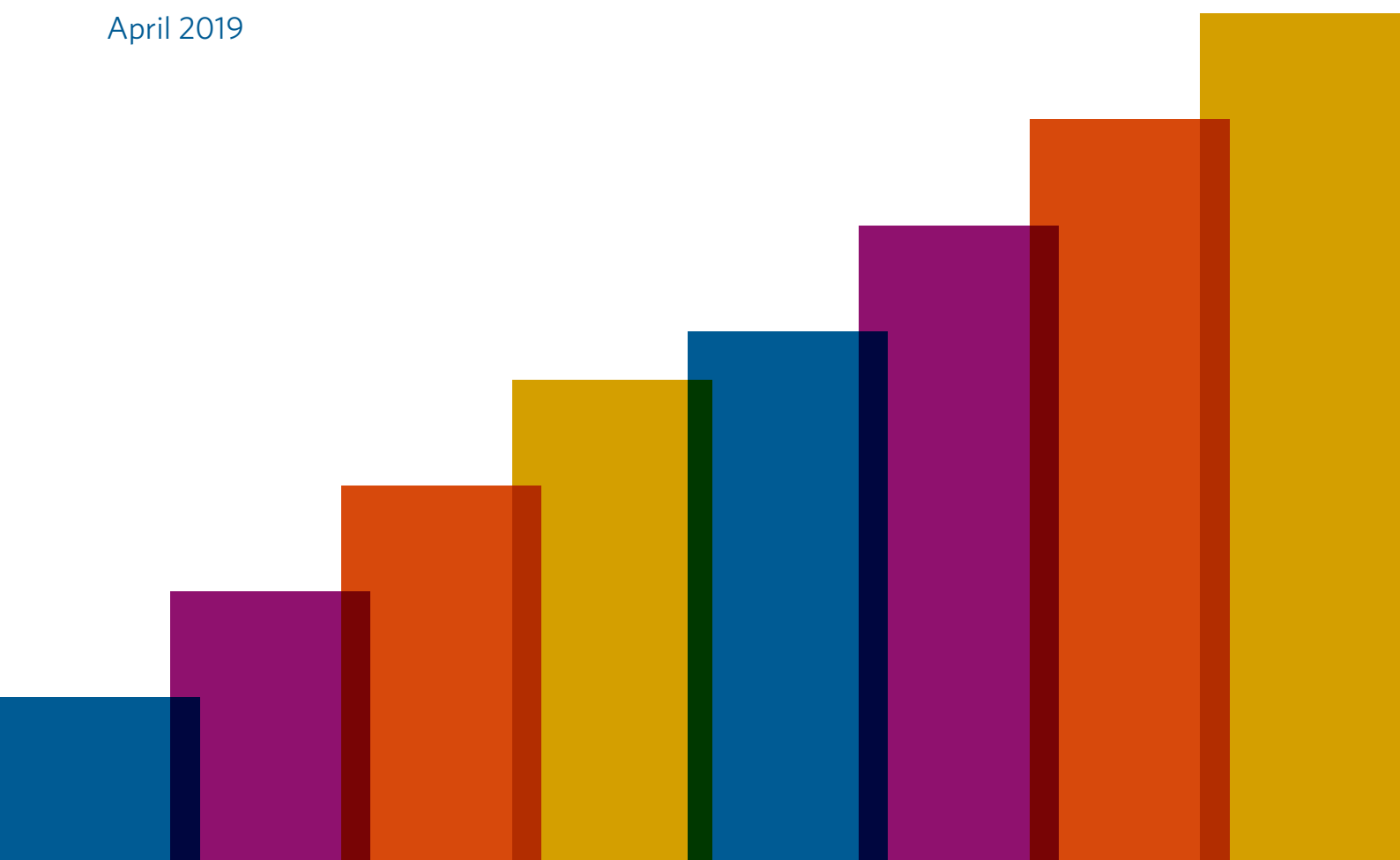


# The Dormant Assets Scheme: A Blueprint For Expansion

Report From Industry Champions

April 2019



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This report covers both cross-sector and sector-specific aspects of expanding the dormant assets scheme. Chapters 2-5 address common areas of concern and are relevant to all sectors; Chapters 6-9 address sector-specific considerations; and Chapter 10, building on the sector-specific chapters, sets out legislative and regulatory measures for all sectors.

All work is guided by the four core principles set out in the Executive Summary and Chapter 1, and all parties should look to the next steps outlined in Chapter 11.

Each chapter starts with a set of key recommendations for that area. These are compiled in full in Annex B.

# Foreword

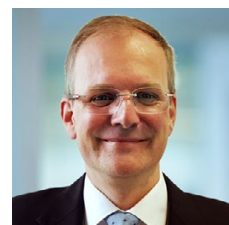
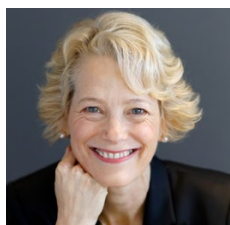
**A decade on from the enactment of the Dormant Bank and Building Society Accounts Act, now is the time for industry to help reunite even more customers with their assets, and put more dormant assets to good use tackling social issues and supporting people and communities across the UK.**

The scheme has been a great success, with the banking sector having already unlocked over £1.2bn. While prioritising the reunification of customers with their assets, it has made over £600m available to good causes. But we want to see all parts of industry participating in the scheme – from smaller banks and building societies to insurance and pensions firms, and from investment and wealth management firms to FTSE 350 companies.

We were pleased to be asked by Ministers in June 2018 to spearhead an industry-led approach to expanding the dormant assets scheme to include a far wider range of assets, and to set out how an expanded scheme would work in practice. This report provides a blueprint for industry: it sets out a cross-sectoral approach to scheme expansion, as well as specific issues that each sector must take into consideration.

Our work has required the support of a significant number of people and firms. Firstly, we would like to thank the members of our industry working groups and technical sub-working groups who have provided their expertise and demonstrated great commitment to this undertaking. Secondly, we are grateful for the advice provided by the Financial Conduct Authority, Reclaim Fund Ltd, and a number of government departments. Finally, we would like to thank the Secretariat at the Department for Digital, Culture, Media & Sport and HM Treasury for all their support throughout this programme of work.

This report marks the end of the design phase of the expansion of the dormant assets scheme, but there is still more that needs to be done, not just by firms but also by the government and regulatory bodies. We hope this report provides clear guidance and recommendations on how to successfully transition to an expanded scheme, and ensures that participating firms, consumers, and society at large all benefit from this.



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# Executive summary

## THE DORMANT ASSETS SCHEME

A dormant asset is one that a firm is unable to reunite with its beneficial, or rightful, owner. In 2008, the government passed the Dormant Bank and Building Society Accounts Act. This enabled banks and building societies to define any balances that had not been touched for 15 years, if their owners could not be traced, as dormant. These could then be transferred to an authorised reclaim fund. In 2011, Reclaim Fund Ltd (RFL) was established to fulfil this role, and worked with the government, the British Bankers' Association (now UK Finance), and the Building Societies Association to launch the dormant assets scheme. Banks were invited to join on a voluntary basis, and initially 14 signed up. Since then, participation has grown: 27 firms are now actively contributing to the scheme, including all major high street banks.

The scheme is underpinned by industry efforts to reunite forgotten or lost assets with their beneficial owners. To this end, RFL ensures sufficient funds are held to meet any repayment claims that may arise in full and in perpetuity. However, owners cannot always be found. When this happens, it is appropriate that genuinely dormant assets are used for public good. Since the scheme's inception, over £1.2bn has been transferred to RFL by participating firms, and over £600m made available to good causes.

## EXPANDING THE SCHEME

In 2016, the independent Commission on Dormant Assets was convened to explore the feasibility of expanding the scheme beyond banking to include the rest of the financial services industry. In March 2017, the Commission recommended that a broad range of UK-domiciled financial products, irrespective of the nationality of their beneficial owners, would be suitable for inclusion. This would encompass additional bank accounts, unclaimed proceeds from life insurance and pensions products, and dormant holdings in investment funds, shares and bonds. The government responded to the Commission by emphasising that the expansion should be industry led, and called for Industry Champions to spearhead further work across four key sectors: banking, insurance and pensions, investment and wealth management, and securities.

This report sets out an implementation blueprint for an expanded scheme. It includes recommendations addressed to industry, the government and regulators, and covers both industry-wide ambitions and sector-specific details, in particular:

- the potential scope of an expanded scheme across industry
- definitions of dormancy for each sector
- other technical and practical considerations, including legislative and regulatory implications, and the transfer and reclaim of assets to and from RFL

## CORE PRINCIPLES OF AN EXPANDED SCHEME

A founding principle of the dormant assets scheme is that customers should always be able to reclaim the amount that would have been due to them had a transfer into the scheme not occurred. For an expanded scheme to succeed in the future, this must remain the case. Consumer protection is at the heart of the scheme, and the reason it has been successful to date is that firms and their customers alike have confidence in it.

Led by their Industry Champions, working groups in each of the four sectors identified a number of cross-cutting issues and forged a set of core principles for an expanded scheme.

### Principle 1 **Prioritise reunification efforts**

The first priority for all firms participating in the scheme is to seek to reunite owners with their assets. Only when reunification efforts are unsuccessful should assets be redirected to RFL.

### Principle 2 **Maintain a voluntary scheme**

Participation by firms in the dormant assets scheme is, and should continue to be, voluntary.

### Principle 3 **Provide full restitution in perpetuity**

Beneficial owners should continue to be able to reclaim, in perpetuity, the amount that would have been due to them had a transfer into the scheme not occurred.

### Principle 4 **Tailor definitions of dormancy**

Due to significant differences in market practice across the four sectors, imposing a single definition of dormancy would be inappropriate and might risk lowering participation rates. Instead, the definition should be calibrated to the nature of the financial product and the experience of customer behaviour.

For sectors with long-term investment products and/or where customers do not regularly interact with firms, a dual definition is required: a trigger which identifies an account as 'potentially dormant' and a period of time that must then elapse before the account is designated as 'dormant'<sup>1</sup>.

<sup>1</sup> See Chapter 3 in full for the scope of assets to be included in the scheme and the definitions of dormancy for them; see Chapter 3, Figure 3.6 (p.28) for a summary table of definitions by sector.

## Executive summary continued

### A PHASED APPROACH

Successful expansion will depend on the government establishing a legislative framework which enables a wider range of assets to be included in the scheme. As this progresses, all sectors agree that the expansion will need to be phased. Firms will need to deepen their understanding of the scheme and implement new processes progressively. RFL will also need to develop its capabilities to accept and manage new types of assets.

It is likely that the pace of scheme implementation will vary from sector to sector. However, the key phases are consistent across them:

- Phase One focuses on:
  - establishing a supportive legislative framework
  - implementing standard practices for the tracing, verification and reunification of owners with their unclaimed assets in sectors that are new to the scheme (i.e. the insurance and pensions, investment and wealth management, and securities sectors)
  - continuing preparatory work for scheme expansion to include new types of assets
  - building and deepening participation in the current scheme from the banking sector, and communicating the scheme more widely.
- Phase Two follows necessary legislative and regulatory change, and focuses on the actual inclusion in the scheme – and transfer to RFL – of:
  - dormant cash accounts
  - dormant non-cash insurance and pensions assets that have been crystallised to cash by operation of a contractual, legal or regulatory event
  - proceeds from the sale of unclaimed shares and associated dividends.
- Subsequent phases focus on further scheme expansion to include more complex assets.

The range of assets to be included in the scheme at each phase is set out in Chapter 4.<sup>2</sup>

### NEXT STEPS

This report marks the completion of the design phase of the expansion of the scheme. From 2019, industry, the government and regulators will enter into Phase One.

#### Establishing a supportive legislative framework

This is fundamental for a successful expansion of the scheme. Industry ambition for expansion is far greater than the current legislation allows. Without legislative change, reunification efforts can be improved and participation deepened to some degree. However, the cross-sector consensus is that, for a wider range of assets to be within scope of an expanded scheme, the government needs to introduce changes to primary and secondary legislation.

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<sup>2</sup> See Chapter 4 in full, and Chapter 4, Figure 4.1 (p.33) for a summary table setting out the phased approach.

### Implementing standard practices for tracing, verification and reunification

Standard practices are set out in Chapter 2 and Annex C, and industry should look to support their widespread adoption. In particular:

- The banking sector should continue to use its '10 core pledges'<sup>3</sup> to guide reunification efforts.
- Several of the sectors that are new to the scheme already have guiding frameworks for managing dormant assets and/or gone-away customers (i.e. customers who cannot be contacted). Where these are in place and effective, they are reflected in the standard practices set out in Chapter 2, and sectors should continue to use them.

### Continuing preparatory work

This will involve industry continuing to be involved in expanding the scheme, in particular working on:

- Quantifying dormancy: Reassessing the size and age of dormant assets at sector level will help potential participants understand the scale of the opportunity and prioritise the agenda accordingly. Sectors are encouraged to consider this as a potential work stream for 2019.
- Addressing sector-specific concerns: Work should continue on these in collaboration with relevant trade associations while the government considers the case for legislative amendments.
- Collaborating with RFL: Sectors should work with RFL during 2019 and beyond to develop its capability to accept and manage a wider range of assets.

### Building participation and communications

Building participation in the scheme is essential to its success. For this to happen, all sectors agree upon the need for a holistic communications strategy. This should tell the story of the dormant assets scheme as a whole - from participating firms' attempts to trace customers, to transferring dormant assets to RFL, to how the surplus is put to work tackling social issues. The message should reach firms, their customers, regulatory bodies and the general public.

In addition, there should be significantly increased transparency from the government to participating firms over the allocation and use of dormant asset funds. The government should also consider ways in which firms can be engaged in the impact of the funds they transfer. Further transparency provisions should be established to enable public scrutiny of which firms choose to take part in the scheme and what level of assets they choose to contribute.

Joint work on communicating the dormant assets story more widely is already underway. In November 2018, a cross-sector workshop was held to begin discussions on building a strategy. This work will continue during 2019, with the goal of raising awareness among consumers and widening participation in an expanded scheme to include not just banks and building societies, but firms across industry.

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<sup>3</sup> <https://www.mylostaccount.org.uk/pledges>

# Glossary of terms and acronyms

Terms	
<b>Assets and products</b>	A firm may manage a range of assets (e.g. shares, cash deposits, insurance policies). Each class of asset may ultimately incorporate several separate products (e.g. life insurance, pensions).
<b>Building participation and communications</b>	'Building participation' refers to both the internal and external processes needed to incentivise and deepen firms' participation in the scheme (both current and expanded). Communications are one aspect of this. However, 'communications' refers more broadly to all efforts to educate firms, customers, regulatory bodies and the general public about the operation of the scheme and its benefits.
<b>Beneficial owners, customers, consumers and clients</b>	In this report, the terms 'beneficial owners', 'consumers', 'customers' and 'clients' should be taken to include investors and security holders, and are all used to refer to the rightful owner of a given (dormant) asset (i.e. the original owner or that person's beneficiaries).
<b>Company and firm</b>	The terms 'company' and 'firm' are used interchangeably, and refer to organisations that manage assets, such as banks, insurers, pensions providers or issuers of shares. They do not ordinarily refer to third-party organisations such as registrars or tracing agencies unless specified.
<b>Dormant asset</b>	A dormant asset is an identifiable and attributable item, valued as a monetary amount or able to be valued as such, which a firm is unable to reunite with its beneficial owner (see above). In this report, the scope of dormant assets considered for inclusion in the scheme is UK-domiciled financial assets, irrespective of the nationality of the beneficial owner.
<b>Gone-away</b>	Some sectors use the term 'gone-away' if they are unable to contact a customer at their registered address. If communications regarding a customer's asset cannot be delivered to its owner and are returned to the firm, such as returned post or an email bounce, the customer may be flagged as gone-away. 'Gone-away' therefore refers to the status of the customer and not the status of the asset. A gone-away customer's asset is not necessarily dormant, but rather forms a trigger for some sectors to begin tracing, verification and reunification processes.



## Life insurance products

### Term insurance

Term insurance is fixed-term life insurance which pays out a sum assured following the death of the insured person during the policy term. Policies are usually taken out for between 10 and 25 years, with premiums typically paid monthly and cover expiring if premiums are not maintained. If the insured dies after the end of the policy term, no sum assured is payable.

### Whole-of-life assurance

Whole-of-life assurance is life insurance that is designed to continue for the remainder of the life of the insured person. The policy pays out a sum assured following the death of the insured person, regardless of when the death occurs. Policies may be taken out at any age, subject to minimum and maximum limits. Premiums can be paid monthly, annually or by an initial lump sum. If premiums are not maintained, the policy will eventually lapse and no amounts will be payable.

### Savings endowment

A savings endowment is a fixed-term combined investment and life insurance policy, usually used in conjunction with a mortgage. The policy is designed to pay out either a lump sum at the end of the policy term, known as maturity, or a sum assured on the death of the insured person if that takes place during the policy term.

Only one amount is paid out, so if the insured person dies before the policy ends there is no maturity payment. Premiums are typically paid monthly, and, if not maintained, the policy may be converted into a 'paid up' policy, whereupon the sum assured or maturity payment will be lower than that which was originally intended.

### Investment bond

An investment bond is a form of life insurance contract that does not have a fixed term and which allows policyholders to invest in a range of investment funds. Investments are typically made via an initial lump sum, and policyholders are generally free to make further investments into their policy at any time. Withdrawals can also be made and the policy can be surrendered at any time, although there may be surrender penalties for doing so in the early years of a contract. Policyholders are therefore usually advised only to invest if they can do so for a period of at least five years. The life cover element of the policy typically pays out 101% of the current investment value of the bond upon the policyholder's death.

## New sectors

'New sectors' is used to refer to those sectors new to the dormant assets scheme under its proposed expansion, namely the insurance and pensions, investment and wealth management, and securities sectors (the banking sector is not 'new' as it is included in the current scheme).

## Glossary of terms and acronyms

**Pensions products****Annuity (both deferred and guaranteed)**

An annuity is a lump sum investment, which typically guarantees to pay a certain level of income for the remainder of the policyholder's life. Unless the annuity was purchased with income guarantees (see below), annuity payments cease on the death of the policyholder.

Annuities can be purchased at any point during an investor's life, although they are typically purchased at retirement with the lump sum payments available from pension policies. Annuities can be set up so that annuity payments are deferred for a certain period of time following purchase and can also be purchased with guarantees that mean annuity payments are made for a specified minimum period of time following commencement, typically between five and 10 years, regardless of whether the policyholder dies during that period or not.

**Defined contribution personal pension**

A defined contribution personal pension is a retirement savings vehicle that allows monthly or lump sum contributions, subject to various contribution limits. Tax relief is provided on contributions at source, and it is designed to allow policyholders to accumulate funds to enable them to provide an income for themselves in retirement. The pension will typically pay out a lump sum on the death of the policyholder prior to them either taking an annuity or an income drawdown policy.

Prior to April 2015, defined contribution personal pension policyholders were obliged to purchase an annuity or an income drawdown policy by age 75. However, as a result of changes made by the government in April 2015, known within the industry as the 'pensions freedoms changes'<sup>4</sup>, policyholders are no longer compelled to do so. Instead, once policyholders reach age 55, they can: leave the pension pot untouched; purchase an annuity at any time; take an adjustable income (flexi-access drawdown); take cash in lump sums (non-crystallised funds pension lump sum); cash in the entire fund value in one go; or take a mixture of any of the above options. The pensions freedom changes are permissive rather than mandatory, so firms can decide whether to apply them or not. Accordingly, some firms allow the changes to apply to policies sold before and after April 2015, whereas others only allow them to apply to contracts sold after April 2015.

**Income drawdown**

An income drawdown contract is a type of defined contribution personal pension policy which allows the policyholder to take regular income withdrawals. The fund remains invested, so any income withdrawals reduce the amount of the pension pot that is available for future investment. If income withdrawals are higher than the investment returns of the policy, it is possible for a policyholder to exhaust the pension fund. As is the case for a defined contribution personal pension policy, an income drawdown contract will typically pay out a lump sum on the death of the policyholder prior to an annuity being purchased.

<sup>4</sup> <https://www.pensionsadvisoryservice.org.uk/about-pensions/pension-reform/freedom-and-choice>

<b>Sector and industry</b>	The term 'sector' is used to refer to the four key sectors of the financial services industry identified in this report, namely the banking sector, the insurance and pensions sector, the investment and wealth management sector, and the securities sector. Firms in these sectors together comprise 'industry'.
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<b>Securities sector</b>	The term 'securities sector' is used to describe those public limited companies whose shares are traded on the London Stock Exchange.
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<b>Acronyms</b>	
<b>ABI</b>	Association of British Insurers
<b>APS</b>	Additional Permitted Subscriptions
<b>ASIL</b>	Angel Square Investments Ltd
<b>BBSWG</b>	Banks and Building Societies Working Group
<b>BSA</b>	Building Societies Association
<b>CASS</b>	Client Assets Sourcebook
<b>CEO</b>	Chief Executive Officer
<b>CGT</b>	Capital gains tax
<b>COBS</b>	Conduct of Business Sourcebook
<b>COLL</b>	Collective Investment Schemes
<b>CRS</b>	Common Reporting Standard
<b>CSDR</b>	Central Securities Depositories Regulations
<b>CSN</b>	Corporate Sponsored Nominee
<b>DCMS</b>	Department for Digital, Culture, Media & Sport
<b>DVLA</b>	Driver and Vehicle Licensing Agency
<b>DWP</b>	Department for Work and Pensions
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FCA</b>	Financial Conduct Authority
<b>FOS</b>	Financial Ombudsman Service
<b>FRC</b>	Financial Reporting Council
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GDPR</b>	General Data Protection Regulation
<b>HMRC</b>	HM Revenue & Customs
<b>HMT</b>	HM Treasury
<b>The IA</b>	The Investment Association
<b>IHT</b>	Inheritance tax
<b>ICSA</b>	Institute of Chartered Secretaries and Administrators
<b>IPWG</b>	Insurance and Pensions Working Group
<b>ISA</b>	Individual Savings Account
<b>IWMWG</b>	Investment and Wealth Management Working Group
<b>OEICs</b>	Open-Ended Investment Companies
<b>RFL</b>	Reclaim Fund Ltd
<b>SIPP</b>	Self-Invested Personal Pension
<b>SWG</b>	Securities Working Group
<b>UAR</b>	Unclaimed Assets Register

# Chapter 1

# INTRODUCTION

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## THE CURRENT SCHEME

- 1.1. In 2008, the Dormant Bank and Building Society Accounts Act was passed. This enabled banks and building societies to voluntarily hand over any monies left unclaimed for over 15 years in accounts defined as dormant to a reclaim fund. This fund would meet any subsequent reclaims in perpetuity, and release the surplus to support good causes.
- 1.2. In 2011, the Co-operative Banking Group (now Angel Square Investments Ltd) (ASIL) established Reclaim Fund Ltd (RFL) to take on this role. From that point, the dormant assets scheme became fully operational, and banks and building societies began to participate.
- 1.3. Through their transfers to RFL, banks and building societies have helped to channel money that would otherwise be lying dormant towards tackling social issues and creating a positive impact on people and communities across the UK. The scheme has also helped focus the sector's efforts on tracing and reuniting customers with their money. With support from the government, which legislated for the scheme and is responsible for determining the types of issues dormant funds are used to target, the scheme has seen over £1.2bn transferred to RFL and £600m made available to good causes.

### Participating banks and building societies

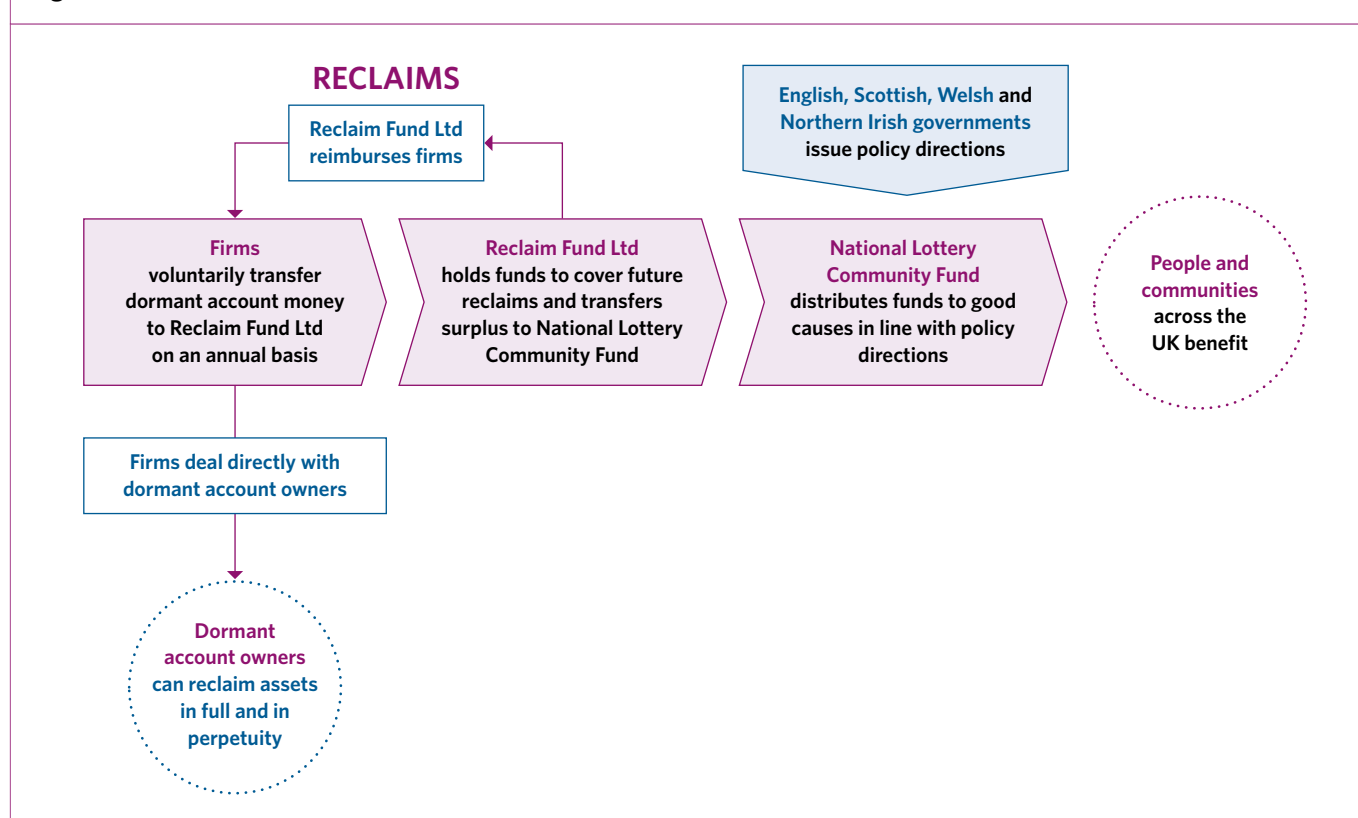
- 1.4. Participation in the scheme has grown steadily since 2011. There are currently 27 participating banks and building societies:

<b>Allied Irish Bank (UK) Plc</b>	<b>Duncan Lawrie Limited</b>
<b>Australia &amp; New Zealand Banking Group</b> - London Branch	<b>Emirates NBD PJSC – London Branch</b>
<b>Bank Hapoalim</b> - London Branch	<b>HSBC Bank plc</b>
<b>Bank Leumi UK plc</b>	<b>Lloyds Banking Group:</b> - Lloyds Bank plc - Bank of Scotland plc
<b>Barclays Bank UK PLC</b>	<b>Nationwide Building Society</b>
<b>Butterfield Bank (UK) Limited</b>	<b>N.M. Rothschild &amp; Sons Limited</b>
<b>Clydesdale Bank PLC</b>	<b>Royal Bank of Scotland Group:</b> - Adam & Company plc - Coutts & Company plc - National Westminster Bank plc - The Royal Bank of Scotland plc - Ulster Bank Limited
<b>Commonwealth Bank of Australia</b> - London Branch	<b>Santander UK plc</b>
<b>Consolidated Credits Bank Limited</b>	<b>TSB Bank plc</b>
<b>The Co-operative Bank plc</b>	<b>Virgin Money plc</b>
<b>Crédit Agricole Corporate &amp; Investment Bank</b> - London Branch	
<b>Danske Bank</b>	

- 1.5. This list includes all major UK retail banks, as well as the UK's biggest building society, meaning that institutions holding the substantial majority of personal deposits in the UK are voluntarily utilising the dormant accounts legislation.
- 1.6. The Act also provides for an alternative scheme. This enables smaller banks and building societies, defined as those with group assets of less than £7bn, to transfer an agreed proportion of their dormant account money to specific local causes of their choice and the remainder to RFL (as an alternative to transferring all dormant account money to RFL). Currently, there are no participants in the alternative scheme.<sup>1</sup> However, RFL, with the support of the Building Societies Association (BSA), is continuing to have conversations with a number of smaller building societies and anticipates that it will be possible to secure future uptake of the alternative scheme.

<sup>1</sup> [The Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017, recommended the abolition of the alternative scheme. In its [Response to the Commission on Dormant Assets' Report](#), February 2018, the government confirmed that it would wait for a progress update on ongoing efforts to test the viability of the scheme to become operational before making a decision regarding its future.

Figure 1.1: The current dormant assets scheme



### Reclaim Fund Ltd

- 1.7. RFL is an independent private company limited by shares set up by the Co-operative Banking Group (now known as ASIL) in 2011. RFL is a reclaim fund, as defined in the Act, and the sole Dormant Account Fund Operator authorised by the Financial Conduct Authority (FCA). It accepts dormant account money from banks and building societies, at which point it also takes on the legal liability to repay the customer for the account if reclaimed. RFL manages the dormant account money it receives with a view to ensuring it holds sufficient funds to meet both future claims from account holders, and relevant operational and regulatory requirements, while making the surplus available to good causes via the National Lottery Community Fund (The Fund). Banks and building societies maintain the customer relationship as agents of RFL and are reimbursed by RFL for any reclaims on a quarterly basis.

### The National Lottery Community Fund (The Fund)

- 1.8. The Fund (previously the Big Lottery Fund) is the current distributor of dormant account money, which is apportioned per capita among England, Scotland, Wales and Northern Ireland. The Fund receives policy directions regarding the allocation and use of money from the relevant bodies in each country:
- in England, from the Secretary of State for the Department for Digital, Culture, Media & Sport (DCMS)
  - in Scotland, from Scottish Ministers
  - in Wales, from Welsh Ministers
  - in Northern Ireland, from the Department of Finance.
- 1.9. The government has made clear that this will remain the case in any expansion of the scheme.

### Distribution of dormant account money

- 1.10. Figure 1.1 outlines the current process of distributing dormant account money from participating firms to support good causes.
- 1.11. Early expectations were that participating firms in a voluntary scheme would initially transfer around £400m of dormant account money to RFL. To date, over £1.2bn has been transferred and over £600m of that made available to good causes.
- 1.12. The banking sector is confident that its reunification efforts, which are based on its '10 core pledges'<sup>2</sup>, are effective. Reclaim rates of assets transferred to RFL have held steady at around 5%.

