



ABI RESPONSE TO HM TREASURY CONSULTATION ON DRAFT REGULATIONS TO BAN COLD CALLING IN RELATION TO PENSIONS

August 2018

Introduction

1. The ABI is the voice of the UK's world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation. The UK insurance industry is the largest in Europe and the fourth largest in the world. It is an essential part of the UK's economic strength, managing investments of over £1.7 trillion and paying nearly £12bn in taxes to the Government. It employs around 300,000 individuals, of which around a third are employed directly by providers with the remainder in auxiliary services such as broking.
2. The ABI welcomes the opportunity to respond to HM Treasury's technical consultation on draft regulations seeking to ban cold calling in relation to pensions.

Executive Summary

3. The ABI has been a long-standing advocate for banning cold calling in relation to pensions, and this consultation is welcome. Attempts to ban pensions cold calling have faced many delays and we encourage the Government to adhere to the timelines laid out in the consultation to prevent further delays to this important issue.
4. While we welcome a ban on cold calling, it is clear that a ban on pensions cold calling will not see the end of pension scams. The Government and industry should continue to work together both on the other avenues proposed in the 2016 consultation – limiting the statutory right to transfer to some occupational schemes and making it harder for fraudsters to open pension schemes – and to raise greater awareness among the public of the signs and characteristics of pension scams. Government and regulators should also take other measures to prevent unsolicited contact, such as cracking down on the behaviour of unregulated introducers, beyond cold calling.
5. The ABI would welcome further clarification on some aspects of the regulations. This includes what constitutes an existing relationship and how this can be communicated to the public, a more robust definition of a 'TPR-regulated person' and further clarification on whether the Government intends to use the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) that restrict unsolicited direct marketing via electronic mail to communicate to the public that unsolicited electronic mail regarding a pension is illegal.
6. We encourage the Government to review the overall effectiveness of the ban once it is in place, and in particular to monitor a number of factors, including whether any legitimate, non-marketing calls are restricted, whether scammers are employing new methods which circumvent the ban, whether the £500,000 penalty proves an appropriate disincentive, and whether other future changes are needed. Furthermore, the Government should consider as



soon as possible how cold calls in relation to retail investments and savings could also be banned.

7. The proactive communication of the ban by the Government to consumers, as confirmed to take place in the consultation summary, will be key to its success. It is vital that the public know that unsolicited calls that they receive about their pension are illegal. The ABI would like to see a fully-funded awareness campaign to accompany the ban and would be delighted to work with the Government to support the development of this and to help amplify it.

Responses to consultation questions

Question 1: Do you agree that the proposed regulations achieve the aim of restricting all unsolicited direct marketing calls in relation to pension, bar the exemptions outlined, without restricting legitimate non-marketing calls?

8. We agree that the draft regulations achieve the aim of restricting direct marketing calls in relation to pensions, bar the exemptions outlined, and we are content that the regulations are broad enough to capture a range of activities.
9. It is unlikely that the draft regulations will restrict legitimate, non-marketing calls. To ensure this is not the case, we recommend that the ban and its effectiveness is monitored and reviewed once in place.
10. In Section 21 B, 3(b) of the draft regulations, the phrase 'existing client relationship' would benefit from further clarification. The current wording – that “the recipient envisages receiving unsolicited calls” – is subjective, because there may be differences in what individual customers would envisage. Greater clarification – for example, that the recipient “may reasonably envisage” receiving unsolicited calls – would allow more effective communication of the ban. Individuals may be unsure as to whether they have an existing relationship with a pension provider, and at what point (if ever) such a relationship would cease to exist. While many industry initiatives seek to increase the public’s engagement with their pension, automatic enrolment’s reliance on inertia can leave some individuals unaware of who their pension provider is, which could make it almost impossible for an individual to know if they have an existing relationship with a provider.
11. When considering the three criteria set out in Section 21B (3), it could be the case that customers who started saving into their pension many years ago (at a time when questions about marketing preferences were less common) would not be able to ‘opt-in’ for marketing calls in this scenario, and therefore were never “given a simple means of refusing”. While some firms may have followed up with longer standing customers since then about their marketing preferences, this could result in marketing calls being restricted in a way which was not intended.
12. While the draft regulations reference a definition in Section 355(1) of the Financial Services and Markets Act 2000 for that of a ‘The Pensions Regulator (TPR) regulated person’, we cannot see the definition in this location. Given the lack of definition for being TPR regulated, we encourage thought to be given as to how better to describe what is meant by a “TPR-regulated person”. While being “FCA-regulated” is a commonly accepted and easily

interpreted term, this does not read across to TPR and the trust-based sector. The most appropriate way of defining this could be:

