THE TA FORUM
AML Working Group

Pension Liberations Scams & Inappropriate Activity

Introduction

Although Transfer Agents (TAs) are not directly responsible for the administration of the Pension Schemes firms should consider the potential exposure in the event of inappropriate activity related to the Pensions that invest in the regular OEIC/Unit Trust funds that they administer. This is particularly important where such accounts are readily identifiable as being pension-related either through the information provided at outset, the designation on the account or the presence of a Pension Trustee company as the registered holder.

The risks fall broadly into two groups:

- Complaints from the underlying Pension member or claims for losses/costs incurred as result of acting on an instruction that is obviously outside the permitted range of activity for a pension product; and

- Criminal proceedings as a result of failing to prevent the facilitation of tax evasion under the Criminal Finances Act 2017

This document provides further detail about how these risks may arise, and the steps firms should consider taking to mitigate that risk.

How are Personal Pension accounts identifiable on TA systems?

This type of account can be recorded in a number of different ways depending on the policies of the firms themselves and the approach taken by the trustees, with the most common examples below:

- the Personal Pension scheme (e.g. The XYZ Sipp)
- the corporate trustee (e.g. XYZ Pension Trustees Limited)
- the corporate trustee (e.g. XYZ Pension Trustees Limited) as primary holder **and** the underlying member (e.g. Mr Smith) as joint holder
- the underlying member (e.g. Mr Smith) as primary holder **and** the corporate trustee (XYZ Pension Trustees Limited) as joint holder
- the underlying member (e.g. Mr Smith) as sole trustee
- multiple individuals acting as trustees

In addition:

- Some Pension Trustee firms provide details of the underlying member along with the original application form
- Some firms may provide specific services to Pension Trustee firms, which may involve capturing information about the underlying member.

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- Supporting documentation (e.g. cover letters, cheque) may also clearly reference the nature of the account.

This is not intended to be an exhaustive list, but it illustrates some of the ways in which a 'regular' OEIC/UT product on the TA systems can be readily identified as being pension-related.

Examples of <u>inappropriate activity</u>

As explained in the introduction, primary responsibility for complying with applicable Pension regulations rests with the Pension Trustees, which includes accounting for tax liabilities and ensuring payments are only made to the member in allowable circumstances.

However, that does not negate the need for TAs to identify and prevent *obviously* inappropriate activity from taking place such as:

- Requests to remove any reference to the Personal Pension from an otherwise obviously pension-related account, such as:
    - Removing the Corporate Pension Trustee from the account;
    - Removing a designation
- Requests to pay money (redemptions or regular payments) directly to the personal bank account of the underlying member instead of to the Pension Trustee for onward payment
- Requests to transfer assets to another account that is not pension-related
- Requests to re-order the joint holders so that the Private Individual is the primary trustee (who receives all correspondence), with the corporate trustee as a joint holder
- Requests to transfer assets to a Pension Trustee Company outside the UK

Firms will find is difficult to identify such *obviously* inappropriate activity if the account cannot be readily identified as pension-related, hence it is recommended that firms consider recording all such accounts on their systems in one of the following ways:

- The name of the pension scheme - e.g. The XYZ Sipp
- The name of the Pension Trustee Company (with or without the underlying member as a joint trustee)

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Impact of allowing inappropriate activity to occur

All the above activity would have the effect of removing assets from the pension wrapper, which could potentially be outside the range of permitted activity, resulting in the customer being subject to punitive tax charge of up to 70% of amounts withdrawn. Although the member is primarily liable for this charge, they may reasonably believe that TAs could/should have acted to prevent such inappropriate activity from taking place and attempt to approach the TA firm for redress.

Furthermore, the HMRC may also consider that firms could/should have done more to prevent such activity, which would have more severe consequences if criminal proceeding were to follow under the corporate offence of failure to prevent criminal facilitation of tax evasion.

Impact of Pensions Freedoms 2015

These risks were further extended from April 2015 when the UK introduced amendments to pension regulations which created greater freedoms to members of schemes, including earlier access to Pension monies and removing the requirement for Personal schemes (e.g. SSAS) from having a Corporate Trustee.

This has enabled members to take control of all or part of their pension fund, including an ability to take benefits at an accelerated rate. This control may give an individual member the ability to further invest their pension fund, however, other than in exceptional circumstances, a member of a UK scheme cannot start taking money from the fund until they reach the age of 55.

Pension Scams

This freedom and choice have unfortunately led to risks of poor investment choice and a surge in pension related scams. These may involve members who actively participate in scams in order to access funds before the permitted pension age, however incidents are more likely to involve unsuspecting financially vulnerable members being targeted by organised scammers whose operations will have the scale and appearance of a legitimate business. Approaches are often unsolicited, via text, email and social media, or may be personal referrals from family or friends who are themselves unsuspecting victims.

