

Written evidence from Name Withheld [PS0012]

I am a fully qualified financial adviser and mortgage broker and am submitting this evidence to hopefully once and for all have the UK Govt face up to its responsibilities for the victims of pension fraud.

I also know several victims of the Ark pension scandal and a change in UK pension law is well overdue, in respect of the impending appeal for the prosecution of them by HMRC for an enormous unauthorised tax charge bill on their pension monies, even though they have never received a penny of their pensions.

The current pension legislation is a national disgrace and needs repealing and revising urgently.

I therefore attach my answers to the questions you have posed, plus I have also added a synopsis of the ARK pension scandal, which I implore you to read and understand if you possibly can.

Although this particular scheme was first instigated in 2010, well before pension freedoms were even thought of, the reasons why and how the public are scammed out of their pensions is still extremely relevant and although, as a financial adviser I regard the pension freedoms instigated in 2015 as largely a very positive move, with many advantages for pension holders, a robust, fair and fit for purpose fraud victim process is also long overdue.

1. What is the prevalence of pension scams?

In my capacity as a financial adviser in recent years I have not come across any in my normal individual workflow, but of course this is perhaps because all the pensions I deal with are already invested in suitable and genuine pension schemes invested in regulated and recognised funds and looked after by a regulated financial adviser firm. However, within the wider community across the country it is obviously a very serious issue still for many people who are usually scammed by usually unregulated financial advisers who have cold-called them or contacted the pension holder via social media or email etc, or the pension holder has seen an advert on a website.

2. What are the current trends in pension scams?

Usually offering an apparently lower tax or tax free element larger than the current 25% or offering options to access the pension earlier than the age 55 minimum or offering returns far higher than could realistically be achieved with a standard pension fund, usually by way of an overseas-based investment into property or other commodities such as forestry for example.

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

Perpetrators – The vast majority escape prosecution and are even left to continue to commence yet another scheme and do exactly the same thing all over again with the same outcome.

Victims – Their pension is either lost in part or invariably in full and then they have no pension provision to fall back on other than the state pension, assuming they have built up some entitlement to this, albeit this is not enough to sustain them financially on its own, and in many cases, losses are suffered of several hundred thousand pounds or more of personal pension provision that they have spent their whole life building up, never to be seen again, causing untold devastation both financially, emotionally and mentally.

If they have received any of their funds at all or even if they haven't, they can then find themselves entering the worst living nightmare you wouldn't wish on your worst enemy, whereby they are then prosecuted by the govt via HMRC and/or the newly govt appointed trustees in place of the crooked ones, and taken to court to pay an unauthorised tax charge of 55% plus years of compound interest, plus be forced to pay back to the trustees the whole of any pension monies they received as well as pay the tax!

They can then find themselves facing financial ruin beyond the initial ruin instigated by the original scammers, via the govt agencies, with seemingly no recourse to financial compensation for these losses, especially if it transpires the scheme's original advisers were unauthorised by the FCA.

So, the result for them is severe stress and anxiety, mental breakdowns, relationships breakdowns, severe medical issues such as cancers, heart attacks, strokes etc, divorces, bankruptcies, even suicides and death

4. How are existing enforcement tools being used?

Very sparingly on the perpetrators, very seriously by the govt on the victims of pension fraud.

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

The Scorpion campaign is far too cursory to help prevent them happening in the first place with pension holders and should be given much more prominence and media coverage from the pension providers, govt agencies etc **before** someone thinks of what to do with their pension, not after they have already applied, just receiving a small pamphlet about it isn't good enough.

The system of HMRC registration of pension schemes, albeit mildly improved from say 10 years ago, is still not anywhere near robust enough to prevent schemes being registered by scammers, and there needs to be a much more stringent registration process and follow-up of schemes, requesting evidence of operational processing and regular assessments and inspections being carried out on pension schemes and its trustees.

Much more onus should be placed on the ceding scheme checking the proposed transfer scheme is a suitable pension account before transfer is executed. If in doubt, the request should be refused and then adjudicated by an independent govt appointed panel, to examine the validity of the potential switch, so if the ceding scheme's decision is upheld, then the client would need to find an alternative option, if it is not upheld the switch is then allowed, and if it then transpires the switch was to a crooked scheme after all, then the independent panel have to reimburse the losses to the client, thereby placing the onus on the providers and regulators, not the pension customers.

