Written evidence from the Association of British Insurers [PPS0039]

ABI Submission to the Work & Pensions Committee Inquiry on Pension scams

Executive Summary

1. The ABI welcomes the opportunity to respond to this inquiry, as pension scams can be devastating, on average, victims of pension scams lost on average of £91,000 in 2017, and as an industry, we are committed to working collaboratively to prevent people becoming victim to them.
2. Scammers are sophisticated, and their tactics have evolved over the years, ranging from liberation scams following the increasing in the minimum pension age, to suspicious transfers in the self-invested market.
3. Scam risk remains a real threat and policy interventions to reduce the risk of scams are needed to protect consumers. However, the lack of clarity on what constitutes a pension scam, and the lack of reporting of such scams means the scale of the problem is unclear.
4. It is also increasingly important to consider pension scams within the broader context of scams. When pensions are transferred into investments outside the pension regulatory perimeter, current preventive measures often fail to offer protection. Recognising pensions are only a vehicle through which scams occur is also important. For example, ABI members are reporting a large increase in the number of fake websites, which are being used to steal customers' personal data and savings. This recognition will allow policy and regulatory interventions to be more effective.
5. Whilst the cold calling ban has put in place fines for perpetrators of pension scams, this tactic continues to be pursued, increasingly through email and text messages, as the ICO has dismissed over half the cases reported. The financial losses facing victims of pension scams are stark, losing potentially their entire pension savings and potentially suffering tax penalties. Whilst there are routes for retrieving the lost savings, this is uncommon. Redress through compensation is welcome for consumers, but paid for by providers and advisers who are not at fault.
6. Given the evolutionary nature of pension scams, there is no silver bullet that will prevent scams from occurring, but policy interventions can reduce the risk, for example, reviewing the effectiveness of the cold calling ban and cracking down on unregulated introducers; ensuring non-advised savers make use of impartial pensions guidance before accessing their pension benefits; working with large technology companies to remove fake websites; and ensuring information in the industry is shared. More can also be done to prevent savers becoming victims of scams in the first instance, most importantly, implementing measures in the Pension Schemes Bill to limit the statutory right to transfer, but also through increasing communication campaigns raising awareness of scam risk.
7. The pensions industry has also taken action to prevent pension scams, working cross-industry through the Pension Scams Industry Group (PSIG), to produce a code of good practice for pension schemes and providers to aid with due diligence processes. However, there are limits on what industry is able to do alone, and further interventions from Government and the regulators is required, especially as

scammers operate on the periphery of regulation. Working with stakeholders to increase intelligence exchange and encouraging consumers to seek guidance when transferring their savings.

Inquiry Questions

1. **What is the prevalence of pension scams?**

8. The prevalence of pension scams is unclear, but the individual losses are huge and the harm caused is acute. It is important to distinguish between the prevalence of:

- pension scam tactics, such as cold calls, which are still widespread;

- money in dubious investments which many would recognise as scams – PSIG estimates this at £1.75bn a year; and

- money permanently lost to known frauds, which may be a much smaller figure - the FCA recently cited a figure of £30m losses since 2017 based on reports to Action Fraud.

9. Specifically, since COVID-19, there have been concerns that pensions scams could become more prevalent, given the financial impact that the pandemic is having on many peoples' lives. According to consumer polling by Canada Life, research, 10% of adults (5.2m people) have been financial scam victims or know someone who has been a victim this year, and 20% of these were related to pensions[1]. Despite these concerns, at the time of writing our members are currently not witnessing increases in transfers out to potential pension scams, although they remain vigilant.

Inconsistent definitions

10. The uncertainty about prevalence can be partly be explained by low levels of reporting (for reasons explained in the answer to Q9) and inconsistent definitions of a scam. The recent HMT consultation on financial promotions describes a scam as "a false financial services offering created by criminals to incite consumers into investing in a fake product or service."

11. The FCA's ScamSmart campaign includes a much wider definition – it may not be criminal or 'fake':

12. "Scammers design attractive offers to persuade you to transfer your pension pot to them (or to release funds from it). It is then often:

- invested in unusual and high-risk investments like overseas property, renewable energy bonds, forestry, storage units
- invested in more conventional products but within an unnecessarily complex structure which hides multiple fees and high charges
- stolen outright"

[1] FT Adviser (2020). https://www.ftadviser.com/pensions/2020/05/26/millions-fall-for-scams-amid-pandemic/

13. This ambiguity does not help the industry or consumers. Government and regulators should be clear that high-risk, illiquid unregulated investments of this kind are scams and are unsuitable for a pension.

