Written evidence from The Pension Scams Industry Group [PS0018]

Executive summary

Pension scams losses are estimated by PSIG at around £10bn so far, based on our research findings. Individuals can lose between one year's worth of savings to 100% of their pension, depending on the scam. The effect is devastating on individuals and likely to increase future social security costs. In some cases, victims are asked to pay a tax penalty on top of pension losses.

To date there has been little research on the prevalence of pension scams with official reports relying on Action Fraud for data. This data is limited to victim reporting and is far lower than industry experience of scams.

Pension scams have moved from the traditional "pension liberation" model, where early access to cash was the driver, to alternative arrangements where monies are invested in high risk, costly or non-existing investments. The introduction of pension freedoms in 2015 enabled transfers to Defined Contribution (DC) schemes where scheme members could access pension savings from the age of 55, free of tax, for up to 25% of the fund and with tax deducted under PAYE for monies in excess of this level. Victims of the more recent model of pension scam typically lose most, if not all, of their pension savings.

Recent analysis has shown that over 90% of transfers go to Self Invested Pension Schemes (SIPPs), which offer greater flexibility than occupational pension schemes, but with the risks borne entirely by the member. SIPPs are vulnerable to "fractional scamming" where layers of charges deplete the member's fund. Included in this are so-called International SIPPs, UK personal pensions sold by overseas advisers. They have no automatic protection under the FSCS, as the advisers are not usually regulated by the FCA

In addition, there is "secondary scamming" where a third-party offers to help a victim recover losses for a fee, leaving the member further out-of-pocket when they fail to do so.

There is a growing trend for individuals to be persuaded to invest not in a pension scheme, but in spurious high risk investments, so called "investment scams". These scams are separate from pension scams, but the money for investment often comes from cashing in members' pensions.

Reports of scams made to Action Fraud are allocated to the police force where each victim resides. This limits successful enforcement action, because each police force is likely to receive a single report, for a potentially nominal value, that will then not be taken further due to resource constraints.

The industry already invests significant sums in scams protection through checking the credentials of receiving schemes, advisers and intermediaries, saving many thousands of scheme members from devastating losses. But good practice is not universal. There can also be a delay in recognising how scams evolve, with government consequently legislating for the last model of scam, while the next model is already in operation.

Focus on scams protection must be on preventing monies going to scams and not on recovery after the event. This means trustees and providers must be able to refuse a transfer where there are signs of a scam. In many cases (including transfers to SIPPs), because of the statutory right to transfer, only a legislative change will permit such refusal on suspicion of a scam. PSIG has crafted an amendment to the Pension Schemes Bill which could achieve this protection at no cost to government. This is detailed in the Appendix to this submission.

Intelligence is gathered on scam arrangements and actors by regulators, law enforcement and industry practitioners, but not shared.

What would PSIG like to see change?

1. Scheme providers should be able to offer help without fear of being accused of giving advice, by way of a broad exemption.
2. The Pension Schemes Bill should be amended to remove the statutory right to transfer where there are recognised signs of a scam (which can be set out in regulations to keep up to date). A proposal has been put forward by PSIG.
3. All trustees and providers should follow the principles and practices of the PSIG Code of Good Practice on Combating Pension Scams (www.combatingpensionscams.org.uk).
4. Schemes should produce management information on scams encountered so that regulators have a better picture of scams prevalence.
5. ICO should use their guidance to restrict the use of mischievous DSARs by those seeking spurious information on individuals and past transfers.
6. There ought to be a national intelligence database on suspected and known scam arrangements and actors, made available to industry practitioners to improve scams prevention activity.
7. HMRC should have discretion to disapply unauthorised payments tax charges. A proposal has been put forward by PSIG. Pension scams victims should be treated with respect.
8. The industry, government and regulators should share a common definition of a pension scam. PSIG has a good example in its Code.
9. Training on scams should be available to trustees and providers to ensure they are fully informed and aware
10. Reporting on pension scams should be improved to accommodate reporting of suspicious transactions and to ensure that multiple victims of a scam are aggregated for enforcement activity. Reporting should be to one place and not several as at present.
11. Police should be adequately resourced to deal with scams.
12. Victims of pension scams should be eligible for compensation and support similar to other victims of fraud.
13. Small Self Administered Schemes should have Pensioneer Trustee or equivalent governance.

