Written evidence from Connaught Action Group [PPS0010]

Introductory comments

While all forms of financial services scam ruin lives, closing down the freedoms people work for and replacing them with fear, those targeting pension assets are particularly unpleasant as they tend to happen later in life when people are either in retirement or close to it, so have little or no opportunity to rebuild their finances.

This document addresses all of the questions raised in the discussion paper bar one (tax, due to lack of specialist knowledge). It is based on our, and in particular my (Mark Bishop's) experience of dealing with a scam that principally but not exclusively targeted pension money, namely The Connaught Income Fund Series 1, in the eight and a half years following that Fund's suspension when the Ponzi-style operation had fully drained the scheme of cash.

Notwithstanding the detailed observations and recommendations in this response, we felt it important to highlight the overriding point, namely that we consider the UK's principal financial regulator, the Financial Conduct Authority, in its current form to be spectacularly unfit for purpose, and the gap between its current performance and its statutory obligations to be the principal reason why pension scams are so prevalent.

We therefore believe that a Royal Commission or similar is needed to deal with both legacy cases and reform of industry and regulator. Such a process was undertaken in Australia to good effect, and the UK could and should work with its CANZUK ally to create a much more extensive scheme here to deal with the larger and more sophisticated industry and far greater extent of harms.

1. What is the prevalence of pension scams?

We are aware of no published data on this topic and believe it would be beneficial to collect such information on an ongoing basis, for the following reasons:

- Quantifying a problem helps politicians, regulators, the industry and citizens understand its scale and hence the importance of developing measures to address it;
- Segmenting the data by geography and by type of scam would help shape and fine tune the necessary response;
- Tracking changes in scale over time would provide an indication of the success or otherwise of such measures and assist in evaluating the effectiveness and value for money delivered by the regulator;
- Segmenting the demographics of those impacted would enable us to understand the equalities implications of the problem and allocate additional resource or implement further measures if necessary to protect the vulnerable

We believe that the Financial Conduct Authority or any successor regulator is the appropriate body to collect and publish such data, for the following reasons:

- Its consumer protection objective imposes on it a statutory obligation to secure an appropriate degree of protection for consumers, an objective that requires it to possess a timely and detailed understanding of potential harms that can best be met by it being the

first party to be alerted to potential scams as they emerge and the owner of real-time data about trends within the sector;

- It already operates the FCA ScamSmart campaign, which could easily be expanded beyond its current role (how to spot/avoid a scam) to one of also encouraging consumers, the industry and other professionals to report potential scams, preferably online. This change, if backed by suitable PR and marketing activity, would have three further benefits:
    - Deterrent: if prospective scammers saw that the FCA was encouraging people to report such activities, they would be less likely to embark on them;
    - Early warning: the FCA would be better placed to protect consumers as it would become aware of scams as their promotional activity begin rather than, as sometimes happens today, when losses have already crystallised;
    - Proactivity: the FCA would be expected to investigate such reports, in order to protect consumers and as part of the proposed data-gathering function. Should it fail to do so, resulting in avoidable consumer harms, the existence of the reports would provide evidence of such inaction, which would be helpful to consumers wishing to pursue civil claims against the regulator and to politicians, citizens and the media in highlighting any shortcomings in the regulator's performance

We recognise that collating data on pension scams requires an agreed definition for them, and would suggest the following:

The causation of material financial detriment to a consumer or group of consumers through the wilful or negligent misallocation of capital within or from his, her or their pension scheme

We believe that the majority of pension scams adopt one or more of the following forms:

