Written evidence from Transparency Task Force [PPS0076]

About the Transparency Task Force

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Much of our focus is on rebuilding trustworthiness and confidence in financial services. To make this possible we are busy developing a framework for finance reform which we describe as a "whole system solution for a whole-system problem" as described in our recently published book

For further information about the Transparency Task Force see:
http://www.transparencytaskforce.org

The purpose of this document

In our main written submission, dated September 9th, we detail many problems with the existing strategy that is attempting, but failing, to deal with pension scams; and we also set out the many ways in which matters could be improved.

During the Oral Evidence Session of 16th September, members of the Work and Pensions Select Committee expressed a desire to receive further information about:

- The "Joint Task Force" idea that we proposed; and we provided additional evidence about that to the Committee on October 5th

- The “White List” idea that we proposed; and we provided additional evidence about that to the Committee on October 13th
- The “International Dimension to the UK’s Pension Scams Problem”; which is being covered by this document.

As with all our evidence to the Committee, this document has been produced by a group of Transparency Task Force volunteers working collaboratively because of their desire to help deal with the UK’s significant problem with financial scams, particularly pension scams.

It is not meant as a detailed “instruction manual” on how to deal with the problem of the international dimension to pension scams. Rather, it merely sets out what we believe to be the main issues, with a view to getting them “on the table.” As such, this submission is designed to initiate dialogue amongst all relevant stakeholders including of course scam victims, the many campaign organisations that represent their interests and of course the Work and Pensions Select Committee itself.

We hope that this discussion document will be of value to those with an open mind, particularly those with a “progress begins with realism” mindset i.e. a willingness to accept constructive criticism of the present situation, with a view to fixing what is wrong.

A porous perimeter;

HM Treasury and the FCA are aware, but what’s being done?

A feature of a growing number of scams is an overseas connection. If the money has accompanied the perpetrator abroad, especially to a country with which the UK has no extradition treaty, even if the UK authorities had the will to pursue the money they would be very unlikely to succeed.

That’s because the UK authorities have thus far failed to work effectively with their overseas counterparts to manage the risk of scammers exploiting the international, jurisdictional dimension to pension scams. Of course, the UK authorities’ overseas counterparts are equally at fault, but we must consider the harsh reality that many territories outside the UK are motivated to attract financial services business to them; and they may not be that scrupulous.

Furthermore, overseas territories do not have a regulatory or moral responsibility to protect the UK’s pensions-saving public; this is not their problem but it is most definitely ours.

We understand that “passporting rights” are at least partly the responsibility of HM Treasury and we believe that the interface between HM Treasury and the Financial Conduct Authority on this matter has resulted in a porous perimeter around the UK that scammers are adept at exploiting.

Our understanding is that the FCA have alerted HM Treasury about this problem but we are uncertain about what has happened to fix the problem, if anything at all. It is not clear which entity is responsible for what.

Are overseas regulators conflicted?

The overseas regulators are torn between their government's proactive approach to opening up and promoting their financial market to foreign companies and them adequately supervising those firms licenced by them. For example, there is extensive anecdotal evidence of overseas regulators almost making rules up or amending them in short spaces of time because they are ill prepared for the volume of firms entering their market.

Overseas regulators tend to be relatively inexperienced and under-resourced. There is just not the same talent pool in these offshore markets as there is in London (or New York), and they have too few personnel because the levies on companies are low. Subsequently, the oversight of financial firms is lacking. Further to the supervision, not all pension business is MIFID and it's MIFID activities that regulators focus on. In many EU markets, there are no IDD reporting requirements to 'local' regulators; effectively no scrutiny of pension transfer business whatsoever.

Grey areas exploited: Appointed Representatives, introducers and more

There are pension specialists operating in the UK who have been involved in scams overseas. They set themselves up as report writing firms so they don't have to be FCA regulated and they work in the background with FCA-regulated pension specialist firms. If overseas firms don't do their due diligence on every aspect of pension firms, they could be allowing their clients to have pension transfers signed off by the very people who facilitated the pension scams overseas.