About the Pension Scams Industry Group (PSIG)

PSIG is the voluntary body set up to support trustees, providers, and administrators in combating pension scams. It was set up in 2014, and in March 2015, published the first Code of Good Practice on Combating Pension Scams. This is the definitive guide to scams prevention and has been praised by the Minister for Pensions and the Pensions Regulator.

The group is informally constituted and includes experts and industry organisations who wish to prevent scams. A list of the current Board members is attached. We also run an informal forum, where members share intelligence on suspicious activities they have seen. This intelligence is shared with Project Bloom's intelligence group, but this is one way. We have called for changes to legislation to make pension scamming more difficult and to give discretion to HMRC on penalties levied on victims.

We have been included in Project Bloom as a limited partner and deliver non-legislative elements of the Bloom Strategic Action Plan.

PSIG is unfunded and relies on the goodwill of its volunteers. We have published three versions of the Code to keep it up to date and are currently working on the fourth. We have ambitions to expand our offerings, but with no funding, we find this a challenge. Later this year, we plan to introduce an accreditation scheme, whereby schemes that can confirm that they follow the principles of the PSIG Code will be awarded a kite mark. Our hope is that this outward sign that due diligence will be carried out will both reassure members and discourage scammers from attempting to scam members of those schemes. It will also help to ensure greater consistency of high-quality due diligence across the industry. Our longer term aims are to expand our intelligence sharing forum, in a safe and secure way, to include all large schemes and providers; to improve the reporting of scam;, to encourage changes to legislation to make scamming more difficult and to provide training on scams to scheme trustees. We may do some of these in partnership with other bodies and are actively working with the Pensions Regulator and Bloom on some initiatives.

Responses to questions

1. What is the prevalence of pension scams?

To date, little research has been carried out to determine the prevalence of scams. The evidence that exists is largely anecdotal or based on reports to Action Fraud (discussed below), which FCA announced in August 2020, had received £31m reports of scams over the preceding three years. This limited reporting of scams activity runs the risk of creating a false impression with the public and government that the instance of scams is considerably lower than experienced by the pensions industry itself. This could inadvertently reduce the urgency in addressing the problem.

PSIG carried out its first survey in 2018 and published findings in early 2019. This was a small study, with data taken from three major providers and, while not statistically significant, it painted an interesting picture of scamming activity. Our report is attached to this paper.

Our key findings were:

1.	**Information on scams is not readily available at an organisational level**
2.	**The Scams Code is seen as a good basis for due diligence**
3.	**Significant time and effort goes into protecting members from scams**
4.	**The more detailed the due diligence, the more suspicious traits are identified**
5.	**SIPPS (including international SIPPS) are the vehicle of choice by scammers**
6.	**Quality of advice tops the list of practitioner concerns, with member awareness a close second**
7.	**Sharing of intelligence would help avoid duplication of effort**

Our research also showed that between 0.5 and 12% of all transfers are likely to be scams, the amount uncovered being correlated with the level of due diligence carried out. PSIG supports a conservative estimate of 5% of all transfers showing typical scam signs. Given the number of annual transfers from DB schemes, this conservative estimate would put the value of scams so far as around £10bn. Far in excess of those reported to Action Fraud.

The top 10 Scam signs we found were:

Unregulated intermediary between member and receiving scheme
Member unaware of their adviser
Member cold called
Poor member understanding of the receiving scheme's charges/investments
Adviser on a watchlist
Receiving scheme suspicious
No paperwork provided by receiving scheme
Member advised that by transferring he can access funds more tax efficiently
Guaranteed return promised
TVAS illustration not provided by adviser

In 2019, rather than carry out our own survey, we were approached by the Police Foundation, a charity, to help them develop and carry out a study. We helped them form the questions to ask and secured the assistance of other organisations to complete the survey. The results have not yet been published but are expected soon.