- *Outright frauds*: the pension beneficiary is encouraged to invest in an asset class that does not exist or does not have the claimed benefits, either within the pension itself or using money withdrawn from the scheme;
- *Pension liberation schemes*: these are illegal workarounds that enable beneficiaries to access capital from pensions to meet living expenses when they are below the age at which pension benefits can legitimately be taken, or divert such capital into businesses they own;
- *Defined benefit transfers*: advisers may recommend the transfer of capital from 'gold plated' pensions to defined contribution ones against client interests;
- *Misadventure*: a fund or asset manager may depart from its stated investment mandate, whether through hubris, recklessness or to benefit connected parties, thereby exposing clients to risks of which they are unaware and which they would not willingly take;
- *Unauthorised or misunderstood charges or conditions*: wealth management firms, financial advisers, fund managers and others may impose charges on assets or conditions (such as exit fees or liquidity restrictions) that either are not notified of in advance or that are not presented in such a way that clients understand them, resulting in there being an absence of informed consent to fees or terms that would be considered unreasonable

These forms are sometimes combined. So, for instance, money may be liberated from a pension, or transferred from a defined benefit scheme to a defined contribution one, as a prelude to investing it in a fraud[1].

[1] Colloquially known as *sippshifting* or, more bluntly, *sippshitting*

The FCA recently claimed that pension frauds account for £30m a year of losses. This was based solely on reports made to Action Fraud and, we assume, is limited to the value of the sums lost by those reporting, rather than those affected (a small proportion of people affected by any one scam may choose to report it to Action Fraud, or any other organisation).

When the regulator tweeted this information, within hours members of the public had responded with information about such scams running into many hundreds of millions of pounds of losses. We suggest that the FCA's gross underestimate of the harms caused is symptomatic of a lack of inquisitiveness and a presence of organisational defensiveness that must be overcome if pension scams are to be tackled effectively in the future.

2. What are the current trends in pension scams?

It is impossible to know, due to the absence of data and the fact that even anecdotal evidence usually emerges only *ex post*.

Anecdotally, given that the global financial crisis appeared to result in a spate of pension liberation scams (as employees were made redundant and needed an immediate source of income and as small business owners became desperate for cash injections to save their firms) and defined benefit transfers (which often play on concerns about sponsoring firms' financial stability), it might be reasonable to expect that Covid-19 could do the same.

3. What are the common outcomes of pension scams for perpetrators and victims?

The default outcome is a permanent and large-scale transfer of wealth to the former from the latter, with a proportion of the sums lost by victims typically being dissipated through operating costs and the balance retained by the perpetrators.

Given the regulatory protections around pensions and financial services generally, every pension fraud requires the negligence or collusion of a regulated firm[2], whose involvement is required for regulated activities such as approving financial promotions and pension transfers. This fact in theory gives consumers five options for securing financial redress:

- Complaining to the firm, then to the Financial Ombudsman if the former refuses to pay;
- Pursuing a claim in a civil court;
- Asking the FCA to issue a restitution order under Section 382 of the Financial Services and Markets Act 2000
- Relying on the firm's professional indemnity insurer to pay out on a successful Ombudsman complaint, civil claim or restitution order, should the firm lack the resources to do so itself

[2] That is to say a firm that has been approved to appear on the FCA's Register

- Expecting the Financial Services Compensation Scheme to pay out in the event the firm has inadequate insurance cover

However there are disadvantages to each of these options, as a result of which consumers seldom receive full redress. These include:

- There are well-publicised concerns about the competence of employees of the Financial Ombudsman to determine complex cases, and about delays in case handling[3];
- The Ombudsman's scheme has an upper limit of £350,000, which may be insufficient to cover larger claims;
- Civil litigation is expensive and slow, and usually involves asymmetries of information and resource that advantage the firm;
- The FCA almost never uses its restitution powers[4] and they are flawed[5]
- The professional indemnity market is flawed, and firms' insurance provision is poorly supervised by the FCA[6]
- The FSCS has an upper limit, in the case of most pension schemes, of £85,000, which may be insufficient to cover mid-sized and larger claims. Also it is extremely reluctant to pay out when any other potential route for redress, however slow or expensive, has not been fully exploited. Finally, it takes an extremely cautious view on the payment of interest on outstanding capital, typically awarding a *de minimis* figure based on bond yields in situations in which the Ombudsman might authorise a default figure of eight percent simple annual interest
- All of these options demand a lot from victims in terms of sophistication, resilience, time, money and longevity and impose on them financial hardship, often for many years, typically followed by incomplete or no redress

