

Work & Pensions Committee
Call for evidence: Protecting pension savers – five years on from the pension freedoms:
Pension scams
Response from the Low Incomes Tax Reform Group (LITRG)

1 Introduction

1.1 About Us

1.1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

1.1.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

1.1.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

1.2 Our interest in this consultation

1.2.1 We are specialists in tax and related welfare benefits for people on low incomes. We provide online guidance¹ on these matters which, in 2019, received over 5 million unique visitors.

1.2.2 We are regularly contacted by members of the public via these websites with questions about their financial affairs – relating to tax and welfare benefits (including state pension entitlement). We are also often asked about pension savings and how decisions relating to these can affect tax and benefits.

1.2.3 The enquiries we receive show how confusing matters of personal finance can be for the general public – particularly those on low incomes who might face challenges such as low standards of literacy and numeracy.

¹ Our main website for the public being www.litrg.org.uk

- 1.2.4 Tribunal case reports show how such unrepresented taxpayers get caught up in pensions liberation schemes and not only lose all (or a substantial part) of their pension savings but then also are faced with tax charges on top. We therefore focus our comments below on question 8 of the call for evidence. We also make some broad comments in response to question 9.

2 Is HMRC's position on the tax treatment of pension scam victims correct? (Question 8)

- 2.1 There would seem to be two interpretations to this question. First – is HMRC's treatment of pension scam victims correct under the law as it stands? Second – is it right that the law should treat pension scam victims in the way that it does?
- 2.2 In this respect, the first point is that it is not HMRC who make the law. It is HMRC's job to apply the law as it is written and for the courts then to deal with any appeals against decisions made by HMRC.
- 2.3 On accessing pension savings on an unauthorised basis,¹ the pensionholder² faces two possible tax charges: an unauthorised payments charge³ (charged at 40%) and an unauthorised payments surcharge⁴ (charged at 15%) – i.e. up to 55% of the amount of the unauthorised payment. The individual can apply for the 15% surcharge to be discharged if 'in all the circumstances of the case, it would not be just and reasonable for the person to be liable' to it.⁵ There is no in-built flexibility on these charges: anything not authorised is unauthorised.
- 2.4 From discussions with frontline tax charities, TaxAid⁶ and Tax Help for Older People⁷, we are aware that pensionholders on low incomes can fall victim to pensions liberation schemes. Not only do these people unwittingly lose all or a significant proportion of their pension savings but then face tax charges for the unauthorised access to their savings. There is also potentially a cost to the state through having to fund pension credit payments to such individuals in order to top-up their retirement income.

¹ Section 160 Finance Act 2004 defines an unauthorised payment as one which is not on the list of authorised payments within Section 164 Finance Act 2004. For most people (with exceptions for serious ill-health, etc.), a payment would be unauthorised if funds are extracted from approved pension schemes before the minimum age of 55.

² Additional charges may apply to the scheme administrator by way of a scheme sanction charge.

³ Section 208 Finance Act 2004

⁴ Section 209 Finance Act 2004

⁵ Section 268 Finance Act 2004

⁶ www.taxaid.org.uk

⁷ www.taxvol.org.uk

- 2.5 The rationale behind the tax charges is apparently twofold – to claw back tax relief on amounts saved into pensions (and on the tax-efficient fund growth) which was given to support the individual saving for later life, and – particularly in the case of the surcharge – to deter attempts to access the funds early.
- 2.6 However, in cases where the individual has lost a significant amount of their savings to a pensions liberation scheme – probably through financial naivety or misplaced trust in someone they might have thought was giving genuine advice in their best interest – is it right to impose these charges?
- 2.7 The courts have tended to agree with HMRC that the charges, as the law stands, do apply. See *McCormack* (TC06443)¹, for example. Editor-in-chief of *Taxation* magazine, Andrew Hubbard, summed up this case as follows:

“There was a rather sad tax case report this week — *McCormack* (TC6443). It involved three individuals who faced unauthorised payment charges and surcharges as a result of their participation in pension liberation arrangements. They were a representative sample of several people who had been caught up in the same schemes. They had been persuaded by apparently genuine advisers with connections to FSA-registered businesses to move their pensions from UK-approved schemes (in one case a teachers' pension scheme) into others that were said to offer better investment terms or more flexible ways of accessing the fund. At least one of the individuals appears to have lost a large proportion of his money through forex investments and significant amounts were taken in fees. But all of them did receive some money out of their schemes. When HMRC realised what had been happening it raised charges on the individuals on the amounts they had received. On appeal, the First-tier Tribunal upheld the assessments — as was almost inevitable — because there was no doubt that the legislation applied in the way HMRC said.

