

24 June 2022

The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW
Email: PSA21@tpr.gov.uk

Dear Sir/Madam,

RE: TPR ENFORCEMENT AND PROSECUTION POLICIES CONSULTATION

I am writing in response to The Pensions Regulator's (TPR) consultation on its enforcement and prosecution policies. The PLSA previously responded to TPR's new enforcement policies in December 2021; we now welcome the response and both the draft scheme management enforcement policy and prosecution policy. We comment on some of the challenges faced by DB (Defined Benefit) schemes whilst waiting for the Department for Work and Pensions (DWP) regulations on the notifiable events regime.

About the PLSA

The Pensions and Lifetime Savings Association is the voice of workplace pensions and savings. We represent pension schemes that together provide a retirement income to more than 30 million savers in the UK and invest more than £1.3 trillion in the UK and abroad. Our members also include asset managers, consultants, law firms, fintechs, and others who play an influential role in people's financial futures. We aim to help everyone achieve a better income in retirement.

PLSA's general view on the consultation

We are supportive of TPR and the use of enforcement powers to act against poor behaviour, such as dishonesty or misconduct that impacts negatively on schemes, or wilful neglect of responsibilities, including disregarding meaningful engagement with regulatory processes and compliance.

We welcome TPR taking on board our recommendation to consolidate the enforcement policy which will now replace existing policies for DB, defined contribution (DC) and public sector service pension scheme policies. This simplification will provide trustees with a clearer view of the Regulator's approach.

We have previously raised concerns about the lack of clarity about the factors considered where overlapping regulatory powers are exercised and when this policy would be used in that context. Whilst we note that the "Overlapping Powers" chapter is not open for consultation, we welcome the updated examples which add clarity.

The new draft enforcement policy demonstrates a clear intent to be proportionate, transparent, and consistent. We believe this approach will create open communication and reduce the likelihood of unintentionally encouraging a risk averse culture. The streamlined approach adopted provides details of factors considered on the level of engagement or enforcement which could be taken; these factors will provide useful guidance for trustees and what they should expect.

We do, however, note in paragraph five under the ‘assessment of risk and harm’ section, that it is not clear why the weighting applied to these individual factors should vary based on the evolving strategic priorities of TPR. We recommend TPR remove this sentence as in its current form would no longer act as a deterrent and would make this policy less effective.

We believe that the updated prosecution policy provides clarity on the TPR’s approach to the investigation and prosecution of criminal offences.

It is noted that TPR is not seeking views on the Information Gathering section as it formed part of the Autumn consultation. As included as part of our response last year, we wish to stress that TPR should consider the proportionality and reasonableness of information requests and the time given to schemes to comply. Schemes appreciate dialogue with TPR when information requests are made as well as flexibility regarding requests that are circumstance specific.

High fines policy (avoidance)

We welcome TPR sharing its approach to applying high fines only in circumstances where the behaviour relates to breaches of the notifiable events regime or where false and/or misleading information has been provided to TPR or trustees. We are concerned DB schemes may find themselves in breach of this policy as funds due to delays of the final regulations for notifiable events.

In October 2021, in our response to the DWP’s Consultation on the Notifiable Events Amendment Regulations for DB schemes, we recommended both the DWP and TPR clarify what is defined as a “decision in principle”. We believe that in its current form, the term is too vague and could therefore create confusion for firms that are at a very early stage of looking into disposing of business assets but are yet to reach any such “decisions in principle.” This in turn could lead to an unintended breach of the regulations as they are currently worded. The PLSA also urged further clarification on “when the main terms are proposed” – both in its definition and at what point will the main terms of a transaction be deemed to be “proposed.”

At the time of writing, the DWP’s response is now overdue as the regulations were expected in Spring 2022, and TPR is therefore also yet to consult on guidance of these regulations. Whilst we recognise TPR have issued a “Criminal Offences Policy” which sets out some common practices, there may still be unintentional breaches from both trustees and employers. We ask that the DWP and TPR work collaboratively to avoid trustees having a lack of clarity on their own responsibilities and then accidentally falling into the anti-avoidance behaviour category.

Conclusion

Overall, we welcome TPR's approach to consolidate the enforcement policy and update its prosecution policy. These are crucial steps in ensuring that TPR remains flexible in its approach and its application of powers and that it will provide trustees and employers with confidence when conducting their respective roles.

We hope that the above is helpful. If you would like any further clarification or information, please do not hesitate to get in touch.

Yours sincerely

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Senior Policy Advisor

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