### Benefits to consumers

- 1.13. Consumer protection is a cornerstone of the scheme, with the priority for participating firms being the reunification of customers with their assets. The approach encourages firms to trace gone-away customers before transferring their assets to RFL. In addition, one of the founding principles of the current scheme is that customers can reclaim their money in full and in perpetuity. This ensures customers are not financially disadvantaged if their funds are transferred into the scheme.
- 1.14. Everyone benefits from the dormant assets scheme: Customers are guaranteed full restitution in perpetuity; participating banks and building societies demonstrate responsible business practices; and money in genuinely dormant accounts is made available to good causes, creating a positive impact on people and communities across the UK.

## EXPANDING THE SCHEME

### The Commission on Dormant Assets

- 1.15. The independent Commission on Dormant Assets was established in 2016 to assess the feasibility of expanding the scheme to include a wider range of assets from across the financial services industry.
- 1.16. Its membership comprised Nick O'Donohoe, the Commission Chair and former Chief Executive Officer of Big Society Capital, and nine Commissioners representing the financial and professional services industries. The Commission made more than 50 recommendations to the government in March 2017.<sup>3</sup>

- 1.17. The Commission's report made clear that any scheme expansion should retain the founding principles of the current scheme, namely that:
  - Assets should only be transferred into the scheme after every reasonable effort had been made to trace customers and reunite them with their assets.
  - Participation for firms should be voluntary.
  - Beneficial owners should be able to reclaim the full value of any assets transferred into the scheme in perpetuity.

### The government's response to the Commission's report

- 1.18. The government published its response to the Commission's report in February 2018, in which it reaffirmed the founding principles set out by the Commission.<sup>4</sup> It also made clear that any implementation of an expanded scheme should be industry led, with support from the government.
- 1.19. To that end, in June 2018, the government asked four senior Industry Champions to spearhead sector preparations for expanding the scheme and to report to them by the end of 2018 on how this should happen.

### Industry leadership

- 1.20. The Industry Champions convened working groups from the banking, insurance and pensions, investment and wealth management, and securities sectors. These working groups were tasked with building on the Commission's work and reporting to the government on:
  - the potential scope of an expanded scheme in their sector
  - appropriate definitions of dormancy in their sector, including for products that are typically used as long-term savings vehicles
  - other technical and practical considerations that apply to their sector, including tax and regulatory implications, data protection requirements, and the process for transferring assets to RFL.
- 1.21. This report is designed as a blueprint: to industry for how to prepare for an expanded scheme; to the government for how to facilitate the expansion; and to regulators for how to enable it. Consumer protection is at the heart of every stage, and Chapter 2 therefore follows with standard practices to improve the tracing, verification and reunification of customers with their assets. Below is an overview of the core principles on which the expanded scheme should be based and the phased approach for its implementation.

<sup>2</sup> <https://www.mylostaccount.org.uk/pledges>

<sup>3</sup> Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society, March 2017.

<sup>4</sup> Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society, February 2018.

## CORE PRINCIPLES OF AN EXPANDED SCHEME

### Principle 1: Prioritise reunification efforts

- 1.22. The first priority for firms is to seek to reunite an asset with its owner. Only when reunification efforts are unsuccessful should assets be redirected to the scheme, and RFL should be in a position to decline transfers where sufficiently rigorous tracing, verification and reunification efforts have not been undertaken. Standard practices should be implemented within each sector, and to this end, Chapter 2 outlines a set of standard practices, aimed in particular at the new sectors.<sup>5</sup> In addition, there is cross-sector agreement that greater government support with data sharing would significantly improve reunification rates (see Chapter 2, Sections 2.17-2.25).
- 1.23. The costs associated with these exercises were raised as a common concern. All new sectors support the application of an optional and proportional *de minimis* value, where assets worth more than this would require more robust tracing, verification and reunification exercises before their transfer to RFL. The value chosen for each new sector should be appropriate for the products in question, and consider both market practice and the impact it could have on potential reclaim rates. The government and relevant regulators are requested to enable this through legal and regulatory amendments where this is necessary.
- 1.24. The insurance and pensions and securities sectors further recommend that firms have the ability to deduct the cost of tracing from the value of the asset to which the tracing relates if it is reasonable to do so. The banking and investment and wealth management sectors do not believe this is necessary or appropriate for their sectors.

### Principle 2: Maintain a voluntary scheme

- 1.25. The dormant assets scheme is, and should continue to be, voluntary. This includes whether a firm chooses to participate in the scheme, how often it participates, and what eligible assets it chooses to transfer to RFL.

### Principle 3: Provide full restitution in perpetuity

- 1.26. Under the current legislation, customers are able to reclaim, in perpetuity, the amount that would have been due to them had a transfer into the scheme not occurred. Full restitution in perpetuity has full cross-sector support, and is celebrated as one of the key drivers behind the success of the current scheme. The government and regulators should further ensure there are no undue tax implications of a reclaim.
- 1.27. It is important to note that, while the customer is entitled to the full value of their asset at the point of reclaim (subject to verification), it would not be possible to guarantee the return of the asset itself. For example, a customer reclaiming shares would receive back the cash equivalent value of those shares at the point of reclaim and any associated dividends rather than the asset itself.
- 1.28. In terms of the reclaim process, under the current scheme, owners who wish to make a reclaim for a dormant asset contact the firm they originally held the asset with, and RFL then refunds the firm. The firm thus acts as the agent for RFL, and under an expanded scheme, the same principle should apply.

### Principle 4: Tailor definitions of dormancy

- 1.29. Due to significant differences in market practice across the four sectors, imposing a single definition of dormancy would be inappropriate and risk lowering participation rates. Instead, the definition of dormancy should be calibrated to the nature of the financial product and the experience of customer behaviour, and reflect and build on existing practices. It is recommended that the government define dormancy at an account or product level within each sector, while allowing firms the flexibility to also consider the customer level.
- 1.30. For the banking sector, customers regularly use accounts, and so dormancy is defined in the current Act by a period of inactivity. The current definition of 15 years of no customer-initiated transactions should be maintained.
- 1.31. For other financial products where customers do not regularly transact, inactivity would be an inappropriate standard on which to base dormancy. The long-term nature of many investment products, and the lack of a maturity date, is a challenge to these sectors, and it is not unusual for there to be no interaction between customers and providers until the customer (or their beneficiaries) seeks to dispose of the asset. Therefore, a dual definition is required: a trigger which identifies an account as 'potentially dormant', and a period of time that must then elapse before the account is designated as 'dormant', and funds transferred to RFL.
- 1.32. The scope of assets to be included in the scheme, and the definitions of dormancy for them, is set out in Chapter 3, Figure 3.6 (p.28).

<sup>5</sup> 'New sectors' refers to the insurance and pensions, investment and wealth management, and securities sectors. The banking sector is not 'new' in that it is included in the current scheme, and already has reunification practices that have proven robust (see Chapter 2, Section 2.2).



## A PHASED APPROACH

- 1.33. Successful expansion will depend on the government establishing a legislative framework which enables a wider range of assets to be included in the scheme. As this progresses, all sectors agree that the expansion will need to be phased. Experience from the current scheme demonstrates that firms prefer to include additional asset classes progressively as they increase their understanding of dormancy. For example, some banks and building societies are now considering including Cash Individual Savings Accounts and Suspense Accounts in the range of dormant assets they transfer to RFL. This is likely to be the case with new non-cash assets, such as unit trusts and Open-Ended Investment Companies (OEICs). It is also likely that the pace of implementation will vary from sector to sector.

### Phase One

- 1.34. Establishing a supportive legislative framework is fundamental for a successful expansion of the scheme. Industry ambition for expansion is far greater than the current legislation allows. Without legislative change, reunification efforts can be improved and participation deepened to some degree. However, the cross-sector consensus is that, for a wider range of assets to be within scope of an expanded scheme, the government needs to introduce changes to primary and secondary legislation.
- 1.35. The first priority for new sectors during 2019 is to ensure that standard practices for tracing, verification and reunification are in place and being correctly used (as per Principle 1). Chapter 2 sets out these standard practices, drawing on existing sectoral frameworks and practices where they are in place and effective.
- 1.36. Sectors should continue preparing for scheme expansion, and working with RFL on a range of issues, including quantifying dormancy, identifying the necessary legislative and regulatory changes, and developing the capabilities of RFL to accept and manage new types of assets.
- 1.37. Industry and the government should work together to build participation in, and communicate effectively about, the scheme. Target audiences are firms, their customers, regulatory bodies, and the public. There should also be significantly increased transparency from the government to participating firms over how dormant asset funds are allocated and used, and the government should consider additional ways in which industry can be engaged in the impact of the funds it transfers. Transparency provisions should also be established to enable public scrutiny of which firms choose to take part in the scheme, and what level of assets they choose to contribute.

### Phase Two

- 1.38. Following necessary legislative and regulatory changes, Phase Two focuses on the inclusion in the scheme and transfer to RFL of dormant cash assets, and dormant insurance and pensions assets that crystallise to cash by operation of a contractual, legal or regulatory event. For the securities sector, it is currently anticipated that proceeds from the sale of shares and any associated dividends could also be included as soon as legislation permits.
- 1.39. Transfer and reclaim processes for an expanded scheme should be aligned with those under the current scheme. As per the current scheme, the legal liability should transfer with the asset to RFL. However, there should be no transfer of personal data from the participating firm to RFL or vice versa. Instead, participating firms should act as agents of RFL for the purposes of dealing with reclaims, settling directly with the customer, before being refunded by RFL.

### Subsequent phases

- 1.40. Subsequent phases focus on further expansion of the scheme to include more complex assets.
- 1.41. Regarding complex non-cash assets, it would be impractical, and create too many legal and regulatory challenges, for RFL to become one of the largest asset managers in the UK. Therefore all dormant non-cash assets would need to be converted to cash before being eligible for transfer into the scheme.

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## Chapter 2

# TRACING, VERIFICATION AND REUNIFICATION

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## KEY RECOMMENDATIONS

- |              |  |                                |
|--------------|--|--------------------------------|
| <b>R2.1.</b> | New sectors should implement the standard practices for tracing, verification and reunification outlined in Annex C.   | <b>see 2.6–2.7 and Annex C</b> |
| <b>R2.2.</b> | The appropriate level of tracing, verification and reunification exercises should not be enshrined in future legislation, given the different products and systems in each sector. Rather, industry should put in place sector-specific frameworks that guide those exercises. Agency transfer agreements between participating firms and Reclaim Fund Ltd (RFL) should ensure that reasonable efforts are made before firms are able to transfer assets to RFL.   | <b>see 2.8</b>                 |
| <b>R2.3.</b> | Working with its trade association (or equivalent), each sector should look to promote the benefits of using the sector's framework or principles for managing gone-away customers and/or unclaimed assets.  | <b>see 2.10</b>                |
| <b>R2.4.</b> | The insurance and pensions and investment and wealth management sectors would like to work with the Financial Conduct Authority (FCA) and RFL to consider whether an optional, proportionate approach to the efforts applied to the tracing of assets would be appropriate, as well as whether this should include a <i>de minimis</i> level above which more robust tracing, verification and reunification efforts should be applied prior to a transfer to RFL. | <b>see 2.12–2.13</b>           |
| <b>R2.5.</b> | Some sectors support levying a tracing charge on assets where appropriate, while other sectors believe this compromises the principle of full restitution. The government should consider both consumer protection and the risk of lower participation from some sectors before reaching a decision for any future legislation.  | <b>see 2.14</b>                |
| <b>R2.6.</b> | UK Finance and the Building Societies Association should consider working with other trade associations to explore how the MyLostAccount platform could be extended to, or replicated by, other sectors.   | <b>see 2.15</b>                |
| <b>R2.7.</b> | Industry should continue to explore the possibility of making the services of unclaimed assets register(s) free to the public, with support from relevant sectors.   | <b>see 2.16</b>                |
| <b>R2.8.</b> | To improve reunification rates, most sectors believe the government should amend primary and secondary legislation, where necessary, to enable data sharing for the specific purpose of aiding tracing, verification and reunification attempts. The Digital Economy Act 2017 and the Tell Us Once service have been identified as potential opportunities.  | <b>see 2.17–2.25</b>           |

## INTRODUCTION

- 2.1. All sectors recognise that tracing, verification and reunification efforts are the priority before any dormant assets are transferred to RFL, and that dormant assets should only be made available to good causes if their beneficial owners cannot be found. This was emphasised both in the Commission's report and the government's response to it, and all sector working groups agree.<sup>1</sup>
- 2.2. The banking sector should continue using its '10 core pledges'.<sup>2</sup> The sector is content that their reunification efforts have proved sufficiently robust under the current scheme, with reclaim rates holding steady at around 5% of accounts transferred to RFL. Accordingly, this chapter largely excludes the banking sector, and looks instead to support those sectors that are new to the dormant assets scheme. To distinguish between them, 'new sectors' is therefore used to refer to the insurance and pensions, investment and wealth management, and securities sectors.
- 2.3. Current practice varies both across sectors and between firms. To bring consistency, this chapter outlines a set of standard practices that new sectors should consider adopting in line with their own guiding frameworks or principles.
- 2.4. In large part, these standard practices can be adopted without additional government or regulatory intervention, and industry is encouraged to consider implementing them as soon as possible as part of Phase One preparations for an expanded scheme. There are, however, key areas where legislative amendments and regulatory support would make considerable improvements to their success rate.

## CROSS-SECTOR CHALLENGES

- 2.5. The process of tracing, verifying and reuniting unclaimed assets has been acknowledged as a cross-sector challenge. Several common factors have been identified:
  - an ageing UK population, which means that more assets are becoming due for payment as benefits or investments reach their contractual end date
  - fears of a scam causing customers to ignore communications
  - changes to company names through mergers and acquisitions, which lead to customer confusion regarding the identity of their product/investment provider
  - varying risk appetites of individual companies, which lead to differing requirements for proving a customer's identity before reuniting them with their assets (companies that have set more extensive verification requirements can find reunification efforts more costly and challenging)
  - the quality of customer data, though the level of challenge is experienced differently across sectors<sup>3</sup>
  - the cost of tracing and verification, particularly for small values such as dividend payments, cheques of low value, and small pensions pots.

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<sup>1</sup> [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017; [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), February 2018.

<sup>2</sup> <https://www.mylostaccount.org.uk/pledges>

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<sup>3</sup> For example, the securities sector generally only holds data on names and addresses, as this is all that is required when investing in securities. By contrast, insurers and pensions providers have a greater level of data available to verify a customer's identity, such as national insurance numbers, which can be used in the verification of pensions customers.

## STANDARD PRACTICES FOR TRACING, VERIFICATION AND REUNIFICATION

- 2.6. Several sectors within the financial services industry already have guiding frameworks or principles for managing gone-away customers. Where these are in place and effective, sectors should continue to use them. For the current scheme, the banking sector uses the '10 core pledges', which are referenced in the Industry Guidance to FCA Banking Conduct of Business sourcebook and supported by MyLostAccount.<sup>4</sup> Frameworks are also available to other sectors through trade associations such as the Association of British Insurers (ABI)<sup>5</sup> and The Investment Association (The IA). After reviewing these, the following standard practices are put forward for new sectors to consider:
- Each new sector should have an agreed definition for gone-away customers and dormancy, as needed.
  - Companies in new sectors should consider proactively reviewing their customer base.
  - Companies in new sectors should consider clear communications with customers to explain their responsibility for ensuring their contact details are kept up-to-date.
  - Where appropriate, companies in new sectors should initiate attempts to contact customers as soon as returned communications indicate a gone-away, and consider using alternative contact methods and data sources to do so.
  - Companies in new sectors should consider having documented procedures for verification.
  - Companies across some new sectors should consider periodically repeating their attempts to trace gone-away customers, as appropriate, before transferring to RFL.
  - Companies across some new sectors should consider having targets related to the level of reconnection with gone-away customers.
  - Companies in new sectors should have their own documented gone-away customer management framework in place.
- 2.7. Annex C provides more detail on these standard practices and the sector(s) to which they relate.
- 2.8. The appropriate level of tracing, verification and reunification exercises should not be enshrined in legislation. Given the wide range of products and systems, it would be difficult to set out a uniform approach and doing so could restrict flexibility for practices to adapt and improve over time. Agency transfer agreements between participating firms and RFL should ensure that reasonable efforts are made before firms are able to transfer to RFL.

## IMPLEMENTING STANDARD PRACTICES DURING 2019

- 2.9. Implementing standard practices on tracing, verification and reunification will assist companies in their preparation for an expanded dormant assets scheme. To that end, each new sector should consider the following short- to medium-term actions during 2019.
- 2.10. Working with its trade association (or equivalent) where needed, each new sector should look to promote the benefits of using the sector's framework or principles for managing gone-away customers and/or unclaimed assets. This should encourage companies within the sector to adopt the framework/principles in order to bring consistency to practices for tracing, verification and reunification prior to assets being considered dormant and transferred to RFL.
- 2.11. A toolkit that could be used across the sector when tracing, verifying and reuniting customers with unclaimed assets should be developed and deployed. This toolkit could include:
- data sources available for tracing
  - support available through suppliers for tracing, verification and reunification (e.g. MyLostAccount or the Unclaimed Assets Register (UAR) operated by Experian)
  - the various types of tracing exercises available, with likely success rates
  - templates for customer verification communications
  - methods for encouraging customers to respond to verification communications
  - potential *de minimis* levels above which more robust tracing, verification and reunification efforts should be applied prior to a transfer to RFL.

<sup>4</sup> <https://www.mylostaccount.org.uk/pledges>

<sup>5</sup> <https://www.abi.org.uk/globalassets/files/publications/public/its/abi-framework-for-the-management-of-gone-away-customers-in-the-life-and-pensions-market.pdf>

## COST OF TRACING

- 2.12. The cost of tracing and verifying a customer to reunite them with unclaimed assets is a major challenge to new sectors. Data on the level of spend shows that costs vary between companies and sectors. The insurance and pensions sector seems particularly affected, where tracing an individual customer can cost thousands of pounds in some cases.<sup>6</sup> In light of this, there is strong support for a proportionate approach to implementing standard practices for tracing, verification and reunification.
- 2.13. Working groups for the new sectors have discussed introducing an optional *de minimis* threshold, to be determined within sectors. If a company chooses to apply a *de minimis* level, more robust tracing exercises would be applied for any customers with dormant assets totalling more than the set amount prior to any transfer to RFL. For assets worth less than the *de minimis* level, companies could apply their own internal procedures to govern the process (such as writing to the last known address of the asset owner). This may require legislative, regulatory or operational amendments (for example, a change to companies' articles of association in the securities sector). Initial discussions on the application of a level of *de minimis* for the new sectors have taken place with the FCA, which is receptive to considering the approach, subject to receiving further evidence and consulting on any rule changes. The FCA's agreement to a *de minimis* threshold is considered critical to its application across the insurance and pensions and investment and wealth management sectors. Discussions on an appropriate *de minimis* level for sectors will continue with the FCA and RFL in 2019.
- 2.14. In addition, some sectors have considered levying a charge on the asset held to cover tracing, verification and reunification costs. Consensus on this issue has not been reached. The insurance and pensions and securities sectors highlighted that participation in a voluntary scheme could be lower if firms in their sectors were unable to levy a charge on assets where appropriate. Chapter 7, Sections 7.13–7.14 and Chapter 9, Section 9.16 address this in more detail. There may also be a customer benefit associated, as firms would be more willing and able to undertake more robust, costly tracing exercises if they could recover the costs. This is already a standard procedure in the securities market. However, the banking and investment and wealth management sectors oppose this, and have raised concerns that it would undermine consumer protection and customers' rights to full restitution. The banking sector will continue to fund tracing, verification and reunification from its operating costs, while the investment and wealth management sector would have managers meet this cost rather than customers. The FCA also raised concerns, as it appears to contradict existing regulations, and emphasised that it would require further work.<sup>7</sup> It is recommended that the government consider both sides before reaching a decision for any future legislation.

<sup>6</sup> ABI member survey results, August 2018.

<sup>7</sup> Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly) and existing Guidance in CASS 7.11.58G have been highlighted.

## CROSS-SECTOR COLLABORATION

- 2.15. As a result of the success of MyLostAccount (circa one million enquiries over the last 10 years) for the banking sector, discussions have been held about the application of the model to other sectors. Most sectors encourage UK Finance and the Building Societies Association to explore how it could be extended to, or replicated by, other sectors. Discussions will be progressed in 2019, alongside other ongoing discussions on funding and alternative models for reuniting customers with unclaimed assets.
- 2.16. Some companies manage an unclaimed asset register and offer services to the public to assist them in locating lost assets. The services also put the customer in touch with the appropriate company to reclaim such assets. Discussions with some asset registers are underway (and are expected to continue into 2019) regarding the potential to make their services free to the public, alongside greater support from all sectors in providing details of unclaimed assets, to increase reunification rates.

## GOVERNMENT ASSISTANCE

- 2.17. From cross-sector discussions, it is evident that verifying a person is often more difficult than tracing them to a new address. Customers who have not been in contact with the company for a long period of time are often concerned that reunification efforts could be a scam, and/or they do not recognise the brand of the company making contact when mergers, acquisitions or rebranding have occurred in the interim.
- 2.18. There is strong belief across new sectors that access to data held by government bodies (e.g. HM Revenue & Customs (HMRC), Driver and Vehicle Licensing Agency (DVLA) and TV Licensing) would be helpful in verifying an address. This would support industry in achieving higher levels of reunification before assets become dormant. However, it is recognised that there are significant legislative barriers to sharing personal data.
- 2.19. While the banking sector acknowledges that government data could be useful for tracing exercises, it does not agree that having access to government data would be sufficient to improve verification, and therefore reunification, rates. The customer must get back in touch directly with their bank and building society before reunification of a dormant asset would be allowed. The Banks and Building Societies Working Group (BBSWG) does not believe that having additional data sources to confirm an address would significantly improve this.
- 2.20. For the three new sectors, a potential high-level model for how government data could be used was developed through cross-sector discussion and explored with government representatives. The creation of a secure portal was suggested, through which providers could input a traced address for an individual and receive back

a 'yes' or 'no' response, depending on whether government datasets matched the address submitted. This would support firms to verify a customer's address, as government data is likely to be more accurate.

- 2.21. Representatives from all sectors and the Department for Digital, Culture, Media & Sport (DCMS) have had discussions with appropriate government bodies in the preparation of this report, and discussions will continue. They have confirmed that government bodies work to existing guidelines and regulatory frameworks, which set out what information can and cannot be shared. These frameworks limit even what can be shared between government departments.
- 2.22. HMRC has confirmed that current legislation is in place to protect customers' personal data. A legislative barrier has been identified that prevents sharing data to aid tracing, verification and reunification efforts, including as proposed in Section 2.20.<sup>8</sup>
- 2.23. Primary legislative changes would therefore be required. This would be subject to political appetite and the legislative timetable, on which there is significant pressure at this time. All sectors recognise that any such changes, if possible, would take several years and are unlikely to be relevant in the short term.
- 2.24. The Digital Economy Act 2017 has been identified as an opportunity to move this issue forward. A precedent for sharing government data with the private sector has been set in this Act, where energy and water suppliers are included as part of its fuel and water poverty objectives. Private bodies could also be included if the primary legislation is amended to insert similar clauses to those that brought energy and water companies in scope. It is recognised that, if feasible, this would take significant time to accomplish and, again, be subject to political appetite and legislative timetables. The government is encouraged to further consider this avenue for data sharing with the financial services industry in 2019.
- 2.25. The Department for Work and Pensions' (DWP) Tell Us Once service also offers data sharing opportunities. The service allows bereaved individuals to inform local and central government services about a family member's death at the same time. Amendments could potentially be made to include additional sectors for customers who use the service, and enable them to choose for their data to be shared with specified private sector organisations. Currently, customers can share data with named government departments or public service pensions providers. To be a feasible offering, all sectors should consider creating or contributing towards a centralised service (such as the Death Notification Service) that could be named in the service as a single offering. Any amendments would, however, only identify where customers had died and may also require primary legislative amendments. The government is asked to continue exploring the potential opportunity in 2019.

- 2.26. It is noted that DWP is continuing to engage with industry, consumer groups and other stakeholders on industry-led pensions dashboards. The work it has done in assessing their feasibility has outlined the complexity of both implementing the initiative and the UK pensions system more widely. The insurance and pensions sector should consider the relevance of the feasibility report, published in December 2018, to this work as part of its preparations in 2019.<sup>9</sup>
- 2.27. Due to the long-term nature of these proposals, work will continue to identify any additional opportunities and pursue these avenues further throughout 2019 and beyond, as appropriate.

## CONCLUSION

- 2.28. The banking sector should continue using its '10 core pledges'. The sector is content that its reunification efforts have proved sufficiently robust under the current scheme. The BBSWG does not believe there would be any customer or scheme benefit from the introduction of a sector-wide *de minimis* level of dormant assets above which more robust tracing, verification and reunification efforts would be applied. Currently, a *de minimis* can be set at firm level. The BBSWG does not believe there should be a requirement for sector-level regulation.
- 2.29. It is recognised that considerable work has already been completed in some sectors to bring consistency to the way gone-away customers are managed. All firms should consider implementing standard practices for tracing, verification and reunification.
- 2.30. Particularly if combined with the government's support in facilitating the sharing of data, the standard practices outlined in this chapter and in Annex C will enable firms in new sectors to deliver more effective tracing, verification and reunification exercises before assets become dormant.

<sup>8</sup> s18(1) of the Commissioners for Revenue and Customs Act 2005.

<sup>9</sup> <https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation>

## Chapter 3

# DEFINITIONS OF DORMANCY

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## KEY RECOMMENDATIONS

- R3.1.** Each sector, other than the banking sector, should consider developing a definition of a gone-away customer if it has not already done so. **see 3.9–3.11**
- 
- R3.2.** The existing definition of dormancy for the banking sector, as defined in the Dormant Bank and Building Society Accounts Act 2008, should be retained. **see 3.17**
- 
- R3.3.** When expanding the legislation to enable a greater range of financial assets to be transferred into the scheme, the government should use the following definitions of dormancy:
- Insurance and pensions:
    - For policies with a contractual end, the dormancy period should be seven years after the crystallising event or, where earlier, at the point at which it is identified that a deceased customer has no next of kin.
    - For policies with no contractual end, the dormancy period is recommended to be whichever comes earlier:
      - the point at which it is identified that a deceased customer has no next of kin
      - seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.**see 3.18–3.20**
  - Investment and wealth management:
    - Where the customer is owed or holds a cash amount only, the asset becomes dormant when it has been outstanding for at least six years from the date payment became due.
    - For a customer with holdings in unit trusts/Open-Ended Investment Companies (OEICs), dormancy is defined as where a customer has been identified as gone-away for at least 12 years and there have not been any active transactions on the customer's account during that time. **see 3.21–3.23**
  - Securities:
    - For shares, unclaimed dividends and proceeds from corporate actions, dormancy should be defined as a period of no shareholder-initiated contact for 12 years and:
      - the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)
      - where applicable, at least three dividends have become payable but have not been cashed. **see 3.24–3.27**

## INTRODUCTION

- 3.1. In its report to the government, the Commission noted that a major issue for the expansion of the scheme was the inconsistency of the various sectors' approaches to dormancy. The report recognised, however, that it would be inappropriate to apply one definition across multiple different assets.<sup>1</sup> Most bank and building society accounts necessarily involve regular contact between the company and the customer as they are more transactional. By contrast, many of the assets being considered for an expanded scheme come from long-term savings products, where limited contact with customers even for decades is not unusual. Therefore, the Commission proposed different definitions of dormancy should be developed for different asset types.
- 3.2. The sector working groups considered the adoption of a standardised period of dormancy. However, they concluded that it would be better to build on existing practices in each sector. Changing current practices risks undermining levels of participation in a voluntary scheme, and furthermore would cause significant delay to the inclusion of dormant assets.<sup>2</sup> The sector working groups therefore agreed with and pursued the Commission's recommendation that dormancy definitions should be developed for different asset types. This chapter outlines these definitions, which are key to determining what assets can be considered as being within the scope of an expanded scheme.

## CURRENT PRACTICES

- 3.3. For banks and building societies, a dormant account is defined in the Dormant Bank and Building Society Accounts Act as having no customer-initiated transactions for 15 years.
- 3.4. For the securities sector, a company's ability to deal with dormant shares is determined by its articles of association and the Companies Act 2006. It is not compulsory to have share forfeiture provisions within articles of association. For companies that do, practice varies in respect of the time that must elapse before a share can be forfeited. However, the most common time period is 12 years of no shareholder-initiated contact.
- 3.5. Unclaimed dividends paid on shares in the securities sector are retained for a period of time by the company that declared them. The model articles of association in the Companies Act 2006, which many companies use as a template for their own articles, provide for firms to retain unclaimed dividends after 12 years.<sup>3</sup>
- 3.6. Currently, dormancy is not generally recognised in either the investment and wealth management or insurance and pensions sectors. The long-term nature of many investment products and the lack of a maturity date is a challenge to the concept of dormancy, and it is not unusual for there to be no interaction between customers and providers until a customer seeks to dispose of their asset. This may be decades from the initial date of product purchase or investment, particularly with investments made for the purposes of retirement planning.
- 3.7. Dormancy can arise for many reasons. A frequent issue is when a customer fails to provide a change in contact details, such as when moving property and/or changing their email address or telephone number. Other reasons for dormancy include when a customer dies without leaving a will or beneficiaries; forgets about owning an account, policy or share; or withdraws a bank or building society account to zero and believes they have closed their account, but interest subsequently accrues.
- 3.8. Customers should understand that it is their responsibility to notify companies of changes in their contact and bank account details. More frequent contact between firms and their customers may identify these situations and allow for alterations to be made more readily. However, the primary responsibility for providing up-to-date contact details should remain with the customer.

<sup>1</sup> See the [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017, p.9 and throughout the report.

<sup>2</sup> See Chapter 7 for the insurance and pensions sector, esp. Sections 7.15-7.16; Chapter 8 for the investment and wealth management sector, esp. Sections 8.10-8.17; and Chapter 9 for the securities sector, esp. Sections 9.17-9.25.

<sup>3</sup> See <http://www.legislation.gov.uk/ukxi/2008/3229/schedule/3/made>. N.B. Bonds have been excluded from the securities sector's definition of dormancy, as per Figure 3.1, (p.25).

## GONE-AWAY CUSTOMERS

- 3.9. The concept of a gone-away customer is more familiar across the sectors. A potential gone-away customer is identified by trigger points such as post being returned from the last known address of the customer and/or payments remaining uncashed or (in the case of electronic transfers) being returned. With distributing schemes, where payments (e.g. dividends) are sent out regularly, failure of these to be cashed act as clear trigger points to flag a potential gone-away customer.
- 3.10. The concept of gone-away customers is less relevant for the banking sector's definition of dormancy. For example, an account can be both active (transactions are occurring) and gone-away (post/emails have been returned). Accordingly, the banking sector does not use a gone-away status as a trigger point for dormancy, but rather 15 years with no customer-initiated transactions (as defined in the Act).
- 3.11. While it would be difficult to operate a standard definition of a gone-away customer across all three other sectors, developing a definition for each sector can provide a suitable trigger point for dormancy where relevant. This should also direct firms to initiate alternative methods to contact gone-away customers before commencing tracing, verification and reunification efforts, as set out in Chapter 2.

