Written evidence submitted To the Data (Use and Access) Public Bill Committee by ABI (DUAB34).

Executive summary

1. We welcome the opportunity to provide written evidence to the House of Commons Public Bill Committee on the Data (Use and Access) Bill [Lords].

2. This Bill provides a much-needed opportunity to amend the Privacy and Electronic Communications Regulations (PECR) to enable long-term savings providers to send more useful, engaging electronic communications to their customers (in line with Consumer Duty requirements).

3. We also believe that the 'public service delivery' data sharing clauses in the Bill can be extended to help solve the issue of lost pension pots.

4. The Privacy and Electronic Communications Regulations (PECR) sit alongside the Data Protection Act and the UK General Data Protection Regulation (GDPR). They give people specific privacy rights in relation to electronic communications.

5. Unfortunately, PECR, in combination with the Information Commissioner's Office's (ICO's) direct marketing and regulatory communications guidance, make it difficult for pension providers to send useful, engaging electronic communications to customers that have opted out of direct marketing. This includes the vast majority of automatically enrolled customers who do not have an opportunity to opt-in for marketing materials as workplace pensions are set up by employers rather than directly by employees.

6. Pensions engagement and understanding is a crucial part of achieving pensions adequacy. Therefore, allowing long-term savings providers to send communications which are not necessarily neutral in tone, and which include clear calls to action around contributions, consolidation, and drawing an income could help to improve adequacy of income in retirement and pension outcomes generally.

7. The ICO, The Pensions Regulator (TPR) and the Financial Conduct Authority (FCA) recently published a joint statement, which clarifies how long-term savings providers and pension scheme trustees should interpret the ICO's direct marketing and regulatory communications guidance. We welcome the statement as it provides greater certainty for the industry. However, by its nature, it is guidance which cannot tackle issues stemming directly from PECR.

Why we are calling for changes to PECR

Inconsistencies in regulation

8. Communicating effectively with customers is essential to help close the pension savings gap and ensure that more people can plan effectively for a comfortable retirement.

9. The FCA's Consumer Duty requires firms to support their customers by helping them to make informed decisions about financial products and services and to avoid foreseeable harm. Similarly, under the TPR's Code of Practice and Guidance, trustees of pension schemes are expected to

provide their members with support to help them make important decisions about their retirement. While there are a range of legislative and regulatory disclosures that apply to pensions and long-term savings products, the Consumer Duty and TPR's Code and Guidance do not set out specific messages that must be sent to consumers. In any case, email will often be the most appropriate form of communication to reach customers.

10. However, Section 22 of PECR states that unsolicited communications for the purposes of direct marketing cannot be sent by electronic mail unless:

    a. The recipient consents to marketing communications being sent, or

    b. The marketing is in respect of similar products and services and the recipient has been given a simple means of refusing the use of their contact details for direct marketing, at the time that their personal details were obtained (in the course of the sale of the product). This requirement is referred to as the 'soft opt-in.'

11. The ICO's direct marketing and regulatory communications guidance establishes that a message is likely to be direct marketing if it 'actively promotes an initiative'[1]. For example, by 'highlighting the benefits and encouraging people to participate or take a course of action.' Indeed, if even 'a routine communication has marketing elements, then it is direct marketing' regardless of its main purpose. Information provided by a firm is unlikely to be direct marketing if, as well as adopting a neutral tone, it is 1) 'solely for [their customer's] benefit and 2) against [the firm's] interest and [the firm's] only motivation is to comply with a regulatory requirement. This gives limited room to manoeuvre for providers to engage with savers.

12. The guidance goes on to note that while it is important to comply with 'your statutory regulator's requirements' (e.g. Consumer Duty), these regulators (e.g. FCA) 'do not expect you to contravene other laws' (e.g. PECR).

13. These rules make it difficult for long-term savings providers to send useful, engaging electronic communications (in the spirit of Consumer Duty and TPR's Code and Guidance) to customers that have opted out of direct marketing. Consumers then miss out on support that could help them take better financial decisions because firms do not want to fall foul of ICO's direct marketing guidance (not to mention the FCA's advice rules that limits personalisation of content).