14. Related to this, it is important that the risk of pension scams is not considered in isolation. Pension scams are arguably a subset of investment scams where the pension is the vehicle for accessing a dubious investment, or a hook for fraud. It may be argued that only pension scams are relevant to this Committee or to DWP; however, the money going into investment scams would be safer in a more mainstream pension, and indeed funds may be taken from pensions to access these scams due to the promised returns.

15. A recent briefing note from the Pensions Policy Institute[2] sets out this problem clearly: while interventions can be made to prevent transfers to pension schemes which are invested inappropriately, far less can be done about cash being flexibly withdrawn from a pension, and invested elsewhere in dubious arrangements.

16. For example, the pension assets might be used to purchase investment products like crypto currencies and mini-bonds. The latest FCA data showed £339 million worth of losses through investment scams in 2019, and 6,427 reports to Action Fraud[3]. Further, in Q2 we expand on the trend of insurance and investment brands being actively misused by organised criminals to defraud members of the public into making rogue or non-existent investments through fake websites.

2. What are the current trends in pension scams?

17. The activities commonly described as pension scams have evolved over time, often following regulatory changes. Past concerns had involved pensions liberation frauds, which involved a person being convinced to transfer their pensions to an unregulated scheme before reaching the minimum pension age of 55 following the increase in minimum pension age from 50 to 55.

18. Following FCA guidance in 2013 that providers would be held accountable for due diligence on investments held within Self-invested personal pensions (SIPPs)[4], there was an increase in suspicious transfers to Small self-administered schemes (SSASs). Following HMRC tightening the rules for overseas pensions, there was an increase in international investments held within SIPPs.

19. Since the introduction of pension freedoms and the ability for people to access their pension pot far more flexibly, we now see a broader range of scams and other suspicious activity targeting people's pension savings.

Regulator Campaign	**New Tactics**	**Expected tactics**
Offers of free pension reviews	ID fraud/phishing for account information	Unsolicited contact via social media and internet phishing

[2] PPI (2020). https://www.pensionspolicyinstitute.org.uk/media/3482/20200519-bn121-how-have-scams-evolved-since-the-introduction-of-pension-freedoms.pdf
[3] FT Adviser (2020).
[4] https://www.fca.org.uk/publication/finalised-guidance/fg13-08.pdf

Pensions cold calling (despite it now being illegal) Offer of early access to a pension Offers of “safe” investments or guaranteed unrealistic returns	Overseas advisers contacting and setting up new UK policies (which is not permitted) Transfer to a DB scheme to a provider and immediately elsewhere	Pension loan offering ‘Cloned firm’ scam activities (for DB transfers)

20. Scams in a wider sense also are also impacting people’s pension savings. There is an increasing proliferation of fake websites in the market operating Authorised Push Payment scams, with some ABI members dealing with 32 fake websites at the same time. Many of these impersonations are so sophisticated that the firm’s own staff find it difficult to identify the fraudulent activity. Victims of such scams were reported to have lost their entire life savings, having been groomed into handing over the money, by staff at fake call centres. While the industry is working hard to combat this threat and protect its customers, tackling this matter requires a collaborative effort on the part of the financial services sector, providers of search engines, government, regulators and law enforcement agencies to raise awareness, share intelligence, provide a robust regulatory response and take swift and decisive enforcement action.

21. Claims management companies are also using data subject access requests to collect customer information and file for complaints alleging loss for high risk investments on their behalf. Some of these allegations are quite inaccurate, which trigger concerns on customers being exploited and unknowingly involved in potential frauds.

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

22. Financial losses for victims of pension scams are usually substantial: on average £91,000 in 2017 and £82,000 in 2018[5], with little chance of recovery. Other than the acute loss of retirement savings, victims and transferring schemes might suffer tax penalties as a consequence of the pension scams. For example, if victims were led to release their pension funds early or more than what the member’s remaining lifetime allowance, they might see an unexpected tax charge.

23. While individuals may be able to retrieve the money they lost to the scammers if the perpetrator is successfully prosecuted, this is uncommon and will only happen if sufficient assets are recovered to return to victims. It can often take many years for the victim to realise this, allowing the perpetrators to get away with no action being taken.

