



tisa

Leading on Investments and Savings

**Response by TISA to
Commission on Dormant Assets:
Call for Evidence – Trade
Associations**

24th June 2016

About TISA

TISA is a not-for-profit membership association operating within the financial services industry. The focus of our recommendations and actions is improved outcomes for consumers and UK plc with this approach leading to a stronger UK financial services industry.

TISA's growing membership comprises over 150 firms involved in the supply and distribution of savings and investment products and services. These members represent many different sectors of the financial services industry, including asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.

TISA has a successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for the public. Effective policy and regulation and the creation of efficient industry infrastructure continues to be the major focus for our members. TISA is unique in that it represents the entire financial services industry, incorporating cross-sector policy, industry and technical expertise. Whilst we maintain a solid partnership with government, the regulators and wider industry, we remain independent and develop neutral views and opinions. This impartiality is reflected in our ability to drive development projects which improve industry performance and consumer outcomes, putting us in the unique position of being able to constantly challenge the status quo to bring about material improvement.

Summary of TISA response

TISA supports the need to improve the way dormant assets are dealt with, but we consider that it is critical that sufficient emphasis is placed on tracing the rightful owners of those assets before any further action is taken.

When appropriate tracing action has been taken, due time elapsed and assets are available to be passed away, then we suggest that charities are not the only beneficiaries. Our work with Oxford Economics is showing that long term saving has benefits for Britain over short term consumption. This challenges the presumption that unclaimed assets are free money that would be better off given to charity as there may be more beneficial ways those assets could be used.

We therefore suggest that as these monies are being disinvested they should be used for things like long term infrastructure projects which deliver benefit to UK plc.

Additionally, we recommend that firms have a policy on both the processes they have in place to trace dormant or gone away clients and the treatment of unclaimed assets and cash, regardless of whether they intend to pay amounts to charity in accordance with the relevant CASS rules or any new requirements put in place.

Response to the Call for Evidence – Trade Associations

Relevant to this response is the fact that in 2014, TISA, in conjunction with the British Standards Institution (BSI), published a set of good practice standards to help firms deal with the problem of losing contact with their customers and the resulting unclaimed assets – currently estimated to be valued between £15bn and £20bn.

Sponsored by TISA and supported by a steering group of 15 firms (including representation from multiple sectors of the financial services industry in addition to tracing firms) and a wider review panel, a BSI Publicly Available Specification (PAS 156): 'Specification for the maintenance of financial services customer data' was developed. This enables organisations who administer their own customer data, or third party administrators, to put in place a governance process, together with a framework for maintaining and continually improving the accuracy of the customer data they hold, including tracing details of lost customers or beneficiaries of the assets.

The primary cause of unclaimed assets is out of date or incomplete customer information. Organisations need to ensure a high quality of customer contact data and that data management policies are robust enough to avoid disconnects with the customer that might prevent assets being reunited.

The PAS sets out six requirements for maintaining financial services customer data:

1. The minimum requirements for achieving and maintaining customer contact
2. Primary, and where present, secondary data to be captured and maintained
3. Ways of establishing contact with lost customers and beneficiaries
4. Business history profiling including high-level details of changes such as mergers and acquisitions which may affect the way a customer knows and contacts the organisation; and how this information is made available
5. Timeframes for any review and, if required, updating of customer contact data
6. The organisations' data quality management policy.

We believe the work which has already been undertaken within the investments industry can help inform the eventual outcomes of this Commission.

A copy of PAS 156 has already been passed to Susan Sternglass Noble who is chairing the Investment Management Working group for this Commission.

Question 1 Which types of asset within your sector do you think include a dormant element which could be considered in a potentially expanded dormant asset scheme?

We feel that a clear set of rules or principles would be valuable, with scenarios or products serving as illustrations but leaving firms the discretion to pay away. That said, all assets have the potential to be included in such a scheme. However, each comes with its own set of challenges. The key ones are as follows

- Where an asset is held in a non-cash form at what point is the value realised? In the event the owners come forward and provides the necessary evidence to make a claim, what value is used?
- What level of tracing is carried out in order to ensure the owner of the assets is given sufficient opportunity to take the necessary action to reclaim them?
- What information is publicised to enable the rightful owners to be able to trace lost assets while minimising the risk of fraudulent claims? For example, it is unlikely that advertisements in the press would be considered to be appropriate.
- Consideration of the terms and conditions that control when the asset may be realised and in what circumstances, if any can this be done without the owner's prior consent (e.g. ISA).
- Consideration of existing regulatory controls currently in place to safeguard the assets. From an equity perspective this could be the CASS rules, particularly sections 6 and 7.

Simple items suitable to be included in an expanded dormant asset scheme might be as follows:

- unclaimed distributions (non ISA),
- un-cashed, out of date cheques (client money in most cases)
- residual balances held on closed accounts.
- Deceased clients where no beneficiary has been identified or no claim made
- Term driven products where the asset owner has failed to respond or give instruction after a certain period has past.
- "Gone away" balances where the customer cannot be traced after a certain period. In particular in this area would be low balances which do not meet the minimum criteria

Question 2: In your view are there any assets within your sector that should be excluded from an expanded dormant assets scheme? Please explain why you think that is the case

- Any asset where insufficient evidence of tracing the owner can be provided
- JISA/CTF accounts will require differentiated timelines due to the nature of the accounts in that they are 'locked-in' until the child reaches 18yrs of age