There are three issues with reporting of scams:

(a) Reporting of pension scams is focused almost entirely on victim complaints, usually well after the event, when a person recognises that they have been cheated. Anecdotal evidence suggests that it may take victims up to seven years to spot that they have been scammed, usually when they come to claim their benefits or ask a question of their adviser or new scheme and get no response, or sometimes only following the appointment of an independent trustee to the scheme by the Pensions Regulator. Victims are also reluctant to report scams out of embarrassment from having been duped, out of fear of being charged tax penalties and because they do not believe the police will take any action.

(b) Reporting on scams by the industry is discouraged by the fragmented nature and inadequacies of the system for reporting scams. Currently, schemes and providers are asked to report on scams to the Pensions Regulator, the FCA and Action Fraud. They are not compelled to do so. In some cases, they are asked to report to the National Crime Agency. This is cumbersome and confusing. Action Fraud, the natural destination for scam reports, is not fit for purpose at present, being focused on "pension liberation" (see comments below) rather than more general pension scams and being built to take reports from victims, but not from third parties like trustees or providers. Industry reports are, by definition, based on <u>suspicion</u> only and not on actual loss. We have heard feedback from the industry that Action Fraud has told scheme managers that they are "not interested" in concerns about pension scams. PSIG has been asking for changes to be made to the reporting system for some considerable time but has been rebuffed on resource and cost grounds. We have recently made a breakthrough with Project Bloom (chaired by TPR) undertaking to bring the relevant parties to the table to improve pension scam reporting. We would point out that as Action Fraud deals with reports from victims, the number received are likely to be far smaller than the number of actual scams victims, for the reasons stated above. They have pointed to an increase in reports of investment scams, but do not make the link that the money paid to such scams often comes from cashing in pension scheme savings.

(c) We don't all use the same language when reporting scams. The industry and regulators should use a common definition of a pension scam. The definition found in the PSIG Code is a good one:

"The marketing of products and arrangements and successful or unsuccessful attempts by a party (the "scammer") to:

- release funds from an HMRC-registered pension scheme, often resulting in a tax charge that is not anticipated by the member.
- persuade individuals over the normal minimum pension age to flexibly access their pension savings in order to invest in inappropriate investments.
- persuade individuals to transfer their pension savings in order to invest in inappropriate investments.

where the scammer has misled the individual about the nature of, or risks attached to, the purported investment(s), or their appropriateness for that individual investor."

2. What are the current trends in pension scams?

Until around 2013, pension scams tended to take the form of "pension liberation", whereby an individual transferred funds from a "legitimate" registered pension scheme to another, typically registered with HMRC (usually an occupations pension scheme), more often than not having been assured by advisers that they could access funds earlier than permitted by regulations. Liberation "vehicles" that enabled this might well have been set up as genuine occupational pension schemes within the definitions of pensions legislation but were facilitating release of funds to members from their pensions that risked constituting "unauthorised payments" for the purposes of tax legislation. Because of the tax relief granted to benefits in the ceding scheme, punitive tax penalties apply to liberated funds. There are still schemes around that facilitate "pension liberation" but they are much less common than they were.

With greater law enforcement and regulator awareness of pension liberation, scammers generally switched to alternative pension scams, where pension funds were transferred to scam arrangements where monies were purportedly invested in typically high risk or non-existing (and often single) investments. Early access to funds became less of a driver with the introduction of pension freedoms in 2015, whereby Defined Contribution (DC) scheme members could access pension savings from the age of 55, free of tax, for up to 25% of the fund and with tax deducted under PAYE for monies in excess of this level. Whereas victims of "pension liberation" schemes were generally receiving 25-50% of their pensions as cash (oblivious to the tax risk), victims of the more recent model of pension scam have typically lost most, if not all, of their pension savings.