## SCOPE OF ASSETS

- 3.12. The scope of assets to be considered for inclusion in the dormant assets scheme across the four sectors is:

**Figure 3.1: Scope of assets to be considered for the dormant assets scheme**

Sector	Scope of potentially dormant assets
<b>Banking</b>	Any account that has at all times consisted only of money and provided by the bank or building society as part of its activity of accepting deposits, <sup>4</sup> namely: <ul style="list-style-type: none"> <li>● current and savings accounts</li> <li>● Cash Individual Savings Accounts (ISAs)</li> <li>● Suspense Account balances.</li> </ul>
<b>Insurance and pensions</b>	<p>Policies with a contractual end date:</p> <ul style="list-style-type: none"> <li>● savings endowments</li> <li>● term insurance</li> <li>● defined contribution personal pensions with a requirement to purchase an annuity or income drawdown at age 75</li> <li>● annuities with a guaranteed payment period.</li> </ul> <p>Policies with no contractual end date:</p> <ul style="list-style-type: none"> <li>● whole-of-life</li> <li>● investment bonds</li> <li>● defined contribution personal pensions with no requirement to purchase an annuity or income drawdown at age 75</li> <li>● income drawdowns</li> <li>● deferred annuities.</li> </ul>
<b>Investment and wealth management</b>	<p>Cash assets:</p> <ul style="list-style-type: none"> <li>● unclaimed distributions</li> <li>● unpaid redemption proceeds</li> <li>● inactive cash accounts (including Cash ISAs)</li> <li>● orphan monies received after a fund is wound up.</li> </ul> <p>Non-cash assets (including ISAs):</p> <ul style="list-style-type: none"> <li>● regulated unit trusts</li> <li>● OEIC shares.</li> </ul>
<b>Securities</b>	<p>Securities assets:</p> <ul style="list-style-type: none"> <li>● shares</li> <li>● dividends</li> <li>● proceeds from corporate actions (e.g. takeovers).</li> </ul>

<sup>4</sup> Dormant Bank and Building Society Accounts Act 2008.

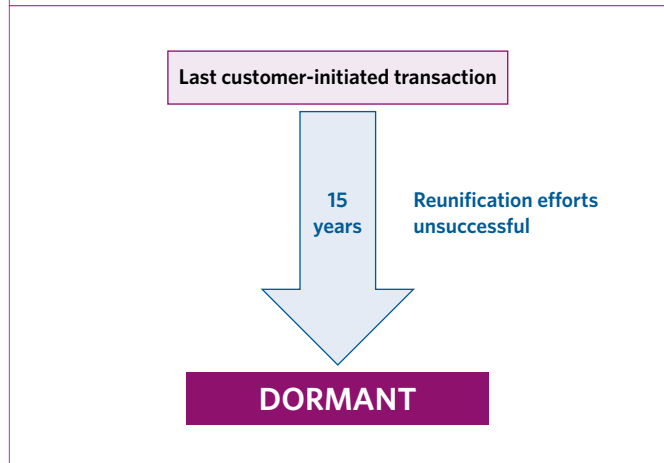
## DEFINITIONS OF DORMANCY

- 3.13. Robust definitions of dormancy within each sector are required so that firms have a consistent basis to identify dormant assets and transfer them accordingly to an expanded scheme (or to alternative charitable causes via an alternative scheme, see Chapter 5, Sections 5.28-5.29). This should also form the basis of a legal definition to enable any future legislation to expand the scheme.
- 3.14. Any final decision on the definition of dormancy, and any applicable time periods, should be determined in the context of guaranteeing full monetary restitution, with a customer being reinstated into the financial position they would have been in had their asset not been transferred to Reclaim Fund Ltd (RFL). This ensures that having dormant assets included in an expanded scheme does not disadvantage their owners.
- 3.15. Whilst there is already an existing definition of dormancy used in the current scheme for bank and building society accounts, this cannot be universally applied across different assets. Instead, dormancy should be defined by some or all of: customer inactivity over time, lack of proactive action at a trigger date (e.g. maturity date), and loss of contact with customers over an extended time frame despite a reasonable level of attempted reunification activity by a firm.
- 3.16. It is therefore proposed to adopt different definitions of dormancy for different product and asset types. In all instances, dormancy should be preceded by a period of tracing activity in order, where possible, to reunite the beneficial owner or their estate with their asset.

### Banks and building societies

- 3.17. It is not proposed to change the existing definition of dormancy for the banking sector, as set out in the Act, of 15 years of no customer-initiated transactions.

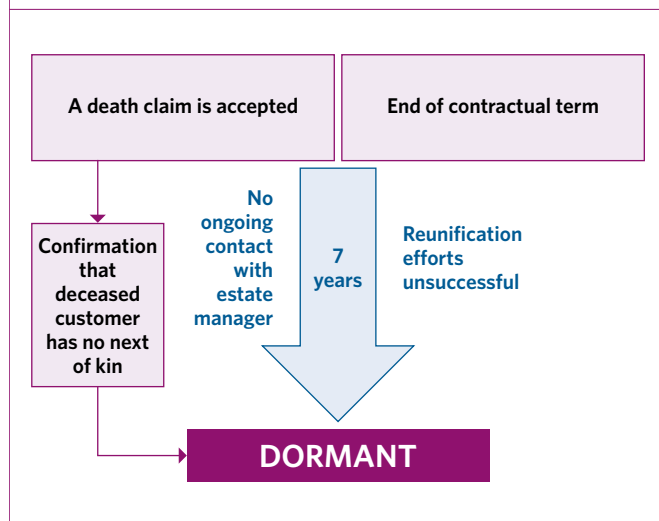
**Figure 3.2: Definition of dormancy for the banking sector**



### Insurance and pensions

- 3.18. For policies with a contractual end date, it is proposed that dormancy should be defined as seven years after the end of the contractual term for savings endowment policies – or, where there is a death claim, whichever comes earlier:
  - the point at which it is identified that a deceased customer has no next of kin
  - seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.
- 3.19. For policies with no contractual end date, dormancy should be whichever comes earlier:
  - the point at which it is identified that a deceased customer has no next of kin
  - seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.

**Figure 3.3: Definition of dormancy for the insurance and pensions sector – policies with a contractual end date**



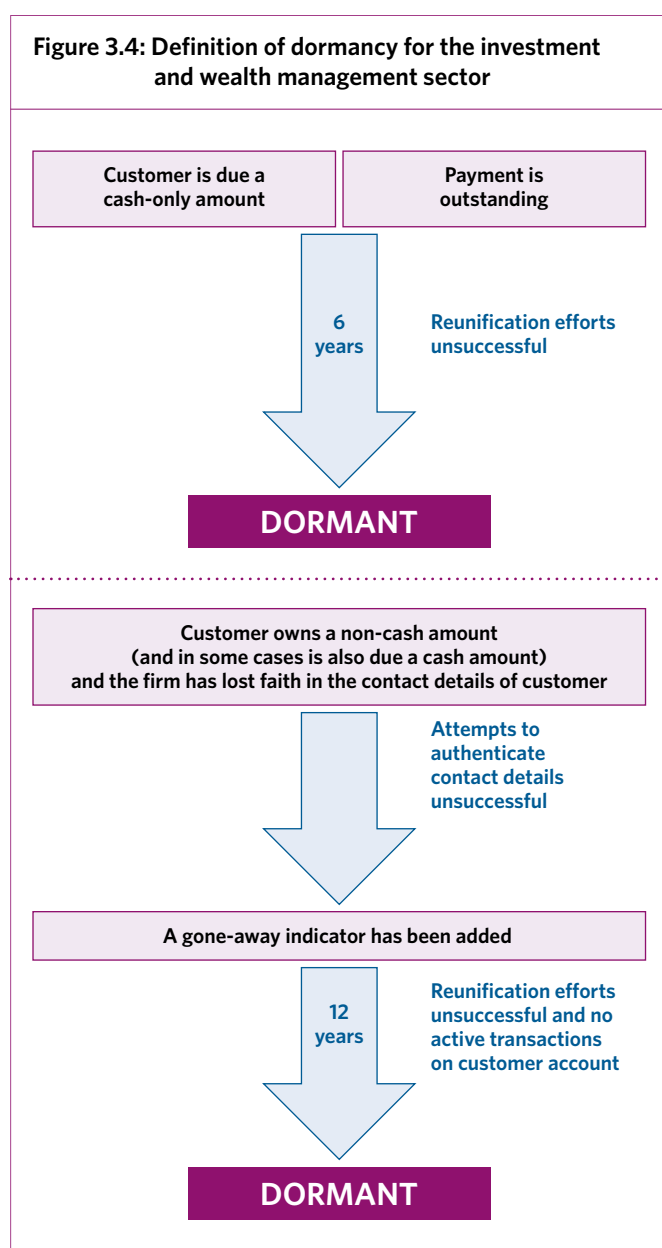
- 3.20. This approach is consistent with that recommended by the Commission, and relates to the experience of insurers on the Commission that most customers come forward within five years to claim their policy proceeds.<sup>5</sup> The Insurance and Pensions Working Group supports this conclusion and agrees that seven years would be prudent.

<sup>5</sup> See [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017, in particular Figures 2.1 and 2.2.

### Investment and wealth management

- 3.21. It is proposed that dormancy should be defined as where a customer is owed a cash amount only (potentially from an outstanding unclaimed distribution or unpaid redemption proceeds), and it has been outstanding for at least six years from the date payment became due.
- 3.22. For a client with holdings in unit trusts or OEICs, dormancy should be defined as a minimum of 12 years from the point a gone-away indicator was added, and there have not been any active transactions on the client account over that period.<sup>6</sup>

**Figure 3.4: Definition of dormancy for the investment and wealth management sector**

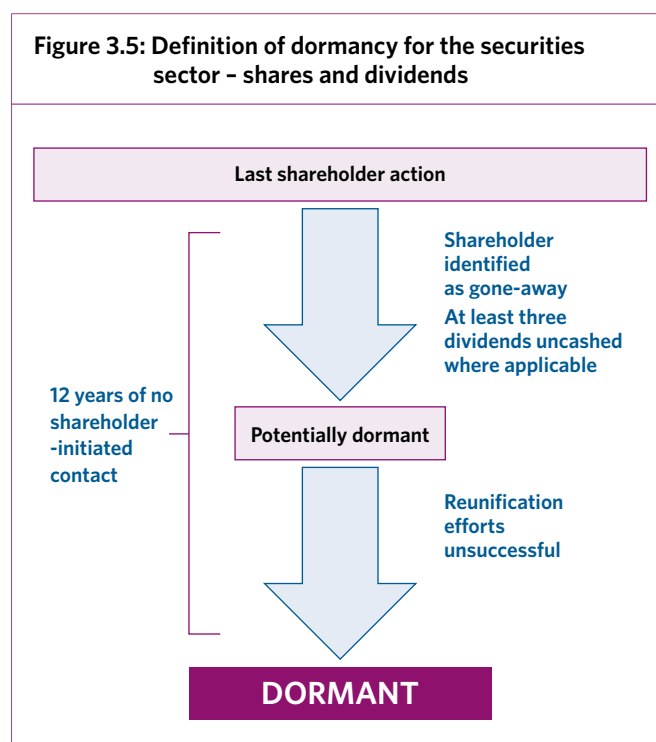


- 3.23. This approach aligns with current time periods used in the Client Assets Sourcebook (CASS) processes and would therefore maintain some consistency with current market practice.

### Securities

- 3.24. For both shares and unclaimed dividends, dormancy should be defined as a 12-year period of no shareholder-initiated contact and:
- the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)
  - where applicable, at least three dividends have become payable but have not been cashed.
- 3.25. For proceeds from corporate actions (e.g. takeovers), dormancy should be defined as 12 years of no shareholder-initiated contact from the point at which the consideration was received by the company (in accordance with existing Companies Act 2006 requirements).
- 3.26. For the securities sector, a 'Track and Trace' exercise, as set out in Chapter 9, Figure 9.1 (p.65), should be followed to attempt to reunite the shareholder with their asset before the asset is defined as dormant and transferred to RFL.

**Figure 3.5: Definition of dormancy for the securities sector - shares and dividends**



- 3.27. This approach aligns with the most common and most prudent current market practice. See Chapter 9, Sections 9.17-9.25 for further details.

<sup>6</sup> Active transactions would include regular saving payments or mandated payments to a bank account that have not been rejected. The assets being transferred to RFL would need to be liquidated first.

## Summary

<b>Figure 3.6: Definitions of dormancy by sector</b>			
<b>Sector</b>	<b>Scope of potentially dormant assets</b>	<b>Minimum period from the trigger(s) until asset classified as dormant</b>	<b>Triggers</b>
<b>Banking</b>	Any account that has at all times consisted only of money and provided by the bank or building society as part of its activity of accepting deposits, <sup>7</sup> namely: <ul style="list-style-type: none"> <li>● current and savings account</li> <li>● Cash ISAs</li> <li>● Suspense Account balances.</li> </ul>	15 years	No customer-initiated transactions.
<b>Insurance and pensions</b>	<p>Policies with a contractual end date:</p> <ul style="list-style-type: none"> <li>● savings endowments</li> <li>● term insurance</li> <li>● defined contribution personal pensions with a requirement to purchase an annuity or income drawdown at age 75</li> <li>● annuities with a guaranteed payment period.</li> </ul> <p>Policies with no contractual end date:</p> <ul style="list-style-type: none"> <li>● whole-of-life</li> <li>● investment bonds</li> <li>● defined contribution personal pensions with no requirement to purchase an annuity or income drawdown at age 75</li> <li>● income drawdowns</li> <li>● deferred annuities.</li> </ul>	7 years	<p>For savings endowment policies: end of the contractual term.</p> <p>For all other cash and non-cash assets: following identification that the customer has no next of kin or, where earlier, seven years after a death claim and there is no ongoing contact with those managing the estate.</p> <p>The point at which it is identified that a deceased customer has no next of kin or, where earlier, seven years after a death claim is accepted and there is no ongoing contact with those managing the estate. See Chapter 7, Section 7.16 for more details.</p>
<b>Investment and wealth management</b>	<p>Cash assets:</p> <ul style="list-style-type: none"> <li>● unclaimed distributions</li> <li>● unpaid redemption proceeds</li> <li>● inactive cash accounts (including Cash ISAs).</li> </ul>	6 years	The point of contractual settlement date, or from the point of return to a client money account.
	<p>Non-cash assets (including ISAs):</p> <ul style="list-style-type: none"> <li>● regulated unit trusts</li> <li>● OEIC shares.</li> </ul>	12 years	The point a gone-away indicator is added and thereafter, for at least 12 years, there have been no active transactions on the client account.
<b>Securities</b>	<p>UK public companies:</p> <ul style="list-style-type: none"> <li>● shares</li> <li>● dividends.</li> </ul>	12 years	<p>A 12-year period of no shareholder-initiated contact and:</p> <ul style="list-style-type: none"> <li>● the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)</li> <li>● where applicable, at least three dividends have become payable but have not been cashed.</li> </ul>
	<p>UK public companies:</p> <ul style="list-style-type: none"> <li>● proceeds from corporate actions (e.g. takeovers).</li> </ul>	12 years	A period of no shareholder-initiated contact from the point at which the company received the consideration (i.e. in accordance with the Companies Act 2006).

7 Dormant Bank and Building Society Accounts Act 2008.

## NEXT STEPS

- 3.28. The establishment of a uniform and consistent approach to the definition of dormancy by sector and, where necessary, asset class, should enable industry to provide an estimate of the value of dormant assets, which could potentially be made available to good causes through an expanded dormant assets scheme.

# Chapter 4

# TRANSFER AND RECLAIM

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34	Defined approach to transfer	4.15 - 4.26
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## KEY RECOMMENDATIONS

- R4.1.** During 2019 and, where necessary, thereafter, the sectors should work with Reclaim Fund Ltd (RFL) to enable them to establish the appropriate processes for including new types of assets in the scheme, and to ensure RFL can provide full restitution for these. **see 4.3-4.14**
- 
- R4.2.** Firms should follow the current practices of submitting reclaim requests to RFL on a quarterly basis, except where a reclaim is of particularly high value (subject to agreement with RFL). **see 4.27-4.28**
- 
- R4.3.** When a customer makes a reclaim, the firm should calculate the cash equivalent value of what the asset would have been worth had it not been transferred to RFL. **see 4.29-4.30**
- 
- R4.4.** HM Revenue & Customs (HMRC) will need to consider the tax implications of expanding the scheme and how best to ensure tax neutrality. **see 4.47**

## INTRODUCTION

- 4.1. In its response to the Commission's report, the government agreed that the principle of full restitution in perpetuity should be maintained.<sup>1</sup> This principle has full cross-sector support and is celebrated as one of the key drivers behind the success of the current scheme.
- 4.2. The government also noted that expansion is likely to be phased as the scheme moves to include a more diverse range of assets. It further recognised that the pace of implementation may vary across sectors. A phased approach similarly enjoys industry's full support. This chapter explains the rationale for a phased approach and seeks to outline how it should work. It also specifies definitions of restitution for each sector, and reflects on common challenges regarding transfer and reclaim processes.

## A PHASED APPROACH

- 4.3. Given the complexity of some assets, notably in the insurance and pensions and investment and wealth management sectors, it is proposed that there should be a phased approach to assets being included in an expanded scheme.
- 4.4. As expansion starts across the financial services industry, considerably more firms than currently participate will be involved in the scheme. These new participants will have to implement new processes for identifying dormant assets, transferring them into the scheme, assessing their ongoing value, and making reclaims where necessary. Asking firms to transfer their dormant cash balances into the scheme first will enable the appropriate processes to be put in place, and increase firms' confidence in participating in the scheme. With the appropriate legal and regulatory framework in place, their participation could then be extended to include non-cash assets, where relevant.
- 4.5. The wide range of non-cash assets being considered for inclusion in the scheme presents new challenges for RFL. It gives rise to a degree of complexity that needs to be carefully considered by RFL before the inclusion of such assets in the scheme can be confirmed. To be able to provide full restitution for previously non-cash assets, RFL would need, among other things, to build and develop the capabilities for managing the market value risk of non-cash assets. Their complexity and volatility would need to be taken into consideration when defining a process for transferring non-cash assets to RFL.

- 4.6. There are also legal and regulatory challenges that will need to be resolved before this process can be defined with any certainty or implemented. Given this, it would be prudent to phase in the type of assets being included in the scheme from the insurance and pensions and investment and wealth management sectors. Extending the scheme to non-cash assets should only be undertaken once RFL has assessed and accepted the legal, regulatory, commercial and operational issues and risks involved.

### Phase One

- 4.7. The first phase focuses on legislative change from the government, implementing standard practices for the tracing, verification and reunification of owners with their unclaimed assets in sectors that are new to the scheme, continuing preparatory work for the scheme expansion to include new types of assets, deepening participation in the current scheme from the banking sector and communicating the scheme more widely. As per Chapter 2, this should be a priority for industry during 2019.

### Phase Two

- 4.8. The second phase follows necessary legislative amendments. In Phase Two, RFL should accept dormant cash balances (i.e. cash accounts and dormant insurance and pensions assets that have already crystallised to cash, but not cash investments such as cash funds), and the proceeds from the sale of shares and any associated dividends. Further legal analysis is required on the circumstances under which firms do and do not have contractual or statutory powers to convert non-cash assets into cash.
- 4.9. As RFL currently only receives cash balances from banks and building societies, there is a proven method for cash to be transferred to and reclaimed from RFL. This process should be adopted by other sectors and therefore make Phase Two of the expansion simpler.
- 4.10. Consistent with the current Act, the legal definition of dormancy should be based at the account or product level rather than at the customer level. However, this should not prevent companies from choosing to take customer activity or correspondence on other accounts held within the same institution as evidence that the customer is still active. The investment and wealth management sector has indicated its preference that all of a customer's dormant assets at a firm should be transferred to RFL at the same time - i.e. that its sector will choose to take the customer level into account - because its definition of dormancy is based upon losing contact with the customer. Therefore, in Phase Two, participants in this sector should only transfer dormant cash balances where the customer does not also hold non-cash assets at the same firm.

<sup>1</sup> [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), February 2018.

- 4.11. In the investment and wealth management sector, after a fund has been wound up, its depositary or trustee occasionally receives money for the fund. If this is too small to distribute to the shareholders in the fund at the time it was wound up, it is paid into the courts. Considering these are small amounts, it takes a disproportionate amount of time to complete the process for paying into the courts. Depositaries and trustees would prefer to be able to pay these orphan monies to RFL if they choose.
- 4.12. For the securities sector, it is currently anticipated that proceeds from the sale of shares and any associated dividends could be included as soon as legislation permits.

### Subsequent phases

- 4.13. Once Phase Two has bedded in, it is envisioned that there will be subsequent phases to the expansion. These will focus on the scheme processing more complex assets. The complexity of the products should be measured by their legal complexity, such as trust structure and market volatility. For the securities sector, transfers from corporate sponsored nominees and proceeds from corporate actions may also be included in a subsequent phase.
- 4.14. The phased approach to transfer is illustrated below.

**Figure 4.1: A phased approach to transfer**

	Banking sector	Insurance and pensions sector	Investment and wealth management sector	Securities sector
<b>Phase One</b> (from 2019)	Deepened participation in the current scheme. Additional Cash Individual Savings Accounts (ISAs) and Suspense Account balances contributed.	Standard practices for tracing, verification and reunification implemented within each sector. Other preparatory work at sector level completed.		
<b>Phase Two</b> (following legislative change)		Products that have already been crystallised to cash by operation of a contractual, legal or regulatory event.	Unclaimed distributions and unpaid redemption proceeds (where the customer does not hold any non-cash assets). Orphan monies received after a fund is wound up.	Shares and associated unclaimed dividends.
<b>Subsequent phase(s)</b> (phased transfer of other assets, depending on the complexity of the product)		Products that have not been crystallised to cash by operation of a contractual, legal or regulatory event.	Fund holdings (alongside cash assets, if also held).	Transfers from Corporate Sponsored Nominees. Proceeds of corporate actions.

## DEFINED APPROACH TO TRANSFER

- 4.15. Subject to agreement from RFL, firms should follow the process currently used by banks and building societies to transfer dormant account money in bulk to RFL on an annual basis. For each firm, an annual date for transfer to RFL is agreed. Transfers do not have to be made every year.
- 4.16. The transfers should be accompanied by high-level data to assist RFL with their modelling. For an expanded scheme, this should include:
- how and when firms have tried to trace the customers
  - any interest rate applicable to the account being transferred
  - types of products the customers held
  - RFL category, which relates to the quality of data associated with the asset.
- 4.17. Firms will need to ensure they have the appropriate processes and systems in place to be able to provide this information, and for RFL to receive and store it.
- 4.18. To enable beneficial owners to make reclaims from RFL, firms will need to keep records of:
- who owns the underlying assets that have been transferred
  - in which RFL category they were placed
  - in which year they were transferred.
- 4.19. This is in keeping with the current approach for banks and building societies.
- 4.20. Preliminary legal advice has confirmed that neither the Money Laundering Regulations 2017 nor General Data Protection Regulation (GDPR) prevent firms from retaining data for this purpose indefinitely to the extent that customer claims remain outstanding. Chapter 10 addresses data-related issues in more detail, including in the event of insolvency.
- 4.21. It would be impractical, and create too many legal and regulatory challenges, for RFL to become one of the largest shareholders and unitholders in the UK. Therefore, non-cash dormant assets would need to be converted to cash before being eligible for transfer to RFL. This is subject to detailed consideration by RFL.
- 4.22. The challenge with this is that the customer may wish to reclaim the asset and not its cash equivalent. It is possible, however, that the original asset may not be available. Therefore, legislation will be needed to confirm that, while the customer is entitled to receive the full value of the asset at the point of restitution, they will not have a right to reclaim the original asset itself. See Chapter 10 for more details, but further consideration should be given to avoiding and managing disputes over this.
- 4.23. To achieve full restitution, similar information to that provided to RFL for cash balances will have to be supplied by firms for non-cash assets. In addition, some details about the underlying product should be provided at the time of the transfer. These may include the type of funds that have been crystallised and transferred to RFL. These may also cover the proportion of funds that were invested in the UK and the type of markets they invested in (e.g. FTSE 100, FTSE 250), and which other markets the funds invested in (e.g. European or US stock exchanges, or emerging markets). This would assist RFL in modelling the value of any reclaims.
- 4.24. On an ongoing basis, RFL may require updates on the investment strategy and performance of some products to enable it to adjust its risk models accordingly. RFL will need to undertake considerable hedging activities to ensure that there is not a large discrepancy between the assets held by RFL and the amount to be returned in the event of a reclaim.
- 4.25. RFL should work with the insurance and pensions and investment and wealth management sectors to be able to address the complexities around providing full restitution for non-cash assets in these sectors. In order not to unduly delay the transfer of cash assets, the non-cash assets from these sectors will not be included in the phase immediately following legislative amendments (Phase Two).
- 4.26. Under the current scheme, RFL has experienced some inflows of assets that have not been subject to appropriate tracing, verification and reunification efforts. Such inflows of assets have a high reclaim rate. Future legislation should strengthen RFL's ability to decline to accept transfers where sufficiently rigorous tracing, verification and reunification efforts have not been undertaken.

### Non-cash assets

## DEFINED APPROACH TO RESTITUTION

- 4.27. Under the current scheme, banks and building societies settle reclaims with customers as and when they are received and verified. The banks and building societies then request the money back from RFL on a quarterly basis, which reimburses them in accordance with a contractually agreed process.
- 4.28. RFL would understandably prefer not to manage more frequent reclaims, as this would add to its administrative costs. However, given the types of assets to be included in an expanded scheme, there may be occasions when a firm receives one or more reclaims that total an amount it is not able to readily meet. Therefore, it is proposed that a threshold amount is agreed by firms with RFL, and any reclaims that total more than that amount can be claimed back from RFL immediately. The level of threshold required would vary depending upon the size of the firm and its business. Therefore, it is suggested that the size of the threshold should be quantified in the agreement between RFL and the firm when it signs up to the scheme. The potential viability and detail of this approach will need to be assessed carefully and agreed by RFL.
- 4.29. Firms should keep records of the asset the customer held. When a customer makes a reclaim, the firm would be expected to calculate the current value of the asset and, for some assets, allow for any activity that has taken place since the asset was liquidated and transferred to RFL. This could be difficult for some products that are, for example, based on lifestyling or have been switched into other products.<sup>2</sup> Further consideration should be given to the issue of avoiding and managing disputes on the calculation of reclaims (see Chapter 10).
- 4.30. It should be noted that it might be costly to maintain these records. For example, if fund managers need to keep shadow registers, transfer agencies would have to make system and procedural changes to enable them to do so.
- 4.31. As per Section 4.16, when making a reclaim from RFL, the firm should provide the value of the customers' assets as well as the date of transfer and to which RFL category they were allocated.

## DEFINITIONS OF FULL RESTITUTION

- 4.32. In its response to the Commission's report, the government agreed that one of the principles of the expanded scheme should be that 'no customer should be disadvantaged by having an asset included in the scheme'.<sup>3</sup> Under the current legislation, customers are able to reclaim the amount that would have been due to them had a transfer into the scheme not occurred.
- 4.33. Due to the difference in the nature of the assets being considered for the expansion of the scheme, the definition of full restitution varies for products across and within the sectors. Where possible, assets have been grouped together to minimise the number of definitions.

### Shares

- 4.34. Currently, a company's ability to deal with dormant shares is determined by the share forfeiture provisions contained within its articles of association. It is not compulsory to have share forfeiture provisions within articles of association. Where articles of association permit shares to be forfeited, shareholders are not normally entitled to any payments for forfeited shares – indeed, typically the articles provide for shareholders to lose their entitlement to a dividend if it has not been claimed for 12 years from the date it became payable. However, on a discretionary basis, some companies choose to pay the value of the shares at the time they were sold.
- 4.35. As RFL requires non-cash assets to be liquidated before being transferred into the scheme, dormant shareholdings would have to be sold before being transferred. Under the current market practice, shareholders could receive the value of the shares at the point they were sold. However, full restitution from RFL would provide the full value of the shares at the point of reclaim, plus the dividends paid by the company on its shares, and, in certain circumstances, the value of any corporate actions between the point of sale of the shares and the reclaim from RFL. In light of this, companies may be encouraged to amend their articles of association to include a template article setting out the terms upon which a share would be forfeited and participate in an expanded scheme.

### Unit trusts and Open-Ended Investment Companies (OEICs)

- 4.36. Both unit trusts, which are established with a trust structure and therefore have trustees, and OEICs are collective structures that are open-ended and hence accept new monies from investors without limit. They also vary in their legal form, which creates complexities for including them in an expanded scheme. RFL would be expected to provide the value of the unit trust or OEIC at the time the customer made their reclaim, as well as any distributions paid since the assets were liquidated and transferred to RFL.

<sup>2</sup> 'Lifestyling' refers to when investments are tailored to the individual requirement of the client.

<sup>3</sup> [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), February 2018.

### Share dividends, fund distributions and redemption proceeds

- 4.37. Customers reclaiming dividends on shares, fund distributions or redemption proceeds would be entitled to their value at the time they were due. Firms do not currently pay any interest on these balances; accordingly, customers would not receive interest if they were included in the scheme.

### Insurance and pensions products that crystallise to cash

- 4.38. Customers reclaiming products that crystallise to cash would be entitled to the value at the point of crystallisation plus any accrued interest. See Chapter 7, Figures 7.1 and 7.2 (p.53 and 54) for more details on this.
- 4.39. It is not uncommon for insurers to make interest-like 'goodwill payments' in relation to some products. These payments tend to relate to the period between the product crystallising to cash and the claim being made by the customer or their beneficiary. They are usually in the form of the Bank of England base rate, plus or minus an adjustment. As these payments are made on a goodwill basis, they are not usually covered by contract terms or regulation. Due to the complexity of this, the Insurance and Pensions Working Group (IPWG) therefore suggests that the treatment of goodwill interest should be negotiated and covered in the transfer agency agreement between the participating firm and RFL.

### Insurance and pensions products that do not crystallise to cash

- 4.40. Some insurance and pensions products do not automatically crystallise to cash. It would be nearly impossible to provide a current value on receipt of a reclaim for these types of products as they had been liquidated, which presents a challenge to guaranteeing customers full restitution.
- 4.41. For these types of products, therefore, the insurance and pensions sector will require a legislative override that allows the products to be crystallised at the date they are transferred to RFL. This should then form the basis for full restitution of these products.