Question 3: In your view what are the advantages and disadvantages of defining a) a period of no contact or b) a lack of client traceability

a) Defining a period of no contact - advantages

- This is straight forward and easy to measure. The requirement will be to establish the period of non-contact.
- There is no change in process or cost to the provider
- An annual statement could be used to request contact if there has been no other contact for a period of time
- Online users could be checked for last log in

b) Defining a period of no contact - disadvantages

- The fault of the lack of contact could lie with the provider who has not maintained contact appropriately.
- There may have been no need for the client to contact the provider except at claim or withdrawal stage
- Issuing a statement to an address does not prove receipt of the document which could have been sent to the wrong address for years.
- Where ownership of assets has been transferred and no contact had been received before the transfer, the client has been disadvantaged.
- On its own, there is no requirement for the firm to carry out some tracing activity

c) Defining a lack of client traceability - advantages

- This is the safest way of demonstrating to any claimant that attempts were made to reunite the assets
- The firm has a duty of care to remain in contact with the investor. Carrying out tracing activity is a good way of demonstrating this.
- A good tracing process in place has both positive results for the firm and, over time, the costs will pay for itself.
- A customer data quality standard BSI 156 already exists for firms to work to.

d) Defining a lack of client traceability - disadvantages

- Initial cost to the provider of the tracing activity. To carry this out appropriately may have some higher initial costs when first carried out, especially if there has been no tracing activity for some time (years). The firm will still be earning charges for these assets to offset these.
- Additionally, it will be important to include differentiated requirements determined by the size of the unclaimed account

Question 4: What are the legal, regulatory, accounting and operational issues which might inhibit the assets you listed in question 1 being contributed to an expanded scheme?

- The terms and conditions will prevent the assets being transferred unless they have been amended to support this.
- In some circumstances, the investor will need to accept this change. This might be in the form of a vote if the assets are held directly on a register.
- Revised T&Cs would need to include details of the required process and timelines.

Question 5: What are your views on whether participation in an expanded scheme should be voluntary or mandatory? What are the reasons for your preference?

The feedback received suggests that a voluntary scheme would not be significantly well supported. This can also be seen from the current scheme with the bank and building society sector which has had limited success.

Some providers have already stated that they would not participate unless the scheme was compulsory.

Question 6: What do you see as the advantages and disadvantages of a) a voluntary scheme and b) a mandatory scheme?

a) Advantages of voluntary scheme

- Firms can choose whether they want to participate.
- Firms only make changes to terms and conditions if they participate
- Limited requirement to make regulatory changes for equities to allow them to be sold and paid into charity

b) Disadvantages of voluntary scheme

- Limited participation anticipated therefore smaller amount into charity
- May still need to make regulatory/legal changes

c) Advantages of compulsory scheme

- Maximises contributions to charity
- All firms participate making it easier to compare quality levels across industry
- The rules/regulations are the same for everyone can have standard terms and conditions
- Maximises the outward perception of the industry

d) Disadvantages of compulsory scheme

- All firms would have to contact customers and make changes to terms and conditions.
- Regulations would need to be drawn up to ensure assets remain protected and the point at which a value is derived is clear.

Question 7: Are there any regulatory rules that require your sector to disclose or report on level of dormant assets? If so, please indicate what these rules are.

There are no specific regular reporting requirements on the level of dormant assets. Firms do report on the level of client money to the FCA.

Question 8: Is your sector currently required to treat dormant assets in a certain way, for example via accounting or regulatory systems? What enforces that requirement?

There is no specific requirement. However:

- There is a requirement to account for client money items separately
- The firm would need to identify a gone away or a deceased customer on their records in order to protect these assets. So they would be identifiable.
- From a client money perspective the assets are identifiable. For those bound by them, CASS (6.10 for assets 7. for client money) rules allow these to be paid to charity after following certain processes after a period of time (12 years for assets, 6 years for client money). It may be helpful to make these timelines consistent.

Question 9: Are there currently legislative or regulatory restrictions on releasing dormant assets from being held in perpetuity, awaiting their return to the beneficial owners?

- ISA regulations currently prevent assets from being passed on unless on deceased or cashed in by owner.
- A firm's terms and conditions determine what is allowed.

Question 10: If legislation regarding transparency was introduced, what information does your sector carry which could be reported?

Firms will have identified the following in the course of their work. It does not mean they are able to produce reports without some work being carried out:

- Evidence of client money items.
- Gone away clients
- Uncashed distributions
- Low value asserts
- Residual holdings after encashment
- Deceased clients where beneficiaries not found

Additional commentary

We recommend that:

- Our work with Oxford Economics is showing that long term saving has benefits for Britain over short term consumption. This challenges the presumption that unclaimed assets are free money that would be better off given to charity as there may be more beneficial ways those assets could be used.

We therefore suggest that as these monies are being disinvested they should be used for things like long term infrastructure projects which deliver benefit to UK plc for example:

- Charities which deliver benefits to UK plc
- Infrastructure projects
- NHS

Commission on Dormant Assets: Call for Evidence

- The requirement under CASS 7.11.52 E (1)(c), which requires a second attempt to be 'by any means other than [the method used before in] (b) should be reconsidered in light of the fact that for many clients the only available contact details are postal, particularly when they were set up before the internet age.
- CASS 7.11.57R is clarified to include direction on whether a firm must make good any amount paid away under £25 if the client subsequently comes forward
- CASS 7.11.50R currently places an open-ended obligation on firms to hold reserves to repay clients who come forward after money has been paid away. We recommend inclusion of a 'hard stop' date on that liability.
- Guidance is included as to what types of charities may be used to avoid controversy in awards made by firms.
- Separate consideration is given where a firm has taken on books of business where client and contact data is minimal.
- With regards a de minimis amount, £25 is sometimes cited as being too low, but for the very poor, £25 is a significant sum of money.