Over the last few years, there has been a significant increase in transfers to Self Invested Pension Schemes (SIPPs). PSIG carried out a mini survey in 2019 and reported that over 90% of all DB transfers went to SIPPs, rather than to other occupational pension schemes or master trusts. In 2020, according to a survey by XPS Pensions Group, transfers to SIPPs have increased to 98% of all transfers. This is worrying. There are SIPP providers that only permit regulated investments and those that allow a broader range. Our concern is not SIPPs as a product, which is perfectly suitable for some individuals, due to their flexibility, but SIPPs are often high fee charging vehicles and appear to be first choice of scammers and poor advisers. They suffer from "fractional scamming", where individuals are not made aware of the various charges that apply through the life of the SIPP. In some cases, the charges levied reduce a member's pot by as much as a year's value of pension. In addition, many SIPPs are so called "International SIPPs", which are really UK personal pensions, but sold to expats and also to UK residents by overseas advisers. They have no automatic protection under the FSCS, as the advisers are not usually regulated by the FCA. We hear that Brexit and UK recession fears are fuelling demand for international SIPPs.

There is also an increase in Small Self Administered Schemes (SSAS), presumably because of the facility to take loans from the arrangement. We believe governance of these arrangements would be improved with reinstatement of a Pensioneer Trustee.

More recently, partly because of better scrutiny of new scheme registrations by HMRC, scammers have extended their range to persuading victims to invest money in spurious investment schemes promising unrealistically high returns, usually single type, highly illiquid and costly. These are referred to as investment scams (as distinct from pension scams). However, this distinction misses the point that the main source of the cash invested by individuals in such schemes is their pension money, legitimately cashed in by the member under pension freedoms (and sometimes also incurring a tax bill). Once a member has his pension monies in his hand, there is no longer the safety net of the occupational or personal pension scheme to call out the risk and counsel him. An investment scam sourced from pension monies is, in our view, still a pension scam, but one over which the pensions industry has no control. We are concerned that hardship flowing from the Coronavirus pandemic will exacerbate this problem. COVID-19 has provided a unique set of circumstances and the speed with which fraud has evolved as the pandemic has unfolded has seen attentions turning to scams. In this regard, concerns seem to centre around:

- Transferring to non-standard investments;
- Encashing savings and sending monies to a "safe haven" or a new bank account for "security purposes";
- Firm impersonations and;
- Members being told not to mention the purpose of the encashment to the pension provider.

In addition, there is fraud where an individual's pension pot is taken over by a scammer, through impersonation of that individual and the funds are stolen. This is also likely to increase with emerging hardship from Coronavirus.

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

Scam victims can lose all or some of their pension savings. Transfer values from Defined Benefit (DB) schemes are on average c£250,000, while those from DC are around £30,000. Financial advice is only required for safeguarded rights of £30,000 or more. Around £35bn is transferred out from DB schemes each year and, as mentioned above, over 90% of this money moves from relatively secure DB funds, where the risk is largely borne by the scheme sponsor, to SIPPs, where the risk is borne by the individual. Losses range from around one year's worth of pension due to misleading and excessive charges, to all of a person's pension savings. The regulators report that the average loss is around £82,000 and that some losses exceed £1million. We have seen nothing to contradict that. From our own research in 2019, we believe that at least 5% of transfers show signs of a scam. Based on DB transfers of around £35bn a year, at best estimate, c£1.75bn could be transferring to scams or unsuitable arrangements every year. This of course does not include the monies cashed in from DC schemes that end up in scam investments. PSIG estimates that around £10bn has probably been lost to scams.

PSIG is concerned with the sudden increase in compensation claims against ceding schemes on behalf of victims of scams and bad transfers. Claims Management Companies (CMCs) are highly active, advertising on radio and in social media. We have heard that some former advisers who sold the transfers are themselves engaged by CMCs to pursue those very transfers for compensation. This should not be permitted.

We await with interest the outcome of the current High Court case of the PPF v Dalriada, which could eventually result in compensation being payable to scammed pensions schemes from the Fraud Compensation Fund. This fund is aimed at compensating occupational pension schemes where losses to a scheme result from dishonesty. Of course, compensation would go to the schemes concerned, who would then pay pensions to the members. As more recent scam vehicles are not occupational pension schemes, the outcome of this case will not have any impact on compensation for personal pension schemes. Members of personal pension schemes might have recourse to the FSCS but this is uncertain and depends on individual circumstances and might involve considerable delay if the relevant regulated entity has not been declared insolvent and is not on the FSCS' list of companies "in default".