The scammers' tactics are based on deceit and coercion, misleading individuals about the nature and risk of investments as well as the level of fees and the tax liabilities for accessing pension funds early. Members may be offered a pension review, followed by a "loan", "cashback" or "savings advance" on their pension, even where they are below the age of 55 years. High pressure sales tactics to sign transfer agreements quickly, even using couriers to deliver and wait for signed documents, are a classic indication of such scams.

Scammers often attempt to counter industry efforts to combat pension fraud by informing members that trustees / providers merely want to retain their funds, providing members with guidance on how to circumvent due diligence questions. Ill-informed responses or a desire to transfer funds despite significant financial losses being outlined to members, are further red flags to potential scams.

Elaborate scams have been known to engage with the ceding fund using false documents to deceive staff as to the validity of their scheme, securing millions of pounds in the process. Funds are often transferred

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to schemes wholly controlled by the scammers via associates and family members, or to inappropriate investments with unsuspecting transfer agents.

Funds accessed by the member prior to the normal retirement age will result in a tax liability. The scammers themselves will retain a large percentage of the fund on the pretext of fees and the promised “loan” or investment “cashback” will be advanced out of the members own fund. This will leave very little of the fund remaining for future retirement. Where such unauthorised withdrawals have been made, HMRC may charge interest of at least 55% plus fees, possibly increasing to as much as 70%. This will be due on the full sum released and not just that provided in a “loan”. Victims of scams may not only lose their life savings but be faced with a tax bill they are unable to pay.

Industry Controls for Pension Trustees

A member has a statutory right to transfer their fund, however there is a requirement on trustees / providers to act with due care and in the best interests of all members, including those who wish to transfer out. Since 2015 pension industry stakeholders have worked closely to identify and mitigate the risk of these scams, with the Pension Scams Industry Group (PSIG) producing “Combating Pension Scams: A Code to Good Practice.” This highlights emerging threats and sets out detailed good practice for the industry.

This voluntary code sets out industry standards to be observed when dealing with transfer requests from UK registered pension schemes. This includes scam awareness to the individual, as well as the potential financial impacts of the transfer, enabling the member to make an informed choice. The code advocates the ceding scheme exercises due diligence so that only a valid transfer is made to a registered pension scheme, or a Qualifying Registered Overseas Pension Scheme (QROP).

Project Bloom is a public and private sector collaboration for tackling pension scams, chaired by the Pensions Regulator. Further delegates include the FCA, Action Fraud and the City of London Police, National Crime Agency, The Pensions Advisory Service and the Pensions Scams Industry Group. Their remit is to enhance awareness of the issue and has also referred incidents for investigation by law enforcement. NFIB utilises such reports together with broader intelligence to produce industry alerts, which can be used as part a firm’s due diligence process.

Legislation

Pension scams will be caught by the fraud offences set out in sections 2 to 4 Fraud Act 2006. Where such a transfer is made in order to make unauthorised withdrawals from a pension fund, a member may be guilty of tax evasion offences. Such criminal conduct will constitute a predicate offence for the purposes of money laundering under the Proceeds of Crime Act 2002.

Transfer Agent obligations in the event of inappropriate activity being identified

Where a Transfer Agent administers an investment account linked to a Pension Trustee firm, they themselves may be caught by the requirements to prevent pension scams, particularly where, in the eyes of the Regulator, they could or should have identified and reported suspicions. This could lead to the risks mentioned previously.

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Transfer Agents are required to have effective systems and controls to prevent the risk that they may be used to facilitate financial crime. This would include the types of fraud, tax evasion and money laundering set out above. Where suspicions arise, a firm should not only consider making a report of a pension scam to the regulator, but also a disclosure of a Suspicious Activity Report (SAR) to the NCA including a request for a Defence Against Money Laundering (DAML) where appropriate. As part of its reasonable measures to prevent the facilitation of tax evasion, a firm should maintain effective policies and procedures. FCA guidance advocates the inclusion of scenarios to highlight the risks posed.

A firm either knowingly or unwittingly used to facilitate the investment of funds derived from pension scams may find itself involved in criminal investigations or the subject of complaints to the regulator and ombudsman. This may lead to both financial and reputational risk as well as a suspension or withdrawal of operating licence. Such risks may be mitigated by greater awareness, risk management and the employment of effective due diligence measures.

Firms are required to report their suspicions of pension scams to the Pensions Regulator using the following link: http://www.thepensionsregulator.gov.uk/codes/code-reporting-breaches.aspx.

Recommendations for firms

1) Provide awareness training to staff on the risks outlined within this paper.

2) Give consideration to the firm's risk appetite in respect of such activity outlined in this document.

3) Ensure that firm's procedures and mitigating controls are aligned to the firm's risk appetite.

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