4. How are existing enforcement tools being used?

We believe that the principal reason why pension scams are so widespread is that the FCA has historically operated, and continues to operate, as a light-touch conduct regulator, both reluctant and slow to bring to bear the consequences of misconduct on the firms and individuals who are

[3] The FOS disputes these, and a subsequent Review largely vindicated the organisation. However there were concerns over the independence of its author, Richard Lloyd, and he was subsequently appointed as a non-executive director of the FCA, which has overall responsibility for the FOS

[4] We believe s382 has been used fewer than five times since coming into effect in April 2003

[5] The court must have regard to the profits accruing to the firm, as well as the losses experienced by the victim. Where a regulated firm is merely the negligent enabler of a third-party fraud, for instance by approving a misleading financial promotion or an inappropriate pension transfer into a fraudulent scheme, its fee for doing so may be *de minimis* relative to the scale of the loss caused to the victim, so a court may be reluctant to issue a restitution order for the full extent of the consumer detriment

[6] Most PI policies operate on a 'claims made' basis, which means the insurer covering a firm on the date a claim is made is responsible for it, rather than the insurer that covered the firm when the act or omission took place. Consequently the insurance industry has the benefit of hindsight and is able to exclude a great many schemes and situations *ex post*, before most claims can be brought. The FCA allows this, and has also accepted larger firms' decision to self-insure, a situation that results in there being no cover should the firm be at risk of or in insolvency

responsible and consequently predisposed toward allowing consumers to be exposed to avoidable harms.

By way of an example, a recent Freedom of Information Act request revealed that the FCA prosecuted no individuals and firms, and removed permissions from no individuals and firms, for approving misleading or inaccurate financial promotions in the six years from 2013 to 2019 inclusive. During that time, only two cases resulted in the issuance of fines[7].

Not only does this mean there is little or not deterrent against misconduct, but firms and individuals that perpetrate it remain at liberty to do so again. To take just one case study, consider the history of Link Fund Solutions Limited (formerly Capita Financial Managers Limited):

- *2006-9*: the firm fails properly to perform its fiduciary duties under Principles 2 and 3 of the FSA's Principles for Business as Authorised Corporate Director of the CF Arch cru Investment Funds, resulting in consumers suffering more than £100m in unremedied losses and many years' loss of access to their savings;
- *November 2012*: FSA belatedly publishes Final Notice highly critical of the firm's conduct. No restitution order is issued; the FSA trades its right to punish the firm for a contribution to the victims' losses, so the company remains on the Register, overseeing some £20bn of client assets. There is no prosecution of the firm or its senior managers for approving misleading financial promotions;
- *2008-2009*: the firm approves misleading promotions for The Connaught Income Fund Series 1. When it discovers this fact, it resigns its role as the Fund's Operator without disclosing to clients or the regulator its grave concerns about the promotions and the wider operation of the Ponzi-style scheme, which ran out of cash and was suspended in March 2012. It has again breached Principles 2 and 3. Investors lose approximately 90 percent of the £106m invested;
- *November 2017*: FCA belatedly publishes another Final Notice highly critical of the firm. Again, no restitution order is issued and the regulator accepts a contribution to the victims' losses in return for no removal of permissions, fines or prosecutions. The firm by now manages around £40bn of client assets;
- *2014-2019*: the firm is engaged as Authorised Corporate Director of the CF (later LF) Woodford Equity Income Fund, which was suspended in June 2019. Investors are expected to lose approximately half of the £3.6m in the Fund at close; those who withdrew money pre-suspension because of concerns about its management have also suffered losses;
- *2020*: FCA announces it is investigating the firm for its conduct as Authorised Corporate Director. Concerns include: approving misleading promotions; failing to exercise fiduciary duty to ensure all investments were in accordance with the stated investment criteria and that breaches of liquidity and leverage limits and conflicts of interest[8] were avoided