## PERPETUITY

- 4.42. The Commission's report and the government's response to it both agreed that customers should be able to reclaim any asset transferred into the scheme in perpetuity.<sup>4</sup> All sectors support this principle.
- 4.43. Working groups considered the feasibility of full restitution in perpetuity, as well as capping the reclaim period at 75 years, and RFL accordingly explored this second option. However, RFL established that doing so would not make a material difference to its ability to insure its tail risk and would, in fact, eliminate a major selling point of the scheme and undermine its consumer protection. Maintaining the principle of full restitution in perpetuity is therefore recommended as part of an expanded scheme.

## INSOLVENCY

- 4.44. If a participating firm becomes insolvent and its assets and liabilities are not administered by another participating firm, dormant asset customers would remain entitled to full restitution from the authorised reclaim fund.
- 4.45. If an authorised reclaim fund were to become insolvent, and therefore unable to satisfy the right of a customer to restitution, the customer would be eligible to make a claim for compensation under the Financial Services Compensation Scheme (FSCS). Further work is needed to explore how an expanded scheme could benefit from FSCS protection. It is expected that a customer's existing entitlement/eligibility with their current asset(s), and equivalent limits, will apply. This is consistent with the principles that apply to the current scheme.
- 4.46. Ensuring the right to full restitution and the portability of customer data in insolvency are challenging issues that are considered further in Chapter 10.

## TAX IMPLICATIONS

- 4.47. Both the Commission and, more recently, the sector working groups have identified a number of tax implications for an expanded dormant assets scheme. HMRC should consider the tax implications of expanding the scheme in line with these. Annex D provides further details on this.

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<sup>4</sup> [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017; [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), February 2018.

## CONCLUSION

- 4.48. The principles of full restitution, as defined in Sections 4.32–4.41, guaranteed in perpetuity, should underpin any transfer and reclaim processes in an expanded scheme. This ensures that dormant asset owners continue to be protected as robustly as they are under the current scheme.
- 4.49. All sectors agree that a phased approach to assets being included in the expanded dormant assets scheme is advisable. This will allow industry to first grow its understanding of the scheme's operations and become comfortable with the necessary processes before beginning to include more complex assets.
- 4.50. As far as possible, it is recommended that the current principles of transfer and reclaim for the banking sector should be maintained. The main departure from this would be to allow firms to invoice RFL immediately for any reclaims of a size they would be unable to meet, as defined in their transfer agency agreement. The government should ensure that relevant legislation and regulation is amended appropriately to take tax implications into consideration.
- 4.51. Going forward, the sectors are willing to work with RFL to enable them to establish the appropriate processes for expanding the type of assets they can include in the scheme, and ensure they can provide full restitution for these.

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# Chapter 5

# BUILDING PARTICIPATION AND COMMUNICATIONS

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## KEY RECOMMENDATIONS

- |   |                                 |
|---|---------------------------------|
| <p><b>R5.1.</b> Industry, the government, Reclaim Fund Ltd (RFL) and the Financial Conduct Authority (FCA) should work together to agree and implement a holistic communications strategy that improves understanding and awareness of the dormant assets scheme and its planned expansion.</p>   | <p><b>see 5.13–5.16</b></p>     |
| <p><b>R5.2.</b> The government should assist industry in publicising and better supporting participants in the scheme, including:</p> <ul style="list-style-type: none"> <li>● working with industry to create a dedicated dormant assets scheme website</li> <li>● supporting industry to develop sector-specific communications packs</li> <li>● working with RFL to celebrate new entrants.</li> </ul>   | <p><b>see 5.17–5.18</b></p>     |
| <p><b>R5.3.</b> RFL should create joining packs for prospective participants.</p>   | <p><b>see 5.18</b></p>          |
| <p><b>R5.4.</b> The government should improve transparency on how dormant account money is allocated and used, and explore ways to engage industry in the impact of the scheme.</p>   | <p><b>see 5.18 and 5.25</b></p> |
| <p><b>R5.5.</b> Industry should consider reassessing the size of dormancy at sector level in 2019 to enable firms to better understand the scale of the opportunity.</p>  | <p><b>see 5.20–5.21</b></p>     |
| <p><b>R5.6.</b> RFL should continue to publish an annual report detailing which firms are participating in the scheme. To increase transparency, this information should be appropriately publicised, and made more prominent and readily accessible.</p>   | <p><b>see 5.22–5.23</b></p>     |
| <p><b>R5.7.</b> UK Finance, the Building Societies Association (BSA), The Investment Association (The IA), the Association of British Insurers (ABI), ICASA: The Governance Institute, and other trade associations should play a convening role in facilitating sector discussions about the scheme. They should consider including the expansion of the dormant assets scheme as an agenda item in relevant working groups, thus helping share relevant information with their members.</p> | <p><b>see 5.26–5.27</b></p>     |
| <p><b>R5.8.</b> As part of an expanded scheme, the government should consider the feasibility of expanding the alternative scheme to allow smaller firms from the new sectors with strong local affiliations to join.</p>   | <p><b>see 5.28–5.29</b></p>     |

## INTRODUCTION

- 5.1. Voluntary participation is a founding principle of the current scheme. The scheme encourages participants to do more to reunite customers with their assets, and only if this is unsuccessful, to then channel dormant funds to RFL. Fourteen participants joined voluntarily in 2011 and transferred £368m. Since then, membership has grown steadily, reaching a total of 27, including all major UK high street banks and the UK's largest building society. These participating firms have so far transferred over £1.2bn into the scheme, and seen the reputational and operational benefits.
- 5.2. The dormant assets scheme should remain voluntary – both in terms of participation in the scheme, and what assets firms choose to transfer. In line with its response to the Commission's report, the government should ensure an expanded scheme maintains its voluntary nature.<sup>1</sup>
- 5.3. The success of the voluntary scheme will require a range of mechanisms for building participation. These include both internal and external processes needed to incentivise and deepen participation, as well as a holistic communications strategy. The banking sector is at a relatively advanced stage, and is now focused on mechanisms to deepen participation and enhance transparency. Chapter 6 explores this in more detail, outlining possible options specific to this sector. Although the banking sector is at a mature stage, some of the considerations for building participation will still be relevant for attracting eligible banks and building societies that do not yet participate.

## BENEFITS OF PARTICIPATION

### Benefits to wider society

- 5.4. The common thread amongst all participants in the scheme is the shared moral imperative to put dormant assets to good use and, in line with each firm's corporate social responsibility, a desire to positively impact some of the most vulnerable people and communities in the UK.
- 5.5. The benefit to wider society is significant. To date, over £1.2bn has been transferred into the scheme, of which over £600m has been made available to good causes.

### Benefits to participating firms

- 5.6. Participating in the dormant assets scheme provides an opportunity for firms to demonstrate responsible business practices by joining efforts with peer organisations to positively impact people and communities across the UK.
- 5.7. There is a reputational benefit to firms that participate in the scheme. As more money is transferred in, the impact on and benefits to society become ever more demonstrable. The transparency of this should be improved to better highlight this benefit to participating firms and those considering joining the scheme.
- 5.8. In some cases, participating in the scheme also provides an opportunity for firms to streamline their internal processes, including the handling of their books. The preparation for joining the scheme allows firms to review the treatment of legacy assets arising from any previous or current business restructuring. In addition, for companies that currently pay unclaimed assets to a charity of their choice, an expanded scheme could offer significant benefits in terms of eliminating their risk of needing to meet reclaims in the future. This could be material for reclaims relating to non-cash assets. Finally, the scheme would allow firms in sectors that do not currently offer full restitution in perpetuity to better protect their customers.
- 5.9. Participating in the scheme bolsters a consistent approach across industry for dealing with dormant assets, and will help drive forward better working practices. This includes efforts to reunite customers with their assets.

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<sup>1</sup> [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), February 2018.

### Benefits to consumers

- 5.10. Consumer protection is a cornerstone of the scheme, with the priority for participating firms being the reunification of customers with their assets. This approach enables more people to be reunited with their money by encouraging firms' efforts to trace gone-away customers before transferring any assets to RFL. If standard practices for tracing, verification and reunification are deployed for an expanded scheme, the effect will be greater still.
- 5.11. One of the founding principles of the current scheme is that customers can reclaim their money in perpetuity. With full restitution guaranteed, customers are not financially disadvantaged if their funds are transferred. In an expanded scheme, these principles will afford more customers the ability to reclaim the value of their assets at any point. This represents an improvement on current market practice, where some products (such as shares) do not have to be repaid if forfeited. Moreover, an expanded scheme will ensure more consistent and transparent cross-sector approaches to identifying and treating dormant assets before they are transferred to RFL, which will result in fairer treatment of customers.
- 5.12. Everyone benefits from the dormant assets scheme: More customers, through increased efforts by firms, are reunited with their assets; participating firms demonstrate responsible business practices; and some of the most vulnerable individuals in society benefit from dormant funds.

### COMMUNICATIONS STRATEGY

- 5.13. For an expanded scheme to achieve its full potential, it will be essential to communicate a holistic narrative – from the attempts of participating firms to trace customers, to transferring truly dormant assets to RFL, to how the surplus is put to use tackling social issues. It should clearly communicate the benefits of the scheme to consumers, firms (both current and potential participants), and society as a whole.
- 5.14. Clearly communicating this message and reaching out to these audiences will help build understanding, engagement and participation, and ensure:
- increased reunification of customers with their assets, with consumers at large understanding they are protected when assets are transferred into the scheme
  - increased participation by firms, both those within the financial services industry and the FTSE 350
  - improved understanding of how the current scheme works, and more assets being transferred into it, which can then be made available to good causes.
- 5.15. It is important that industry, the government, RFL and the FCA work collaboratively to develop and implement a holistic communications plan for the key audiences (industry, consumers, society at large) and build the brand of the dormant assets scheme. These efforts will be advanced in 2019.
- 5.16. By increasing public awareness, a holistic communications strategy could also impact reclaim rates on dormant account money already transferred to the scheme. RFL will need to take this into account as part of its work to improve its reclaim modelling capabilities.

#### Tailored communications for industry

- 5.17. In 2018, the working groups started work on defining a communications strategy for industry as a key target audience. It is apparent that different firms will require different types of communications based on their stage of interaction with the scheme. From a firm being unaware of the scheme to actively participating, there should be a range of appropriate prompts available to encourage participation. The ultimate aspiration is for participants, over time, to become proud advocates of the scheme to peers and relevant stakeholders.

5.18. The following communications tools should be considered with this in mind to encourage firms along the journey:

- Dormant assets website: As a first step, the government has published a page on its website, which brings together the key information about how the scheme works, how customers can reclaim their funds, and the impact dormant funds have on people and communities across the UK.<sup>2</sup> The development of a dedicated dormant assets scheme website would be particularly valuable for firms that are unaware of, or have only high-level awareness of, the scheme.
- Sector-specific communications packs: Industry, the government and RFL should work together to develop sector-specific communications packs that support firms that are considering joining the scheme.
- RFL joining pack: An RFL joining pack should be developed and made accessible online to support firms that are preparing to join the scheme. It should include details on: the steps firms need to take to join; the process for making transfers and reclaiming; and relevant technical and legal information.
- Celebration of new participants: The government is encouraged to work with RFL to publicly celebrate new participants in the scheme. This could be achieved through press notices, relevant social media platforms, and newsletters. The celebration of new entrants will draw positive press for those firms, and pique the interest of peer firms who are not yet participating.
- Spotlight the impact of the scheme: The government, RFL and The National Lottery Community Fund (The Fund, previously the Big Lottery Fund), as the named distributor of dormant account money, are encouraged to create more visual and compelling content on the scheme. This should bring to life its impact in a way that is both easy to relate to and inspires pride among active participants. Content could include a visual library of case studies and explainer videos, which could be embedded on various platforms. Showcasing the impact of the scheme, and appropriately crediting participants, would support firms in championing the scheme to prospective members.

## OTHER MECHANISMS FOR BUILDING PARTICIPATION

5.19. A holistic communications strategy will have a major role to play in incentivising and deepening participation in the scheme. In addition, the working groups considered a range of other mechanisms for building participation.

### Size of dormancy

- 5.20. It was not part of the Industry Champions' remit to reassess the size of dormancy in each sector. However, both the banking and investment and wealth management sectors felt this data would be a valuable addition. The banking sector has included some estimates to support its sector-specific proposals in Chapter 6.
- 5.21. As asserted in Chapter 3, Section 3.28, defined approaches to dormancy should enable industry to provide an estimate of the value and age of dormant assets. Reassessing the size of dormancy at sector level will help potential participants understand the size of the opportunity, and prioritise the agenda accordingly. Sectors are encouraged to consider this as a potential work stream for 2019.

### Transparency on firms' treatment of dormant assets

- 5.22. Currently, RFL maintains regular contact with scheme participants through a number of mechanisms. These include bilateral meetings, direct contact, and an annual certification sent to participants that gives them an opportunity to highlight queries. RFL also publishes an annual report, detailing levels of contributions and reclaims.<sup>3</sup> This is publicly accessible through its website.
- 5.23. In its review of the scheme, the Commission recommended that RFL should continue to publish an annual report detailing which firms are participating in the scheme. However, to increase transparency, this information should be appropriately publicised and made more prominent and accessible. Increasing the prominence of the annual report will be helpful in complementing efforts to increase awareness of the scheme and, over time, build participation.
- 5.24. Enhancing the transparency of the treatment of dormant assets at both sector and firm level can be a powerful mechanism in building participation. Individual firms could potentially include this disclosure in their own public reports. Sector-specific approaches to transparency, such as the 'participate and explain' model of the securities sector and the need to engage further with the Financial Reporting Council, are explored in more detail in the sector-specific chapters (see Chapters 6-9).

2 <https://www.gov.uk/government/publications/the-dormant-accounts-scheme>

3 For example, see RFL's Annual Report and Accounts 2017: <https://fr.zone-secure.net/18541/795788/#page=50>

### Allocation of dormant assets

- 5.25. There is cross-sector agreement that participation would improve if firms had a better understanding of how dormant assets are allocated and used after RFL releases them to The Fund. There should be significantly improved transparency here. This is linked to the communications strategy of spotlighting the impact of the scheme, as discussed in Section 5.18, but extends beyond it. Ways in which industry can be better engaged in the impact of the scheme should be considered. For example, the emerging work on financial inclusion could be an opportunity for industry to support the scheme on the distribution side.

### Trade associations

- 5.26. Trade associations hold sizeable influence, disseminating information to their members and shaping the agendas for their sectors. At the inception of the current scheme, the British Banking Association (now UK Finance) and the Building Societies Association (BSA) provided a platform for prospective participants to discuss the technical and operational aspects of the scheme. It is recognised that these efforts were critical to the initial uptake.
- 5.27. There is a significant opportunity for trade associations, including UK Finance, the BSA, The IA, the Association of British Insurers and ICASA: The Governance Institute, to play a key role in building participation. They should consider: including the expansion of the dormant assets scheme as an agenda item in relevant working group forums; circulating periodic communications on the success of the scheme within their membership; and shaping best practices for their sector.

### Alternative scheme

- 5.28. It is recognised that some smaller, locally-based firms already pay unclaimed money to local charities and/or good causes. Under the current Act, in addition to the main scheme, there is provision for an alternative scheme. This allows smaller banks and building societies, defined as those with assets below £7bn, to transfer a proportion of their dormant account money to RFL and direct the remaining portion to their chosen local charities and/or good causes.
- 5.29. For smaller firms in the three new sectors with similar strong local affiliations, participation in an expanded scheme could be deterred if they were unable to continue supporting their chosen good cause(s) in a similar way. There is therefore cross-sector support for expanding the alternative scheme to include smaller firms in the additional three sectors.

## LEGISLATION AND ROLE OF REGULATORS

- 5.30. In the government's response to the Commission's report, it committed to an industry-led expansion. This lead has been an integral part of the current scheme's success, and should be maintained. To ensure high levels of voluntary participation from industry, the government should look to keep the design of an expanded scheme, and any necessary legislation, simple.
- 5.31. To complement efforts to build participation, it is important for industry to feel confident that regulators are fully apprised and supportive of industry efforts to expand the scheme. This should be done with care so as not to undermine the voluntary nature of participation.<sup>4</sup>

## CONCLUSION

- 5.32. The dormant assets scheme is a good news story. The scheme is building a lasting legacy through the active use of dormant assets to support good causes, and creating a positive impact on people and communities across the UK. It also supports firms in demonstrating responsible business practices, and provides an opportunity for firms to transfer liability for dormant assets to RFL, and to streamline their internal processes. And it protects consumers and drives the reunification of owners with their assets.
- 5.33. Industry and the government working together in 2019 should help improve understanding and awareness of the dormant assets scheme, and support planned expansion.

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<sup>4</sup> For more on regulatory implications see: for banks and building societies, Chapter 6, Section 6.30; for insurance and pensions, Chapter 7, Sections 7.29-7.34; for investment and wealth management, Chapter 8, Sections 8.28-8.30; for securities, Chapter 9, Sections 9.50-9.55; and for all sectors, Chapter 10.

# Chapter 6

# BANKS AND BUILDING SOCIETIES

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## KEY RECOMMENDATIONS

- R6.1.** The existing definition within the Dormant Bank and Building Society Accounts Act 2008 of dormancy for banks and building societies should remain at 15 years of no customer-initiated transactions. **see 6.7**
- 
- R6.2.** Existing participants are encouraged to:
- continue identifying all potentially eligible assets for inclusion within their future transfers to Reclaim Fund Ltd (RFL)
  - create appropriate processes, where necessary, for eligible Cash Individual Savings Accounts (ISAs) and cash assets held in Suspense Accounts to be included
  - support RFL's objective of increasing its reclaim modelling capabilities through evaluating additional dormant account data transfer. **see 6.7-6.21**
- 
- R6.3.** HM Revenue & Customs (HMRC) should consider how to supply additional guidance on the treatment of Cash ISAs of deceased customers that have been transferred to the dormant assets scheme, as well as certain practical clarifications outlined in Section 6.8. **see 6.8**
- 
- R6.4.** As part of any programme of legislative change, the government should consider options to enhance the clarity of the existing Act by explicitly including Suspense Accounts. **see 6.11-6.15**
- 
- R6.5.** The government should maintain the alternative scheme provisions within any subsequent legislative revision to continue to encourage the engagement of participants with assets of less than £7bn, and review its position in three years. **see 6.23**
- 
- R6.6.** The government is encouraged to engage with the Chief Executive Officers (CEOs)/ Chairs of potential participants about the benefits of joining the scheme. **see 6.24**
- 
- R6.7.** UK Finance and the Building Societies Association (BSA) should arrange a meeting for the Banks and Building Societies Working Group (BBSWG) to address any outstanding issues and, where appropriate, ensure that dormant assets issues are considered at the meetings of any relevant industry forums. **see 6.25**

## INTRODUCTION

- 6.1. UK banks and building society accounts collectively hold over £1.3tn of customers' money in savings or current accounts that would be eligible under the Dormant Bank and Building Society Accounts Act 2008 if they became dormant.<sup>1</sup>
- 6.2. The BBSWG includes representatives from banks and Nationwide Building Society, as well as the industry bodies UK Finance and the BSA. A full list of BBSWG members can be found in Annex A.

### Progress since the Commission on Dormant Assets' report

- 6.3. The BBSWG agrees with both the government and the Commission that the current voluntary scheme has been a success. Since the first transfers were made in 2011, participants have collectively contributed over £1.2bn, representing a threefold increase on initial estimates. Additionally, there has been ongoing growth in the number of participants since the scheme's inception, with the majority making contributions across multiple years.
- 6.4. The BBSWG agrees with the findings of the Commission that there are two significant areas of opportunity to maximise potential transfers to RFL from the banking sector:
  - consistency of interpretation of the current scheme by participants to ensure the full range of eligible asset types are considered for transfer
  - mechanisms to encourage bank and building society participation.
- 6.5. Combined, these could deliver incremental transfers to RFL estimated at up to £200m over five years.<sup>2</sup> Of this, circa 50% would be one-off 'catch-up' type payments, which could potentially be accessible within two years, with the remainder being ongoing annual contributions.
- 6.6. Additionally, the BBSWG believes that there is another mechanism for leveraging onward distributions from RFL to good causes, which may have cross-sector applicability. This would see participants increasing the level of information supplied to RFL beyond that required under their individual transfer agency agreements. Sections 6.17–6.21 explore how this could support RFL to release a greater proportion of funds.

## DEFINITIONS OF DORMANCY

- 6.7. Under the Dormant Bank and Building Society Accounts Act 2008, dormancy for banks and building societies is defined as 15 years of no customer-initiated transactions, and the BBSWG agrees that this definition should be maintained. Participant interpretations of this definition have varied, with some firms including a wider variety of account types than others. The Commission's report highlighted both Cash ISAs and Suspense Accounts as assets suitable for inclusion in the scheme.<sup>3</sup> The BBSWG has considered this and does not believe there are any specific legislative barriers to their inclusion, provided the relevant dormancy criteria outlined in the existing Act can be satisfied.

### Cash ISAs

- 6.8. Following correspondence with the BBSWG, HMRC published additional guidance in September 2018 for Individual Savings Account (ISA) managers on 'Closing, voiding or repairing an ISA', adding a section of new guidance on dormant accounts.<sup>4</sup> This clarifies that Cash ISAs can be classified as dormant accounts under current legislation and transferred to RFL after 15 years without a customer-instigated transaction. It additionally advises that Junior ISAs cannot be eligible for transfer. Finally, it confirms that any reclaims would not form part of an investor's annual ISA allowance if they were paid back into a Cash ISA with the same ISA manager. Additional clarification, however, is sought on:
  - Account numbers: Where a previously dormant Cash ISA is reopened, guidance is requested on whether or not it is acceptable to provide the customer with a new account number and sort code.
  - The treatment of deceased cases: Currently, two different sets of rules apply to the treatment of Cash ISAs post-notification of death (where date of death is pre-6 April 2018, and where date of death is 6 April 2018 or later). It is requested that the guidance covers how ISA providers should treat a dormant Cash ISA, specifically the interest earned post-death, in these two circumstances.
  - Eligibility for Additional Permitted Subscriptions (APS): APS rules are also differentiated by the date of death. It is requested that the guidance covers how the APS rules should be interpreted for dormant accounts in these scenarios.<sup>5</sup>

<sup>1</sup> Bank of England BankStats, October 2018 Release (non-seasonally adjusted).

<sup>2</sup> BBSWG estimates based on publicly stated accounts and a range of existing participant contribution levels.

<sup>3</sup> [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017.

<sup>4</sup> <https://www.gov.uk/guidance/close-void-or-repair-an-isa-if-youre-an-isa-manager#dormant-accounts>

<sup>5</sup> For example, how would an ISA provider treat an account where the Cash ISA is transferred to RFL in April 2019, the customer dies in May 2019, but the spouse does not find out about the account's existence, and thus their ability to use an APS, until more than three years after the death?



- 6.9. Based on the historic Cash ISA market size, the BBSWG estimates the potential ISA opportunity to be in the range of £30–60m from scheme participants who have not previously transferred ISAs, with additional transfer potential in each successive year of £4–8m. As part of Phase One of the expansion, outlined in Chapter 4, Figure 4.1 (p.33), the BBSWG encourages all current participants to consider including ISAs in their dormant account transfers, following the lead of Lloyds Banking Group, Nationwide, Santander and Virgin Money, which have already done so.
- 6.10. It should be noted that some participant firms may need to make changes to their systems and processes to enable the transfer of these funds to RFL. This will influence the time horizon over which any incremental transfers could be made. Consideration will need to be given to existing reunification approaches to ensure compliance with HMRC's ISA manager guidance.
- 6.14. Additionally, there are provisions incorporated into the transfer agency agreements that relate to accounts with incomplete information, which would extend to Suspense Accounts. The transfer of such balances requires RFL's express consent. Under the relevant contractual provisions, the onus is on participants to take the necessary steps to satisfy themselves that any monies to be transferred are eligible under the Act, and to resolve any operational issues prior to transfer. As for Cash ISAs, firms may need to invest in their systems and processes before these funds could be made available to RFL.
- 6.15. The BBSWG and RFL are satisfied that the current legislation permits the transfer of certain Suspense Account balances. Given that the Act does not currently include express reference to this type of account, however, it may be desirable to clarify more expressly the position of Suspense Accounts as part of any legislative changes required to enable an expanded scheme.

### Suspense Accounts

- 6.11. Suspense Accounts are not explicitly referenced within the existing Act. While industry practice varies, a Suspense Account is generally used to describe a form of internal account or general ledger that is used to record miscellaneous transactions or amounts due to customers. This is often on an aggregated basis, rather than at a customer level.
- 6.12. To be valid for transfer, all accounts must meet four distinct criteria defined in the Act:
- to have always consisted of money
  - to be provided by the bank or building society as part of its activity of accepting deposits
  - to meet the transactional definition of dormancy
  - to include in the amount transferred to RFL the appropriate amount of accrued interest due on the relevant balance at the point of transfer (with appropriate adjustments made for fees and charges payable).<sup>6</sup>
- 6.13. At the time of designing the contractual agency arrangements that support the existing scheme, RFL and the British Bankers' Association (now UK Finance) jointly sought advice on the Act's drafting. They confirmed there was no issue, in principle, with treating accounts on a generic basis for the purposes of the Act. Given that, the fact that accounts have been closed and the money has been placed into a pooled Suspense Account would not, of itself, preclude that money from being transferred to RFL under the Act – provided it meets all other requirements.

### Other account types

- 6.16. The Commission also highlighted Child Trust Funds and foreign currency as potential opportunities. The BBSWG does not consider these to be worth pursuing, given their relative size and complexity.

<sup>6</sup> The Dormant Bank and Building Society Account Act 2008.

## TRANSFER AND RECLAIM

- 6.17. The BBSWG and RFL recognise that there may be an opportunity to increase the proportion of funds transferred to RFL that can be subsequently and prudently released for distribution to good causes.
- 6.18. At the inception of the scheme, a standardised transfer agency agreement was drafted to which all participants are required to sign up. This was drafted on the basis that no personal data would ordinarily be transferred to RFL, with only a limited aggregated data set passed to RFL for both annual transfers and quarterly reclaims, including:
- year of transfer
  - vintage (historic balances or 15-year money)
  - category (1, 2 or 3; this ranks the quality of data associated with the account)
  - aggregated value buckets (<£50, £50-100, etc.)
  - number of accounts, for categories 1 and 2
- 6.19. This level of detail provides RFL with only a limited understanding of reclaim composition and does not lend itself to detailed actuarial modelling. Following discussions with its actuarial consultants, RFL has begun a series of bilateral conversations with several larger participants in the scheme to understand the commonality of information held. The aim, subject to prevailing data protection legislation, is to evaluate options for increasing the information transferred, and thus RFL's modelling confidence, enabling it to prudently release a greater proportion of dormant funds.
- 6.20. Discussions are ongoing, with outstanding key issues identified as:
- Compliance with the General Data Protection Regulation (GDPR): Participants' data processing statements do not describe sharing data with RFL, which will limit the granularity of information that can be transferred.
  - Timings and costs: Given the annual nature of the transfer process, which involves multiple systems and reconciliation processes within participant organisations, creating outputs containing additional fields is not a simple process.
- 6.21. The BBSWG recognises that the expansion of the scheme to include other asset types is likely to introduce further systems and reunification processes, which may require significant enhancement to existing infrastructure.

## BUILDING PARTICIPATION

- 6.22. Chapter 5 covers cross-sector recommendations on building effective participation within an expanded dormant assets scheme using lessons learned from the banking sector. However, in the mature current scheme, there remain firms that are eligible to participate but have not yet opted to do so.
- 6.23. Participation in the scheme is currently biased towards the largest players in the market; Nationwide Building Society is the only building society participant. In part, this is due to the lack of take-up of the alternative scheme for smaller banks and building societies. However, some building societies are now expressing renewed interest in joining the alternative scheme following amendments to its distribution structure by RFL. The BBSWG therefore disagrees with the Commission's recommendations to abolish the alternative scheme, and believes it should be maintained and reviewed again in three years.
- 6.24. As a first step, the BBSWG believes it is worth repeating the communication activities carried out at the scheme's inception. Many of the existing participants received direct government communications before the Act was passed. It is likely that issuing a similar message to the CEOs and Chairs of the largest non-participating banks and building societies could trigger a similarly successful response.
- 6.25. Longer term, a different approach may be required to sustain existing and encourage new participant engagement. The reconstitution of the banking sector's working group as part of the response to the Commission's report has demonstrated the value of a pan-sector focus. Going forward, this could be enabled by trade associations playing a convening role, facilitating the inclusion of dormant assets at meetings of any relevant industry forums.
- 6.26. Any additional action will need to be considered carefully, given the voluntary nature of the scheme. Currently, RFL is required to publish a list of participants and their contributions as part of its annual report. Whilst this provides some measure of recognition to participants, there is no equivalent list of non-participants. There are concerns that this data could be taken out of context and misinterpreted. It would also be essential to avoid any possibility of misunderstanding among customers, so that they retain total confidence that their long-term savings will not be lost to them.

6.27. Depending on the effectiveness of the mechanisms adopted, the range of outcomes could be significant. Encouraging the remaining large building societies to participate could see potential additional transfers to RFL of £25–60m as a one-off payment.<sup>7</sup> Additionally, there is further inflow potential from banks that contribute irregularly. This could add another £15–45m in one-off contributions.<sup>8</sup> Encouraging regular participation from both groups could see an additional £3–15m transferred per year.<sup>9</sup>

## CONCLUSION

- 6.28. To date, participating banks and building societies have transferred over £1.2bn into the scheme. Over £600m of funding from dormant accounts has been made available to good causes, benefiting people and communities across the UK. This is an impressive achievement, and the BBSWG commends all those who have been involved.
- 6.29. However, there remains an opportunity to increase the sector's contribution by encouraging additional participants and ensuring consistency of legislative interpretation.
- 6.30. To this end, the BBSWG expects that:
- The incremental Cash ISA opportunity could begin to flow through (if firms are not already including them) from 2020. This would not require any further government or regulator intervention, although further clarification on Cash ISA rules would be helpful.
  - While significant levels of participation have been achieved to date, there remain a number of significant players who have yet to contribute to the voluntary scheme. This may require the engagement of the government and regulators.