- Authorised master trusts, as in s.1 of the Pension Schemes Act 2017. Master trusts are most similar to FCA-regulated firms, as they will have to abide by comparable standards in terms of fitness and propriety and will be both authorised up-front and strictly supervised on an ongoing basis.
- The scheme administrator, as in s.270 of the Finance Act 2004. This would be relevant if the exemption should be extended to other trust-based schemes that are regulated by TPR that fall outside the scope of the master trust framework. This is also comparable to being an FCA-regulated person, as a fitness and propriety test is available to HMRC for scheme administrators but it assumes that all persons appointed as scheme administrators are fit and proper persons unless HMRC holds information, or obtains information, which causes it to question that assumption.

Question 2: Do you agree that the proposed regulations capture the wide range of activities through which people could be encouraged to use their pensions savings in order to invest in inappropriate or scam investments?

13. For all intents and purposes, the regulations currently seem sufficient to capture the range of activities of pension scammers. However, as recognised in the consultation document, pension scams evolve as scammers seek to employ new methods. In our response to the 2016 pension scams consultation, we supported the extension of the ban to include all forms of investment across all forms of digital communication. It is possible that scammers could target other types of retail investments and savings, and therefore Government should keep under review and consider as soon as possible how cold calls in relation to retail investments and savings could be banned.
14. It is also important that other measures are taken to prevent unsolicited contact, such as cracking down on the behaviour of unregulated introducers, beyond cold calling. For example, some new methods are already in practice, with attention recently being drawn to a tactic known as ‘factory gating’ whereby individuals who are known to soon be making decisions about their pension are specifically targeted in person outside their workplace.
15. Given the above, it is therefore vital that the effectiveness of the ban, once in place, is monitored and reviewed (as raised in Section 9), to ensure that it is working as intended. Monitoring will also be beneficial to assess whether other products should be brought into scope (such as retail investments as set out above) and to consider whether extension of the ban or other means are appropriate interventions. We welcome the powers given in the Financial Guidance and Claims Act 2018 (FGCA) to do this. Government should also consider conducting research after the campaign to measure to what extent the message that pension cold calling is illegal has been recognised by the public.
16. In our previous response to HM Treasury’s pensions scams consultation¹ in 2016, we advocated that extending the ban to include all electronic communication would be “essential to effectively tackle pension scams”. Although we recognise that Section 22 of PECR restricts the use of electronic mail for direct marketing purposes, further clarification is needed as to

¹ <https://www.abi.org.uk/globalassets/sitecore/files/documents/consultation-papers/2017/abi-response-to-treasury-pension-scam-consultation.pdf>

whether the Government intends to communicate to the public that unsolicited electronic mail regarding a pension is illegal given these regulations. Moreover, it is important to make clear whether a prohibition already applies to email and texts related to pensions. We note that the definition of electronic mail (Section 2 of PECR) is broad and covers texts as well as emails.

Question 3: Do you agree that the proposed regulations are sufficiently flexible and future proofed to prevent the evolution of scam pensions cold calls that circumvent the ban?

We agree that the regulations are flexible and suitably future-proofed and we note the Government's ability to make future changes to the ban if needed. As highlighted in Section 9 of this response, monitoring will be key here.

17. Other Government initiatives will play a role in future proofing the cold calling ban, and the ABI has long called for a number of other policies which would give the ban the best chance of success. For example, by limiting the statutory right to transfer there is a greater chance that savings will not be lost to scammers even if an individual is cold called despite the ban and persuaded to make a dubious transfer. Furthermore, the development of the pensions dashboard and mid-life MOT and the creation of a new Single Financial Guidance Body will all help increase engagement and understanding of pensions and therefore allow for better recognition of the signs of a pension scam.

18. In addition to the role that the SFGB will play in improving financial capability as set out above, the SFGB also has duties relating to the cold calling ban, as set out in the FGCA. Section 3 (7) of the FGCA gives the SFGB a consumer protection function, in that it should "consider the effect of unsolicited direct marketing on consumers of financial products and services" and therefore do the following:

- from time to time publish an assessment of whether unsolicited direct marketing is, or may be, having a detrimental effect on consumers, and
- advise the Secretary of State whether to make regulations to ban unsolicited direct marketing for other consumer financial products.