4. **How are existing enforcement tools being used?**

Our experience of enforcement is limited to what we hear as part of Project Bloom. Enforcement against scammers is difficult and Project Bloom is focused on doing whatever it can to encourage enforcement.

A further issue is that reports made to Action Fraud are subsequently distributed to the police force within which the victim resides. This hampers successful enforcement action, because each police force is likely to receive a single report, for a potentially nominal value, that will then not be taken further due to resourcing constraints. However, that scam might have a further 19 victims with a significant aggregated loss value. The opportunity for successful enforcement is then lost because each case is being looked at, and subsequently dismissed, on an individual basis.

We are aware of Project Bloom partners taking down suspicious websites and misleading adverts, which is of huge benefit, but is often after damage has been done.

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

Pension scammers will never be stopped while we attack them in a piecemeal fashion. Government and regulators have been slow to act and have appeared not to treat the risk seriously enough, partly because of the underreporting of scams. There is also a delay in recognising how scams evolve, thereby legislating for the last model of scam, while the next model is already in operation. Efforts have also been fragmented and have focused on public awareness campaigns. These are essential and have done a lot of good, but they are limited because people tend not to believe that they would fall for a scam.

Enforcement activity tends to be secret and takes a long time to come to fruition.

We strongly support the cold calling ban introduced in 2019 but it took too long to bring it into being and it has not stopped calls from overseas. Scammers now focus more on social media.

As mentioned above, we are also aware of secondary scamming, where companies offer to help victims recover their losses, for a fee, and do little. We are also aware that some former advisers, who persuaded victims to transfer to a scam, are now employed by claims management companies, who pursue the very arrangements those same advisers put in place. There has been a significant growth in approaches to schemes seeking information on members and past transfers, via DSAR (data subject access requests), to pursue complaints against the ceding scheme. PSIG has written to the ICO to ask them to take account of mischievous DSAR requests in their new guidance. CMCs themselves are regulated by the FCA and should not be permitted to employ such questionable characters or pursue spurious claims for compensation. PSIG is concerned that such claims for past transfers will threaten the viability of those schemes that acted in good faith to comply with member requests to transfer. Given the £billions transferred after 2013, potentially to members' detriment, compensation claims could be significant.

Scammers are typically very persuasive and groom their victims to trust them as if they are friends or family, so the game can be partly lost even before a transfer request is made to the scheme. The member may well have already made up his mind and generic information on scams is unlikely to dissuade him. Trustees and providers must be able to help as they are the only tangible barrier standing between the member and the scam. The power to prevent scams rests with government and regulators.

Government has the means to empower trustees to refuse to pay a transfer to a scheme following an approach that shows signs of a scam. Trustees in Guernsey have this power already. We appreciate that this is contrary to government policy which supports the freedom to transfer, but the cost of transfers to dodgy arrangements is far too high for this policy to continue. We are aware that the Pension Schemes Bill is likely to limit the statutory right to transfer to an occupational pension scheme by requiring evidence of employment in relation to the scheme and narrowing the choice of other vehicles available for transfer. It may also require transferees to seek guidance from TPAS (a step recommended in the PSIG Code since 2018). While helpful for the small number of cases that involve a transfer to a workplace or small self administered scheme, restricting the right to transfer in this way will do little to impact the transfer to self invested personal pensions, which, as mentioned above, account for more than 90% of all transfers.

PSIG has proposed a change to the Pension Schemes Bill 2020/21 that will restrict the statutory right to transfer where due diligence uncovers scam signs, which can be prescribed in regulations and thereby more easily be kept up to date. We are grateful to Stephen Timms and Nigel Mills for listening to us and look forward to seeing this amendment tabled and passed. Only if we take such direct action will we truly permit the force for good of the industry to combat the scourge of pension scams. However, this will take time and money.