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<sup>7</sup> BBSWG estimates based on publicly stated accounts and a range of existing participant contribution levels.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

# Chapter 7

# INSURANCE AND PENSIONS

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## KEY RECOMMENDATIONS

- |              |  |                             |
|--------------|--|-----------------------------|
| <b>R7.1.</b> | All firms are encouraged to follow the Association of British Insurers' (ABI's) principles for reconnecting with gone-away customers (whether members of the ABI or not).  | <b>see 7.8</b>              |
| <b>R7.2.</b> | The insurance and pensions sector would like to work with Reclaim Fund Ltd (RFL) and the Financial Conduct Authority (FCA) on how best to recognise the sector principles on tracing, verification and reunification.  | <b>see 7.9-7.13</b>         |
| <b>R7.3.</b> | The Insurance and Pensions Working Group (IPWG) recommends a <i>de minimis</i> value of £100 per customer above which more robust tracing, verification and reunification efforts would be applied, and welcomes a dialogue with the FCA about this as part of a broader conversation on the best approach to tracing, verification and reunification.   | <b>see 7.14</b>             |
| <b>R7.4.</b> | For policies with a contractual end, the dormancy period is recommended to be seven years after the crystallising event or, where earlier, at the point at which it is identified that a deceased customer has no next of kin.   | <b>see 7.16, Figure 7.1</b> |
| <b>R7.5.</b> | For policies with no contractual end, the dormancy period is recommended to be whichever comes earlier: the point at which it is identified that a deceased customer has no next of kin, or seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.  | <b>see 7.16, Figure 7.2</b> |
| <b>R7.6.</b> | The working assumption is that firms are able to crystallise assets to cash at the end of the contractual term, but legal due diligence to confirm this is recommended. A sample of product terms and conditions for policies that crystallise to cash should be reviewed to assess the likelihood of firms being able to crystallise assets to cash, and therefore the likelihood of future legislation being required to address this potential issue. This should be conducted as part of this sector's preparations in 2019. | <b>see 7.16, 7.29-7.34</b>  |

## INTRODUCTION

- 7.1. The UK's insurance and pensions sector is the third largest in the world and manages investments worth £1.8tn. In 2017, there were over 58 million life and long-term savings policies in force, generating premium income of £180bn per year and paying out benefits worth £175bn.<sup>1</sup>
- 7.2. The IPWG includes representatives from the sector, regulatory and consumer bodies, and trade associations. A full list of IPWG members can be found in Annex A.

### Progress since the Commission on Dormant Assets' report

- 7.3. The IPWG reviewed and retested many of the assumptions and recommendations from the Commission's report,<sup>2</sup> and found itself aligned with many of the report's conclusions.
- 7.4. The IPWG developed the report's recommendations in several areas, the most significant of which is the proposal to introduce a phased approach to the inclusion of insurance and pensions assets, distinguishing between those assets that crystallise to cash and those that do not (see Figures 7.1 and 7.2, p.53 and 54).
- 7.5. The IPWG's terms of reference did not include reference to recalculating the quantum of potentially available assets, and this is one of the few areas that the IPWG has not sought to reconsider. However, if a phased approach to the inclusion of assets is adopted, it is likely that the quantum will initially be lower than those set out in the Commission's report.
- 7.6. The IPWG reviewed the Commission's recommendations on scope and agreed the following assets should be considered out of scope for the current proposed expansion of the scheme:
  - mutual funds
  - industrial branch policies
  - policies and assets held under group trusts, such as occupational pensions schemes, where dormant assets belong to a fund or group of investors, rather than a specific identifiable individual
  - general insurance assets
- 7.7. The IPWG felt that with-profits funds should be out of scope of the initial phases of the expansion. However, there was discussion that the inclusion of some with-profits funds should be kept under review for subsequent phases.

## TRACING, VERIFICATION AND REUNIFICATION

- 7.8. The ABI has drawn up principles for reconnecting with gone-away customers. The IPWG encourages all firms (whether ABI members or not) to follow these principles.
- 7.9. The IPWG fully supports the principle that every effort should be made to reunite customers with their assets. This is essential for ensuring that including insurance and pensions assets in any expansion of the scheme neither exploits nor is seen to exploit the typically lower level of engagement consumers have regarding these longer-term contracts.
- 7.10. The requirement to undertake tracing should form an integral part of deciding whether an asset is dormant or not. This gives consumers confidence that industry has taken all steps to reunite assets with their owners, and minimises disruption for RFL. The IPWG recognises that the average value of a dormant asset is much larger for this sector than in the existing scheme, and would like to work with RFL and the FCA on how best to recognise the sector principles on tracing, verification and reunification.
- 7.11. A problem for the insurance and pensions sector, in terms of maintaining contact with its customers, is the inherently long-term nature of the contracts provided. Many contracts do not require regular engagement from customers during their lifecycle, and this factor, when combined with the many mergers and acquisitions that often change the name of the company the customer originally contracted with, creates problems with reconnecting with customers, even when a customer has been successfully traced to an address.
- 7.12. The IPWG notes that the main barrier to reunification is often not an issue of tracing a customer to a particular address, but rather convincing the customer to re-engage with the firm (i.e. current market practice for verification). Chapter 2 covers this in more detail. The insurance and pensions sector intends to continue working with the ABI and to use its framework for the management of gone-away customers to increase rates of reconnection and reunification. In addition, the ABI will continue to engage with the FCA in the design of the reconnection regime so that firms can be confident that the regulator endorses their tracing efforts.

<sup>1</sup> Indicative figures provided by the ABI, November 2018.

<sup>2</sup> Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society, March 2017.

- 7.13. Along with the Securities Working Group (SWG), the IPWG supports the principle that there should be scope to levy a charge for tracing against the relevant asset when it is appropriate to do so (see Chapter 2, Section 2.14). However, it is anticipated that legislative change would be required to enable this given that few, if any, current product terms and conditions would allow for such a charge. The IPWG recommends legislative change to enable such a charge to be made for both existing and new contract sales. Firms should look to change the terms and conditions of new contracts accordingly, and ensure that customers are aware at the point of sale that such a charge may be made in the future.
- 7.14. In light of the potential costs of tracing, which could be as high as £150 for a deceased customer's estate, the IPWG supports the application of a proportionate *de minimis* threshold per customer where appropriate. Given the average value of a dormant asset is much larger for this sector than in the existing scheme, and more costly reunification efforts are undertaken, the IPWG recommends a value of £100 as a proportionate and appropriate *de minimis* level. Above this threshold, more robust tracing, verification and reunification efforts should be applied before transfer to RFL. The application of such a *de minimis* threshold would enable the insurance and pensions sector to manage its costs in relation to low value assets, which may be up to a third of customers with dormant assets transferring to RFL. The sector would welcome a dialogue with the FCA in 2019 on details as part of a broader conversation on the best approach to tracing, verification and reunification.

## DEFINITIONS OF DORMANCY

- 7.15. When defining dormancy for insurance and pensions assets, the IPWG took into consideration the definitions recommended by the Commission.
- 7.16. The IPWG sought a dormancy definition that would enable the greatest range of assets to be included in an expanded scheme with the least amount of legislative change required. Having considered several different options, the IPWG settled on defining dormancy by reference to those contracts identified by the Commission's report that crystallise to cash – either by operation of a contractual event (i.e. either the passing of a maturity date or the acceptance of a death claim), or because of some other legal or regulatory event, or because of the usual business practice of the firm concerned. The working assumption is that firms are able to crystallise assets to cash at the end of the contractual term, but legal due diligence to confirm this is recommended. This should be conducted as part of this sector's preparations in 2019. The IPWG also considered the existing scheme's use of a 15-year period until assets can be defined as dormant. However, adopting this would go against the experience of firms, which showed that the vast majority of customers come forward to claim policy proceeds within five years of the end of a contract. It was therefore felt that a seven-year period, also recommended by the Commission, was suitably prudent. The tables below set out dormancy definitions by product.

**Figure 7.1: Insurance and pensions policies with a contractual end date that potentially crystallise to cash**

Asset type	Trigger point for crystallisation of benefits	Minimum period following trigger point after which asset can be considered dormant	Actions to be taken during minimum period and prior to transfer of dormant asset to RFL
Savings Endowment	End of contractual policy term.	Seven years after end of contractual term (but see Section 7.19).	Undertake specified tracing activities using financial and residential data retained by the firm, as well as that which is publicly available, to try to trace the customer and, where appropriate, next of kin or estate executors/administrators and re-establish contact.
Savings Endowment	Death or illness claim accepted.	Whichever comes earlier: the point at which it is identified that a deceased customer has no next of kin, or seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.	
Term Insurance			
Defined contribution personal pension with requirement to purchase annuity or drawdown at age 75	Death claim accepted, or the date at which an annuity or drawdown arrangement was due to be purchased (e.g. at age 75) has passed.		
Annuity with guaranteed payment period	Death claim accepted during guaranteed payment period.		

**Figure 7.2: Insurance and pensions policies with no contractual end date that potentially crystallise to cash**

Asset type	Trigger point for crystallisation of benefits	Minimum period following trigger point after which asset can be considered dormant	Actions to be taken during minimum period and prior to transfer of dormant asset to RFL
Whole-of-life	Death claim accepted.	Whichever comes earlier: the point at which it is identified that a deceased customer has no next of kin, or seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.	Undertake specified tracing activities using financial and residential data retained by the firm, as well as that which is publicly available, to try to trace the customer and, where appropriate, next of kin or estate executors/administrators and re-establish contact.
Investment bonds			
Defined contribution personal pension with no requirement to purchase annuity or drawdown at age 75			
Income drawdown			
Deferred annuity	Death claim accepted during deferred period.		

## TRANSFER AND RECLAIM

### A phased approach

- 7.17. The IPWG supports the cross-sector agreement to introduce assets into the dormant assets scheme in a phased approach, as set out in Chapter 4. The insurance and pensions assets anticipated to be included within Phase Two of the expansion are set out in Figures 7.1 and 7.2 above.
- 7.18. It is intended that the scheme's expansion includes all contracts sold to date that meet the test of crystallising to cash, as well as all contracts that meet such criteria that are sold in the future.
- 7.19. One disadvantage of the proposed phased approach is that some firms do not crystallise an asset to cash after a natural policy event such as a maturity or death, either because of business practice or contractual necessity. This may initially reduce the number of assets that are transferred to RFL. It is hoped that, within the parameters of a voluntary scheme, those firms would move to amend their practices where possible to include crystallisation to cash, and thereby maximise the potential contributions to the scheme.
- 7.20. Once the assets in scope for Phase Two have been successfully included in the expanded scheme, subsequent phases would look at how assets that do not crystallise to cash by operation of a contractual, legal or regulatory event could also be included. If, as the IPWG suggests, only cash is ever transferred to RFL, this would require legislation to enable providers to unilaterally crystallise assets to cash. In doing so, it raises the question of how reclaim values for non-cash assets immediately prior to their crystallisation should be calculated. The IPWG has not considered this point in depth, but an approach where customers received the cash equivalent value of what their asset would have been worth at the point of reclaim had it not been transferred to RFL would seem to be a good way forward.

### Transfer and reclaim process

- 7.21. There will be a number of operational challenges for firms as they establish systems and controls to enable them to contribute to an expanded scheme. However, it is hoped that adopting a voluntary approach to both participation in and contribution to an expanded scheme will give firms sufficient flexibility to contribute assets to it without bearing significant costs.
- 7.22. The IPWG is particularly concerned to ensure that customers can always reclaim the amount that would have been due to them had a transfer into the scheme not occurred. This concern includes a desire to ensure that there is no double taxation of assets transferred to and/or reclaimed from RFL.
- 7.23. The IPWG anticipates that, from a practical point of view, reclaim arrangements in an expanded scheme will work in the same way as they do currently for banks and building societies. Experience with the current scheme is that customers will usually approach the provider firm direct, who will reimburse customers before subsequently reclaiming the matching amount from RFL.
- 7.24. Current practice regarding the application of interest to amounts that are then reclaimed by customers varies. This is because some contracts stipulate a rate of interest while others do not. Where a contractual rate of interest is not stipulated, practice among firms offering goodwill interest again varies.
- 7.25. Further consideration will need to be given to how interest payments, both goodwill and contractual, will interact with RFL. Various options are available, but seeking to develop a common approach across the sector for goodwill payments would be both complex and time-consuming. The IPWG therefore suggests that the treatment of interest should be a matter that is covered in the transfer agency agreement between the participating firm and RFL and negotiated bilaterally.



## BUILDING PARTICIPATION

- 7.26. Ensuring that firms, consumers and regulatory bodies support the inclusion of dormant insurance and pensions assets within an expanded scheme is crucial to securing its success.
- 7.27. At present, there is a good level of engagement with practitioners within firms. However, the IPWG felt it important to secure support at the executive level. To this end, the IPWG developed a proposed engagement brochure aimed at the Chief Executive Officers of firms. The brochure seeks to illustrate the benefits of participating in an expanded scheme, and to encourage executives to ensure their firms do so. The IPWG considers there to be merit in expanding the scope of this document to cover all sectors, and that this should be considered holistically as part of the development of a communications programme to promote the expansion of the scheme.
- 7.28. The IPWG feels that participation would be significantly improved if firms had a better understanding of how dormant assets are allocated and used after RFL releases them to The National Lottery Community Fund (previously the Big Lottery Fund). The IPWG recommends that there is significantly improved transparency on this front, and that ways in which industry can be better engaged in the impact of the scheme are considered. For example, the emerging work on financial inclusion could be an opportunity for industry to support the scheme on the distribution side.

## LEGISLATION AND REGULATION

- 7.29. Further legal analysis is required into the circumstances under which insurance and pensions firms do and do not have contractual or statutory powers to convert non-cash assets into cash (i.e. crystallising a policy into a cash value).
- 7.30. The inclusion of dormant insurance or pensions assets that do not crystallise to cash because of a natural contractual or regulatory event will require legislative change to accomplish. This will allow firms to overrule any product terms and conditions and unilaterally crystallise assets to cash.
- 7.31. The IPWG has considered whether the transfer of a dormant asset might be viewed as a transfer of insurance business under Part VII of the Financial Services and Markets Act 2000 (FSMA). This section of FSMA sets out the statutory mechanism that must be followed when transferring insurance business from one entity to another, the most notable part of which is that such a transfer requires court approval. Legal advice was sought on this. Initial conclusions were that the proposal for Phase Two of the scheme's expansion, as outlined in Sections 7.16 – 7.20, should mean that any transfer of a dormant insurance or pensions asset to RFL will not be subject to the Part VII FSMA requirements because the dormant asset would crystallise to cash prior to the transfer.

- 7.32. When this sector starts to consider the inclusion of assets that do not crystallise to cash in an expanded scheme (see Section 7.20), whether the requirements of Part VII FSMA apply will need to be given careful consideration. If the inclusion of assets in subsequent phases is accompanied by a decision to forcibly crystallise those assets to cash, a change in legislation will be required to allow providers to do so.
- 7.33. Legislation would also be required if firms are to be allowed to levy a charge against the relevant asset for the costs of tracing activities. It is unlikely that current product terms and conditions would allow such a charge to be levied, and so a legislative change would be required to cover both assets that crystallise to cash and those that do not.
- 7.34. In taking part in an expanded scheme, firms would want to ensure that the maximum degree of consumer protection is provided. Crucial to this is the need to ensure that there is no risk of an asset being taxed twice if it is transferred to, and then reclaimed from, RFL. For example, there would be tax implications if HM Revenue & Customs considered a transfer of dormant pensions assets from a participating firm to RFL to be an unauthorised payment. To that end, the IPWG thinks it essential that the government ensures that any such risk is eradicated. These issues and associated recommendations are explored further in Chapter 10.

## CONCLUSION

- 7.35. The inclusion of assets from the insurance and pensions sector in an expanded dormant assets scheme represents a significant opportunity. As industry works together to coordinate tracing, verification and reunification efforts, the sector should see an increase in the number of assets that are reunited with their beneficial owners – the best outcome of any scheme expansion. Where reunification is not possible, the proposed expansion will provide firms with a framework within which they can deal with dormant assets and channel them towards good causes. Consumers will be protected through the tracing, verification and reunification efforts firms will undertake before any transfer to RFL takes place, as well as through the provision of reclaim rights from RFL in perpetuity.
- 7.36. While the insurance and pensions sector may be a willing participant in the expansion of the current scheme, it cannot do so without the assistance of the government and regulators to ensure that the relevant legislation and regulatory endorsements are in place to facilitate the transfer of dormant assets to RFL.
- 7.37. The insurance and pensions sector looks forward to working with the government and regulators to achieve the stated aim of participation in an expanded scheme and increased rates of reunification of customers with their assets.

# Chapter 8

# INVESTMENT AND WEALTH MANAGEMENT

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## KEY RECOMMENDATIONS

- R8.1.** Members of The Investment Association (The IA) are encouraged to follow The IA's principles for tracing gone-away customers. **see 8.6–8.7**
- 
- R8.2.** The investment and wealth management sector would welcome a discussion with the Financial Conduct Authority (FCA) and Reclaim Fund Ltd (RFL) in 2019 on the *de minimis* limit as part of a broader conversation on the best approach to the tracing, verification and reunification of customers with their assets. **see 8.8**
- 
- R8.3.** The Investment and Wealth Management Working Group (IWMWG) recommends that firms in its sector define dormancy at the customer level, so that all of a customer's assets are identified as dormant in a consistent manner. In line with the current Act Guidance notes, the government should consider how future legislation may enable providers to consider client activity on other accounts within the same firm when defining dormancy. This would enable firms in the investment and wealth management sector to choose to define dormancy at the customer level without hindering other sectors' ability to transfer to RFL on an account or product level. **see 8.11**
- 
- R8.4.** The period of dormancy in the investment and wealth management sector should be measured as follows:
- where the customer is owed or holds a cash amount only (potentially from an outstanding unclaimed distribution or unpaid redemption proceeds), and it has been outstanding for a six year minimum period from the date payment became due
  - where the customer has holdings in unit trusts and/or Open-Ended Investment Companies (OEICs) (and potentially also a cash amount), and a gone-away indicator has been added a minimum of 12 years ago and there have not been any active transactions on the customer's account
- see 8.10-8.17**
- 
- R8.5.** Once addressed in any subsequent phases, the timing of the liquidation of non-cash dormant assets being transferred to RFL as cash should be in line with firms' own policies. **see 8.19**
- 
- R8.6.** The government should consider an undertaking that, in the event of a subsequent claim for a non-cash asset, the customer will only be entitled to an equivalent cash payment (in line with the principle of full restitution) and not reinstatement of the original investment. **see 8.23**
- 
- R8.7.** Clarification in future legislation is sought around the exact point in time that the cash amount due to a customer is calculated for a reclaim. **see 8.25**
- 
- R8.8.** The FCA should consider changes to the Client Assets Sourcebook (CASS), the Collective Investment Schemes (COLL) sourcebook, and other relevant rules to facilitate the transfer of dormant assets in this sector and liability for meeting reclaims to RFL. **see 8.28–8.30**

## INTRODUCTION

- 8.1. The IWMWG includes a wide variety of firms and trade associations. It has been assisted in its work by The IA Dormant Assets Technical Group. A full list of IWMWG members and The IA Dormant Assets Technical Group members can be found in Annex A.
- 8.2. The IWMWG fully supports the expansion of the current scheme. While the inclusion of non-cash assets would significantly increase the pool of dormant assets potentially made available to good causes, it would also introduce some significant challenges.

### Progress since the Commission on Dormant Assets' report

- 8.3. The IWMWG recommends a definition of dormancy that will largely align with existing regulations and processes, and will therefore help encourage voluntary participation in the scheme.
  - 8.4. The IA have published principles for tracing gone-away customers, which should meet the aims of reconnecting with customers and improving reunification rates.
  - 8.5. The IWMWG supports the principle of full restitution in perpetuity and has considered the operational and tax challenges that follow from this. While good progress has been made, it is recognised that some significant challenges remain, and further work is required to allow the scheme to be expanded to include non-cash assets.
- ## TRACING, VERIFICATION AND REUNIFICATION
- 8.6. As acknowledged in the Commission's report, there are wide inconsistencies in practices to trace customers and reunite them with their assets within the investment and wealth management sector.<sup>1</sup> In response to this, The IA set up a Dormant Assets Technical Group with the initial aim of bringing consistency to tracing practices. They have drawn up principles for tracing gone-away customers, which have recently been published.<sup>2</sup> The IA and the other trade associations are encouraging their members to follow these principles.
  - 8.7. The key principles outlined by The IA are in line with the standard practices proposed in Chapter 2. They recommend that:
    - A customer's account can be considered gone-away when the firm has lost faith in the contact details that it holds for a customer, and it has been unsuccessful in authenticating the customer's current contact details.
    - Firms should consider the use of clear and transparent messaging explaining that customers need to ensure that all their contact details are kept up-to-date.
    - Due to the costs of the tracing, verification and reunification activity, firms may consider having a *de minimis* limit, which should be applied to the total value of a customer's holdings (including historical money balances and unclaimed distributions). Above the *de minimis* level, more robust tracing exercises such as using a tracing agency would be applied prior to any transfer of assets to RFL.
    - Consideration should be given to naming an individual responsible for managing the gone-away process. This role should encompass documenting the process, record-keeping and regular reporting to senior management, boards and relevant legal entities.
  - 8.8. The investment and wealth management sector would welcome a discussion with the FCA and RFL in 2019 on the *de minimis* limit as part of a broader conversation on the best approach to the tracing, verification and reunification of customers with their assets.
  - 8.9. The tracing of gone-away customers in this sector would be greatly assisted by access to government data, as discussed in Chapter 2, Sections 2.17–2.18.

<sup>1</sup> [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017.

<sup>2</sup> Only available on members' section of The IA's website.

## DEFINITIONS OF DORMANCY

- 8.10. In defining dormancy, the IWMWG has concentrated on regulated unit trusts and OEICs. As acknowledged in the Commission's report, these are the most readily available schemes to retail clients. Child Trust Funds are not currently being considered as in scope due to their relative immaturity as products. In addition, the working groups (both the IWMWG and The IA's Technical Group) have taken into consideration inactive cash balances including, but not limited to, unclaimed distributions and unpaid redemption proceeds.
- 8.11. The IWMWG recommends that firms in this sector base the definition of dormancy at the client level, rather than the product/account level. This intends to ensure that all of a customer's assets can be considered dormant in a consistent manner. In line with The IA's principles, assets should only be considered dormant after the customer has been identified as gone-away, and all attempts to trace the customer have been unsuccessful.
- 8.12. The sector's definition of dormancy is divided into two parts in order to facilitate eligible assets being transferred to RFL in a phased approach. As outlined in Chapter 4, Sections 4.8-4.12, Phase Two of the expansion will first move cash-only balances, while other assets will be considered for inclusion at a later date.
- 8.13. Dormancy should be considered in two stages, in line with current sector practices:
- where the customer is owed or holds a cash amount only (potentially from an outstanding unclaimed distribution or unpaid redemption proceeds), and it has been outstanding for a six year minimum period from the date payment became due
  - where the customer has holdings in unit trusts/OEICs (and potentially also a cash amount), and a gone-away indicator has been added a minimum of 12 years ago and there have not been any active transactions on the customer's account.
- 8.14. Active transactions should include regular saving payments or mandated income payments to a bank account, which have not been rejected. The assets relating to their unit trusts/OEICs should include unclaimed distributions and unpaid redemptions and, in the case of Platforms, inactive cash dealing accounts. In addition, depositaries would like the option to transfer to RFL money that has been received for a fund that has wound up but is too small to distribute to the last unitholders of the fund. As per Chapter 4, Section 4.11, these orphan monies are currently paid to the courts but could be used to benefit society instead.
- 8.15. An advantage to individual firms participating in this scheme is that they will be able to reclaim the equivalent cash payment (in line with the principle of full restitution) of customer claims from RFL, which may be material in the case of non-cash assets.
- 8.16. The choice of dormancy periods has been guided by existing practices for unclaimed unwrapped distributions and client money held under the FCA's CASS regime. Six years is the current period used within COLL for being able to pay unclaimed distributions to the fund. Moreover, under CASS 7, it is permitted to pay client money to charity if held for at least six years following the last movement on the customer's account. Firms that are regulated under CASS 6 are permitted to liquidate unclaimed non-cash assets if held for at least 12 years and pay the cash to charity.
- 8.17. The dormancy definition should apply to Individual Savings Accounts, unwrapped unit trusts, and OEICs.

## TRANSFER AND RECLAIM

- 8.18. The IWMWG supports a phased approach to transferring assets to the scheme in line with Chapter 4, Figure 4.1 (p.33). To operate a phased approach, firms should look to transfer amounts from clients with cash only to RFL in Phase Two, provided appropriate legislative changes and amendments to CASS and COLL have been implemented. The IWMWG considers the approach to cash to be very similar to the process many firms already operate under CASS, and can therefore be progressed relatively quickly.
- 8.19. There are some significant issues to resolve with non-cash assets, hence the recommendation for these to be included in any subsequent phases. Once addressed, the timing of the liquidation of non-cash dormant assets being transferred to RFL as cash should be in line with firms' own policies.
- 8.20. One of the key principles for the current dormant assets scheme is that there is full restitution for customers. Firms within the investment and wealth management sector have a fiduciary responsibility for their clients' assets and, therefore, this remains a key principle for this sector.
- 8.21. The level of dormant non-cash assets is much greater in this sector than the level of the dormant cash-only assets. Some firms currently pay unclaimed cash assets to charity but, as required under CASS, they must meet any future claim from the client for their cash assets. Due to the potentially large sums associated with non-cash assets, firms are unlikely to volunteer for an open-ended risk position for these. It is therefore important for RFL to have the ability to accept non-cash assets and provide full restitution for them from the investment and wealth management sector to secure their inclusion in an expanded scheme.
- 8.22. It is not practical at this stage for RFL to accept dormant non-cash assets. Instead, firms should liquidate all holdings and transfer the cash proceeds, along with high-level fund information, to RFL. To provide full restitution in this scenario, RFL will need to obtain the appropriate technical expertise to manage the ongoing market and reclaim risks (Chapter 4, Section 4.5).
- 8.23. The government should consider an undertaking that, in the event of a subsequent claim for a non-cash asset, the customer will only be entitled to an equivalent cash payment (in line with the principles of full restitution) and not reinstatement of the original investment.

- 8.24. Firms should continue to maintain customer records and would be the first point of contact in the case of a subsequent claim. In line with the current scheme, firms should be able to claim from RFL the full cash value of the assets due to the customer as if the transfer had not taken place. As explained in Chapter 4, Sections 4.27-4.28, firms should be expected to pay reclaims to clients and then claim the money back from RFL on a quarterly basis. However, if a firm receives one or more reclaims of a size it is not be able to meet, it would be able to reclaim these immediately from RFL before paying the client.
- 8.25. Clarification in future legislation is sought around the exact point in time that the cash amount due to a customer is calculated for a reclaim.

## BUILDING PARTICIPATION

- 8.26. There has been considerable interest and representation in the IWMWG from several trade associations as well as a variety of firms, as Annex A attests. This suggests that many firms within the sector are keen to consider participating in an expanded scheme.
- 8.27. It will be important to achieve a high level of visibility and transparency regarding the mechanism used for onward distribution of the money, as well as its positive impact on people and communities. It is recognised that some wealth managers that currently pay unclaimed money to their local charities do not want to lose this local connection. They would like the ability to access an alternative scheme for smaller institutions with strong local affiliations along the lines of that currently available to smaller banks and building societies (see Chapter 5, Sections 5.28-5.29). However, the IWMWG is ultimately supportive of RFL's role as a distributor of dormant assets funds to support good causes, not simply as a guarantor of full restitution. It therefore supports a restricted alternative scheme that does not undermine the success and impact of the main scheme.

## LEGISLATION AND REGULATION

- 8.28. Ultimately, the success of the scheme in this sector will be reliant on legislative changes that discharge firms and depositaries/trustees from any liability in relation to transferring assets to RFL. Chapter 10 goes into more detail on this.
- 8.29. Some firms already pay unclaimed cash and non-cash assets to registered charities, as permitted under FCA CASS rules. Changes would need to be added to CASS to permit equivalent transfers to RFL.
- 8.30. The role of the FCA in determining the changes required to CASS, COLL and other relevant rules, along with the content of the final rules and guidance is important. This is not only because the FCA is charged with enforcing the rules, but also because the process for making rules and guidance under the Financial Services and Markets Act (FSMA) 2000 requires the FCA to consult all stakeholders on their content. Moreover, the FCA has an operational objective to secure an appropriate degree of protection for consumers.

## CONCLUSION

- 8.31. The investment and wealth management sector believes that the adoption of common tracing principles will significantly improve firms' ability to reconnect with gone-away customers. For those cases where reunification proves not to be possible, the IWMWG fully supports the release of dormant assets for use in support of good causes.
- 8.32. The IA has now published its principles for tracing, verification and reunification, and it is encouraged that these are widely adopted across the sector in 2019 as part of Phase One of the expansion of the scheme. Firms are further encouraged to use these principles to refine their definition of gone-away customers, and subsequently attempt to put a value on both the size and age of dormant assets they hold to refine the Commission's estimate of dormant assets in this sector.

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# Chapter 9

# SECURITIES

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## KEY RECOMMENDATIONS

- |               |   |  |
|---------------|---|--|
| <b>R9.1.</b>  | Companies in the securities sector should consider proactively reviewing their security holder base on a regular basis.   | <b>see 9.11</b>  |
| <b>R9.2.</b>  | Companies in this sector should not be required to repeat tracing attempts; rather, this should be optional to account for differences in companies' size and abilities.  | <b>see 9.11</b>  |
| <b>R9.3.</b>  | Companies in this sector should not set targets related to the reunification of dormant assets. It is felt that the passive nature of the relationship with the shareholder in this particular sector would make this inappropriate, and may drive the wrong kind of behaviour in order to meet them.   | <b>see 9.11</b>  |
| <b>R9.4.</b>  | The securities sector should adopt a three- and seven-point 'Track and Trace' process.  | <b>see 9.13, Figure 9.1</b>  |
| <b>R9.5.</b>  | The scope of dormant assets that the Securities Working Group (SWG) has considered is only within public companies. For shares and unclaimed dividends, dormancy should be defined as a period of no shareholder-initiated contact for 12 years and: <ul style="list-style-type: none"> <li>● the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)</li> <li>● where applicable, at least three dividends have become payable but have not been cashed.</li> </ul> | <b>see 9.17–9.19</b>   |
| <b>R9.6.</b>  | During 2019, ICSA: The Governance Institute's Registrars Group should determine a definition of 'no contact' for the purpose of defining a gone-away shareholder.   | <b>see 9.20–9.22</b>   |
| <b>R9.7.</b>  | For proceeds from corporate actions, dormancy should be defined as 12 years of no shareholder-initiated contact from the point at which the company received the consideration.   | <b>see 9.24</b>  |
| <b>R9.8.</b>  | The government should consider amending the Companies Act 2006 to allow the proceeds from corporate actions to be passed to Reclaim Fund Ltd (RFL) instead of the courts.   | <b>see 9.30</b>  |
| <b>R9.9.</b>  | The Financial Reporting Council (FRC) should consider encouraging companies to disclose details of dormant assets in their annual reports, and to continue discussions to develop a 'participate and explain' approach to participation in an expanded scheme.  | <b>see 9.43</b>  |
| <b>R9.10.</b> | The government should consider implementing a statutory instrument or primary legislation to amend companies' articles of association to allow companies to specify the terms on which the shares would be forfeited (including the dormancy period and a <i>de minimis</i> tracing level) prior to passing funds to RFL. The position of share registrars should also be clarified to ensure they do not bear responsibility for restitution.  | <b>see 9.48–9.49 (also 9.23, and 9.14–9.16 on the <i>de minimis</i> level)</b> |
| <b>R9.11.</b> | The Financial Conduct Authority (FCA) should consider amendments to the Client Assets Sourcebook (CASS) rules to enable dormant shares and unclaimed dividends held within a Corporate Sponsored Nominee (CSN) to be transferred to RFL.  | <b>see 9.50–9.53</b>   |
| <b>R9.12.</b> | The government should consider the impact of the proposals on dematerialisation and how this may impact an expanded scheme if progressed.   | <b>see 9.55–9.57</b>   |

## INTRODUCTION

- 9.1. The London Stock Exchange is one of the world's largest and most international stock exchanges. The primary market of the London Stock Exchange comprises over 1,100 companies and has a market value of around £3.8tn.
- 9.2. The SWG was established in June 2018, comprising individuals with appropriate knowledge and experience of dealing with dormant equity and debt securities of UK listed companies. A full list of SWG members can be found in Annex A.
- 9.3. The SWG agrees that issuers should consider using dormant securities to support good causes rather than flowing back to the company or remaining idle on its share register or in an unclaimed dividend account. As governance initiatives evolve, companies are under increasing scrutiny to show how they provide benefit to society and the communities in which they operate. Using dormant assets in this way provides companies with the opportunity to enhance their reputation and make a positive contribution to good causes in the UK.
- 9.4. The SWG recognises that investment can be a long-term decision and that investors have no legal obligation to make proactive contact with corporate issuers or their appointed agents. All recommendations in this chapter have been made with this in mind, and are based upon making reunification efforts prior to transfer to RFL, as well as the principle of full restitution to the investor upon reclaim.
- 9.5. This chapter sets out the position for the securities sector for discussion and debate, detailing:
  - standardisation of tracing and verification efforts to enable securities to be reunited with their beneficial owners
  - measures to be taken to define the dormancy period
  - the reasons for the proposed length of dormancy for securities
  - the challenges and risks of transferring securities based on full restitution
  - building participation
  - legislation and regulation.
- 9.6. The SWG recognises the need for a simple and consistent approach to managing dormant assets, and this chapter should therefore be taken in the context of the preceding and subsequent thematic chapters.