24. Even once discovered, victims seldom report scams to relevant authorities. According to a recent survey by Aviva, half of the victims do not do so, mainly because they do not know whom to approach or do not believe their cases would be investigated[6].

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[5] FCA (2018). https://www.fca.org.uk/news/press-releases/regulators-warn-public-pension-scammer-tactics-victims-report-losing-average-91000-2017
[6] FT Adviser (2020) https://www.ftadviser.com/pensions/2020/07/22/missed-opportunity-to-use-victims-in-scam-work/

Compensation is welcome but being abused

25. Many of the dubious investment opportunities, which may not be explicitly fraudulent but meet the above broader definition of a scam, are not regulated by the FCA, meaning any investment is not protected by the Financial Services Compensation Scheme (FSCS).

26. However, there have been instances where compensation has been provided if the money has been invested inappropriately by a regulated firm. For example, the FSCS has paid out £5.9 million on claims related to regulated advice given on high risk and illiquid investments in The Resort Group products (which was the subject of the *Hughes v Royal London* case, where Royal London had blocked a transfer because of concerns it was a scam, but was forced to let the customer's money go).

27. We are aware of a sudden increase in Claims Management Companies (CMCs) making claims against ceding schemes or advisers on behalf of victims for allowing bad transfers to go ahead. Astoundingly, these CMCs are sometimes set up by the same individuals as the companies that encouraged the transfers in the first place. The FSCS has an important role in identifying this through its 'prevent' work.

28. In both of the above cases, consumers may receive some welcome redress, but the bill is in turn paid by advisers and providers who are not at fault. Compensation regimes should not be abused in this way; other interventions are required, including:

- Stronger regulation of small firms including CMCs.
- Unregulated investments of the kind described being banned within pensions.
- Action against directors of failed firms establishing new regulated entities.

29. Receiving proper guidance could prevent victims from being scammed repeatedly. The Pensions Advisory Service, now the Money and Pensions Service (MaPS), set up post-scam appointments to help victims look at ways to rebuild their pension savings. This is important to protect victims from further harm.

30. We have answered the part of the question about outcomes for perpetrators alongside the following question.

4. How are existing enforcement tools being used?

31. Pensions cold calling being banned in 2019, with fines up to £500,000, was an important symbolic step. But evidence suggests that many scammers continue to use this tactic. Half of the cases ICO investigated during the first six months of the ban were dismissed without any arrests or fines issued[7]. While scams made via email and text messages have been suppressed, those made through cold-calling has increased by 234% from 2018 to 2019[8].

[7] FT Adviser (2020) https://www.ftadviser.com/pensions/2019/07/04/half-of-pension-cold-calling-cases-dismissed/
[8] FT Adviser (2020) https://www.ftadviser.com/companies/2020/03/03/scammers-return-to-cold-calling/

32. There have been encouraging signs in enforcement in recent years, for example:

- The Pensions Regulator banned people from acting as trustees, asking the High Court to order defendants to repay scheme members[9]. There has also been an increase in the amount of information the regulator has requested about pension scheme administration and legislative compliance[10].

- Unauthorised introducers have recently been compelled by the High Court to pay redress to victims, in a case brought by the FCA. They were found in breach of FCA rules because they were conducting unauthorised business, arranging investments such as plantations in Costa Rica.

33. But these interventions came many years after the scams were operating. We encourage the Government, FCA and TPR to prevent firms operating around the fringes of regulation and not limited to pensions.

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

34. There is no silver bullet that will stop pension and other scammers from operating, as scammers constantly evolve their tactics, but there are actions that policy makers, regulators and providers could take to minimise the risk.

35. While the cold calling ban has gone some way to shutting down one channel of contact for perpetrators of pension scams, new approaches continue to develop, with an increasing number of victims being targeted online, particularly through online adverts and social media. These channels were already growing: in 2018, 54% of those who checked the FCA Warning List had been contacted by potential scammers via online sources (emails, professional looking websites and social media), increasing from 45% in 2017. The ban also did not stop overseas cold calls from operating. MaPS has a statutory function to consider the impact of cold-calling on consumers and to advise DWP whether to extend it to other areas. We would welcome MaPS conducting and publishing its first such assessment.

