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The Pensions Regulator
CoP12 Consultation Team
Napier House, Trafalgar Place
Brighton, BN1 4DW

Re: TPR's Consultation on the Code of Practice (CoP) 12: Contribution Notices

Dear CoP12 Consultation Team,

We're the Pensions and Lifetime Savings Association (PLSA); we bring together the pensions industry and other parties to raise standards, share best practice, and support our members. We represent over 1,300 pension schemes with 20 million members and £1 trillion in assets, across master trusts and defined benefit, defined contribution, and local government schemes. Our members also include some 400 businesses which provide essential services and advice to UK pensions providers. Our mission is to help everyone to achieve a better income in retirement. We work to get more people and money into retirement savings, to get more value out of those savings, and to build the confidence and understanding of savers.

The PLSA welcomes the opportunity to respond to the proposed circumstances in which The Pensions Regulator (TPR) may expect to issue a Contribution Notice (CN) if any or all of the new tests, or the material detriment test, are met.

Due to the very short consultation period, we have responded with our key concerns. We would be happy to engage with further discussions about the detail. We would also like to express our concern about the risks that the now regular practice of consulting for reduced periods does not provide sufficient time for meaningful engagement with the industry and will lead to sub-optimal outcomes.

We hope that the following key points will still be helpful to your work in finalising the code and code-related guidance for CNs:

1. The PLSA is supportive of the aims of the new employer tests, and about TPR's new powers more generally, but we ask for clarity within the guidance and to be aware of potential unintended consequences, which are detailed below.
2. The suggested tests could be very subjective and further explanations are needed to help employers understand whether they are at risk of being issued a CN. For instance, how will materiality be assessed? How will impact on the covenant, and the subsequent effect on the "recovery to the pension scheme on insolvency of the employer" be estimated?

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3. An unintended consequence of the new Contribution Notice powers could be that there is less investment into any company that has a legacy DB scheme, where there are what could be deemed “unreasonable” constraints on dividend policy. This could, ultimately, weaken the covenant and have wider long-term macro impacts on economic recovery in the UK. To help avoid this, clarity is needed on what level of dividend payment might trigger the employer resources test. It would also be helpful if the guidance could re-establish the example previously used to showcase what would be deemed acceptable dividend policy by the Regulator.
4. In the [PLSA’s response](#) earlier this year to TPR’s consultation on its criminal sanctions, we called on the Regulator to go further in providing reassurance that an entity will not be prosecuted where it has fully mitigated any detriment that may be caused to a DB scheme. Case studies showing how the Regulator will approach making judgments in some of the “grey areas” – for example, by providing middle-ground scenarios – will help enable individuals working with pension schemes to fulfil their duties with confidence. Drawing on these principles for this consultation on Contribution Notices, we ask TPR to consider the following:
 - ▶ It would be helpful if TPR explicitly stated that it would not consider issuing a CN (or not use their criminal offences powers) if (a) employers showed they had fully mitigated any known detriment or if (b) circumstances fell outside of the scenarios currently listed.
 - ▶ It would also be helpful to have additional examples of situations where a CN would not be issued, where the tests are met but there is net benefit to the pension scheme. For instance, if the employer “chooses to do the right thing” by making a large contribution to the scheme, this would reduce the S75 debt recoverable on insolvency.
 - ▶ Other areas should be considered as well to be categorised as “reasonable”, and would thus also not trigger a CN, such as if the employer chooses to prudently invest for its own business growth.
5. More detail is needed around how employers can and should mitigate common business situations, to avoid an unnecessary uptick in clearance applications and regulatory self-referrals by trustees, which would potentially increase TPR’s workload.

We hope that these key reflections from our membership are helpful and please be in touch at any time if you would like to discuss any of the above further.

Yours sincerely,

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