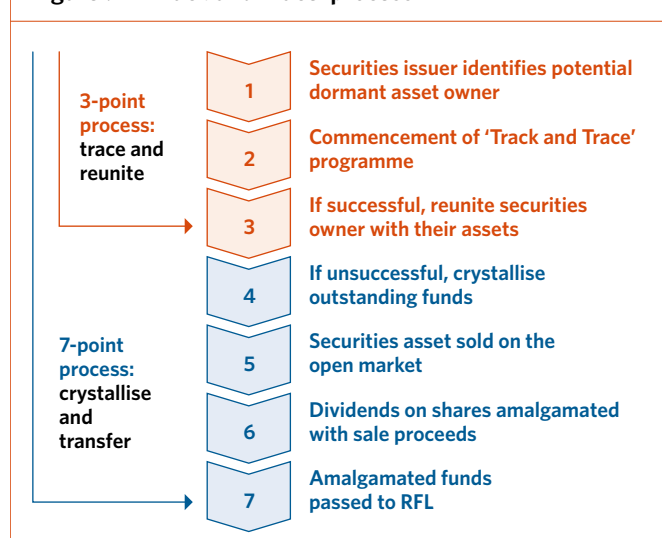
## Progress since the Commission on Dormant Assets' report

- 9.7. The SWG has focused on establishing the definition of dormancy and developing a consistent approach to tracing, verification and reunification that is straightforward and cost-efficient in order to drive greater voluntary participation in the scheme.
- 9.8. The SWG has discussed at length the legal and regulatory challenges of transferring such securities as part of the scheme, and these have been shared across the other three sectors. Details of these can be found in Chapter 4.
- 9.9. As part of its scoping work, the SWG has considered the inclusion of unclaimed bond repayments and coupons in an expanded scheme. As most corporate bonds are held in pooled investment vehicles by institutions, with a low level of bonds held directly or by private individuals, the overall value of unclaimed bond repayments and coupons would not be significant. Whilst the market for retail bonds, which specifically target private investors, continues to grow, it is significantly smaller than that for corporate bonds. Retail bonds have only been trading on the London Stock Exchange's Order book for Retail Bonds since 2010. After careful thought, the SWG recommends that bonds should not be included in an expanded scheme.

## TRACING, VERIFICATION AND REUNIFICATION

- 9.10. The SWG fully supports the principle that the priority of a company should be to reunite an asset with its beneficial owner before considering transfer to RFL for onward distribution to good causes. Likewise, companies and their registrars should encourage shareholders to ensure their contact details are kept up-to-date.
- 9.11. The SWG recommends that companies should consider proactively seeking to reunite gone-away shareholders with their shares on a regular basis. This could be done following payment of a dividend for those holders whose dividend is returned unpaid, or where contact has been lost with the shareholder for a period of time. However, holding securities can be inherently passive, which makes convincing shareholders to respond to tracing efforts more difficult. There is no requirement that a shareholder exercise any of the rights resulting from their ownership, such as casting votes at general meetings. As a result, and in light of the costs associated, the SWG does not recommend that companies should be required to make several reunification attempts (as proposed in Chapter 2, Section 2.6 and Annex C) prior to a security being declared dormant, although some companies may wish to do so. In addition, companies in this sector should not set targets related to the reunification of dormant assets. It is felt that the passive nature of the relationship with the shareholder in this particular sector would make this inappropriate, and may drive the wrong kind of behaviour to meet them.
- 9.12. The requirement to trace a gone-away shareholder should be integral to determining dormancy. The SWG recommends that a company should be required to conduct a tracing exercise a maximum of 12 months prior to any transfer of funds to RFL in order to determine whether a shareholding is dormant or not.
- 9.13. To promote a consistent approach across the sector to tracing, verification and reunification, the SWG recommends a streamlined, three- and seven-point 'Track and Trace' process.

**Figure 9.1: 'Track and Trace' process**



- 9.14. The SWG recognises that the cost of tracing a shareholder to reunite them with their securities can be significant. It is recommended that the costs associated with the tracing, verification (where required) and reunification of securities are proportionate to the dormant asset in question. In light of this, and in line with other sectors, the SWG supports applying a *de minimis* value for tracing. Above this level, more robust tracing exercises should be applied. Below this level, practitioners may apply their own internal procedures to govern the process, following which such holdings could be transferred to RFL once dormant. For the financial services firms in the securities sector, FCA endorsement of a *de minimis* value is encouraged.
- 9.15. Amendments to companies' articles of association may be required allow companies to adopt a *de minimis* level. The government is asked to consider implementing any necessary legislation to enable this.
- 9.16. The cost of tracing a customer to reunite them with unclaimed securities and dividends is a major challenge to participating in an expanded scheme. Current market practice allows a company to recover costs in tracing gone-away holders of securities, and dealing costs in crystallising an asset from the proceeds of forfeited shares. Therefore, the SWG recommends that consideration be given to whether companies could recover these costs from the crystallisation of any asset disposal prior to the monies being passed to RFL. This would result in a net amount being transferred to RFL and would encourage participation in this sector.

## DEFINITIONS OF DORMANCY

- 9.17. Current market practice is for companies' articles of association to provide for share forfeiture and unclaimed dividend release after 12 years of no shareholder-initiated contact. While some companies may have a period of less than 12 years, a period above 12 years is highly unusual. A review of FTSE 100 companies, undertaken for the SWG in the summer of 2018 by Freshfields Bruckhaus Deringer, found that 83 companies had a dormancy period of 12 years for share forfeiture, two companies had a period of 10 years, and five companies had a period of six years, with 10 companies having no share forfeiture provisions in their articles.
- 9.18. The SWG does not recommend that dormancy periods be aligned with current practice in the banking sector. Given the voluntary nature of the expanded scheme, a longer dormancy period of 15 years may deter companies from participating. It is likely that some firms would choose to avoid, (i) the need to amend their articles of association, and (ii) the additional cost of retaining gone-aways on the share register for an extra three years. A longer dormancy period may also increase the difficulty of tracing a gone-away shareholder. Given this, the SWG recommends dormancy continues to be defined in the securities sector at 12 years.

- 9.19. The SWG agrees that, for both shares and unclaimed dividends, dormancy should be defined as occurring where there is a period of no shareholder-initiated contact for 12 years and:
- the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)
  - where applicable, at least three dividends have become payable but have not been cashed.
- 9.20. Any further enhancements to the definition of a gone-away will need to be decided upon by the Institute of Chartered Secretaries and Administrators (ICSA) Registrars Group in conjunction with issuers.
- 9.21. The gone-away could then be defined as dormant once a three-point 'Track and Trace' exercise had been followed to try to reunite the shareholder with their assets.
- 9.22. The ICSA Registrars Group will work to define a practical solution for the definition of 'no contact', ensuring that the views of all registrars are taken into account. This work is ongoing and will be finalised during 2019.
- 9.23. In order to implement a consistent share forfeiture programme, companies would have to amend their articles of association to include a template article that would set out the terms upon which a share would be forfeited and funds passed to RFL. To avoid companies needing to seek shareholder approval to amend their articles, the government is requested to consider implementing a statutory instrument or a piece of primary legislation that accomplishes this.
- 9.24. The Companies Act 2006 requires that proceeds from corporate actions (e.g. takeovers) be held for a period of 12 years. If left unclaimed, it provides for the shares to be sold and for the proceeds to be paid into the courts. The SWG believes this period of dormancy should be maintained as it aligns with the proposed dormancy period for shares and unclaimed dividends. For proceeds from corporate actions, therefore, dormancy should be defined as 12 years of no shareholder-initiated contact from the point at which the company received the consideration.
- 9.25. The SWG recognises that there is no obligation on a shareholder to maintain or initiate contact, or to attend or vote at a general meeting. Therefore, if a company does not declare dividends, there is a higher chance that shares could be classified as dormant as only one of the conditions in Section 9.19 would need to be fulfilled. However, given the requirement for companies to undertake the three-point 'Track and Trace' exercise under the dormancy definition, and the right of shareholders to receive full restitution for assets transferred to an expanded scheme in perpetuity, the SWG considers this definition of dormancy to protect the shareholder appropriately.

## TRANSFER AND RECLAIM

### Approach to transfers

- 9.26. Shares should first be liquidated into cash. An amalgamation of proceeds from the sale of shares (net of reasonable costs, as proposed in Section 9.16 above), together with unclaimed dividends in respect of those shares, should then be transferred to RFL. The existing method for cash to be transferred to and reclaimed from RFL, as described in Sections 4.15-4.19, should be adopted by the securities sector.
- 9.27. Companies may follow the principles currently used by banks and building societies to transfer their dormant assets to RFL on an annual basis, and in line with the established principles. For each company, an annual date will be agreed when it can transfer dormant assets to RFL. In line with the voluntary nature of the scheme, it will not be required to transfer assets every year.
- 9.28. It is recognised that tracing activities will need to be carefully coordinated to ensure that shares are forfeited as close as possible to the annual transfer date to RFL, to avoid facing a reclaim in advance of monies being passed to RFL.
- 9.29. The transfers should be accompanied with high-level data to assist RFL with its risk modelling. Companies will need to ensure they have the appropriate processes and systems in place to be able to provide this information, and for RFL to receive and store it. Chapter 4, Section 4.5 outlines this in more detail.
- 9.30. The SWG believes that the dormant proceeds from corporate actions should be included in an expanded scheme. Where there is a compulsory squeeze out, however, the Companies Act 2006 requires any unclaimed proceeds that are held for a period of 12 years, and where reasonable enquiries have been made to find the relevant shareholder, to be paid into the courts. It is proposed that the government considers amending the Companies Act 2006 to permit unclaimed cash and shares of a dissentient shareholder, who has not responded for 12 years, to be sold and transferred to RFL. Alternatively, to avoid the need for primary legislation, the government could consider passing secondary legislation to direct the courts to transfer any assets it receives in this way to RFL. Individuals who currently re-engage with the company concerned should be entitled to full restitution.

### Approach to reclaims

- 9.31. Around 5% of transfers under the current scheme for banks and building societies are reclaimed. Despite this low rate, it is vital to have a robust process to cater for reclaims. One of the key principles of an expanded scheme is that of full restitution: Shareholders should always be able to reclaim the amount that would have been due to them had a transfer into the scheme not occurred.

- 9.32. Currently, where a company's articles include share forfeiture provisions, these do not normally permit a shareholder whose shares have been forfeited to make a claim for them. On a discretionary basis, however, some companies agree to pay a claimant the value of the shares at the time they were forfeited. Current practice is to deduct any tracing or dealings costs associated with doing so from the value reimbursed to the shareholder. In addition, these articles typically provide for shareholders to lose their entitlement to the relevant dividend if it has not been claimed for 12 years from the date it became payable.
- 9.33. Companies who participate in an expanded scheme will have the benefit of being able to provide full restitution to a claimant. RFL would provide the market value of the shares, plus the dividends paid by the company on their shares, and the value of any corporate actions between the date of transfer of monies to RFL and the date the claim is verified. This would ensure a claimant is put back into the same financial position as they would have been, net of any tracing and/or dealing costs, had the shares and dividends not been forfeited and transferred to RFL.
- 9.34. For the purpose of calculating the value of reclaims, the SWG does not recommend companies in the securities sector maintain a shadow register (as proposed in Chapter 4, Sections 4.29-4.30) as this would create potential additional ongoing costs for participants. Instead, at the issuer's request, a register may be kept by the relevant registrar, showing:
- the name and address of the holder of forfeited shares
  - the number of shares
  - the amount of unclaimed dividends transferred to RFL
  - the date of transfer.
- 9.35. However, the register will not be updated to reflect these events following the transfer of monies to RFL:
- any changes in the value of a share
  - the payment of any dividends
  - the impact of any other corporate actions following the transfer of monies to RFL.
- 9.36. To provide full restitution, reclaim amounts should be calculated at the point at which the shareholder formally applies to reclaim the relevant share(s), subject to verification. To assist companies or registrars in calculating such amounts, it is proposed that information available from Datastream or similar third parties is used as a basis for calculations. Chapter 10, Sections 10.31-10.32 includes a consideration of full restitution in the case of insolvency, but further work is needed to understand what, if any, assets could or could not be claimed by a former shareholder, the issuer or their appointed insolvency practitioner.
- 9.37. It is important to recognise that, while in many cases determining the amount owed will not present any material difficulties, in other cases (e.g. takeovers) it will be more challenging – and that, over time, those challenges are likely to increase.

## BUILDING PARTICIPATION

- 9.38. Ensuring that companies, employees, investors, regulators and other stakeholders are aware of the expanded scheme and its contribution to good causes is vital to ensuring its success.
- 9.39. Developing a consistent way of communicating the expanded scheme to companies, including Boards of Directors, is key to creating visibility and encouraging participation. It is also important to achieve a high level of visibility and transparency over the workings of RFL to provide confidence in its ability to pay reclaims and distribute the surplus to good causes.
- 9.40. In discussing the barriers to entry to an expanded scheme, companies stress that clear incentives and simplicity of operation are crucial. As the scheme is voluntary, the SWG believes it is imperative that these matters are addressed to facilitate participation.
- 9.41. A particular advantage for companies in participating in an expanded scheme is that they will be able to pass any financial liability for subsequent claims to RFL, and be able to offer full restitution for any subsequent claimants. As this is better than the current market practice, it should encourage participation if appropriately promoted.
- 9.42. A survey of FTSE 350 companies by the ICSA Registrars Group in September 2018 showed that only 13% operated a share forfeiture programme. This suggests that, while companies have the ability to reunite shareholders with their shares, and to conduct share forfeiture exercises where unsuccessful, the majority of companies do not currently do so. The survey also showed that fewer than 46% of participants were aware of the expansion of the dormant assets scheme, evidencing the need for the scheme to be publicised to encourage participation.
- 9.43. While the expanded scheme will be voluntary, the SWG believes that greater transparency around dormant assets could increase participation and, ultimately, the amount distributed to good causes. Initial positive discussions have taken place with the FRC to encourage companies to disclose in their annual reports:
- details of the aggregate value of dormant assets held by them
  - how much they have raised from forfeited shares and unclaimed dividends
  - how such monies were used.
- It is recommended that these discussions continue with the FRC with a view to developing a 'participate and explain' concept for dormant assets.
- 9.44. Given that a number of companies already use funds from share forfeiture exercises to support good causes, the SWG believes that the government should consider expanding the current alternative scheme for smaller banks and building societies to encourage companies from other sectors to continue supporting causes that are local to them.

- 9.45. Given the different characteristics of the assets being considered for participation in an expanded scheme, it is proposed that a phased approach be adopted. Phase One in the securities sector should focus on developing and implementing the 'Track and Trace' process for reuniting shareholders with their assets and continuing preparatory work with RFL to include new types of assets in the scheme. Following legislative and regulatory changes, Phase Two for this sector should focus on the transfer of unclaimed shares and dividends. Subsequent phases should focus on unclaimed shares and dividends arising from corporate actions, as well as transfers from CSNs, due to their complexity. Adopting a phased approach will allow RFL time to build and develop the capabilities for managing the market value risk of non-cash assets, and for companies to put in place the appropriate processes over time and increase their confidence in participating in the scheme.
- 9.46. A more detailed analysis would have to be undertaken before transferring assets that had undergone a corporate action, i.e. a takeover, merger, rights issues or multiple actions. Calculating the market value for these types of assets may be more complicated. For example, a company might de-merge part of its business as a separate entity, which could in turn be acquired by another company. A gone-away shareholder in the original company would be entitled to restitution for the value of the original shareholding as well as the value of their shares with the new company post-acquisition.
- 9.47. By developing a simple and low-cost way for companies to reunite owners with their unclaimed shares, dividends and proceeds from corporate actions, and to direct dormant assets to good causes if unsuccessful, the SWG believes there is a real incentive for companies to participate in an expanded scheme.

## LEGISLATION AND REGULATION

- 9.48. Proposed changes to legislation include the introduction of primary legislation to amend companies' articles of association to include a template article, and making amendments to the model articles of association under the Companies Act 2006, to establish a common set of terms upon which dormant assets could be forfeited and funds passed to RFL. This would permit the forfeiture of unclaimed shares, dividends, and proceeds from corporate actions, as well as allow companies to adopt a *de minimis* level of tracing. It would therefore enable companies in the securities sector to participate in an expanded scheme and support good causes through cash transfers to RFL.
- 9.49. Company mergers are normally effected either as a takeover or as a scheme of arrangement under Parts 28 and 26 of the Companies Act 2006, respectively. There is a concern that a share registrar, who typically administers these assets after a change of control, may be liable for any restitution claims as a result of being deemed a constructive trustee for entitlements in certain scenarios. To support the role of the share registrars in an expanded scheme, the SWG proposes that legislation be amended to clarify their position to ensure they do not bear responsibility for restitution.

### CASS rules

- 9.50. Investors using a CSN service are not bound by the issuing companies' articles of association as they do not appear on the issuing companies' register of members, but are governed by the CSN's terms and conditions and CASS rules.
- 9.51. A review of a small sample of CSN terms and conditions indicated that they are reasonably uniform and are silent on forfeiture of shares and unclaimed dividends. CSN would therefore need to adopt a consistent approach to their terms and conditions to enable shares and unclaimed dividends to be transferred to RFL.
- 9.52. CASS rules allow for unclaimed dividends and shares held by untraceable investors to be paid to a registered charity of the firm's choice after 6 and 12 years, respectively, without movement on the client account. However, in the event of a claim being made, the CSN would be required to pay the claimant a sum equal to the amount paid to the charity. There is therefore little incentive for a CSN to transfer unclaimed dividends to charity, given the requirement to reimburse the client.
- 9.53. Therefore, the SWG recommends that the FCA considers amending the CASS rules to allow dormant shares and unclaimed dividends held by untraceable investors to be transferred to RFL with liability for meeting any claim being met by RFL.



### Tax implications

- 9.54. A key principle of an expanded scheme is that shareholders can always reclaim the amount that would have been due to them had a transfer into the scheme not occurred. There is a concern about how reclaimed assets would be taxed. As with all registered property, transferring legal and beneficial ownership does attract stamp duty for dematerialised securities. There is a current exemption for charities, which should be extended to an expanded scheme. The SWG believes it is vital that HM Revenue & Customs provides clarification on this to encourage participation by companies, and ensures shareholders are treated in a tax neutral and tax efficient manner.

### Dematerialisation

- 9.55. The topic of full dematerialisation within the UK markets has been discussed within the sector since 2003. When the EU Central Securities Depositories Regulations (CSDR) were published in August 2014, they contained a requirement for all securities within member states to be issued in dematerialised form from 2023, and for all existing securities to be converted to fully dematerialised form by 2025. This may be subject to change due to the UK's withdrawal from the EU. Dematerialisation, if progressed, may have a material impact on improving tracing, verification and reunification in two main areas.
- 9.56. First, the size and scale of the awareness campaign at the point dematerialisation is launched may serve to re-engage a sizeable number of currently disengaged investors. The communications exercise associated with dematerialisation is likely to be large in scale and deployed over a 12–18 month period. There is potential that previously disengaged investors may contact companies and their registrars as a result, and thereby become reconnected with their shares.
- 9.57. Second, CSDR will increase the digitisation of the industry. Once a shareholding is represented solely in electronic form, it is increasingly likely that investors will also move to receiving communications, sending instructions, and making elections electronically as well. This may increase the number of engaged investors, while also serving to identify those who are genuinely dormant.

### Accounting for transferred assets

- 9.58. The accounting treatment for forfeited shares and unclaimed dividends is complex. In principle, proceeds from the sale of untraced shares and write-back of unclaimed dividends should be reflected in share premium and retained earnings, respectively. The use of the proceeds from the forfeiture to support good causes should be reflected in the income statement.

## CONCLUSION

- 9.59. The SWG has focused on dormant shareholdings, unclaimed dividends and corporate actions associated with holding shares, such as rights issues and takeovers. The SWG supports the inclusion of these assets in an expanded and voluntary dormant assets scheme, subject to further legal and regulatory considerations.
- 9.60. The SWG believes the core objective of an expanded scheme should be to reunite owners with their rightful assets. It has developed a 'Track and Trace' process to promote a consistent and effective approach across the securities sector. However, if reunification efforts fail, companies should be encouraged to use the proceeds from the crystallisation of dormant assets to support good causes by participating in an expanded scheme.
- 9.61. The SWG believes a key tenet of encouraging companies to participate in an expanded scheme is the principle of full restitution, which provides a greater level of shareholder protection than the current market practice for forfeited shares. For companies, the knowledge that a shareholder can always reclaim the amount that would have been due to them had a transfer into the scheme not occurred is seen as a key driver for encouraging participation, and increasing funds made available to good causes.
- 9.62. The SWG believes that the process to repatriate dormant assets should be easily navigable for the security holder, clearly understood, and not unduly burdensome.
- 9.63. Whilst the SWG believes a number of companies would wish to participate in an expanded scheme, they would not be able to do so without the assistance of the government and regulators to ensure that legislation and regulations are amended to permit the transfer of dormant securities assets to RFL.

# Chapter 10

# LEGISLATION AND REGULATION

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## KEY RECOMMENDATIONS

The legislative and regulatory implications of the core principles of the expansion are considered in more detail in Figure 10.1 (p.77-79).

- R10.1.** Pending legislative change, industry should improve tracing, verification and reunification efforts as well as deepen participation in the scheme by banks and building societies. **see 10.4-10.6**
- 
- R10.2.** The insurance and pensions and investment and wealth management sectors would like to work with Reclaim Fund Ltd (RFL) and the Financial Conduct Authority (FCA) on how best to recognise the sector principles on tracing, verification and reunification. **see 10.7-10.9**
- 
- R10.3.** In order to expand the dormant assets scheme, primary legislative change is necessary to allow the scheme to receive a wider range of assets. It is recommended that future primary legislation enshrines the power to include additional assets and participants via secondary legislation, which would be consistent with a phased approach. **see 10.15-10.23**
- 
- R10.4.** Industry would like to work with the FCA to determine how to amend the Client Assets Sourcebook (CASS) and the Collective Investment Schemes (COLL) sourcebook rules to implement agreed definitions of dormancy, and ensure there are no regulatory impediments to transferring assets to RFL. **see 10.24-10.28**
- 
- R10.5.** Further work is required to explore how an expanded scheme could benefit from Financial Services Compensation Scheme (FSCS) protection should RFL become insolvent. **see 10.32**

## INTRODUCTION

- 10.1. The Dormant Bank and Building Society Accounts Act 2008 sets out the framework for the operation of the current dormant assets scheme. The Act has proved to be an effective legislative instrument insofar as it has facilitated the transfer to RFL, which is presently the sole authorised reclaim fund, of over £1.2bn to date, and made available over £600m of this to good causes.
- 10.2. As reflected in the preceding chapters, there is a strong appetite among industry for the expansion of the scheme to accept new classes of assets. However, successful expansion will largely depend on a legal framework being put in place that enables and incentivises industry to participate in an expanded scheme, while ensuring sufficient protection for the owners of dormant assets. This is expected to be a multi-year process that begins with primary and secondary legislation, and involves long-term collaboration between the government, RFL and industry.
- 10.3. The first part of this chapter tests the extent to which the expansion could be implemented without legislative change. The second part then sets out how industry's vision for the expansion could be realised with legislative and regulatory change.

## POTENTIAL FOR EXPANSION WITHOUT LEGISLATIVE CHANGE

### Increased reunification of dormant assets with their owners

- 10.4. The government's response to the Commission's report identified tracing, verification and reunification of customers with their assets as a core priority for industry before an asset is transferred into the scheme.<sup>1</sup>
- 10.5. The tracing, verification and reunification processes carried out by individual banks and building societies is not embedded in statute and is currently managed at firm level. Accordingly, the deepening of tracing, verification and reunification efforts can be pursued across industry without legislative change.
- 10.6. Chapter 2 of this report outlines standard practices for new sectors for the tracing, verification and reunification of assets with gone-away customers. It also presents the progress made by industry, particularly in the insurance and pensions and investment and wealth management sectors, to standardise approaches to tracing, verification and reunification since the publication of the Commission's report.

- 10.7. The insurance and pensions and investment and wealth management sectors would like to work with Reclaim Fund Ltd (RFL) and the Financial Conduct Authority (FCA) on how best to recognise the sector principles on tracing, verification and reunification. In this respect, further analysis is required to assess which FCA rules and guidance require amendment. This will also help determine whether the FCA should prioritise some sectors over others.
- 10.8. In addition, the FCA is asked to confirm its approval of a proportionate approach to tracing, verification and reunification efforts. In the event that tracing, verification and reunification attempts are set out in primary or secondary legislation as a condition for transferring an asset into the scheme, or if standard practices are prescribed by the FCA in a non-binding form, the FCA should consider a *de minimis* threshold.
- 10.9. The insurance and pensions sector has proposed that the FCA approves measures to allow participating firms to deduct tracing costs from assets where it is reasonable to do so, and considers this essential to incentivise firms to participate in an expanded scheme. The banking and investment and wealth management sectors are opposed to this recommendation, and have raised concerns over it compromising on consumer protection and full restitution. Some firms may already have an entitlement to be reimbursed such costs under the terms of the instrument that governs their relationship with their customers. This is market practice in the securities sector, and firms that wish to benefit from an entitlement to reimbursement for tracing, verification and reunification costs may, without the government taking any action, include terms to this effect.

### Greater participation in the existing scheme

- 10.10. The Act provides for an alternative scheme, which allows smaller banks and building societies (defined as those with group assets of less than £7bn) to transfer an agreed proportion of their dormant account money to RFL, and the remainder to one or more charities of their choice. This could be charities they have a special connection with, or that undertake to use the money for the benefit of communities local to the branches of the bank or building society. The Commission recommended abolishing the alternative scheme due to a lack of take up.<sup>2</sup> In its response, however, the government stated that it would wait for a progress update before deciding on the future of the alternative scheme.<sup>3</sup> Leaving the current legislative framework untouched means that the alternative scheme remains in place. RFL remains hopeful that it will be possible to on-board the first participants in the alternative scheme over the course of 2019 (see Chapter 6, Section 6.23). The government should continue to monitor the operation of the alternative scheme and review it again in three years.

<sup>1</sup> [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017; [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), February 2018.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

- 10.11. The Commission highlighted the potential for deepening participation under the existing scheme through increasing transfers of Cash Individual Savings Accounts (ISAs) and Tax-Exempt Special Savings Accounts.<sup>4</sup> Uncertainty over the tax treatment of Cash ISAs upon reclaim has been a primary barrier for firms transferring them into the scheme. HM Revenue & Customs' (HMRC) guidance on Cash ISAs has been welcomed by the banking sector, but further clarification is needed to unlock the opportunities identified in Chapter 6, particularly on the treatment of interest earned on assets of the deceased.<sup>5</sup>

#### Expansion of the scheme via a contractual work-around

- 10.12. The current Act is narrowly confined to the cash balance of dormant bank and building society accounts, and the government has no power to expand the scheme via secondary legislation. A contractual work-around to expand the scheme without legislation was explored, but it was not considered to be viable. RFL cannot act outside the objects in its articles of association and, as a result, a contractual solution would require a new fund to be formed that is independent of the Act, and that would enter into contractual arrangements with participating institutions. However, a contractual arrangement would be unlikely to provide firms with sufficient protection for them to participate. In particular, they would remain liable for customer claims in the event of the insolvency of the new fund. There are several barriers to any attempt to apply the Act to other assets, or for an authorised reclaim fund to receive a broader range of assets, without amendments to the Act.

### POTENTIAL FOR EXPANSION WITH LEGISLATIVE CHANGE

- 10.13. The industry's vision for the expansion requires a range of legislative changes. Figure 10.1 (p.77-79) identifies a non-exhaustive list of specific legislative and regulatory considerations for the expansion outlined in this report and, where applicable, the ways in which they could be implemented.
- 10.14. Under the current Act, the customer no longer has any recourse against the bank or building society that transferred the asset. The transfer of legal liability to RFL is a critical feature of the Act, which should be preserved in an expanded scheme. If liability remains with participating firms, there is likely to be a low level of participation in an expanded scheme.

#### Expanding the class of assets and participants

- 10.15. Currently, the Act entitles a bank or a building society to transfer the balance of a dormant account to an authorised reclaim fund. In order for the scheme to include a broader range of assets, the Act will need to be amended both substantively and in form (for example, to change the title of the Act). Participation will remain voluntary in terms of both participation by firms and the way in which firms participate.
- 10.16. The Act could be amended in a number of ways to expand the assets and firms included in the scheme. One option would be to specify a comprehensive list of assets in primary legislation that are suitable for inclusion in the scheme (see Chapter 3, Figure 3.1, p.25). Another option would involve enacting primary legislation that grants a power to specify, by secondary legislation, assets that are to be included in the scheme. This would allow 'new' assets to be considered for inclusion in later statutory instruments.
- 10.17. Whether in primary or secondary legislation, it is recommended that the financial instrument definitions are aligned, insofar as possible, with those for the relevant 'specified investments' in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) as amended. The advantage of this approach is that it will allow the scheme to keep pace with the legislative recognition of new investment types, considering more general developments in financial services and markets regulation, to address, for example, developments in financial technology such as crypto-assets. However, the categories of 'specified investments' may nonetheless require consideration and extension to capture assets not clearly addressed, such as rights under store cards.