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

Instigate the system as detailed above. In addition, if the ceding scheme can find nothing untoward with the proposed transfer, but it is subsequently found to be a scam, a compensation scheme is put in place to refund the victims, either in part or in whole. Only this will then compel the govt to instigate far more stringent controls on pension switches to reduce the potential pay-outs to pension fraud victims.

Increase dramatically in the wider media adverts and videos demonstrating the ways and means of how a pension scam is usually executed, and what to watch out for.

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

Have each govt agency, regulator, pension providers and trustees become much more responsible for their individual jobs, such as the FCA, TPR, HMRC, ceding scheme providers, etc. In short, they need to do their jobs properly! There are far too many scams being operated by unregulated

advisers, and also sometimes with investments in unregulated or spurious investment schemes and yet they are able to register a pension scheme in the UK and make it look bona-fide far too easily.

The FCA have now recently ceased keeping a register of individuals that are authorised and have now left it to the company themselves to keep a register of authorised individuals, because the FCA doesn't want the hassle of keeping it themselves. This is a backward step.

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

Its technically legally correct, because the pension legislation mainly based on the Finance Act of 2004 and the Pension A-Day legislation instigated in 2006 allows them to prosecute victims of pension fraud for the unauthorised tax charge.

The reasons for having the 55% unauthorised tax charge + cumulative interest is due to the Treasury firstly not wanting to encourage pension liberation, so it is apparently seen as a deterrent for people embarking on a potential liberation scheme but secondly due to the Treasury wanting to reimburse themselves the perceived loss in tax they would have received on the pension monies if it had been taxed in the normal way. Because the pension contributions would have enjoyed some tax relief while this scheme was being cultivated over the years, HMRC's perception is that if the victims are not penalised in this way, they have only had the tax break and not the taxable redress at the other end.

I have heard some seemingly quite intelligent and well-respected accountants and treasury officials allude to this and use this as their justification in pursuing the charge.

However, their reasoning is flawed and their pompous and arrogant pursuit of the victims hypocritical, cruel and malicious in the extreme.

HMRCs execution of this and the fact that the legislation exists at all for them to use in this way is a national disgrace and their utter total complicity in many high-profile or serious pension fraud cases such as the ARK scheme or Salmon Enterprises for example, where they seriously suspected or were fully aware the schemes were potential frauds, and yet allowed them to continue, with no public warnings or actions, in the full knowledge that the customers could or would be defrauded and they could then send them astronomical tax bills for the privilege, is a national scandal and they should hold their heads in shame.

If a Ltd company approved, allowed and helped to execute a financial transaction that it knew or seriously suspected was fraudulent, but then charged the trustees and customers an enormous financial penalty once this fraud became apparent, that company's directors` would surely be held to account for fraud themselves. This is exactly what HMRC have done for years, but because it is the govt treasury, it is allowed to act with seemingly endless impunity.

Many countries do not tax their pension fraud victims in this way, yet they too have been given some tax relief along the way, but their govts don't feel slighted enough to ruin the victims lives yet further, after being scammed of their pension, to pursue them for a punitive tax charge on monies they now don't have! Yet in the UK, the victims are treated as co-conspirators, and tremendous force is executed in pursuing these victims for this charge, while leaving the vast majority of the actual scammers totally unprosecuted!

As for it acting as a deterrent, this is inherent nonsense. Most pension fraud victims were totally unaware of the horrendous possibility of the tax charge on their pension if they were scammed, until they received notice of it through the post from HMRC! There is no great public perception of this

tax charge even to this day, so it cannot act as a deterrent when the general public isn't even aware of it.

Even the FCA's own television advert depicting a chap being scammed by a crooked pension adviser, although it mentions you could lose all your pension pot, makes no mention at all of "... and you can also be pursued by HMRC for a life-changing and bankrupting tax bill thereafter for years too", does it!