On the cost of due diligence, our research in 2019 showed that due diligence effort to uncover the signs of scams adds at least 15 man-minutes to a transfer, but often significantly more than an hour. While this leads to significant costs to the industry, the cost to members (and schemes) of not carrying out checks is much greater. We believe that the change we propose will potentially save millions of pounds of pensions from falling into the hands of scammers and reducing the burden on the Fraud Compensation Fund, the FSCS, and also HMRC. If it serves as a deterrent to scammers too, we should eventually see the level of pension scam activity reduce. The cost to government in making this change, on the other hand, should be zero.

Trustees and their advisers need to be better informed about scams and need to be prepared to carry out proper due diligence. The steps and the rationale are set out clearly in the PSIG Code of Good Practice on pension scams but, because it is not a statutory code, some trustees feel they do not need to follow it given the strength of the statutory right to transfer.

The good news is that the Pensions Regulator is supportive of the Code and is expected to launch a trustee training module on pension scams. PSIG has been heavily involved in this work with the Regulator and the training and support will be a huge step forward in scam prevention.

PSIG is also developing an accreditation scheme, in partnership with the Pensions Regulator, so that schemes can confirm that they comply with due diligence principles set out in the Code. In a recent industry poll by Professional Pensions, 95% of respondents said they would carry out such due diligence. The industry is therefore ready to do its part, but their work needs to be meaningful and supported by the authorities.

In addition, we need an accessible scams intelligence database, with information shared to help the industry with due diligence.

We need to pursue all scammers with the full force of the law, so that they are deterred and so that they can be seen to suffer consequences. Too few police resources are dedicated to pursuing pension scams. Successful prosecutions are often pyrrhic, in that little is recovered for the benefit of victims. Criminal cases have the extremely high bar of proof beyond reasonable doubt. The Pensions Regulator can disqualify trustees or issue fines against perpetrators, but those monies go to HM Treasury and not the victims.

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

No one becomes a victim by choice. The regulator has stated that 50% of people are likely to fall for a scam, despite the publicity given to scams. Scammers are convincing, appear knowledgeable and qualified, and people tend to think they would be smart enough to spot a scammer. Scammers also groom individuals to alienate them from the transferring scheme trustees or providers.

To stop people being scammed, focus must be on prevention, through giving tools to trustees and providers to do so. The PSIG Code is an excellent tool that helps schemes spot the dodgy and potential scam transfers at the outset. It has been available since 2015 and is updated regularly. Ceding schemes are best placed to check on the credentials of a receiving scheme and those involved in a transfer but are powerless to do anything without putting themselves in harm's way. This is because they legally cannot refuse a transfer where the member has a statutory right, and sometimes even when the right is discretionary. They can be fined for refusing and dealing with complaints is costly and time consuming. This conflict cannot continue if we seriously wish to prevent scams and the harm that they do to pension savers, legitimate providers, and advisers, as well as the UK economy.

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

The pensions industry should and does play a vital role in preventing scams. Pension schemes are the starting point for the funds targeted by scammers and the biggest contribution to combating scams comes from those enlightened schemes that watch out for scams and talk to members about their concerns before a transfer is completed. Warning members by a call is effective in helping members to appreciate the risks, with roughly 25% of those spoken to withdrawing their request to transfer. Once a transfer goes ahead, it is far too late to wish it had not.

Many organisations follow the good practice set out in the PSIG Code, and thereby protect many thousands of members, but too many do not. PSIG is working towards an accreditation scheme to recognise those schemes and administrators that follow the PSIG Code.

The lack of encouragement from authorities for schemes and providers that do their best to prevent scams is disappointing. Schemes that refuse to transfer on suspicion of a scam risk being penalised by the regulator and/or the Pensions Ombudsman, while those that comply with the member's requests to transfer are criticised and may face the financial consequences later. They may be forced to reinstate that member without compensation. This cost would hit the scheme sponsor (and potentially the PPF in future). Trustees and providers are therefore damned if they do and damned if they do not. This conflict is untenable.

