involve requiring schemes to try to engage all members, or placing limits on the extent to which they can target only those members and actions likely to result in the largest increase in fees chargeable.

It is worth keeping in mind that PECR only governs when direct marketing can be sent electronically. Schemes are able to send direct marketing by post, and to send communications that are not direct marketing electronically. Additionally, schemes are able to send communications electronically which inform members of, for example, the potential benefit of contributing more to their pension but which do not constitute marketing.

It is clear from conversations I and officials have had with schemes that some schemes feel the definition of what constitutes marketing is not clear enough for them to be confident they can encourage engagement in a way that would not be considered to be marketing.

I want to reassure the committee that the Government is examining this issue. In their recent consultation '*Advice Guidance Boundary Review – proposals for closing the advice gap'* the Treasury and the Financial Conduct Authority asked: "what steps could be taken to provide reassurance about the electronic communications that firms can provide to give greater consumer support, in compliance with PECR direct marketing rules? Do you consider a similar approach to the joint FCA / ICO letter on savings rates may help provide additional clarity on this?" While I cannot pre-judge the government's response to this, I can reassure the committee that DWP officials will of course work with HMT, the FCA, the ICO and other stakeholders on the appropriate next steps as part of our work to explore potential solutions This would be unlikely to solve all the impacts of the interaction of PECR with automatic enrolment. This could have a significant impact on schemes' ability to engage their members and potentially have an effect sooner than a solution that involved legislative change.

Yours Sincerely,

Paul Maynard

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