Much of the money invested in Arch cru, Connaught and Woodford came, directly or indirectly, from pension investors. We question whether the regulator acted in accordance with its statutory obligations to protect those consumers. Perhaps even more gravely, we note that the firm now

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[7] Timothy Roberts, Andrew Wilkins and Alison Moran for the Catalyst/ARM Life Settlement Bond case; Credit Suisse International and Yorkshire Building Society for the Credit Suisse Cliquet Product, a structured investment scheme

[8] Principally connected party transactions, such as investment into Capita plc, the ACD's parent, firms linked to Peter Dubens, Anton Bilton, Glyn Hirsch, directors of Woodford Patient Capital Trust and shadow directors of Woodford Investment Management Limited, and the decision to invest in Woodford Patient Capital Trust

oversees funds worth £85bn, and that the directors closely associated with these scandals, Chris Addenbrooke and Karl Midl, remain in post - and extremely well remunerated.

Both the absence of prosecutions and removals of permission and the case study demonstrating how a firm can cause serial consumer detriment and continue to trade in our view raise serious questions about the fitness for purpose of the current regulator and regulatory environment that impact on but are not limited to the ability to prevent pension scams.

5. What more can be done to prevent pension scammers operating?

This consultation should be placed in the context of the fact that the FCA last year commissioned an unprecedented three External Reviews of its actions in relation to high-profile cases in which it has faced heavy criticism[9]; they are due to be completed in or around September 2020. It also faces calls for many further Reviews[10] in respect of cases in which the seriousness of concerns raised about the regulatory performance are at least as serious.

This inquiry is therefore exceptionally timely, in that it takes place against a backdrop of questions being asked about whether the FCA and wider regulatory environment are fit for purpose and, if not, what changes should be made. It is, however, not within scope to address these wider issues, so we will instead focus in this paper on some key improvements we believe should be considered in any subsequent inquiry that addresses the future regulatory environment.

a) Duty of care (firms)

- We believe that registered firms and individuals should owe an actionable duty of care to provide clients with information that is accurate, and to take reasonable steps to ensure that it is understood and that any recommendations made are genuinely suitable to the client's circumstances, goals and risk appetite;
- When the FCA consulted on its Mission in 2016, consumer responses, including ours, advocated the introduction of a Duty of Care. Perhaps predictably, most industry responses favoured the status quo, in which it is subject to the Principles for Business, the sixth of which is an ill-defined requirement to treat customers fairly. Breach of this principle does not in itself provide grounds for successful civil litigation, nor to a requirement (only a right, seldom used) for the regulator to undertake enforcement action;
- Rather than side with consumers on the issue, the FCA announced a further consultation on the issue of Duty of Care, resulting in the publication in April 2019 of a summary paper promising further consultations, which have yet to emerge;
- We sense that the FCA is not keen on the introduction of a duty of care; it may therefore have to be imposed, as part of any reform process or the creation of a successor body

b) Duty of care (regulator)

[9] The Connaught Income Fund Series 1, London Capital and Finance and the Interest Rate Hedging Products redress scheme

[10] Including, but not limited to, Lendy, Collateral, Funding Secure, Blackmore Bond, RBS GRG, HBoS Reading