36. Government and regulators should crack down further on the behaviour of unregulated introducers. HM Treasury is also consulting on a requirement for FCA approval of financial promotions by unauthorised firms. Concerns have also been expressed about lead generation firms, which can be legitimate, but can put consumers at harm by selling data to scammers. Due diligence by HMRC, FCA and Companies House should be strengthened to provide industry greater confidence that authorised schemes or administrators have passed stringent checks before they are established.

37. As noted above, the industry is working closely with government, regulators and law enforcement agencies to tackle scammers misusing trusted brands on fake websites. However, taking fake websites down is extremely challenging as they can be easily moved to another domain. The upcoming Online Harms Bill presents an opportunity to introduce

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[9] TPR https://www.thepensionsregulator.gov.uk/en/media-hub/press-releases/pension-scammers-ordered-to-repay-millions-they-took-from-victims
[10] FT Adviser (2019) https://www.ftadviser.com/pensions/2019/08/20/regulator-cracks-down-harder-on-schemes/

more protection for customers by tackling 'grooming' which is often used as a tactic to aid investment fraud (e.g. to pass banking security checks). There is also an important role for large technology companies to move quickly to take down fake websites. Currently, once a fake website has been discovered by a regulated firm, there are several obstacles to taking down the website leaving the public vulnerable to scams for a prolonged period.

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

Limiting the right to transfer

38. We are supportive of Clause 125 in the Pension Schemes Bill which would limit an individual's statutory right to transfer. Currently, pension providers have little choice to make a transfer, even if concerns are present following due diligence. It will be important to consult on the regulations promptly after Royal Assent, in order to get the detail right and deliver the change in a timely manner.

39. We support the PSIG proposal that the Government should go further and enable providers and schemes to refuse transfers to suspicious schemes, as this will be in the best interests of consumers. However, it needs to be clear that providers will not face negative consequences for flagging suspicions, and therefore preventing transfers, in good faith; and needs to enable routine transfers to be conducted rapidly.

Increasing use of guidance

40. We are also supportive of the Government amendment which effectively requires customers to receive guidance in some circumstances before a transfer. The amendments were not debated in the House of Lords, so we will be keen to understand how the new power would function and under which circumstances would a transfer be classified as suspicious. Impartial pensions guidance will play an important and potentially transformational role in raising awareness of the risk posed by pension scams and helping consumers avoid them.

41. Pension Wise is proving effective in helping people understand their pension options in general, including the risks posed by scams. User evaluations show that among those savers who make use of Pension Wise, 95% feel very or fairly confident in their ability to avoid pension scams following their appointment (57% "very confident" and 38% "fairly confident") compared to 83% of non-users (of whom 38% were "very confident" and 45% "fairly confident").[11] This is especially important among consumers who do not use regulated financial advice, for whom a Pension Wise appointment may be the only opportunity to speak with an impartial expert before making decisions about their pension savings. These positive data show the importance of forthcoming FCA rules intended to significantly increase Pension Wise guidance usage among non-advised savers prior to accessing their pension benefits, as required by the Financial Guidance & Claims Act.

[11] https://moneyandpensionsservice.org.uk/wp-content/uploads/2020/01/Pension-Wise-service-evaluation-2018-2019-Experiences-and-outcomes-of-customers-Ipsos-Mori.pdf

Regulator-led campaigns

42. In addition to the above recommended actions for regulators to prevent scammers from operating, their consumer awareness programme should continue. The joint TPR and FCA 'ScamSmart' campaign is welcome. Despite this, recent research by the regulators showed that "42% of pension savers…could be at risk of falling for at least one of six common tactics used by pension scammers", demonstrating that more needs to be done to increase awareness of the risks. Worryingly, FCA-commissioned research in 2018 suggested that more than half of the 45-65 years old do not think they would be a target of pension scams because they are "too savvy"[12].

Industry due diligence and consumer awareness

43. Within the industry, the PSIG was set up to combat pension scams through the publication of a code of good practice in due diligence for trustees, providers and administrators in 2015, which has been updated multiple times to reflect the changes in the market (most recently in 2019) and has prevented thousands of transfers to unauthorised arrangements. The code provides clear guidance on due diligence for transfers and we would like to see it adopted by The Pensions Regulator as official guidance.

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

44. The ABI and its members have played an active role in preventing pension scams for a number of years. Our members are have widely adopted and are guided by the PSIG code, and are adept at conduct due diligence on transfers where needed. Moreover, the ABI and some of our members are represented on the PSIG board.