What we need is a “safe harbour” for schemes and providers who take the necessary action to protect scheme members from scams. The ideal way to do this is by removing the statutory right to transfer where trustees or providers have reasonable suspicions that a member is being scammed, based on due diligence findings. The due diligence required is clearly set out in the PSIG Code. Failing this, schemes and providers who can show that they followed the PSIG Code should be exempt from later maladministration claims. This would encourage schemes to carry out reasonable due diligence and refuse dodgy transfers.

Pension schemes could do more than simply comply with a member’s request for cash from the scheme but question him more closely on his need for and intended use of the money. This of course, runs the risk that any schemes doing this could be viewed as giving financial advice. The fine line between help and financial advice and the uncertainty generated is a tragedy that prevents individuals getting the help they need from a place they should trust: their existing pension scheme. Scheme providers should be able to offer help without fear of being accused of giving advice, by way of a broad exemption

The industry already does a lot to protect scheme members from scams, but the efforts are not widespread. Some organisations believe that the statutory right to transfer is so strong that efforts to stop transfers are wasted. Others go to great lengths to protect their members from scams, with deep investigation of all transfer requests and counselling of members. As mentioned above, PSIG published a mini survey in early 2019, which suggested that the large organisations included between them spend as much as £1m a year protecting customers from scams. This is commendable and should be encouraged because the risk of £billions being lost is too high. As mentioned above, we are keen to see a national intelligence network that warns schemes and providers of suspicious actors and also a robust straightforward reporting system.

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

Frankly, no. The tax position was established to guard against tax avoidance and gives no discretion to HMRC. Before the advent of the “professional” pension scammers, those who tried to avoid or evade tax were generally well off and tax advised. Pension scam victims are ordinary people. If a member received funds early or more than the limits, an unauthorised tax penalty is levied by HMRC, regardless of the circumstances. The tax penalty is to claw back tax relief given during the pension accrual phase. There is no ‘good faith’ defence for victims and HMRC regards all victims as guilty. They are treated disrespectfully. HMRC has raised many protective claims against scams victims back to 2009. These scams victims have not been found guilty, but the tax penalty has been levied to ensure the sum can be collected by HMRC at any time in the future. Worse still, interest for non-payment is added by HMRC each year via a new demand that further frightens the victims, leading many to despair. Some have paid the tax to get rid of the demands, others hold on, hoping for fair treatment. Many victims are in financial hardship and confused and, for some, the tax levied and the unsympathetic way it is processed is the last straw.

PSIG has proposed a change to tax law to get around this issue but, so far, we have not been successful. Our paper on the matter is attached.

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

There is some co-ordination, but a lot of disjointed efforts. Project Bloom, the multi agency initiative, has been operating for a few years, ably and enthusiastically chaired by the Pensions Regulator for the last two years. While central coordination is necessary, not all partners contribute equally to the initiative. Bloom is an essential mechanism and should be encouraged. HMRC should commit to being a partner.

There has been a lot of focus by the Pensions Regulator and the FCA on public awareness campaigns, which are good, but have limited impact, for reasons stated above. TPR works extremely diligently to create and maintain a Strategic Action Plan (SAP), but the whole group needs to be more active.

More recently, membership has expanded and there are some positive signs of progress to come. PSIG is also now part of Bloom and takes responsibility for delivery of non-legislative solutions. It is involved in strategy and communications, but we are not included in the intelligence group, although we do provide input to it from our own intelligence network. We have made excellent progress in the non-legislative plans and attach our current SAP extract for information.

Appendix

PSIG Suggested Wording on Further Restricting The Statutory Right to Transfer

PSIG, in combination with one of its Board and Technical Group members, Pinsent Masons, drafted the wording below to help ease the tabling of an important amendment to the Pension Schemes Bill 2020/21 aimed at strengthening the ability of trustees and providers to combat pension scams. It follows the style of the amendment to PSB used recently by Baroness Stedman-Scott.

We would appear to need the wording in each of the sections dealing with (i) "ways of taking right to cash equivalent" (section 95) and (ii) "power to give transfer notice" (section 101F), with the same wording then needed again in the two equivalent sections for the Northern Irish version of the Act.