- The FCA currently has a set of statutory objectives, but no specific duty of care to consumers. It can therefore opt not to take actions, such as prosecuting or banning, or issuing restitution orders, that cause detriment and loss to consumers, largely without consequence
- It currently enjoys a general exemption from civil liability, except in cases where it has acted in bad faith or breached a claimant's human rights;
- Reversing these two points would create an obligation on the regulator to act where needed to protect the public and would also turn it into an additional, deep-pocketed respondent that scam victims could pursue for redress in situations in which regulatory failure is the or a cause of their losses and other options are unattractive or non-viable;
- Doing so would have additional benefits, including:
    - *Transparency*: the regulator would be required to justify its actions and inactions in any contested claims;
    - *Accountability*: the quantum of payouts made by the regulator would be visible to all stakeholders and would act as a measure of its performance;
    - *Alignment of interests*: introducing this duty of care would align the honest and capable majority in the industry with consumers in wanting to improve the regulator's performance, because they don't want to pay increased regulatory levies to fund compensation to the victims of regulatory failure
- Even with this change, litigation by pension fraud victims against the regulator would be challenging for many, requiring as it does significant outlay from people whose finances have been depleted and significant time inputs from people who may be elderly. This can be addressed by improving the complaints scheme, as outlined below

c) Strengthen complaints scheme

- Given the asymmetry of information and resources available to consumers (especially those impacted by pension scams) and the regulator, litigation may not be the preferred option for the pursuit of redress under a new duty of care and expanded civil liability regime
- This can be resolved through three changes to the Financial Regulators' Complaints Scheme:
    - The Commissioner should be appointed by, and report to, a panel comprised of and representing the interests of genuine victims of financial service misconduct;
    - There should be a 'comply or explain' requirement on the regulator in respect of the Complaints Commissioner's recommendations;
    - The Commissioner should be free to recommend the payment of compensation by the regulator to victims of regulatory failure, without limit as to quantum or the nature of the causation
- When both the Financial Services and Markets Bill and the Financial Services Bill were debated in parliament, concerns were expressed by Members about the difficulty of litigating against a regulator that has, in effect, limitless finances (it can simply raise the levy to cover expenditure). The complaints scheme was designed to address this potential inequity, and as is made clear in Section 87(5)(a) of the 2012 Act, politicians intended there to be no constraint placed on the nature of such recommended compensatory awards;
- Unfortunately the actual scheme rules devised by the FCA and its fellow regulators were worded in a way that has resulted in the Commissioner feeling limited to recommending *de minimis* payments to reflect inconvenience and distress, rather than material sums to

remedy financial loss. The FCA has been asked by the Treasury to consult on changes to remedy this ambiguity[11]; the FCA has worded the consultation document in such a way as to resolve it in favour of ruling out the recommendation of material redress in almost all cases. This change may therefore have to be imposed on a reluctant regulator

d) Make regulator (much) more proactive

- We recommended (Q1) that the FCA's ScamSmart campaign be relaunched to encourage the public to report potential scams (whether pension-related or elsewhere in financial services);
- The regulator should triage every such report quickly and advise complainants and the wider public when there's a problem. When that's the case it should also aim to close down the scam (perhaps by means of a court order), prosecute the perpetrators and any enablers and remove permissions from registered firms and individuals;
- While the latter stages of this process can be undertaken by Enforcement, a separate Investigations team may be required for initial triage and subsequent pursuit – in effect, mirroring the distinction between the police and the Crown Prosecution Service that exists in other areas of the law;
- This Investigations team should be culturally diverse from the rest of the regulator. Recruitment should focus on people who enjoy, and are good at, 'going after the bad guys': former detectives, HMRC investigators, benefits fraud specialists and even people from the intelligence services. There should be a significant number of non-graduates among them;
- The Investigations team would also replace the FCA's current Whistleblowing team, which we believe is grossly inadequate. It has been criticised for ignoring compelling intelligence[12] and for costing less to run than the organisation pays its CEO. Whistleblower tip-offs would come in via the same channels as ScamSmart ones, and the team would put them through the same triage and investigatory processes but with an enhanced presumption of credibility given the source;
- Enforcement's remit would be widened to include offences for which the regulator is not currently the lead prosecutor, in particular those relating to the Fraud Act 2006. The FCA does prosecute some financial services fraudsters, but very few. Other services tend to avoid them due to the complexities of the cases, difficulties in evidence collection and, we suspect, the Memoranda of Understanding between key police services and the FCA under which the former tend to hand such cases to the latter, where they are subsequently not pursued;
- The regulator should attach a specialist PR team to its Enforcement operation whose remit would be to achieve maximum possible media coverage for every ban and prosecution achieved, thereby changing the environment from one in which prospective pension scammers are emboldened by the reasonable expectation that they will get away with it to one in which they are deterred by a powerful foreboding that the book will be thrown at them, created by a combination of a newly assertive regulator and PR that amplifies its wins