In the case of the Ark pension scandal (see detailed explanation enclosed below), the worst case of unauthorised tax charge skulduggery by HMRC is imminent for the 500-odd victims.

For the victims who received an apparent tax-free "loan", they are facing and have already paid in some instances, the 55% tax charge plus 9 years interest, so around 70% in reality, on any monies received, a few thousand to several hundred thousand pounds, plus they still face having to pay back the whole loan amount **as well** to the Trustees.

For the victims that applied for but never received a loan, they are still going to be charged the 55% tax as if they had received it! This is govt robbery of pension victims, no arguments!

Buried in the 2004 pension legislation is again a little-known clause that allows HMRC to do exactly this, on the premise that they *intended* to receive a loan or HMRC can also argue there was an *'internal transfer'* of monies within the pension fund by the crooks and the tax is incurred by this method instead?!!!.

This pension legislation that allows HMRC to pursue victims in this way for this reason is a scandal and whoever helped to draw this legislation up and let it be passed should hold their heads in shame too. How can you justify charging someone a six-figure tax bill for some pension monies they have never received?

This law needs changing urgently before the end of the year, and these malicious, cruel and totally unfair clauses removed and HMRC directed forthwith to cease pursuit of these victims in this way for this reason.

What other example is there in UK society where the victim of a serious crime, financial or otherwise, can be left so utterly devastated again after being scammed, both financially, and mentally, by the very govt who are supposedly there to help them and who also possess and control the power to stop the crooks instead in the first place? There is no other example.

Any self-respecting govt should not want to continue with this, it is so morally wrong on all counts and the scandalous complicity of HMRC themselves in these cases and the fact HMRC have been left uncensored to threaten and then charge the victims of the ARK and Salmon Enterprises pension scheme for just two real examples, and over such a long time, nearly 10 years in the case of ARK, is a shameful stain on British justice and sense of fair play.

If this law is not changed by the end of the year, then hundreds of ARK victims will receive enormous and life-changing tax bills for pension monies that HMRC's complicity enabled them to be robbed of and which they've never seen a penny of.

This is a scandal. IF YOU ACHIEVE LITERALLY ONE THING FOR VICTIMS OF PENSION FRAUD, WITH THIS ASSESSMENT OF YOURS, CHANGING UK PENSION LAW TO PREVENT HMRC PURSUING PENSION FRAUD VICTIMS IS YOUR MAIN PRIORITY.

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

There is far too much self-preservation and buck-passing within the corridors of power, so when a victim from a scheme such as I have alluded to complains officially to the bodies in question, whether it is the FCA, TPR, HMRC, Pension Ombudsman, SFO, there is a serious lack of will to help the victims, but a very strong and seemingly unending will to protect their own regulatory position and find in favour of the pension provider or HMRC or TPR's conduct. Until these bodies are made accountable for their actions in a more transparent, fair and robust way, nothing will change in this regard. It is palpably ridiculous for their conduct to be adjudicated by the very same organisations involved in the original decision making, there should be a properly independent pension review body and TSAR, who is totally separate from any govt body, and whose independent assessment should be recognised and abided by in the case of pension fraud.

The ARK Pension Scheme - The Ultimate UK Pension Scandal – A Perfect Storm

The Initial Scam

- In Autumn 2010, websites spring up advertising up to “50% cashback” on your pension – irrespective of your age or the type of pension you have, by way of a loan facility against your existing pension pot.
- Stephen Ward, then author of the industry's top annual pension guide, Tolley's, Chief Examiner of the G60 pension exam, the top occupational pension qualification at the time, and one of the top government advisers on the taxation of pensions, commences promotion of the scheme to financial advisers, brokers, introducers, etc
- In March 2011, Stephen Ward appears at a seminar as guest speaker for approx. 70-80 brokers at a golf club in Surrey, promoting the scheme, stating that the loans would be free of any potential taxation and would never have to be paid back.
- Stephen Ward also states that for this scheme to be deemed illegal, there would “need to be a change to the primary pension legislation, a change that would have unwanted and unintended consequences for existing pension schemes”, his meaning being that there would be difficulties for the govt to change this, even if they wanted to.
- He demonstrates that the loan is making use of the little known fact, that allows one occupational pension scheme to lend up to 50% of its fund to another pension scheme, and vice-versa, so by setting up a quid-pro-quo arrangement between two separate pension owners, for an equal amount, neither will have to pay each other's loan back.
- Stephen Ward also states that the remaining pension funds will be invested in high class international property funds and commercial rents and the usual 25% tax free cash will also be able to be taken at age 55 as normal, from those remaining funds too.
- A 5% fee is charged for each pension holder to access their loan facility by Ark.
- It is also alleged at this time that some of the pension's funds were used to purchase a strip club in Derby!