#### Dormancy definitions

- 10.18. Future legislation will need to enshrine dormancy definitions by sector and/or product type. For bank and building society accounts, customers regularly use accounts and so dormancy is defined in the Act by a period of inactivity. For financial products where customers do not regularly transact, a dual definition is required: a trigger at which an account is identified as potentially dormant, and a period of time subsequent to this before an account can be designated as 'dormant' and the cash value of the asset transferred to RFL.
- 10.19. The definition of dormancy will be calibrated to the nature of the financial product and the experience of customer behaviour, and reflect and build on existing practices. It is recommended that the government defines dormancy at the product level within each sector. As reflected in the Explanatory Note to the Act, institutions will have the flexibility to take into account activity or correspondence from the customer in relation to other accounts held with the same institution as evidence that the customer is still active.

<sup>4</sup> Ibid.

<sup>5</sup> <https://www.gov.uk/guidance/close-void-or-repair-an-isa-if-youre-an-isa-manager#dormant-accounts>

10.20. It is not recommended to link the dormancy definition to tracing, verification and reunification efforts in legislation. Tracing, verification and reunification efforts should instead remain an operational principle, to be determined by individual firms. There are different systems and standards developed by each sector, although efforts will be made to align standard practices across sectors where relevant.

#### Allowing authorised reclaim funds to receive a wider set of financial assets

10.21. The functions of a reclaim fund, which are restricted by the Act to handling dormant account money, will need to be revised to allow the scheme to include a broader range of assets. The precise parameters of these objects, and the legal architecture of the authorised reclaim fund(s), will depend on the financial assets that are included in the expansion. The extent to which the amended legislation allows an authorised reclaim fund to segregate the risks associated with products that have different reclaim rates through structuring is beyond the scope of this analysis, but requires further consideration by the government.

10.22. RFL currently has permission under Part 4A of the Financial Services and Markets Act (FSMA) 2000 to act as a 'Dormant Account Fund Operator'. The impact of the expansion on (i) RFL's FCA Permission and (ii) the provisions of the FCA Handbook of Rules and Guidance, with which RFL and its directors must comply, will require detailed consideration together with the FCA and appropriate public consultation in due course.

10.23. All sectors recommend that dormant assets should be converted to cash before being transferred to RFL. Further work with the FCA is required to determine whether the transfer of the cash value of the assets gives rise to any additional regulatory obligations for RFL. If assets were, instead, transferred to RFL in specie, this would raise practical and legal issues. For example, if insurance policies were transferred to RFL, RFL might require authorisation from the Prudential Regulation Authority to carry out regulated insurance activities.

#### Facilitating participation from different sectors and product structures

10.24. The property rights of financial asset owners should remain paramount under an expanded scheme. However, for the scheme to work, it will be necessary for officers who are subject to duties in the holding or administration of customer assets to be granted immunity from liability. The expansion of the scheme to accept different types of assets and participants engages officers who are subject to a range of fiduciary and non-fiduciary duties, such as trustees, company directors, and agents. If those officers were to participate in the scheme, they would be at risk of acting in breach of one or more duties. For example, a director who liquidates and transfers dormant shares to an authorised reclaim fund is unlikely to be acting in the best interests of the company. Granting statutory immunity or relief from liability will allow them to participate in the scheme, and provide the legal certainty essential to incentivising officers to do so.

10.25. The granting of immunity or relief in this way is not novel. Legislation already authorises officers to perform acts that would otherwise constitute a breach of duty. In order to appropriately grant immunity or relief, the government may wish to consider amending the Companies Act 2006 and the Trustee Act 1925.

10.26. In addition to changes to primary legislation, it will also be necessary to amend rules governing the conduct of custodians and depositaries. This will include changes to CASS and the FCA's Conduct of Business Sourcebooks (COBS). The sets of rules that will require amendment are: those in CASS which currently contain provision for 'paying away' unclaimed assets and money; and those in COBs which deal with the provisions in customer agreements. Changes to more sector-specific sections of the FCA Rules and Guidance will also be required – COLL being the most obvious example. Legislative change should result in clear guidance on the steps that a participating firm acting in a fiduciary capacity would need to take to discharge its liability before 'paying away' the proceeds of the realisation of investments or transferring investments. Currently, as an example, a stock transfer form must be completed by the client to transfer their holding in shares.

10.27. In order for certain types of assets to be included in an expanded scheme, legislative change will be required to permit firms to transfer those assets to an authorised reclaim fund, or to provide a mechanism for firms to convert those assets into cash prior to their transfer to the reclaim fund. For example, in the securities sector, amendments will be required to the Companies Act 2006 to include the unclaimed consideration that is payable by a bidder to shareholders as part of a takeover. The inclusion of dormant insurance or pensions assets that do not crystallise to cash in subsequent phases of the scheme's expansion will require legislative change to allow firms to overrule any product terms and conditions, and unilaterally bring a contract to an end.

10.28. Clarity on the accounting treatment for different types of asset will also be necessary.

#### Ensuring consumer protection

##### *Full restitution in perpetuity*

10.29. Consumer protection is at the heart of the expansion. The principle of full restitution set out in Chapter 1, Sections 1.26-1.28, should be maintained in primary legislation. At a broad level, the legislative instrument should specify that customers are able to reclaim the amount that would have been due to them had a transfer into the scheme not occurred. As under the current scheme, it is envisaged that customers will retain the ability to reclaim their assets from the authorised reclaim fund(s) in perpetuity. In addition to this right of restitution, customers are presently protected by statutory and regulatory mechanisms that are directed to protecting consumers.

### *Dispute resolution*

- 10.30. If a customer is concerned about their treatment by their bank or building society, including in relation to their entitlement to restitution of an asset transferred to an authorised reclaim fund, the customer may have recourse to the Financial Ombudsman Service (FOS). The FOS deals with complaints from customers on financial matters including, for example, banking, insurance, pensions, investments and financial advice. Before the FOS can intervene in a dispute, the customer must first provide the subject of their complaint with an opportunity to investigate the complaint. The FOS has the authority to request or require a company to offer financial compensation, correct a credit file, or offer an apology as means of dispute resolution. This system will not be affected by the expansion of the scheme.

### *Insolvency of a participating firm*

- 10.31. In the event of the insolvency of a participating firm, customers currently have the right to full restitution from RFL. While RFL would be legally responsible to meet repayment claims, RFL considers that in practice it is unlikely to hold any customer records itself, or have the capability to administer customer claims, without outsourcing this responsibility to a third party. If the scheme is expanded to accept a broader range of assets, the government may enhance the insolvency regime to require insolvency practitioners to continue to fulfil the relevant agency requirements on behalf of RFL, and to ensure that dormant account holders are protected and can continue to be managed in an insolvency scenario, with appropriate arrangements for information management following the cessation of an insolvency process. This would help support an orderly outcome for customers. The government may also wish to take a different approach to different assets due to the difficult issues of valuation that arise in the event of insolvency.

### *Insolvency of a reclaim fund*

- 10.32. The FSCS applies to customers whose assets are included in the scheme at present. Further work is required to determine how an expanded scheme could benefit from FSCS protection. In order to participate in the FSCS, the customer would need to be an 'eligible claimant' under the rules governing the FSCS. As a result, the position of securities holders requires further analysis as securities are not within scope of the FSCS.

### *Tax treatment*

- 10.33. The impact of a transfer of assets into the scheme should be tax neutral. The recent HMRC Guidance on Cash ISAs preserves tax neutrality only where the money is paid back into the original Cash ISA or a Cash ISA with the same ISA manager.<sup>6</sup> As outlined in Annex D, the transfer of new types of assets into the scheme raises a number of additional questions around the incidence of capital gains tax, inheritance tax, and interaction with foreign tax reporting regimes. Insofar as certain pensions policies fall within scope of an expanded scheme, pensions legislation would also need to be considered to ensure that any transfer made to RFL is not classed as an unauthorised payment. These questions will need to be discussed in further detail with HMRC and HM Treasury (HMT).

### *Improving reunification rates*

- 10.34. The transfer of any assets into the scheme should only take place after appropriate reunification efforts have been made. Tracing, verification and reunification efforts should rely on standard market practice developed at sector level, and should not be embedded in primary legislation. As discussed in Chapter 2, Sections 2.17-2.27, to increase reunification rates, the government should consider primary and legislative change to enable access to its datasets. The Digital Economy Act 2017 has been identified as a potential opportunity for facilitating data sharing, but this avenue requires further analysis and engagement with the Department for Digital, Culture, Media & Sport (DCMS) to understand further whether change is feasible in the short term, and which type of dataset would be accessible via a change to this legislation.

### *Tackling data-related challenges*

- 10.35. Under the current scheme, participating banks and building societies act as agents for RFL and maintain all customer engagement, records and information. This agency relationship is defined by the contractual transfer agency arrangements in place between RFL and participants, which require firms to maintain this information. No transfer of personal data is made to RFL in the ordinary course.
- 10.36. For assets transferred into the scheme, it is believed that firms would have a legitimate reason under the General Data Protection Regulation (GDPR) to hold on to clients' data, as they would need it if a client reclaimed their assets or sought to make a claim against the firm in spite of the Act.

<sup>6</sup> <https://www.gov.uk/guidance/close-void-or-repair-an-isa-if-youre-an-isa-manager#dormant-accounts>

- 10.37. Under the Money Laundering Regulations 2017 (which implement Article 40 of the Fourth Anti-Money Laundering Directive), firms can only hold on to client due diligence and related information up to five years after the end of the 'business relationship' with a client. As participants in the current scheme maintain all aspects of the business relationship with clients pending the reclaim of their assets (in the capacity as agent of RFL), and also are subject to contractual requirements to maintain this data to enable the scheme to operate in the manner intended by the Act, this requirement should not be triggered until after any reclaims have been met.
- 10.38. Although it is not considered essential, it would be helpful to include an express provision in future primary legislation to acknowledge that participants in the scheme are required to retain such customer data and information as may be reasonably required by the reclaim fund to enable RFL to verify:
- the eligibility of the relevant financial asset for transfer to RFL
  - the accuracy of any information provided to RFL in connection with the transfer
  - the validity of any reclaim.
- 10.39. The insolvency of a participating firm affects the arrangement between the firm and RFL. Under the current scheme, there are agency arrangements in place that seek to provide certain contractual protections for RFL if a participating firm becomes insolvent. This includes allowing RFL or its authorised agent to inspect records or provisions to allow RFL to facilitate a transfer of records to a successor agent. However, it is not clear whether data would be transferred to RFL as part of an expanded scheme.
- 10.40. In drafting these contractual provisions, efforts were made to ensure that they would survive insolvency where possible, but they may not provide as much legal certainty as statutory protections. It is recommended that the government further protects the interests of consumers and bolsters the protections available to the reclaim fund in the event of a participant's insolvency. This could be done through additional specific statutory provisions to ensure that the insolvent participant (and any appointed insolvency office holder) continues to protect relevant customer records and information, and assists RFL in its dealings with customers as agents of RFL. Subject to discussion with HMT, it may be appropriate to consider potential changes to the Banking Act 2009 and applicable special administration regimes (and equivalent legislation).

- 10.41. In addition, RFL would need to design suitable standardised transfer agency agreements. These should allow each of the relevant sectors of an expanded scheme to operationalise how assets would be transferred and dealt with under the scheme in accordance with the new legislation, including what data would be transferred. As was the case in the lead up to the launch of the current scheme, RFL would expect to consult with key sector representatives with a view to framing the contractual terms that will support the amended legislation and the relevant sections of the new scheme.

## PHASED IMPLEMENTATION

- 10.42. As agreed within each sector working group, a phased approach to implementation will be adopted. In addition to the operational challenges identified in Chapter 4, there are significant legal and regulatory challenges associated with the transfer of non-cash assets, whether they are within a trust structure or not.
- 10.43. The phased approach to implementation outlined in Chapter 4 strengthens the case for setting out only the basic architecture for an expanded scheme in primary legislation, leaving the detail of each asset class to be included in the scheme in secondary legislation as and when they are ready to be included.

## CONCLUSION

- 10.44. Establishing a supportive legislative framework is necessary for a successful expansion of the scheme as industry ambition is far greater than the current legislation allows. Without legislative change, reunification efforts can be improved, and participation deepened to some degree. However the cross-sector consensus is that for a wider range of assets to be within scope of an expanded scheme, and for such assets to be transferred – along with liability for restitution to customers – to a reclaim fund, the government needs to introduce changes to primary and secondary legislation.
- 10.45. There is a range of primary legislation in addition to the Act that requires careful analysis by the government in designing any primary and secondary legislation. This includes the Financial Services and Markets Act 2000, Companies Act 2006, Insolvency Act 1986 (and related legislation), Trustee Act 1925, Trustee Act 2000, the Trustee Investments Act 1961, Pensions Act 1995, and other legislation as identified in Figure 10.1.
- 10.46. There are several additional issues that need to be carefully considered by the government in framing a future legislative framework, such as the governance and structure of the reclaim fund architecture, the ability to defray expenses from dormant assets, and any aspects relating to devolved administration law.
- 10.47. The role of both the government and regulators will be critical to enabling and incentivising participation in an expanded scheme.



<b>Figure 10.1: Key legislative and regulatory implications of expansion</b>	
<b>Key issue</b>	<b>Relevant regulation or legislation</b>
The scheme should be voluntary both in terms of the firms that choose to participate in the scheme and the assets they choose to transfer to it.	
<b>Tracing, verification and reunification</b>	
Standard practices for tracing, verification and reunification should be implemented within new sectors and applied by participating firms in those sectors prior to the transfer of an asset to RFL. In parallel, efforts should also be made to align practices across sectors.	Industry does not recommend embedding the tracing, verification and reunification efforts in the primary act.
A proportionate approach is required within sectors to efforts to trace, verify and reunite customers with their assets, including a <i>de minimis</i> value threshold above which more robust tracing, verification and reunification efforts should be applied prior to a transfer to RFL.	Non-legislative measures: The FCA is asked to consider a proportionate approach to tracing, verification and reunification exercises for each new sector and the introduction of an optional <i>de minimis</i> value, and to consider whether consequential amendments are required to the FCA Handbook of Rules and Guidance.
The government should consider amending primary and secondary legislation where necessary to enable data sharing for the specific purpose of aiding tracing, verification and reunification efforts.	Further consideration should be given to amending the Digital Economy Act 2017 and related legislation to facilitate data sharing, and expanding the Tell Us Once service.
The insurance and pensions and securities sectors believe that participating firms should have the ability to deduct the cost of tracing from the value of the asset to which the tracing relates if it is reasonable to do so.	Legislation would be required to allow firms to levy a charge against the relevant asset for the costs of tracing activities.
<b>Dormancy</b>	
The banking sector should maintain its current definition of dormancy. Each sector new to the dormant assets scheme will have an agreed definition of dormancy that will identify both a 'trigger point' at which an account is identified as 'potentially dormant', and a period of time that must then elapse before an account is designated as 'dormant'. The definition of dormancy will be calibrated to the nature of the financial product and the experience of customer behaviour, and reflect and build on existing practices.	New definitions of dormancy should be enshrined in future primary or secondary legislation on dormant financial assets. The FCA should consider amending CASS rules to align dormancy periods with any agreed definitions of dormancy.
<b>Transfer</b>	
Transfer of any assets into the scheme should only take place after appropriate tracing, verification and reunification efforts have been carried out. Standard practices should be implemented within new sectors and applied by participating firms. In parallel, efforts should also be made to align guidelines across sectors.	This is an operational principle that will not form part of the legal definition of dormancy or a legislative pre-condition to transfer to RFL.
RFL should be able to decline to accept transfers where sufficiently rigorous tracing, verification and reunification efforts have not been undertaken.	The current act allows RFL to decline a transfer, but in practice they have limited ability to do so in the agency agreements. The current regime does not specify a consistent standard for tracing, verification and reunification. In the absence of a common standard, RFL states that it would be difficult for it to specify with sufficient precision the circumstances where adequate tracing, verification and reunification has been undertaken (and conversely, where transfers which do not meet this criteria can be refused). The government should clarify the rights and powers of RFL in any future primary or secondary legislation.

<b>Figure 10.1: Key legislative and regulatory implications of expansion</b>	
<p>In Phase Two of the scheme expansion, only assets that are already in cash or have been crystallised to cash by operation of a contractual, legal or regulatory event will be included.</p> <p>In subsequent phases, assets that do not crystallise to cash are to be considered, with the pace of inclusion into the scheme dependent on the complexity of the product. This is likely to be over a series of incremental phases.</p>	<p>The government should consider delegating power to the Secretary of State to make secondary legislation to designate the types of assets and types of participating entities that can be included in an expanded scheme.</p> <p>Further legal due diligence work is required on insurance policies, in particular to test the assertion that these products crystallise to cash under contract. Legislation may be required to overrule any product terms and conditions, where there is no contractual certainty in the crystallisation mechanism. Further legislative analysis is required to determine whether the crystallisation to cash would vary or end the contract.</p> <p>To facilitate the transfer of assets and immunise officers/trustees against any claim by the asset holder, the following acts should be reviewed: Companies Act 2006, Trustee Act 1925, Trustee Act 2000 and the Trustee Investments Act 1961.</p>
<p>Non-cash assets should be converted to cash before being transferred to RFL.</p>	<p>Further consideration is required across sectors to determine whether firms may require statutory authorisation (including the immunisation of firms or officers from claims by customers in relation to the monetisation and transfer of an asset to RFL), or the legislation of a statutory procedure, to convert assets into cash (particularly assets in which a customer may have a proprietary interest) where this does not happen as a result of a contractual, legal or regulatory event.</p>
<b>Reclaim</b>	
<p>Full restitution should be provided to customers in perpetuity, meaning that at the point of reclaim, RFL would pay the amount that would have been due to the customer had a transfer into the scheme not occurred.</p>	<p>The right of full restitution may be maintained in future primary or secondary legislation on dormant financial assets.</p>
<p>The liability of a firm that transfers the cash value of an asset to RFL should be substituted for a right of restitution against RFL.</p>	<p>The right of restitution against RFL may be set out in future primary or secondary legislation on dormant financial assets.</p>
<p>Participating firms are to act as agents of RFL for the purposes of dealing with reclaims.</p>	<p>The agency relationship may either be set out in future primary or secondary legislation on dormant financial assets, or addressed in contractual arrangements between participating firms and RFL.</p>
<p>Reclaims are settled directly between the participating firm and the customer. Participating firms then submit reclaim requests to RFL separately.</p>	<p>The reclaim management process may either be set out in future primary or secondary legislation on dormant financial assets, or addressed in contractual arrangements between participating firms and RFL.</p>
<p>If a participating firm becomes insolvent and its assets and liabilities are not administered by another participating firm, customers would be able to pursue a reclaim with RFL direct.</p>	<p>The insolvency protection granted to a customer upon firm insolvency that exists in the Act may be replicated in future primary legislation, although the extension of insolvency protection to a broader range of assets requires careful consideration. Further consideration is also required in relation to information-sharing and reclaim management where a firm is insolvent or is otherwise dissolved.</p>
<p>If an authorised reclaim fund were to become insolvent and, therefore, unable to satisfy the right of a customer to restitution, the customer should be eligible to make a claim for compensation under FSCS.</p>	<p>The customer would need to be an 'eligible claimant' under the rules governing the FSCS. The entitlement of security-holders would need careful consideration since securities are not captured by FSCS.</p>
<p>There is no transfer of personal data from the participating firm to RFL or vice versa.</p>	<p>There is no legal barrier to customer information being held at firm level if there is a continuing business relationship because the firm is responsible for managing any reclaim. However, further consideration is required in relation to information-sharing in the event of firm insolvency or the firm being otherwise dissolved.</p>



**Figure 10.1: Key legislative and regulatory implications of expansion**

<b>Building participation</b>	
A transparency regime should be enacted to enable public scrutiny of which firms choose to take part in the scheme, and the level of assets they choose to contribute.	Non-legislative.
There should be significantly increased transparency to participating firms over the how dormant asset funds are allocated and used.	Non-legislative.
Transfers into the scheme should be tax neutral.	The tax consequences of transfers into and out of the scheme should be addressed in primary and/or secondary legislation.

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# Chapter 11

# NEXT STEPS

81	Key recommendations	
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82	Establishing a supportive legislative framework	11.2
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83	Continuing preparatory work	11.5 - 11.6
83	Building participation and communications	11.8 - 11.11

## KEY RECOMMENDATIONS

- |               |  |                       |
|---------------|--|-----------------------|
| <b>R11.1.</b> | The government should consider the case for legislative amendments to enable all sectors to participate in the scheme.   | <b>see 11.2</b>       |
| <b>R11.2.</b> | Standard practices for tracing, verification and reunification should be implemented within each sector where they have not been already.  | <b>see 11.3-11.4</b>  |
| <b>R11.3.</b> | Sectors are encouraged to reassess the size and age of dormancy in 2019.   | <b>see 11.5</b>       |
| <b>R11.4.</b> | Industry should continue to resolve sector-specific concerns in collaboration with trade associations.   | <b>see 11.6</b>       |
| <b>R11.5.</b> | Sectors should work with Reclaim Fund Ltd (RFL) during 2019 and beyond to ensure its capability to include a wider range of financial assets in the scheme, while ensuring the core principles can be met. | <b>see 11.7</b>       |
| <b>R11.6.</b> | Industry, the government and RFL should develop a cross-cutting communications plan during 2019 that seeks to build understanding, engagement and participation in the dormant assets scheme.              | <b>see 11.8-11.11</b> |

## INTRODUCTION

11.1. This report marks the completion of the design phase of the scheme expansion. From 2019, industry, the government and regulators will enter into Phase One of its implementation. This will involve establishing a supportive legislative framework, implementing standard practices for tracing, verification and reunification across new sectors, continuing preparatory work to include new types of assets, building and deepening participation among firms, and running an end-to-end communications strategy.

## ESTABLISHING A SUPPORTIVE LEGISLATIVE FRAMEWORK

11.2. Establishing a supportive legislative framework is fundamental for a successful expansion of the scheme. Industry ambition is far greater than the current legislation allows, and while without legislative change reunification efforts can be improved, and participation deepened to some degree, the cross-sector consensus is that for a wider range of assets to be within scope of an expanded scheme, the government needs to introduce changes to primary and secondary legislation.

## IMPLEMENTING STANDARD PRACTICES

- 11.3. The banking sector should continue using its '10 core pledges'.<sup>1</sup> The sector is content that its reunification efforts have proved sufficiently robust under the current scheme, with reclaim rates holding steady at around 5% of accounts transferred to RFL.
- 11.4. Several of the new sectors already have guiding frameworks or principles for managing their dormant assets and/or gone-away customers. Where these are in place and effective, these sectors should (continue to) use them. New sectors should consider the standard practices outlined in Chapter 2 and in Annex C where relevant.

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1 <https://www.mylostaccount.org.uk/pledges>

## CONTINUING PREPARATORY WORK

### Quantifying dormancy

- 11.5. Reassessing the size and age of dormancy at sector level could allow potential participants to understand the size of the opportunity, and prioritise the agenda appropriately. Sectors are encouraged to consider this as a potential work stream for 2019.

### Sector-specific concerns

- 11.6. Work should continue to address sector-specific concerns in collaboration with trade associations in 2019 while the government considers the case for legislative amendments. The insurance and pensions sector should also consider the relevance to this work of the Department for Work and Pensions' (DWP's) feasibility report on the pensions dashboard.<sup>2</sup>

### Collaborating with RFL

- 11.7. RFL has participated in every working group, and has been supportive of the work undertaken to compile this report. However, it is not providing any specific endorsement of the matters here set out. The proposals and recommendations will need to be analysed and considered in detail by the RFL board, as appropriate, in due course. Sectors should work with RFL during 2019 and beyond to advance these discussions.

## BUILDING PARTICIPATION AND COMMUNICATIONS

- 11.8. Building participation in the scheme is essential to its continued success. All sectors see the value that an end-to-end communications strategy would bring to these efforts. This should tell the story of the dormant assets scheme and serve to educate firms, customers, regulatory bodies and the general public about it.
- 11.9. Joint work is already underway by the government, RFL and The National Lottery Community Fund (previously the Big Lottery Fund) to communicate the current dormant assets story more widely, and a cross-sector working group was held in November 2018 to begin discussions on building a strategy.
- 11.10. Moreover, there should be significantly increased transparency, both: from the government to participating firms over the allocation and use of dormant asset funds; and from industry to the public to enable public scrutiny of which firms choose to take part in the scheme, and what level of assets they choose to contribute.
- 11.11. During 2019, industry, together with the government and RFL, will develop a cross-cutting communications plan to build understanding, engagement and participation in the dormant assets scheme. Its goal will be to raise awareness of the scheme among consumers, and to encourage and widen participation in the scheme as it expands to include not just banks and building societies, but firms across industry.

<sup>2</sup> <https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation>

# ANNEXES

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## ANNEX A: ACKNOWLEDGEMENTS

### INDUSTRY CHAMPIONS

In June 2018, the government asked four senior industry leaders to champion preparations across the financial services industry to join the dormant assets scheme. The Industry Champions represented the banking, insurance and pensions, investment and wealth management, and securities sectors, as set out in Figure A.1.

Figure A.1: The Industry Champions	
<p><b>Kirsty Cooper</b> Insurance and Pensions Industry Champion <i>Supported by Steve Marriott</i></p>	<p>Office of the Chairman, Group General Counsel and Company Secretary <b>Aviva plc</b></p>
<p><b>Simon Kenyon</b> Banking Industry Champion <i>Supported by Giles Martin</i></p>	<p>Managing Director, Consumer Banking <b>Lloyds Banking Group</b></p>
<p><b>William Nott</b> Investment and Wealth Management Industry Champion <i>Supported by Graham MacDowall and Jacqui Bungay</i></p>	<p>Former Chief Executive Officer, <b>M&amp;G Securities</b></p> <p>Chief Executive Officer <b>SYZ Asset Management</b></p>
<p><b>Robert Welch</b> Securities Industry Champion <i>Supported by Sara Thomson and Wendy Hardy</i></p>	<p>Group Secretary <b>Tesco PLC</b></p>

### THE INDUSTRY CHAMPIONS' REMIT

The government asked the Industry Champions to build on the foundation of work completed by the Commission on Dormant Assets and to focus work on:

- ensuring appropriate approaches to dormant assets are in place industry-wide
- improving tracing, verification and reunification processes
- considering options to expand the scheme to other asset types.

#### Valuations

The Industry Champions were not asked to provide valuations of the potential dormant assets that might be contributed to the scheme.

#### Distribution of future dormant assets

Industry Champions were not asked to opine on the potential distribution of any dormant assets. The government will continue to have sole responsibility for decisions regarding the allocation and use of any new dormant asset surplus that is identified.

### THE INDUSTRY CHAMPIONS' WORK PROGRAMME

#### Sector working groups

As part of their work programme, the Industry Champions each established a working group to help inform their thinking on a number of issues. Membership comprised a cross-section of firms, Reclaim Fund Ltd (RFL), and senior representatives from trade bodies, the Financial Conduct Authority (FCA), and law firms offering pro bono advice.

In addition to the four working groups, cross-sector groups looked at specific issues relevant across sectors, focusing on:

- tracing, verification and reunification
- definitions of dormancy
- transfer and reclaim
- building participation and communications
- legislation and regulation.

The Industry Champions are grateful to the members of all working groups for their invaluable contributions.

#### Membership of the four sector working groups

The Industry Champions each chaired their relevant working group, supported by a senior firm 'aide' nominated for technical expertise, and a Secretariat lead. The members of each group are set out in Figure A.2.

<b>Figure A.2: Membership of the working groups</b>	
<p><b>Banks and Building Societies Working Group (BBSWG)</b></p> <p>Addleshaw Goddard Allied Irish Bank (UK) Plc Barclays Bank UK PLC Building Societies Association Clydesdale Bank PLC HSBC Bank plc Lloyds Banking Group Nationwide Building Society National Westminster Bank plc Reclaim Fund Ltd Santander UK plc The Royal Bank of Scotland plc UK Finance Virgin Money plc</p>	<p><b>Securities Working Group (SWG)</b></p> <p>Barclays Plc BT Group plc Centrica plc Computershare Equiniti Freshfields Bruckhaus Deringer GlaxoSmithKline Plc ICSA: The Governance Institute Link Group Lloyds Banking Group Plc Reclaim Fund Ltd Rio Tinto Plc Tesco PLC</p>
<p><b>Investment and Wealth Management Working Group (IWMWG)</b></p> <p>Aberdeen Standard Investments BMO Global Asset Management Columbia Threadneedle Investments Depository and Trustee Association (DATA) DST Financial Services Europe Limited Ernst &amp; Young (EY) Eversheds Sutherland FIL Investments International HSBC Global Asset Management (UK) The Investment Association (The IA) Invesco Asset Management JP Morgan Asset Management M&amp;G Investments Oliver Wyman Personal Investment Management &amp; Financial Advice Association (PIMFA) UK Platform Group</p> <p><b>The IA Dormant Assets Technical Group:</b></p> <p>Barclays plc BlackRock DATA DST Financial Service Europe Limited EY Franklin Templeton The IA Investec JP Morgan Jupiter Legal &amp; General M&amp;G Investments Man Group Marlborough Northern Trust Administration PIMFA PricewaterhouseCoopers RBS Collective Investment Funds Reclaim Fund Ltd Schroders UK Platform Group Yealand</p>	<p><b>Insurance and Pensions Working Group (IPWG)</b></p> <p>Allen &amp; Overy LLP Association of British Insurers Aviva plc Eversheds Sutherland Financial Conduct Authority Gen Re Legal &amp; General Money Advice Service The Pensions Regulator Pensions and Lifetime Savings Association Phoenix Group Prudential plc Reclaim Fund Ltd Rothsay Life Plc Scottish Widows Standard Life (Phoenix Group) Sun Life Financial of Canada Zurich Insurance Group</p>

### Bilateral evidence

The Industry Champions and Secretariat have met with key stakeholders, regulatory bodies and other government departments. The Industry Champions would like to thank all those who have contributed to their work.

Additional thanks to:

- the Department for Work and Pensions (DWP)
- the Information Commissioner's Office (ICO)
- HM Revenue & Customs (HMRC)
- the Financial Conduct Authority (FCA)
- Locke Lord
- Aviva Investors
- the Tax Incentivised Savings Association (TISA)
- Maitland Chambers
- the National Treasury Management Agency (NTMA)
- the Irish Insurance Federation (IIF).



## ANNEX B: RECOMMENDATIONS

This annex compiles the key recommendations made throughout the report, and organises them according to the target group, namely: industry, the government and regulatory bodies.