e) Strengthen financial services regulations

[11] Closes on 9 September, 2020

[12] In cases that include Connaught, London Capital and Finance, Blackmore Bond and bank Forex overcharging

- When the UK ends its transitional arrangements with the European Union it may be able to go further in protecting consumers than is possible under the current, multilateral arrangements;
- In particular, it may be able to adopt approaches more closely modelled on those commonplace in the US, including:
    - Securities laws requiring financial promotions to be registered with the regulator and ensuring that those who approve them are wholly liable in civil and criminal law should they prove to be misleading;
    - Tougher legislation, and more proactive investigation and enforcement, against wire frauds (known in the UK as boilerroom scams)[13];
    - Wider use and admissibility of communication intercepts and covert recording in regulatory and criminal investigations and proceedings;
    - Hugely enhanced measures to protect whistleblowers, perhaps including financial awards;
    - Repealing The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, the effect of which has been to place largely beyond the arm of the law pension scams perpetrated from outside the United Kingdom

f) Extending civil liability of auditors

- A common feature in most of the longer-running pension (and wider financial) scams is that auditors failed to highlight misconduct that, in many cases, they ought reasonably to have spotted;
- To date, UK courts have tended to rule that auditors owe a duty of care only to their clients, that is to say the firms they audit, and the pursuit of civil claims against auditors by other parties, extending even to minority shareholders[14], has been largely unsuccessful. Even when it can be shown that audit work was unsatisfactory, courts have held that the client firm is entitled to redress only when it can show that at least one director was unaware of any fraud or false accounting and would have had both will and capacity to challenge the wrongdoing if notified of it by the auditors;
- Victims of scams affecting, directly and indirectly, pension monies have therefore been constrained in their ability to seek redress from auditors, even when it is clear that they have negligently or collusively failed to highlight concerns such as solvency or misuse of funds[15];
- Changing the law so an audit report becomes a representation of fact, giving rise to grounds for redress to be payable to anyone who loses money through reliance on it, would both provide an additional deep-pocketed source of potential recoveries for scam victims[16] and create an alignment of economic interests in which auditors would stand to gain financially from high-performance, ethical work and be penalised by the market for the opposite[17], over time reducing the dominance of the Big Four and raising overall standards

[13] https://www.justice.gov/archives/jm/criminal-resource-manual-941-18-usc-1343-elements-wire-fraud
[14] http://e-lawresources.co.uk/cases/Caparo-Industries-v-Dickman.php
[15] Examples include The Connaught Income Fund Series 1 and London Capital and Finance
[16] Auditors would be required to carry sufficient professional indemnity insurance to meet such claims
[17] Their professional indemnity premiums would be based on their historic track records; if combined with a requirement for periodic, price-based tendering, firms with poor track records would be priced out of the market, while good ones would quickly gain share

6. What more can be done to prevent individuals becoming victims of pension scams?

It is clear that profound change is required to the regulatory regime, and in particular to the regulator, as outlined in our response to Q5, above. But that's only part of the equation. The other is that we need to do more to equip citizens to make informed decisions about their pensions, which includes providing them with information that will better equip them to spot potential scams, and report them to ScamSmart for investigation and prosecution.

Research has shown that 19.8m people believe they would benefit from financial advice but do not have access to it. The actual advice gap may be larger, as people may succumb to overconfidence heuristics (for instance, overestimating their financial understanding or future pension income).