14. In Appendix 1 we provide five example scenarios where customers' decision making and savings position could benefit from email communications from their pension provider even where that individual has not opted-in to direct marketing.

15. Please note that the current broad definition of direct marketing will also restrict the effectiveness of the FCA's targeted support proposal and Department for Work and Pensions' (DWP's) guided retirement policy which are currently in development. FCA and HMT have acknowledged this barrier within their Advice Guidance Boundary Review, and we expect their future policy development to include proposals to tackle this problem. DWP too are aware of the issue but have not yet committed to resolving it as part of their Pension Schemes Bill expected in Spring 2025.

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[1] https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/direct-marketing-and-regulatory-communications/

16. The joint regulatory statement published by the ICO, TPR and FCA on 15 November[2] is a positive development, but while it should provide long-term savings firms with more confidence and clarity in sending regulatory communications to pensions and savings customers in a few circumstances, it doesn't address our wider concerns around PECR.

Automatically enrolled customers

17. Our current workplace pensions system is designed around Automatic Enrolment, where it is employers who set up pension arrangements, and this acts as an additional barrier to communication.

18. Automatically enrolled members do not provide personal data directly to their pension provider or otherwise communicate directly with their provider at the point of sale. As a result, there is no opportunity for automatically enrolled scheme members to opt-in, or for providers to satisfy the requirements for the soft opt-in exception as part of the sales process.

19. Pension providers are also unable to request customers' marketing permissions in any follow-up communication via email. Where they have email addresses for members from the employer, they can send welcome packs, however they are not able to request marketing permissions in this communication as this would be deemed to be a direct marketing communication in its own right. Auto-enrolled customers are by default missing out on the option to receive marketing communications via email.

Proposed changes to PECR – the debate in the House of Lords

20. During Committee Stage in the House of Lords, Lord Lucas tabled two amendments to the Bill, which we had suggested, on a 'soft opt-in' for workplace pensions[3] and direct marketing[4]. The amendments aimed to amend PECR in order to: clarify that communications that are necessary to comply with a legal obligation, or any rules, guidance or request of a regulatory authority are not direct marketing for the purposes of PECR; as well as extend the 'soft-opt-in' rule in PECR to workplace pensions, where previously the soft opt-in was not possible.

21. We welcomed the government's response to this and similar amendments tabled by Lord Lucas during the Report Stage, noting that the government and the FCA are working closely together to improve the support available to consumers. The Minister referred to the FCA's ongoing consultation on targeted support, suggesting that through this, the FCA would seek feedback on any interactions of the proposals and direct marketing rules. The Ministers also suggested that firms can already provide service or regulatory communication messages to their customers without permission, provided these messages are neutral in tone, factual and do not include promotional content.

22. However, we would argue that despite the Ministers' assurances, the initial problems regarding direct marketing still remain, with the current rules limiting the types of communications pension providers can send to their customers. We would still urge that regulatory communications that are necessary to comply with a legal obligation, or any rules, guidance or request of a regulatory

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[2] https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/11/joint-statement-from-the-fca-ico-and-tpr-for-retail-investment-firms-and-pension-providers/

[3] https://bills.parliament.uk/bills/3825/stages/19280/amendments/10016158

[4] https://bills.parliament.uk/bills/3825/stages/19280/amendments/10016159

authority should not be considered direct marketing for the purposes of PECR, even when there are elements of non-neutral tone or active promotion of services.

Public service delivery provisions

23. An estimated 3.3 million pension pots, worth a total £31.1 billion, currently lie unclaimed or lost[5] . This is despite the industry spending millions every year to try to reconnect with the customers they have lost contact with. Despite robust processes to identify the owners of lost pension, investment and insurance products, there is a limit to what providers alone can do. Providers will trace customers and write to them saying they may have a policy they have forgotten about. Customers sometimes wrongly believe these reconnection requests are a scam and do not respond. We believe that the Data (Use and Access) Bill can provide an avenue to mitigate this.

24. Going forward, pensions dashboards will mean that there should be fewer new dormant assets, as savers will be able to view all their pensions online. However, the dashboards might not 'match' customers with out-of-date or incorrect information; and they are unlikely to have an impact on many of the current dormant assets or on other products. This is a problem beyond pensions, and the solutions lie beyond dashboards.