We have not duplicated some elements included in Baroness Stedman-Scott's amendment, for example, requiring trustees or managers to notify members of conditions prescribed, because we think it is separate and we would expect customer notification would apply to whatever conditions end up in section 95(6ZB).

Similarly, there is no point duplicating the "guidance" amendment more generally from Baroness Stedman-Scott and it should be possible to have both that amendment and ours such that 95(6ZB) has a new subsection (c) and (d) – the two do not need to be mutually exclusive. Alternatively, our amendment could capture the guidance point by including as a red flag "a member's refusal to seek independent financial advice or guidance from the Money and Pensions Service".   So ours could trump the existing proposal if there were a preference not to include too many separate amendments.

We think it is important to get across that (a) this is purely wording proposed to facilitate the production of more detailed and prescriptive regulations, to avoid any nervousness about subjectivity in defining red flags, (b) the whole point of our amendment is to recognise the ways scams have evolved since the government's consultation and giving much greater scope and speed to adapt conditions periodically to reflect any further scams evolution (c) is supported by pension trustees and advisers.

For information, we include a few examples below of what red flags might look like in future regulation, to show they can be objectively defined. We would expect they would largely come for the PSIG Code of Good Practice:

(i) The receiving scheme was registered with HMRC within a [12] month period prior to the transfer request being made;

(ii) The transferring member notifies the trustee or manager (of the ceding scheme) that he or she received a cold call in relation to the intended transfer request;

(iii) The transferring member is unable, when asked, to provide the trustee or manager (of the ceding scheme) with [adequate] information regarding the charges to be applied by the intended receiving scheme;

(iv) The transferring member is unable, when asked, to provide the trustee or manager (of the ceding scheme) with [adequate] information regarding the investments to be made by the intended receiving scheme;

(v) The transferring member has not taken any independent financial advice and refuses to do so, or to seek guidance from an independent body such as the Money and Pensions Service, when asked to by the trustee or manager (of the ceding scheme).

To avoid any claims that we are unnecessarily restricting a right to transfer, transfers can proceed on a discretionary basis, where discretion is available and there is good reason to transfer.

Clause 125

Page 120, line 16, at end insert –

"(c) the results of due diligence undertaken by the trustees or managers regarding the intended transfer or the receiving scheme."

Member's explanatory statement

This amendment enables regulations under inserted section 95(6ZA) of the Pension Schemes Act 1993 to prescribe conditions about the results of due diligence undertaken in relation to a transfer request such as to determine that the statutory right to a transfer is not established if specific "red flags" are identified in relation to the transfer or intended receiving pension scheme.

Page 120, line 43, at end insert –

"(c) the results of due diligence undertaken by the trustees or managers regarding the intended transfer or the receiving scheme."

Member's explanatory statement

This amendment enables regulations under inserted section 101F(5A) of the Pension Schemes Act 1993 to prescribe conditions about the results of due diligence undertaken in relation to a transfer request such as to determine that the statutory right to a transfer is not established if specific "red flags" are identified in relation to the transfer or intended receiving pension scheme.

Schedule 11

Page 191, line 30, at end insert –

"(c) the results of due diligence undertaken by the trustees or managers regarding the intended transfer or the receiving scheme."

Member's explanatory statement

This amendment enables regulations under inserted section 91(6ZA) of the Pension Schemes (Northern Ireland) Act 1993 to prescribe conditions about the results of due diligence undertaken in relation to a transfer request such as to determine that the statutory right to a transfer is not established if specific "red flags" are identified in relation to the transfer or intended receiving pension scheme.

Page 192, line 15, at end insert –

"(c) the results of due diligence undertaken by the trustees or managers regarding the intended transfer or the receiving scheme."

Member's explanatory statement

This amendment enables regulations under inserted section 97F(5A) of the Pension Schemes (Northern Ireland) Act 1993 to prescribe conditions about the results of due diligence undertaken in relation to a transfer request such as to determine that the statutory right to a transfer is not established if specific "red flags" are identified in relation to the transfer or intended receiving pension scheme.

September 2020