The Victims

- Between Winter 2010 and June 2011, over 500 people transfer their pension into the scheme, to avail themselves of the new pension loan facility, including policemen, pilots, nurses, firemen, business owners, financial advisers, Joe and Jane Bloggs and all, with fund values ranging from a few thousand to £400,000 or more. Some received their loan, some didn't.

The Pension Scandal instigated by the Pension scammers and HMRC

- In Autumn 2010, HMRC became aware of the scheme and its intentions to make apparent tax-free loans to transferees of up to 50% of the transferred pension value.
- At the same time, HMRC contacted the scheme trustees, including the main one, Craig Tweedley, to discuss how the scheme intended to release these funds tax-free, as HMRC would normally charge anyone accessing any pension monies earlier than normally allowed, a whopping unauthorised tax charge of 55% of any monies paid out of the fund.
- After discussing this with the trustees, HMRC did nothing. No public warning about the potential for a 55% tax charge to be levied on these loans. No public warning about a potential for this scheme to be a pension scam. Nothing.
- HMRC then met in person with Craig Tweedley and Stephen Ward in February 2011, to discuss the Ark pension scheme loan facility again, Craig offered to suspend the issuance of the loans to HMRC if they had any concerns about their legality and possible liability to the ubiquitous 55% tax charge for the recipients. HMRC declined this offer. Again, HMRC made no public warning whatsoever.
- After nearly £30Million had been transferred into the scheme, in June 2011, the scheme was shut down by the Pension Regulator, on instructions from HMRC and the scheme was then charged with being a pension scam.
- In Oct 2011, in the High Court, Justice Bean declares the scheme void (a fraud), but also declares that “no anomalous nor unjust outcome” should be levied on the pension victims themselves.

The Real Scandal instigated by HMRC, the Government and their appointed Trustees, Dalriada

- HMRC then issue every pension fraud victim with an unauthorised tax charge of 55% + Interest on any loan they received from the pension.
- HMRC then declare they are going to issue every pension fraud victim with an unauthorised tax charge of 55% + Interest who **didn't receive a loan**, of which there are hundreds, because “they intended to receive one”!
- In August 2011, Dalriada, the new Trustees of the remaining Ark pension funds, appointed by the govt in place of the scammers, still allow another pension to be transferred into the scheme, by a serving policeman, and when he finds out its been declared a potential fraud and shut down and asks for the transfer to be cancelled and his monies sent back to his police pension, he is refused!
- In November 2011, Dalriada Trustees declare they will also now attempt to recover all the loans that were issued, back from the pension fraud victims, **as well as** having to pay the 55% tax on it too!
- The Pension Ombudsman Service (POS) wash their hands of the affair, ruling that the pension victims can't appeal against the original pension providers, for allowing the transfers in the first place to the crooked scheme, which they have a legal requirement and duty of care to check, because it occurred before the govt had started their (little known) Scorpion campaign, for alerting everyone to potential pension fraud scams, and therefore the POS said existing pension providers would have been apparently ignorant to any potential scams and couldn't be expected to have checked this scheme out.
- This is nonsense - the existing pension providers were already expected to check the validity of the scheme they were transferring anyone's pension to, in the eyes of the FSA and The Pension Regulator at that time, and received various directives to this effect from them about this issue and their duty of care in this regard, for several years, well before Ark or this Scorpion campaign was invented.
- HMRC dither and threaten without actually executing the tax tribunal for the Ark case for over 8 years, with all the stress and worry that causes, with no victim knowing whether or not they actually will definitely pay this or not and with no closure for the victims whatsoever. HMRC then finally

decide they are going to in Autumn 2019, but don't inform any of the victims of the tribunal taking place and find them guilty in their absence! (This is now unsurprisingly being appealed, with the appeal hearings anticipated to be in the next few months)