25. A step change in reconnection efforts will only truly be achieved through the use of government data. This would be possible through extension of the 'public service delivery' data sharing clauses in the Bill, to sharing very limited information with strictly regulated private companies in very limited circumstances. With up-to-date and more accurate address records, it will be easier to match customers with confidence and fewer products will be lost.

26. Industry has tested this idea on a small scale with government. Providers would identify that a customer lives at a new address and would seek confirmation from government data. They would provide the government with the name, date of birth plus the traced address for the customer and would look simply for a Yes/No statement that government records support that the customer lives at that address. For the test, the government supplied an aggregated match rate for all of the dataset, however if this were to be available more widely in the future, we would wish for this to work on an individual basis per customer. The providers could then have greater confidence that the details are correct and that regular communications with the customer can restart. Improved sharing of government data would help industry deliver this vital public service and subsequently improve customer engagement in their pensions and insurance policies.

27. We therefore hope that the Public Bill Committee will include consideration of how the data sharing clauses could be expanded to help reconnect customers with their lost pots.

Smart data

28. We also welcome the provisions within the Bill on Smart Data, which allow for the sharing of customer data upon the customer's request with an authorised third-party provider, and on Digital Verification Services. Smart Data schemes have potential benefits for our industry's customers and potential innovation in the market. The provisions in this Bill could be part of a UK Financial

[5] Briefing Note 138 – Lost Pensions 2024, Pensions Policy Institute, https://www.pensionspolicyinstitute.org.uk/media/vh4aaq2j/20241024-ppi-bn138-lost-pensions-2024-final.pdf

Services Digital Infrastructure Plan which could work to unlock economic growth, as well as driving efficiencies in the public sector, and at the interface of private and public sectors.

29. We are broadly supportive of Smart Data initiatives, but would highlight that any regulations should be specific to each market and the use cases for that market. Even within our experience in pensions dashboards, which are only about pensions, the considerations and consumer needs are very different between different types of pensions. Such initiatives will often be for the public good rather than, or as well as, growth or commercial incentives. The funding model will be different in these cases and the costs and benefits need to be taken into account in each case.

30. Open Finance should be reciprocated by open data from other parts of the economy, and some of the customer needs in Open Finance are based on use of data held by the public sector – such as using HM Revenue & Customs (HMRC) data about a person's tax position to help them make pension and investment decisions.

31. The digital verification process is a critical component of Smart Data and Open Finance initiatives. However, there still appears to be a different approach being taken between digital ID for the public sector through One Login and for the private sector through the proposed trust framework for digital verification services. In some cases, like pensions dashboards, users are proving their identity to both public and private bodies, so a common approach is needed. Having One Login listed as a provider under the Digital Identity and Attributes Trust Framework is a helpful step. But ultimately it should be possible for citizens to verify themselves simultaneously to public and private bodies using a privately held identity – with pensions dashboards a good example of this.

About us

The ABI is the voice of the UK's world-leading insurance and long-term savings industry, which is the largest sector in Europe and the third largest in the world. We represent more than 300 firms within our membership, including most household names and specialist providers, providing peace of mind to customers across the UK.

We are a purpose-led organisation: Together, driving change to protect and build a thriving society. On behalf of our members, we work closely with the UK's governments, HM Treasury, regulators, consumer organisations and NGOs, to help ensure that our industry is trusted by customers, is invested in people and planet, and can drive growth and innovation through an effective market.

A productive and inclusive sector, our industry supports towns and cities across Britain in building a balanced and innovative economy, employing over 300,000 individuals in high-skilled, lifelong careers, two-thirds of whom are outside of London. Our members manage investments of £1.4 trillion, contribute £18.5 billion in taxes to the Government and support communities and businesses across the UK.

Appendix 1: Examples demonstrating consumer harm

The table below sets out five example scenarios where customers' decision making and savings position could benefit from email communications from their pension provider, but where PECR and ICO guidance prevent firms from sending these emails where customers have opted out of direct marketing (or were never given the opportunity to opt-in). We believe that the amendments drafted would help mitigate against these barriers and would allow providers to send useful communications to help savers make sense of their options.

