FCA
Financial Services Consumer Panel

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Dear DWP,

Financial Services Consumer Panel response to:
Protecting Pension Savers - Proposals to Amend the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the DWP's consultation paper (the CP) titled Protecting Pension Savers - Proposals to Amend the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. We are an independent panel that represents the interests of consumers of financial services including both individuals and small businesses. Our focus is on the outcomes and impacts to these stakeholders.

Our focus is predominantly on the work of the FCA; however, we also look at the impact on consumers of other bodies' activities and policy where relevant to the FCA's remit. We are strong proponents for ensuring that regulatory treatment is equivalent for the same regulatory risks regardless of regulator. Furthermore, given the critical importance to consumers, pensions and their protections are a key theme for the Panel. For these reasons, we believe it is important for us to respond to this DWP consultation.

The Panel fully supports the efforts to build a safer and more resilient pension system as expressed by Torsten Bell, Minister of Pensions and as described in this consultation. We agree that pension fraud can be devastating – to the victim and to confidence in the system itself. We appreciate that the pension landscape can be complex for consumers, and they may be persuaded to take actions that are against their own best interests. And, as noted, those who perpetrate fraud against pension savers are becoming ever more sophisticated and their tactics seem to evolve with the imposition of regulation intended to prevent their behaviours. Therefore, we concur that, whenever possible, appropriate actions should be taken to prevent pension fraud from occurring. The DWP's proposed approach of adding effective frictions without creating significant delays or consumer frustration in pension transfers is commendable.

In addition to supporting the proposals, we would like to take this opportunity to provide our thoughts and some suggestions relating to some of the more detailed elements. These are included in the Annex below.

Yours sincerely,

Chris Pond
Chair, Financial Services Consumer Panel

Annex

Question 1: Do you foresee any issues with the planned wording of the flag in regulation 8 of Annex A?

The planned wording in regulation 8 does not raise any concerns for the Panel. However, this wording references regulation 10(1) which then references regulation 11. We are concerned that the wording in regulations 10 and 11 is over-complicated, which could possibly lead to unintended consequences of either additional and unnecessary delays to the transfer process or may allow pension transfers to take place that should not. If it hasn't already, we would urge the DWP to analyse the pension transfer impacts of regulations 10 and 11.

Question 2: Are you aware of any emerging concerns, risks or scam activity, such as those arising in SSASs or other pension arrangements, where existing consumer protections or regulatory safeguards may not be sufficient?

The Panel is not aware of any emerging concerns that are not already known by the regulators. However, if it is not already the case, firms (including pension providers) should be specifically instructed to include potential pension and other financial scam activity as a type of financial crime in Suspicious Activity Reporting. We would also suggest that a centralised reporting mechanism and directory of scams and scammers would be helpful. This could be used by regulators and other authorities to identify and enforce against perpetrators and to identify emerging issues, but could also be made available for use by service providers to identify possible illigitimate transfers. We would also suggest that it could serve as a resource for warning communications to consumers.

In addition, the DWP and FCA must ensure that they identify, have access to, and actively monitor all credible resources where consumers report scams and frauds. Enforcement efforts should be well-defined and coordinated across the various authorities, and effective actions to remove fraudsters should be publicised. This will put fraud perpetrators on notice and should lead to greater consumer confidence in the system.

Question 3: Do you consider the focus on the employment link to be an appropriate and effective measure for addressing the concerns relating to SSAS transfers?

The Panel agrees that adding a red flag when there is a question as to the existence of an employment link seems to be a reasonable means to reduce the likelihood of abusive practices relating to Small Self-Administered Schemes (SSASs). However, we also believe that these schemes might warrant an in-depth review to determine if there are other existing or emerging risks that should be addressed.

Question 4: Do you agree with this proposed approach, including the use of a non exhaustive list of factors? If so, we would welcome your views on what those factors should be. We also welcome your input, including any evidence-based views, on its effectiveness and practical workability.

The Panel appreciates the extensive data that has been collected and considered to support the proposed approach. We also agree that unecessary frictions leading to transfer delays should be reduced whenever possible. Therefore, as long as trustees retain accountability for making sound decisions (that are fully documented), we agree that trustees should be able to exercise their expert judgment when they are convinced that additional due diligence prior to a transfer does not add value in preventing pension fraud.

Question 5: Do you foresee any issues in the practical implementation of the amended regulations?

As the CP suggests, we do urge the regulators to continue to collect and monitor appropriate data to ensure that the changes do not lead to an increase in fraudulent transfers. Please also refer to our reponse to Question 2, as we think there should be specific reporting relating to potential scams and scammers which can then be consolidated into a database to be used by both providers and the regulators to better tackle pension fraud and its perpetrators.

Question 6: Do you foresee any issues with the proposed wording of the amendments to the regulations, as detailed in Annex A?

The Panel is concerned that the terminology relating to confidence levels is not sufficiently defined for general use. Whilst the terms "beyond a reasonable doubt" and "balance of probabilities" may be clear in a legal context, they may be interpreted very differently by people outside the legal profession. We believe that these terms should be more clearly specified in guidance.

Also as we noted in our response to Question 1, we are concerned that the wording relating in Regulations 10 and 11 is overly complicated.