Dalriada Trustees

- During these 8+ years, Dalriada, the new gov't-appointed trustees, semi-regularly threaten the victims with simultaneously requesting these loans back in full, as well as having to pay the tax, with all the resultant stress and worry this causes the victims.
- At a meeting with the victims, Dalriada treats them as co-conspirators and Dalriada's Tax Adviser likens them to the same as Gary Barlow and Take That, when they used a tax avoidance scheme through their accountant, to try and save them themselves millions in tax!
- Dalriada instigate an expensive and wasteful court case to have their legal right to recover the loans rubber-stamped by a Judge, despite their technical legal right to do so is already established and despite the full knowledge HMRC will be taxing the victims too
- HMRC send a surcharge tax bill to Dalriada, to be levied on to the total £18M remaining Ark pension funds, and Dalriada ask the Judge if they can pay for the legal costs for their appeal with HMRC against this tax charge, by using some of the victims' remaining pension funds, the Judge says Yes
- The Ark victim's defence then request the Judge for permission to use a small portion of their remaining pension funds too, to pay for the legal costs of the victims' appeal against HMRC's tax bills, the Judge says No.
- Dalriada refuse to invest any of the Ark's remaining £18M pension funds, out of the original £28-30M, on behalf of the victims, to help potentially replenish the losses and leave these monies in a Barclays cash account to stagnate for over 8 years!
- Despite the victims wanting an idea as to how much they may actually have left of their remaining pension funds, not least because some reach or surpass age 55 and want to access it, Dalriada repeatedly refuse to segregate each individual pension victim's account, so they can't access or know the value of their remaining funds at all
- In the meantime, Dalriada Trustees spend over £5M in fees and legal fees out of the victims remaining pension funds in Ark, so it's now reduced to approx. £13M. This is a guess, because no updated figures are forthcoming from Dalriada, despite requests and complaints made by the victims for this information
- Legally, Dalriada had to prosecute the victims to pay back the loans within 6 years, and the 6 years was up in 2017, so as they were running out of time to do so, they send out "Standstill Agreements", allowing them to extend the 6 years prosecution period indefinitely, but only if the victims sign the agreements. Dalriada blackmail the victims into signing them though, as they declare that if they don't sign them, they will prosecute them anyway!
- It's then reported that Dalriada have in the past year or so, 8 years after they first became Trustees, and 2 years after forcing the victims to sign the Standstill Agreements, prosecuted many of the Ark pension victims, to make them pay back their loans, despite the impending tax bills from HMRC, and when many of them unsurprisingly can't afford to do so, they make them bankrupt!

The Result for the Ark victims

- Suicides, attempted suicides,
- Anxiety, stress, depression, marriage break-ups,
- Serious medical and mental problems,
- No access to their remaining pension fund, bankruptcies
- Still no closure from either HMRC or Dalriada,
- Enormous bills ranging from potentially 55% of the original loans + 8-9 years cumulative interest and the meter is still running, for victims who didn't receive a loan

- Even more enormous bills of potentially 155% of the original loans + 8 years cumulative interest and the meter is still running, for victims who did receive a loan (100% from Dalriada, 55% + Interest from HMRC).