Customer scenario	Benefit and shape of a direct communication	PECR and ICO regulatory communications guidance considerations
Eliza is 32 years old and has been saving into her pension at the minimum contribution rate for the past seven years, without ever considering if it is adequate. She never had the opportunity to opt-in to direct marketing as she was automatically enrolled via her employer. She has since been promoted twice and earns significantly more than she did when her pension was set up.	Given Eliza's current life stage and earnings, she may consider increasing her contribution rate, but may not be aware of the possibilities of doing so, without an email from her provider setting out the long-term case for increased pension saving. This communication could also steer Eliza toward the firm's digital services where she can manage her plans online, making it easier for her to change her contribution rate.	The regulatory communications guidance clarified that the provider could send a message along the lines of: 'your contributions affect the amount of money you will get at the end of your investment' which could include illustrations of projected returns from higher savings rates, without it being direct marketing. But this is couched under the condition that: a *statutory regulator asks their sector to remind people that their contributions affect the size of their investment at the end of the term.* ABI member firms feel this type of communication should be acceptable without having to rely on instruction from the relevant regulator. The Consumer Duty does not set out specific messages to send to consumers. But any steering toward services (such as online services) for the purposes of managing contributions would also be considered as the firm actively promoting an initiative and encouraging a course of action, whilst being of commercial benefit to the firm. Therefore, it would currently be considered as direct marketing. ABI member firms would also want to use language that does more to push against the behavioural biases that lead to under-saving for retirement (e.g. temporal discounting, inertia, a general lack of knowledge about personal finance). But again, at present, this would make the communication direct marketing.
Alex is in his late fifties and has multiple deferred pots, having worked for many large employers with pension schemes across his career. Alex isn't	Alex could benefit from consolidating his pensions to better keep track of his retirement savings. A provider could directly communicate to Alex the option to	This communication would be likely interpreted as encouraging a course of action and therefore considered direct marketing. Careful drafting may allow providers to highlight consolidation as an option, but it would

even aware of all of them and has very rarely engaged with the providers. He wants to start thinking more seriously about his retirement, but the administrative burden associated with navigating his pension pots is putting him off retirement planning. As a long-standing customer on a legacy system implemented prior to PECR, the firm does not have a record of him opting-in to direct marketing.	consolidate, explaining the benefits and offer pension tracing tools or, in future, their commercial pensions dashboard.	likely be relatively unengaging and would not be able to link to the provider's transfer process. The additional information on pension tracing tools or pensions dashboards would likely be considered as active promotion of these services, and therefore direct marketing. There is clearly commercial benefit for the firm if a customer consolidates their pensions with them.
Karl's employer is changing its workplace pension scheme from an occupational workplace pension (OPS) to a group personal pension (GPP). The OPS has benefits that do not automatically transfer across. Karl, now 31, has worked at the company since he was 21, when he was automatically enrolled into the scheme. He gives no thought to his pension.	Karl would have to actively elect to transfer his benefits to the new pension scheme. Further, if Karl failed to transfer as part of a block transfer then he could lose valuable entitlements when transferring at a later date (>25% tax free cash or early retirement options). An engaging email could help Karl to steer him toward maintaining these benefits in the GPP.	The new provider can rely on the legitimate interest lawful basis to send consolidation messages to savers by post. But this is known to be less effective: hard copy messages are not compatible with an online transfer process and result in a customer journey that is disjointed and full of friction points. Email marketing cannot be sent given that the text encourages the active transfer of the benefits.
Deb is approaching 60 and is uncertain how to take decisions to convert her pension into a sufficient income during retirement. For her largest pension, she took the 25% tax-free lump sum at 55 and chose investment pathway one as it was the first option available to select. She is confused by terminology around annuities and drawdown and would appreciate help to take these	Her pension provider could inform Deb of its financial advice services and offer retirement MOT solutions highlighting how she can meet her financial goals. This could lead Deb to take significantly more informed decisions in retirement.	Currently service communications to pensions and investments customers can direct them to independent government-backed services like MoneyHelper or Pension Wise to access guidance and a list of regulated advisers at unbiased.co.uk. But communication outlining its own services – such as financial advice – would be interpreted as actively promoting an initiative and therefore considered direct marketing.

big decisions. Her pot size would enable her to pay for financial advice.		

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