45. It is also worth noting the differences in resourcing between providers and trustees, meaning the ability to prevent scams varies across different providers. Providers of trust-based and contract-based products have very different ability and resources to complete due diligence. If the TPR can adopt the PSIG's code, it will help ensure efforts in the industry are more consistent.

46. The industry has also produced communications that educate customers about risks and signs of scams, and some have founded scam reporting services to make the process simpler. The cold calling ban also made consumer awareness more straightforward, as our members can now assure customers that the cold calls they received were illegal.

47. As noted above, MaPS has an important role to play in helping consumers spot and avoid scams. ABI members contributed to the recent MaPS pension guidance trials and the ABI is keen to work closer with the regulators to increase the numbers of savers using Pension Wise or regulated advice prior to accessing their pension savings.

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

48. In order to effectively consider whether HMRC's position on the tax treatment of pension scam victims is correct, it is important to consider two aspects to this question – whether

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[12] https://www.thepensionsregulator.gov.uk/en/media-hub/press-releases/scam-victims-lose-more-than-1m-each-to-fraudsters

the legislation is appropriate and whether HMRC enforce it appropriately. Typically, HMRC will consider that they simply enforce the legislative rules, and that they often can be in a position where they do not consider they have flexibility to provide a subjectively fairer outcome.

49. HMRC typically takes a strong line enforcing the letter of the law where unauthorised payments have been made, resulting in penal tax rates applying. This affects a wide range of people including those who have been the victim of pension scams as well as those who knowingly entered schemes with the intention of avoiding tax rules.

50. Taking a strict approach are that the tax outcomes are generally clear, and as such legitimate advisers and informed individuals proceed with caution to avoid triggering adverse, unexpected tax outcomes.

51. Where there are scams and unsuspecting taxpayers have both lost savings and triggered tax charges it is easy to say that tax should not be charged. However, the position is nuanced with varying levels of actual and expected knowledge of those who have made unauthorised payments, including scam victims, resulting in defining a fair outcome as being very subjective.

52. Where scam victims have clearly lost significant pensions savings it would be helpful if HMRC exercised more discretion either under the existing legislation (e.g. through use of the 'genuine error' provisions) or through updated legislation in order to provide fairer outcomes. It is possible a solution similar to that used to address the unfair tax outcomes resulting from disproportionate gains arising on some life insurance policies would be appropriate. In that case, recent legislation[13] provides HMRC with discretion to charge tax on a 'just and reasonable' basis. Care, however, is needed in drafting legislation to ensure it could be effectively used to alleviate the suffering of pension scam victims while not being open to abuse.

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

53. Project Bloom is the cross-government scams taskforce which is currently responding to pension scams. They appear to be well co-ordinated across the government, especially on initiatives such as the ScamSmart campaign. However, the taskforce would benefit from having a stronger leadership by a single body. The taskforce is also quite disengaged with the industry as a whole. The ABI and our members would be keen to work with the taskforce and receive regular updates about the actions being taken.

54. One preventative component that is lacking for pensions which has proved successful for general insurance is intelligence-sharing. Intelligence is sometimes shared, but not in a comprehensive or coherent way. Action Fraud was established as the UK's national fraud and cybercrime reporting service. Despite some improvements, the process for reporting suspected scams to Action Fraud and other agencies is not straightforward for providers or customers. Members have also reflected that assistance has sometimes been slow. There should be channels for firms to report any transfers of concern rather than only those which are refused. Encouraging reporting of suspicious cases will better inform the fraud response from police, for example in terms of resourcing. We anticipate that Action Fraud could play a role in coordinating intelligence across different types of frauds and

[13] s507A and s512A ITTOIA 2005

assist with the growing number of investment scams. We support PSIG's efforts to establishing greater intelligence sharing between industry and government and would like to see Project Bloom address this issue.

About the ABI

The Association of British Insurers is the voice of the UK's world-leading insurance and long-term savings industry. A productive, inclusive and thriving sector, our industry is helping Britain thrive with a balanced and innovative economy, employing over 300,000 individuals in high-skilled lifelong careers, two-thirds of which are outside of London.

The UK insurance industry manages investments of over £1.7 trillion, pays nearly £12bn in taxes to the Government and powers growth across the UK by enabling trade, risk-taking, investment and innovation. We are also a global success story, the largest in Europe and the fourth largest in the world.

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