Dear Frank

GOVERNMENT RESPONSE TO THE WORK AND PENSIONS SELECT COMMITTEE’S REPORT
PROTECTING PENSIONS AGAINST SCAMS

The Government will respond formally to the Work and Pensions Select Committee’s Report Protecting pensions against scams: priorities for the Financial Guidance and Claims Bill in due course. However, we wanted to write to the Committee in advance of Committee Stage in the House of Commons.

We would like to thank the Select Committee for their thoughtful consideration of the measures concerning pensions cold calling and Pension Wise guidance contained in the Bill as introduced into the Commons.

We agree that tackling pensions cold calling is an extremely important issue, given the huge cost that scams resulting from such calls can have on people’s lives. As you know, the Government has repeatedly stated its strong commitment to ban this activity – including during debates on the Financial Guidance and Claims Bill. We agree with the view of the Select Committee that an alternative, swifter way of banning pensions cold-calling than currently provided for in Clause 4 is needed. We welcome the Select Committee’s support in developing this thinking and wish to reassure you that officials at HM Treasury are reflecting on the Committee’s proposal, and intend to bring forward an amendment which builds on it. We agree with the broad thrust of the Committee’s proposal, but we want to ensure the amendment addresses the risk of scammers attempting to challenge or circumvent a ban and to ensure that the ban is workable, robust and less liable to legal challenge in the future.
We think we can all agree that it is important that people are encouraged to take up free and impartial Pension Wise guidance when making important decisions about what to do with their flexible benefits. We very much welcome the Work and Pensions Select Committee’s review of clause 5(2) of the Bill. We are sympathetic to the Select Committee’s desire to provide for people to receive a further nudge towards guidance before they access their pension pots as a result of the pension freedoms. The Government accepts that this is the right direction of travel and this is why I have tabled an amendment which builds on the proposal put forward by the Select Committee.

As was the intent of the Committee, the Government amendments will result in members being asked to make an explicit decision about whether or not to take guidance. The Government amendments will put a duty on the FCA to make rules requiring the trustees and managers of personal pension schemes to ask members and their survivors whether they have received appropriate pensions guidance or independent financial advice when they apply to access or transfer their pension benefits. If the member indicates they have not received such guidance or advice the provider must recommend they seek it. The provider must also ask the member whether they want to wait while they access guidance or advice. If the member wants to proceed with accessing their pension benefits without guidance or advice, the provider must ask the member to confirm that they want to proceed without receiving guidance.

Telling scheme members that the Government recommends they take guidance or advice, then asking them whether they want to get guidance or advice before accessing their pension, is making guidance (or independent financial advice) the default option. Asking them to confirm they wish to proceed with accessing their pension without having accessed guidance or advice provides the final behavioural nudge.

The WSPC report asked that corresponding provision be made for occupational pensions using existing powers. However, current legislation does not allow us to create this type of default option. For this reason the Government amendments go further, by also introducing a requirement for the Secretary of State to make regulations imposing corresponding obligations on occupational pension schemes. The Government amendments also ensure that there is proper cooperation between the FCA, the Secretary of State and the Single Financial Guidance Body to make sure that the rules and regulations are effective, workable and consistent when making provision for all schemes which provide flexible benefits, including personal, stakeholder and occupational defined contribution schemes (including in Northern Ireland).
The difference in drafting between the Government amendment and the Committee's proposal is largely down to finessing for practicality and accuracy. For example the Committee's proposal imposes obligations on members directly, but the FCA's rules only apply to the persons it has authorised to carry out the activities it regulates, such as the persons operating personal pension schemes. The Committee's proposal also sets out delivery channel exclusions, which is not appropriate for primary legislation. Details such as these should be set out in rules and regulations, informed by consultation. These can more easily be updated to reflect changes in technology, current user needs and best practice, based on research on how the existing rules and regulations are working.

In conclusion, we would like to reassure the Select Committee that our intention with the amendment we have already brought forward on default guidance, and the amendment we intend to bring forward on pensions cold calling, is to meet the aspirations of the Select Committee.

JOHN GLEN

GUY OPPERMAN