<b>RECOMMENDATIONS FOR INDUSTRY</b>	
<b>2</b>	<b>Tracing, verification and reunification</b>
R2.1.	New sectors should implement the standard practices for tracing, verification and reunification outlined in Annex C.
R2.2.	The appropriate level of tracing, verification and reunification exercises should not be enshrined in future legislation, given the different products and systems in each sector. Rather, industry should put in place sector-specific frameworks that guide those exercises. Agency transfer agreements between participating firms and Reclaim Fund Ltd (RFL) should ensure that reasonable efforts are made before firms are able to transfer assets to RFL.
R2.3.	Working with its trade association (or equivalent), each sector should look to promote the benefits of using the sector's framework or principles for managing gone-away customers and/or unclaimed assets.
R2.4.	The insurance and pensions and investment and wealth management sectors would like to work with the Financial Conduct Authority (FCA) and RFL to consider whether an optional, proportionate approach to the efforts applied to the tracing of assets would be appropriate, as well as whether this should include a <i>de minimis</i> level above which more robust tracing, verification and reunification efforts should be applied prior to a transfer to RFL.
R2.6.	UK Finance and the BSA should consider working with other trade associations to explore how the MyLostAccount platform could be extended to, or replicated by, other sectors.
R2.7.	Industry should continue to explore the possibility of making the services of unclaimed assets register(s) free to the public, with support from relevant sectors.
<b>3</b>	<b>Definitions of dormancy</b>
R3.1.	Each sector, other than the banking sector, should consider developing a definition of a gone-away customer if it has not already done so.
R3.2.	The existing definition of dormancy for the banking sector, as defined in the Dormant Bank and Building Society Accounts Act 2008, should be retained (see R6.1).
<b>4</b>	<b>Transfer and reclaim</b>
R4.1.	During 2019 and, where necessary, thereafter, the sectors should work with RFL to enable them to establish the appropriate processes for including new types of assets in the scheme, and to ensure RFL can provide full restitution for these.
R4.2.	Firms should follow the current practices of submitting reclaim requests to RFL on a quarterly basis, except where a reclaim is of particularly high value (subject to agreement with RFL).
R4.3.	When a customer makes a reclaim, the firm should calculate the cash equivalent value of what the asset would have been worth had it not been transferred to RFL.
<b>5</b>	<b>Building participation and communications</b>
R5.1.	Industry, the government, RFL and the FCA should work together to agree and implement a holistic communications strategy that improves understanding and awareness of the dormant assets scheme and its planned expansion.
R5.2.	The government should assist industry in publicising and better supporting participants in the scheme, including: <ul style="list-style-type: none"> <li>● working with industry to create a dedicated dormant assets scheme website</li> <li>● supporting industry to develop sector-specific communication packs</li> <li>● working with RFL to celebrate new entrants.</li> </ul>
R5.3.	RFL should create joining packs for prospective participants.
R5.5.	Industry should consider reassessing the size of dormancy at sector level in 2019 to enable firms to better understand the scale of the opportunity.

<b>RECOMMENDATIONS FOR INDUSTRY</b>	
R5.6.	RFL should continue to publish an annual report detailing which firms are participating in the scheme. To increase transparency, this information should be appropriately publicised, and made more prominent and readily accessible.
R5.7.	UK Finance, the Building Societies Association (BSA), The Investment Association (The IA), the Association of British Insurers (ABI), ICSA: The Governance Institute, and other trade associations should play a convening role in facilitating sector discussions about the scheme. They should consider including the expansion of the dormant assets scheme as an agenda item in relevant working groups, thus helping share relevant information with their members.
<b>6</b>	<b>Banks and building societies</b>
R6.1.	The existing definition within the Dormant Bank and Building Society Accounts Act 2008 of dormancy for banks and building societies should remain at 15 years of no customer-initiated transactions (see R3.2).
R6.2.	Existing participants are encouraged to: <ul style="list-style-type: none"> <li>● continue identifying all potentially eligible assets for inclusion within their future transfers to RFL</li> <li>● create appropriate processes, where necessary, for eligible Cash Individual Savings Accounts (ISAs) and cash assets held in Suspense Accounts to be included</li> <li>● support RFL's objective of increasing its reclaim modelling capabilities through evaluating additional dormant account data transfer.</li> </ul>
R6.7.	UK Finance and the BSA should arrange a meeting for the Banks and Building Societies Working Group (BBSWG) to address any outstanding issues and, where appropriate, ensure that dormant assets issues are considered at the meetings of any relevant industry forums.
<b>7</b>	<b>Insurance and pensions</b>
R7.1.	All firms are encouraged to follow the ABI's principles for reconnecting with gone-away customers (whether members of the ABI or not).
R7.2.	The insurance and pensions sector would like to work with RFL and the FCA on how best to recognise the sector principles on tracing, verification and reunification.
R7.3.	The IPWG recommends a <i>de minimis</i> value of £100 per customer above which more robust tracing, verification and reunification efforts would be applied, and welcomes a dialogue with the FCA about this as part of a broader conversation on the best approach to tracing, verification and reunification.
R7.4.	For policies with a contractual end, the dormancy period is recommended to be seven years after the crystallising event or, where earlier, at the point at which it is identified that a deceased customer has no next of kin.
R7.5.	For policies with no contractual end, the dormancy period is recommended to be whichever comes earlier: the point at which it is identified that a deceased customer has no next of kin, or seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.
R7.6.	The working assumption is that firms are able to crystallise assets to cash at the end of the contractual term, but legal due diligence to confirm this is recommended. A sample of product terms and conditions for policies that crystallise to cash should be reviewed to assess the likelihood of firms being able to crystallise assets to cash, and therefore the likelihood of future legislation being required to address this potential issue. This should be conducted as part of this sector's preparations in 2019.
<b>8</b>	<b>Investment and wealth management</b>
R8.1.	Members of The IA are encouraged to follow The IA's principles for tracing gone-away customers.
R8.3.	The IWMWG recommends that firms in its sector define dormancy at the customer level, so that all of a customer's assets are identified as dormant in a consistent manner. In line with the current Act Guidance notes, the government should consider how future legislation may enable providers to consider client activity on other accounts within the same firm when defining dormancy. This would enable firms in the investment and wealth management sector to choose to define dormancy at the customer level without hindering other sectors' ability to transfer to RFL on an account or product level.
R8.4.	The period of dormancy in the investment and wealth management sector should be measured as follows: <ul style="list-style-type: none"> <li>● where the customer is owed or holds a cash amount only (potentially from an outstanding unclaimed distribution or unpaid redemption proceeds), and it has been outstanding for a six year minimum period from the date payment became due</li> <li>● where the customer has holdings in unit trusts and/or Open-Ended Investment Companies (OEICs) (and potentially also a cash amount), and a gone-away indicator has been added a minimum of 12 years ago and there have not been any active transactions on the customer's account.</li> </ul>

<b>RECOMMENDATIONS FOR INDUSTRY</b>	
R8.5.	Once addressed in any subsequent phases, the timing of the liquidation of non-cash dormant assets being transferred to RFL as cash should be in line with firms' own policies.
<b>9</b>	<b>Securities</b>
R9.1.	Companies in the securities sector should consider proactively reviewing their security holder base on a regular basis.
R9.2.	Companies in this sector should not be required to repeat tracing attempts; rather, this should be optional to account for differences in companies' size and abilities.
R9.3.	Companies in this sector should not set targets related to the reunification of dormant assets. It is felt that the passive nature of the relationship with the shareholder in this particular sector would make this inappropriate, and may drive the wrong kind of behaviour in order to meet them.
R9.4.	The securities sector should adopt a three- and seven-point 'Track and Trace' process.
R9.5.	The scope of dormant assets that the SWG has considered is only within public companies. For shares and unclaimed dividends, dormancy should be defined as a period of no shareholder-initiated contact for 12 years and: <ul style="list-style-type: none"> <li>● the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)</li> <li>● where applicable, at least three dividends have become payable but have not been cashed.</li> </ul>
R9.6.	During 2019, ICSA: The Governance Institute's Registrars Group should determine a definition of 'no contact' for the purpose of defining a gone-away shareholder.
R9.7.	For proceeds from corporate actions, dormancy should be defined as 12 years of no shareholder-initiated contact from the point at which the company received the consideration.
<b>10</b>	<b>Legislation and regulation</b>
R10.1.	Pending legislative change, industry should improve tracing, verification and reunification efforts as well as deepen participation in the scheme by banks and building societies.
R10.2.	The insurance and pensions and investment and wealth management sectors would like to work with RFL and the FCA on how best to recognise the sector principles on tracing, verification and reunification.
R10.4.	Industry would like to work with the FCA to determine how to amend the Client Assets Sourcebook (CASS) and the Collective Investment Schemes (COLL) sourcebook rules to implement agreed definitions of dormancy, and ensure there are no regulatory impediments to transferring assets to RFL.
R10.5.	Further work is required to explore how an expanded scheme could benefit from Financial Services Compensation Scheme (FSCS) protection should RFL become insolvent.
<b>11</b>	<b>Next steps</b>
R11.1.	The government should consider the case for legislative amendments to enable all sectors to participate in the scheme.
R11.2.	Standard practices for tracing, verification and reunification should be implemented within each sector where they have not been already.
R11.3.	Sectors are encouraged to reassess the size and age of dormancy in 2019.
R11.4.	Industry should continue to resolve sector-specific concerns in collaboration with trade associations in 2019.
R11.5.	Sectors should work with RFL during 2019 and beyond to ensure its capability to include a wider range of financial assets in the scheme, while ensuring the core principles can be met.
R11.6.	Industry, the government and RFL should develop a cross-cutting communications plan during 2019 that seeks to build understanding, engagement and participation in the dormant assets scheme.

<b>RECOMMENDATIONS FOR GOVERNMENT</b>	
<b>2</b>	<b>Tracing, verification and reunification</b>
R2.2.	Industry recommends that the appropriate level of tracing, verification and reunification exercises should not be enshrined in future legislation, given the different products and systems in each sector. Rather, industry should put in place sector-specific frameworks that guide those exercises. Agency transfer agreements between participating firms and RFL should ensure that reasonable efforts are made before firms are able to transfer assets to RFL.
R2.5.	Some sectors support levying a tracing charge on assets where appropriate, while other sectors believe this compromises the principle of full restitution. The government should consider both consumer protection and the risk of lower participation from some sectors before reaching a decision for any future legislation.
R2.8.	To improve reunification rates, most sectors believe the government should amend primary and secondary legislation, where necessary, to enable data sharing for the specific purpose of aiding tracing, verification and reunification attempts. The Digital Economy Act 2017 and the Tell Us Once service have been identified as potential opportunities.
<b>3</b>	<b>Definitions of dormancy</b>
R3.2.	The existing definition of dormancy for the banking sector, as defined in the Dormant Bank and Building Society Accounts Act 2008, should be retained.
R3.3.	When expanding the legislation to enable a greater range of financial assets to be transferred into the scheme, the government should use the following definitions of dormancy: <ul style="list-style-type: none"> <li>● Insurance and pensions: <ul style="list-style-type: none"> <li>○ For policies with a contractual end, the dormancy period should be seven years after the crystallising event or, where earlier, at the point at which it is identified that a deceased customer has no next of kin.</li> <li>○ For policies with no contractual end, the dormancy period is recommended to be whichever comes earlier: <ul style="list-style-type: none"> <li>– the point at which it is identified that a deceased customer has no next of kin</li> <li>– seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.</li> </ul> </li> </ul> </li> <li>● Investment and wealth management: <ul style="list-style-type: none"> <li>○ Where the customer is owed or holds a cash amount only, the asset becomes dormant when it has been outstanding for at least six years from the date payment became due.</li> <li>○ For a customer with holdings in unit trusts/OEICs, dormancy is defined as where a customer has been identified as gone-away for at least 12 years and there have not been any active transactions on the customer's account during that time.</li> </ul> </li> <li>● Securities: <ul style="list-style-type: none"> <li>○ For shares, unclaimed dividends and proceeds from corporate actions, dormancy should be defined as a period of no shareholder-initiated contact for 12 years and: <ul style="list-style-type: none"> <li>– the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)</li> <li>– where applicable, at least three dividends have become payable but have not been cashed.</li> </ul> </li> </ul> </li> </ul>
<b>4</b>	<b>Transfer and reclaim</b>
R4.4.	HMRC will need to consider the tax implications of expanding the scheme and how best to ensure tax neutrality.
<b>5</b>	<b>Building participation and communications</b>
R5.1.	Industry, the government, RFL and the FCA should work together to agree and implement a holistic communications strategy that improves understanding and awareness of the dormant assets scheme and its planned expansion.
R5.2.	The government should assist industry in publicising and better supporting participants in the scheme, including: <ul style="list-style-type: none"> <li>● working with industry to create a dedicated dormant assets scheme website</li> <li>● supporting industry to develop sector-specific communication packs</li> <li>● working with RFL to celebrate new entrants.</li> </ul>
R5.4.	The government should improve transparency on how dormant account money is allocated and used and explore ways to engage industry in the impact of the scheme.
R5.8.	As part of an expanded scheme, the government should consider the feasibility of expanding the alternative scheme to allow smaller firms from the new sectors with strong local affiliations to join.

<b>RECOMMENDATIONS FOR GOVERNMENT</b>	
<b>6</b>	<b>Banks and building societies</b>
R6.1.	The existing definition within the Dormant Bank and Building Society Accounts Act 2008 of dormancy for banks and building societies should remain at 15 years of no customer-initiated transactions (see R3.2).
R6.3.	HMRC should consider how to supply additional guidance on the treatment of Cash ISAs of deceased customers that have been transferred to the dormant assets scheme, as well as certain practical clarifications outlined in Section 6.8.
R6.4.	As part of any programme of legislative change, the government should consider options to enhance the clarity of the existing Act by explicitly including Suspense Accounts.
R6.5.	The government should maintain the alternative scheme provisions within any subsequent legislative revision to continue to encourage the engagement of participants with assets of less than £7bn, and review its position in three years.
R6.6.	The government is encouraged to engage with the Chief Executive Officers/Chairs of potential participants about the benefits of joining the scheme.
<b>7</b>	<b>Insurance and pensions</b>
R7.4.	For policies with a contractual end, the dormancy period is recommended to be seven years after the crystallising event or, where earlier, at the point at which it is identified that a deceased customer has no next of kin.
R7.5.	For policies with no contractual end, the dormancy period is recommended to be whichever comes earlier: the point at which it is identified that a deceased customer has no next of kin, or seven years after a death claim is accepted and there is no ongoing contact with those managing the estate.
<b>8</b>	<b>Investment and wealth management</b>
R8.3.	The IWMWG recommends that firms in its sector define dormancy at the customer level, so that all of a customer's assets are identified as dormant in a consistent manner. In line with the current Act Guidance notes, the government should consider how future legislation may enable providers to consider client activity on other accounts within the same firm when defining dormancy. This would enable firms in the investment and wealth management sector to choose to define dormancy at the customer level without hindering other sectors' ability to transfer to RFL on an account or product level.
R8.4.	The period of dormancy in the investment and wealth management sector should be measured as follows: <ul style="list-style-type: none"> <li>● where the customer is owed or holds a cash amount only (potentially from an outstanding unclaimed distribution or unpaid redemption proceeds), and it has been outstanding for a six year minimum period from the date payment became due</li> <li>● where the customer has holdings in unit trusts/OEICs (and potentially also a cash amount), and a gone-away indicator has been added a minimum of 12 years ago and there have not been any active transactions on the customer's account.</li> </ul>
R8.6.	The government should consider an undertaking that, in the event of a subsequent claim for a non-cash asset, the customer will only be entitled to an equivalent cash payment (in line with the principle of full restitution) and not reinstatement of the original investment.
R8.7.	Clarification in future legislation is sought around the exact point in time that the cash amount due to a customer is calculated for a reclaim.
<b>9</b>	<b>Securities</b>
R9.5.	The scope of dormant assets that the SWG has considered is only within public companies. For shares and unclaimed dividends, dormancy should be defined as a period of no shareholder-initiated contact for 12 years and: <ul style="list-style-type: none"> <li>● the shareholder has been identified as gone-away (i.e. had three or more items of post returned from the registered address)</li> <li>● where applicable, at least three dividends have become payable but have not been cashed</li> </ul>
R9.7.	For proceeds from corporate actions, dormancy should be defined as 12 years of no shareholder-initiated contact from the point at which the company received the consideration.
R9.8.	The government should consider amending the Companies Act 2006 to allow the proceeds from corporate actions to be passed to RFL instead of the courts.
R9.10.	The government should consider implementing a statutory instrument or primary legislation to amend companies' articles of association to allow companies to specify the terms on which the shares would be forfeited (including the dormancy period and a <i>de minimis</i> tracing level) prior to passing funds to RFL. The position of share registrars should also be clarified to ensure they do not bear responsibility for restitution.
R9.12.	The government should consider the impact of the proposals on dematerialisation and how this may impact an expanded scheme if progressed.

<b>RECOMMENDATIONS FOR GOVERNMENT</b>	
<b>10</b>	<b>Legislation and regulation</b>
R10.3.	In order to expand the dormant assets scheme, primary legislative change is necessary to allow the scheme to receive a wider range of assets. It is recommended that future primary legislation enshrines the power to include additional assets and participants via secondary legislation, which would be consistent with a phased approach.
R10.5.	Further work is required to explore how an expanded scheme could benefit from FSCS protection should RFL become insolvent.
<b>11</b>	<b>Next steps</b>
R11.6.	Industry, the government and RFL should develop a cross-cutting communications plan during 2019 that seeks to build understanding, engagement and participation in the dormant assets scheme.

<b>RECOMMENDATIONS FOR REGULATORS</b>	
<b>2</b>	<b>Tracing, verification and reunification</b>
R2.4.	The insurance and pensions and investment and wealth management sectors would like to work with the FCA and RFL to consider whether an optional, proportionate approach to the efforts applied to the tracing of assets would be appropriate, as well as whether this should include a <i>de minimis</i> level above which more robust tracing, verification and reunification efforts should be applied prior to a transfer to RFL.
<b>5</b>	<b>Building participation and communications</b>
R5.1.	Industry, the government, RFL and the FCA should work together to agree and implement a holistic communications strategy that improves understanding and awareness of the dormant assets scheme and its planned expansion.
<b>7</b>	<b>Insurance and pensions</b>
R7.2.	The insurance and pensions sector would like to work with RFL and the FCA on how best to recognise the sector principles on tracing, verification and reunification.
R7.3.	The IPWG recommends a <i>de minimis</i> value of £100 per customer above which more robust tracing, verification and reunification efforts would be applied, and welcomes a dialogue with the FCA about this as part of a broader conversation on the best approach to tracing, verification and reunification.
<b>8</b>	<b>Investment and wealth management</b>
R8.2.	The investment and wealth management sector would welcome a discussion with the FCA and RFL in 2019 on the <i>de minimis</i> limit as part of a broader conversation on the best approach to the tracing, verification and reunification of customers with their assets.
R8.8.	The FCA should consider changes to CASS, COLL and other relevant rules to facilitate the transfer of dormant assets in this sector and liability for meeting reclaims to RFL.
<b>9</b>	<b>Securities</b>
R9.9.	The Financial Reporting Council should consider encouraging companies to disclose details of dormant assets in their annual reports, and to continue discussions to develop a 'participate and explain' approach to participation in an expanded scheme.
R9.11.	The FCA should consider amendments to CASS rules to enable dormant shares and unclaimed dividends held within a Corporate Sponsored Nominee to be transferred to RFL.
<b>10</b>	<b>Legislation and regulation</b>
R10.2.	The insurance and pensions and investment and wealth management sectors would like to work with RFL and the FCA on how best to recognise the sector principles on tracing, verification and reunification.
R10.4.	Industry would like to work with the FCA to determine how to amend CASS and COLL rules to implement agreed definitions of dormancy, and ensure there are no regulatory impediments to transferring assets to RFL.

## ANNEX C: STANDARD PRACTICES FOR TRACING, VERIFICATION AND REUNIFICATION

The banking sector should continue using its '10 core pledges', which are referenced in the Industry Guidance to Banking Conduct of Business Sourcebook and supported by MyLostAccount.<sup>1</sup> The sector is content that its reunification efforts have proved sufficiently robust under the current scheme, with reclaim rates holding steady at around 5% of accounts transferred to Reclaim Fund Ltd (RFL). Accordingly, this chapter largely excludes the banking sector and looks instead to support those sectors that are new to the dormant assets scheme. To distinguish between them, 'new sectors' is therefore used to refer to the insurance and pensions, investment and wealth management, and securities sectors.

Most of the sectors looking to join an expanded dormant assets scheme already have frameworks or principles for managing gone-away customers, such as those available through the Association of British Insurers (ABI) and The Investment Association (The IA). Where these are in place and effective, firms should continue to use them. After reviewing these, the following standard practices are put forward for companies and trade associations in new sectors to consider under an expanded dormant assets scheme.

### Standard practice 1: Definition of gone-aways

Some sectors looking to join an expanded scheme use the term 'gone-away' if communications regarding an asset are unable to be delivered to its owner and are returned to the firm, such as returned post or an email bounce. A gone-away customer is not necessarily dormant, as the prescribed time period may not have elapsed, but rather forms a trigger for some sectors to begin tracing, verification and reunification processes.

A definition of gone-aways is not required for the banking sector to meet existing definitions of dormancy. This is due to the transactional nature of bank and building society accounts. For example, an account can be both active (transactions are occurring) and gone-away (post/emails have been returned). Accordingly, the banking sector does not use a gone-away status as a trigger point for dormancy. For new sectors, due to the range of assets that could come under the scope of an expanded scheme, it would be difficult to operate a common definition for a gone-away customer. Therefore, each new sector should consider having an agreed definition for gone-aways. This is in addition to the definition that each sector will have for dormancy under the expanded scheme (see Chapter 3).

### Standard practice 2: Proactive management of customer contact data

Companies in new sectors should consider proactively reviewing their customer base, potentially before a significant trigger event for the customer (e.g. at maturity of a policy or close to taking retirement benefits), and/or when they have not had contact with the customer for a lengthy period. This could include using an outside service, such as a tracing agent or data provider, to screen customers and proactively identify changes of address (subject to verification).

Firms would then need to consider what action they would take following such a search. This may include prioritising groups of customers by age, trigger events, vulnerability and length of time since last contact.

Equally, companies should regularly check and confirm contact details are correct when in communication with a customer. This may include email, telephone number and address.

### Standard practice 3: Clear communications with customers

All new sectors should consider the use of clear and transparent messaging to explain to customers that they are responsible for ensuring the companies they hold products or investments with have their up-to-date contact details. This messaging could be included in documents such as the prospectus, terms and conditions, application forms, statements, and other regular communications. It could also be incorporated into digital customer journeys where relevant. The Financial Conduct Authority's (FCA) publication on Smarter Consumer Communications may be helpful for firms here.<sup>2</sup>

### Standard practice 4: Tracing

Companies across all new sectors should commence efforts to contact a customer when returned communications (e.g. returned post or bounced emails) indicate that they have moved away from the address held on company records.

Firms should consider alternative contact methods available before tracing takes place. For example, if post has been returned, companies may email, phone and/or text the customer using data captured as part of standard customer processing where consent has been given. If an advisor introduced the customer, the company could consider contacting the advisor directly to obtain an up-to-date address for the customer.

Companies should consider using both financial and residential data sources to trace the whereabouts of a customer. This might include using a credit reference bureau, the electoral register, and/or available government data sources (e.g. Department for Work and Pensions). This could also be outsourced to an expert tracing company. If tracing is outsourced, the company should include a mortality screening to determine if the customer has died. The source of this data is likely to be the government's General Register Office records.

1 <https://www.mylostaccount.org.uk/pledges>

2 [The Financial Conduct Authority's Feedback Statement: Smarter Consumer Communications](#), October 2016.



### Standard practice 5: Identity verification

Companies or their appointed third parties should consider having a documented procedure to verify a customer's identity once a potential new address has been traced, if they do not already have one. A company's requirements for verification are likely to vary, even within sectors, as they will be driven by its relative experience of what works most effectively in contacting its customers.<sup>3</sup>

In their verification communications, companies should include any historical name changes for the organisation, if appropriate, as this will assist the customer in relating the communication to the company that they bought the product or investment from initially.

As the requirements in verifying a customer at a traced address will be dependent on a company's risk appetite, it would be difficult to provide generic procedures across all sectors. Instead, each new sector should look to operate a good practice standard for verification. The following are examples of ways in which a customer's identity at a new address could be verified:

- matching date of birth, previous address and/or national insurance number (if known) to data held by the company
- requiring evidence, such as a utility bill, that the customer lived at the previous address on the company's records and now resides at the new address traced.

To support identity verification, companies should consider including a reference to dormant customer activity on their company website. This can then be referenced in verification communications with customers so that they are able to authenticate such communications and feel confident it is not a scam.

### Standard Practice 6: Repeat tracing

Where the initial trace of a gone-away customer has been unsuccessful, companies in the insurance and pensions and investment and wealth management sectors could consider having a documented process to periodically repeat their attempts to trace the gone-away customer. In any process, and in determining the period(s) used, companies will need to consider the costs and likely success rates of reconnecting with the customer. Current guidance from the FCA suggests tracing takes place after 18 months, and then again every three years for any unsuccessfully traced customers, up until the point the cash is transferred to RFL.

In line with current market practice, the securities sector proposes to undertake tracing exercises only at the point of dormancy (i.e. once). The Securities Working Group (SWG) feels requiring repeated tracing exercises would place too heavy a cost burden on companies and would deter participation. The banking sector will continue to follow its '10 core pledges', which do not require firms to make repeat attempts to contact customers, partly because of the potential fraud risks of doing so.

### Standard Practice 7: Reconnection targets

Companies across some new sectors could consider having targets related to the level of reconnection with gone-away customers. If used, these targets should be documented, measured and reported at a senior level within the organisation, and could include:

- the level of successful reconnection
- the level of customer population recorded as gone-away
- the volume of customers newly recorded as gone-away.

There is broad support for considering targets across the insurance and pensions and investment and wealth management sectors. The securities sector does not wish to recommend targets: in view of the passive nature of the relationship with shareholders, they fear targets could drive the wrong kind of behaviour (see Chapter 9, Section 9.11).

### Standard Practice 8: Governance and reporting

Companies in new sectors should have their own documented gone-away customer management framework in place. This should be communicated and embedded across their organisations and might include using the framework or principles available from their relevant trade association.

It may help to supplement this gone-away framework with an additional framework for the management of unclaimed assets. This could be similar in structure, but should clearly document tracing, verification and dormancy requirements to assist the transfer of dormant asset funds to RFL. See Chapter 4 for further details.

In addition, companies should consider having clearly defined and documented roles and responsibilities across their organisations in relation to gone-away customer management, as well as the management of unclaimed assets prior to any transfer to RFL.

<sup>3</sup> In verifying a customer's identity, companies may: update their records without further verification; write to the customer requesting that they contact the company to verify their identity at the new address; write to the customer requesting evidence, potentially including certifying documentation (e.g. utility bills); use electronic verification to assist; and use telephone-based options to complete verification.



## ANNEX D: TAX IMPLICATIONS

This annex compiles the key tax implications to be considered.

Tax	Potential implications
Individual Savings Accounts (ISA)/Self-Invested Personal Pension (SIPP) wrappers	<p><b>Cash ISAs:</b> In September 2018, HM Revenue &amp; Customs (HMRC) clarified the tax treatment of Cash ISAs transferred to Reclaim Fund Ltd (RFL).<sup>4</sup> At the point of reclaim, the repayment of the balance from RFL is not liable to tax. It will not form part of the investor's annual ISA allowance if it is paid back into the original Cash ISA or Cash ISA with the original ISA manager. If the repaid balance is invested directly in a Cash ISA with another ISA manager or a Stocks &amp; Shares, Innovative or Lifetime ISA, however, it will form part of an individual's annual ISA allowance.</p> <p><b>Stocks and Shares ISAs/SIPPs:</b> HMRC is asked to consider the following tax implications:</p> <ul style="list-style-type: none"> <li>● Would Stocks and Shares ISAs be treated the same as Cash ISAs from a tax point of view?</li> <li>● What impact would there be on the various reporting requirements that asset managers currently meet, e.g. ISACOM 100?</li> <li>● What would happen if a firm was no longer an ISA/SIPP manager at the time the customer reclaimed their assets?</li> </ul>
Capital gains tax (CGT)	<p>CGT is only applicable on the sale of non-cash assets. As dormant non-cash assets would not have been sold at the customer's request, and would have only been liquidated to enable them to be transferred to RFL, it is questionable whether customers who reclaim their assets should have to pay CGT. Those customers have not asked for their assets to be liquidated and may have wished to continue to hold the asset.</p> <p>The calculation of CGT for reclaimed assets could become complex and time-consuming. It is suggested that this may not be justified, considering the amount of tax this would generate for HMRC.</p>
Inheritance tax (IHT)	<p>If on reclaim from RFL the original owner is deceased, the question of IHT needs to be addressed. The treatment of IHT would depend upon whether the estate was still open, or if probate had been granted, and when.</p> <p>For similar reasons given for why CGT should not be due on reclaimed assets, it is proposed that IHT should not be due on reclaimed assets.</p> <p>If HMRC agrees that CGT and IHT would not be due on reclaimed assets, it is acknowledged that anti-tax avoidance measures may be required. This is to ensure that there is not a blanket exemption (i.e. that a customer avoids a CGT or IHT charge that they would otherwise have paid simply because their assets were put into the scheme and had to be reclaimed).</p>

Continued on next page.

<sup>4</sup> <https://www.gov.uk/guidance/close-void-or-repair-an-isa-if-youre-an-isa-manager#dormant-accounts>

Tax	Potential implications
Overseas Owners	Clarification is required from HMRC on what the tax implications would be when liquidating assets held by overseas customers, e.g. United States withholding tax.
Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS)	It needs to be considered if assets being transferred to RFL would have any implications on the reporting requirements for FATCA and CRS.
Risk of double taxation	<p>The Commission's report recommended that the tax treatment of all assets in the current scheme, as well as those being considered for inclusion in an expanded scheme, should be reviewed to remove any potential risk of double taxation.<sup>5</sup></p> <p>The Commission referred to an example where it is possible for the same £1 of transferred asset value to be subject to both corporate tax (paid on investment income) and income tax. HMRC have indicated that this risk has been reduced after the Personal Savings allowance was introduced on 6 April 2016 and section 851 of the Income Tax Act 2007 was repealed.</p>
Pensions: exemptions from tax	Within pensions legislation, there is a list of authorised payments that can be made from a pension without incurring substantial tax penalties. <sup>6</sup> This list should be adapted to make clear that payments to RFL (assuming there are no impediments to crystallising the benefit to cash) are authorised payments and, in addition, that they are exempt from tax. Similarly, payments from RFL to a member or beneficiary (usually made via an insurance company or pensions provider) should be an authorised payment and taxed as appropriate for the payment type.
Goodwill payments	There would need to be consideration on the tax due on any goodwill payments, as mentioned in Chapter 4, Section 4.39. This is especially relevant in relation to tax wrapper products.

<sup>5</sup> [Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendations to benefit investors and society](#), March 2017.

<sup>6</sup> Chapter 3, Part 4 of the Finance Act 2004.



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