We encourage the SFGB to set out at an early stage how it will do this, as it is clear that the SFGB will play an important role alongside the cold calling ban, which in turn will strengthen the extent to which the ban is future proofed.

19. Given its current powers to enforce PECR under the Data Protection Act, we agree that it is appropriate for the Information Commissioner's Office (ICO) to be the enforcement agency for pensions cold calling. To ensure that this ban is future proofed, the extent to which the ICO will require additional resources and funding to take on this additional responsibility should be considered, as insufficient resources could put the effectiveness of the ban in doubt. Furthermore, Government should monitor whether a £500,000 penalty proves an appropriate disincentive for scammers given that some pension pots can equal or exceed this amount. It should also be noted that the scope of fines for breaches of data regulations has increased from £500,000 to £17 million in the 2018 Data Protection Act and we would advocate for a significant increase of the fines associated with a breach of PECR. Likewise, the Government should keep under review whether custodial sentences may provide a more efficient disincentive.

20. An awareness campaign will be a key factor in securing the future of the cold calling ban, as it is vital that the public know that unsolicited direct marketing calls that they receive about their pension are illegal. A ban will be ineffective if it is not accompanied by greater public awareness, and we welcome the Government's commitment to actively communicating this as set out in the consultation document. Noting the request for conversations with stakeholders on how to communicate the ban, the ABI would be happy to work with Government to help discuss how this can be best achieved and to help amplify the campaign. We welcomed the launch of the Pension Regulator and Financial Conduct Authority's joint pension scams awareness campaign earlier this week, and would encourage the Government to run a campaign of a similar scale when communicating the ban. Any communication to the public should include the promotion of reporting cold calls to Action Fraud, and likewise efforts should continue to make the process as simple as possible for consumers.

Question 4: Do you agree that the proposed regulations prevent 'workarounds'?

21. As the ban cannot be extended to overseas callers, and thus only outlaws UK calls, there will unfortunately always be an element of workarounds given that scammers can call from abroad. This could result in scheme members requesting to transfer from their UK provider into schemes offering dubious investments. The Government should take a holistic view when considering the various interventions outlined in their response to the pension scams consultation and should consider whether a provider should have the right to challenge or refuse a transfer if the request was initiated by an illegal cold call. The importance of providers ascertaining the motivation behind a transfer request is highlighted in a code of good practice², produced by the Pension Scams Industry Group and supported by our members, which suggests asking scheme members whether they became aware of the scheme through a cold call.
22. As highlighted in Section 16 of this response, it is difficult to comment on whether texts could act as a workaround until clarification is given as to whether Section 22 of PECR will be interpreted to communicate to the public that pensions texts are illegal too. If Section 22 of PECR is not able to reflect a ban of pensions texts and emails, then these could be used by scammers to circumvent the ban. Furthermore, social media would likely fall out of scope of the ban and has featured in the media as a potential workaround for scammers.
23. We agree that the regulations will prevent other workarounds with exception to the above. While conscious that it is not a silver bullet solution, we are supportive of the arrangements set out between the ICO and international regulators and remain hopeful of their impact.

Question 5: What will be the quantifiable impact of the ban on the legitimate business of firms which undertake pensions cold calling?

- *how many legitimate pensions cold calls are taking place?*
- *how many legitimate pensions cold calls lead to a successful transaction and what is the average value of these transactions?*
- *how many legitimate pensions cold calls will be captured by the ban?*

² <https://www.abi.org.uk/globalassets/files/publications/public/lts/2018/180605combating-pension-scams-code-version-2-final-signed-1.pdf>



24. We are unable to provide quantifiable data for this question; however, we believe it is unlikely that the draft regulations will restrict legitimate, non-marketing calls and we support the many examples given in the consultation document which suggest types of calls that do not constitute direct marketing.
25. In the ABI's recently published framework for the management of gone-away customers³, using phone calls is one of the suggested methods for providers to attempt contact with customers. While each provider's approach varies, it is welcomed that the consultation acknowledges telephoning gone-away customers as a type of call that does not constitute marketing activity and we think it is unlikely that the draft regulations will restrict legitimate, non-marketing calls of this nature. It is important for consumers that this remains out of the scope of the ban.

³ <https://www.abi.org.uk/globalassets/files/publications/public/lts/abi-framework-for-the-management-of-gone-away-customers-in-the-life-and-pensions-market.pdf>