“Part of me has little sympathy. The individuals were looking to get more out of their pensions than conventional arrangements would have allowed and they did receive money so they should pay tax on it. But they would never have got into that position had they not become caught up with what appeared to be credible and authorised advisers. It leaves a bitter taste in the mouth and one cannot help feeling that the wrong people have ended up carrying the can.”²

- 2.8 Moreover, is it right, as in the case of *R Rowland* (TC07499)³, that a taxpayer is charged an additional penalty – for being careless in filing an incorrect return (i.e. because the taxpayer

¹ *B McCormack & Others v HMRC* [2018] UKFTT 0200 (TC):

<http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j10404/TC06443.pdf>

² *Taxation*, 26 April 2018

³ *R Rowland v HMRC* [2019] UKFTT 0741 (TC):

<http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j11455/TC07499.pdf>

omitted to include the unauthorised pension payment)? While we make no comment on the Tribunal's decision to uphold the penalty (which exceeded £7,500) in this particular case, inaccuracy penalties in cases where taxpayers might simply not understand what they have done (and the implications of those actions) would generally seem somewhat harsh.

- 2.9 So on to the second interpretation of this question – is **the law** 'right' to apply tax charges in these circumstances? This is a question for the government to consider more widely, and for the law to be changed if it is not felt to be 'fair' to levy tax charges (and indeed penalties) on the 'victim'.
- 2.10 What is perhaps difficult to determine is how the law should be changed. A financial deterrent is required to avoid everyone trying to access their pension pot early. However, it seems that some room for manoeuvre should be introduced into the law:
- to allow for the discharge or reduction of both the unauthorised payments charge and the surcharge in cases where people have lost savings in such schemes (and with greater flexibility than the Section 268 provisions for discharging the surcharge currently allow); and
 - to transfer liability for the tax on the scheme itself (though we appreciate this is problematic if the scheme promoters have disappeared in the meantime).

3 Are public bodies co-ordinating the response to pension scams? (Question 9)

- 3.1 We note that the Committee will, in 2021, be continuing its work on pensions and will be considering savings for later life more widely. We believe this is an extremely valuable project and we will be contributing our comments to those later calls for evidence.
- 3.2 However, our initial thought in relation to a co-ordinated response to pension scams is that one way to reduce the opportunity for scammers to operate is to have a co-ordinated approach to savings generally.
- 3.3 The government wishes to encourage those on lower incomes to develop a short term savings habit (incentivised, for example, by the Help to Save scheme), as well as introducing initiatives such as the Lifetime ISA which may be used for purchase of a home or to supplement retirement savings. These, together with the existing provisions for tax-relieved savings into pensions, each have their own rules to get to grips with – each scheme having a different method of providing a government incentive and different hazards to watch out for when drawing on savings at the 'wrong' time.
- 3.4 We would suggest that a co-ordinated cross-government review of all government-incentivised savings schemes, with a view to having a simpler and more understandable system, would deliver benefits. For example, it might be possible to have a single form of government-incentivised lifetime savings scheme, which is flexible enough to allow some shorter term access as well as longer term savings. If there were a single scheme with simpler rules, perhaps this

might make it less likely that people will fall victim to scams which seek to exploit people's confusion about the existing complex system?¹

LITRG

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¹ A 2017 Chartered Institute of Taxation Fellowship thesis by Kelly Sizer, LITRG staff member, explores these issues in more detail – *'The complexities of government-incentivised savings for people on low incomes'*: <https://www.litrg.org.uk/latest-news/reports/180227-complexities-government-incentivised-savings-people-low-incomes>