Further, overseas firms use these UK pensions specialists and will claim that the client's contract is with them if anything goes wrong, even though the advisers earn a small fortune from the pension transfer transaction.

This recent article would suggest that the FCA has not yet developed a model to deal with the Expat dilemma despite the fact that the problem has been known about for many years.

We believe that, at least in the past (and quite possibly even now), the FCA have failed to correctly regulate situations where a combination of a UK-regulated entity plus an Appointed Representative plus an introducer firm have worked together to scam UK pensions savers, en masse; particularly when the UK pension saver is living overseas as an Expat.

It would seem that the scammers have been able to "defend themselves" by claiming they are outside the scope of UK regulations when in fact, had the UK regulators enforced properly they would have been deemed responsible.

We would be happy to share further information and evidence regarding this specific matter if the Committee would like us to.

Unregulated markets

Many financial adviser firms operate in unregulated markets such as the Middle East. Jurisdictions are improving and regulation is coming in, in most places, but our members report that they have acquired businesses who have had little or no regulatory oversight whatsoever and have conducted business in a less than Treating Customers Fairly manner.

If the firms themselves do not have a strong compliance function and culture of good sales practices, then the focus will tend to be on making commissions on transactions and not looking after clients and their finances. Crafty, sales-orientated people who are highly motivated through the promise of high commissions to make the sale happen can and will convince UK expat clients to transfer their UK pensions into overseas products based on flexibility, but without properly disclosing the real costs of such investments.

Brexit

There is a high chance that the unsatisfactory levels of cooperation between regulatory and enforcement agencies that exist now will get even worse after Brexit. We are not making a leave/remain point here; rather we are just making the observation that there is uncertainty ahead about what the future holds around the international dimension to financial services regulation.

It should be assumed that it is unlikely that Passporting Rights will survive the end of the transitional arrangements.

Secondary scammers exploit the international dimension too

Secondary scammers are individuals/organisations that purport to help pension scam victims, for example by offering to:

- Try to get their money back from scammers
- Try to prosecute the scammers
- Try to represent the scam victims in relation to regulators and tax authorities such as HMRC
- Act as a claims management company on the victim's behalf

...on the basis of being paid to do so by the scam victims.

There are many actual or potential issues such as:

- A secondary scammer may purport to have qualifications they do not have, in an attempt to appear suitably qualified to represent the interests of their scam victim clients
- A secondary scammer may purport to be a regulated Claims Management Company when in fact they aren't
- A secondary scammer may be paid by the very individuals/organisations they are supposed to be investigating/challenging on behalf of their scam victim clients
- A secondary scammer may be based outside the UK in an attempt to exploit the many "grey area" issues relating to overseas jurisdictions thereby making it difficult for their clients to use the power of the law to bring them to justice

What needs to change?

There is a significant conflict of interest within overseas jurisdictions that are motivated to attract lucrative financial services businesses yet they are also in theory responsible for making sure that their markets operate with integrity. In practice there has been a race to the bottom with a Nelsonian eye turned to scam victims.

We urge UK regulators to take the initiative and lead a desperately-needed strategic overhaul of the approach to international regulation of the financial services sector.

The international regulatory framework should be guided by these principles:

- There must be a high degree of consumer protection
- All financial services should be regulated
- All transactions must have an individual person and an individual firm that carries full regulatory responsibility that transaction
- All individuals and all firms must carry professional indemnity insurance
- No jurisdiction must be allowed to become a "no go zone" where the regulatory and enforcement agencies are impotent
- There needs to be a vigilant approach by UK regulators closing down misleading advertising, particularly online advertising that is connected to overseas entities

Conclusion

It is vital that the UK regulators take an international perspective when attempting to build a regulatory framework that will protect UK pension savers.

Not dealing with the international dimension to pension scams will mean that any attempt to solve the problem will be futile.

It would be like trying to fix a water bucket with two holes at the bottom by just repairing one hole.

November 2020