Besides relaunching ScamSmart with a high-profile campaign to inform consumers, other steps that would improve consumers' ability to spot scams and suboptimal propositions should include:

- *Upweight financial education in schools*: it's on the National Curriculum for state secondaries, excluding Academies and Free Schools, but standards are at best variable and the excluded schools should be brought into scope;
- *Provide workplace and community catch-up classes*: today's adults were not taught about personal finance in schools; they should be helped to get up to speed;
- *Give everyone access to The Pensions Advisory Service and Pension Wise*: these excellent schemes should be extended and their profile raised. Anyone, not just the over-50s, should be able to meet with them, and there's an argument for mandating this in circumstances such as prospective pension liberation exercises or transfers out of defined benefit schemes. They should tour workplaces and community centres to provide seminars and drop-in advice sessions. In short, we should use them as the key vehicle for enabling adults to raise their understanding and confidence to make better use of the freedoms available to them and protect themselves against scams

7. What role should the pensions industry have in preventing scams?

As some of the UK's most knowledgeable and informed citizens when it comes to spotting scams, pensions and other financial services professionals already play a key role in preventing scams. There are three ways in which this can happen:

- *Directly*: for instance, by raising concerns with clients about prospective transfers out of legitimate pension schemes into SIPPs in which capital may be allocated to frauds;
- *As whistleblowers*: by alerting the regulator to activities within their firms that they believe could lead to consumer detriment;
- *As third parties*: by alerting the regulator to financial promotions or other activities they observe in their daily lives that they believe could indicate the existence of pension scams

The first of these would be enhanced by the duty of care obligation obligation outlined in section 5(a) of this document.

The second would be helped by the measures in our section 5(d), though there may be a case for society as a whole going further to protect whistleblowers from negative career impacts. Whistleblowers UK proposes creating a national Office for the Whistleblower, backed by legislation, to ensure they are not victimised and provide financial assistance *in extremis*. The United States pays whistblowers – or, more precisely, requires perpetrators to pay them. A detailed discussion of the merits of these and other proposals is outside the scope of this exercise, so for now we merely record the point that many whistleblowers in the sector have been ignored by their employers and the FCA alike, protected by neither, and have found it impossible to find new jobs in the industry. This must surely have a deterrent effect on others thinking of doing the right thing, so it must change.

The third is good citizenship. Most do it voluntarily; if they don't, we would suggest this may be because they are sceptical that the regulator will act. Certainly there are examples of that happening in the sector. Might financial incentives help? Perhaps, but we believe that the combination of a much more proactive regulatory approach, combined with PR activity that ensures its successful prosecutions and bans are widely reported, should be tried first.

8. Is HMRC's position on the tax treatment of pension scam victims correct?

We lack sufficient knowledge to comment on this question.

9. Are public bodies co-ordinating the response to pension scams?

The Committee would ideally hold an evidence session at which representatives of the relevant bodies are questioned on this matter.

Our experience is that there is significant risk of regulatory underlap. The police are reluctant to investigate financial services scams, especially pensions ones, because they generally involve issues of regulated activity as well as those that sit outside the perimeter. Several also have Memoranda of Understanding with the FCA under which they're required to refer such cases to the regulator, which tends to take them on, and may not always (or often) follow through.

Even when it does, it is looking principally for evidence of regulatory breaches rather than criminality, which may explain the paucity of prosecutions.

One problem that has come to light in some cases is the difference in remits given to the Financial Ombudsman and the Financial Services Compensation Scheme. The former will find for a complainant when doing so is 'fair and reasonable'; the latter will pay out in place of a registered firm where there is a chain of causation that can be demonstrated in civil law. So complainants have sometimes found that the former will award them compensation; but if the firms lack the means to pay and their insurance doesn't pay out, the FSCS refuses to honour the awards. This inconsistency should be removed, ideally by requiring the FSCS to honour Ombudsman decisions.

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