A few Examples

- A pilot who transferred approx. £400,000 pension pot into Ark and never received a loan and has never seen a penny of his fund since, is looking at a bill of over £120,000 + Interest from HMRC
- A lady jumps off a pier in an attempted suicide and is rescued, and the lady's sister calls Angela Brooks, the tireless campaigner for pension fraud victims and head of Pension Life, who acts for the Ark victims, and says her sister has just been saved, but she is now being threatened with being sectioned, as she is incoherent and "keeps mumbling about her Ark Pension".
- An ex-policeman transfers his £70,000 police pension, but never receives a loan and has never had any access to his remaining funds, as has no other Ark victims, but is now looking at a tax bill from HMRC for approx. £18,000, for monies he's never had.
- Another victim transfers nearly £100,000 into the scheme, receives a £43,000 loan but pays HMRC the tax bill of over £30,500. It would have been £24,750 but this includes the interest for 8+ years of HMRC procrastination. The victim pays this now, so as to stop further interest from being charged, before the appeal is heard, but is still looking at having to pay the original loan back as well, of £43,000 to Dalriada Trustees
- Stephen Ward, the govt adviser on pension legislation, who promoted the Ark scheme, is not prosecuted and left to instigate several more pension scams over the next few years, with HMRC allowing him to register them time and time again!

What should happen now?

- **An urgent exception (amnesty) needs to be passed in the coming weeks by this govt, to cease prosecution from HMRC and Pension Trustees of all pension fraud victims, including the Ark victims.**
- Boris Johnson, as the Daily Mail has rightly pointed out, has a couple of Ark victims in his own constituency, he owes it to them to act now, as he promised! All fellow MPs and members of the Lords should be doing everything they can too, to help Ark victims in their constituencies too and to change this appalling pension fraud system for the victims and this travesty of justice
- **A declaration made that the tax laws and pension law for HMRC and the Trustees are mutually exclusive i.e. the two events cannot coincide, you should NOT be facing a tax charge from HMRC AND be made to pay the pension monies back that you are paying the tax on! At the very least, it should be either/or, not both! The U.S. and many other countries do not prosecute their pension fraud victims in this way, why do we?**
- An urgent public enquiry is instigated into pension fraud and the whole system of what happens to the victims when this occurs
- A whole sea-change in attitude and procedures to be instigated and pension law seriously re-examined, to ensure that in line with the FCA's apparent directive for any buyer of a financial product, that they are "Treating Customers Fairly". Does the FCA think the Ark victims have been treated fairly? And what have the FCA, the Pension Ombudsman Service and Pension Regulator done to help the Ark victims' treatment by this pension industry? The answer, nothing! So, what are they there for??
- Every government agency, the FCA, HMRC, The Pensions Regulator, the Pension Ombudsman Service, the Pension Trustees appointed by the govt to stop treating the victims as co-conspirators
- **The disgusting, cruel and downright criminal piece of legislation in the 2004 Finance Act to be repealed now, that states that if someone requests some monies out of a pension that is**

subsequently deemed fraudulent, and therefore the payment would have been an unauthorised payment, they are to be charged the very excessive 55% tax charge + interest, even if they never actually receive the money!! This is legalised govt robbery! Who the hell thought that one up in Blair/Brown`s 2nd term? Compassion with a hard edge! Where`s the compassion in that?

- A complete re-think as to how the govt recoups the “lost” tax, on a subsequent pay-out and/or earlier tax-relief given to a pension holder, if the pension monies eventually end up in a fraudulent scheme, but without having to financially penalise the victim individually to such a life-changing, and monstrous degree and over such a long and inordinately stressful timeframe, with no closure. Remember, its HMRC, Her Majesty`s Revenue and Customs, not simply Revenue and Customs, do you really think Her Majesty the Queen is happy about the treatment dished out to these victims in her name, just because her pompous and arrogant govt can`t bear to suffer any loss themselves, unlike the poor victims?
- A pension protection fund drawn up long-term, that specifically helps victims of pension fraud to claim a certain amount of compensation for lost pension monies, even if it`s only 20p or 30p in the pound, so they have something, rather than nothing. 0.25% deducted annually from each pension fund? A fee levied on the industry? You decide, but doing nothing is not an option!
- Trustees powers to be seriously reviewed, including their fee levels and legal fees levied on customers pensions, when they themselves are deciding the level of fees and why its being spent, with no recourse for the victims.
- A potent complaints system drawn up to allow pension victims to challenge Trustees performance, intentions and actions with a properly independent body that has legal teeth, and much shorter time-limits imposed for their various actions, including segregating remaining pension funds, etc and a proper option to be able to apply to switch Trustees, if they are not acting on your behalf, as they should.

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