The Trustee toolkit downloadable

Pensions law

Tutorial two: The Pensions Regulator

By the end of this tutorial you will better understand:

- the functions and powers of The Pensions Regulator (TPR)
- the information available from TPR to help trustees

This tutorial is part of **Scenario one**.

Glossary

A detailed glossary of technical terms can be downloaded from the Resources tab when you log in at **www.trusteetoolkit.com**

The Pensions Regulator

Who are they?

TPR is the body that regulates work-based pension arrangements (occupational pension schemes and certain aspects of stakeholder and other personal pensions). They superseded the previous regulator, the Occupational Pensions Regulatory Authority (OPRA) and were established under the Pensions Act 2004, to regulate work-based pensions in the UK.

What are their objectives?

TPR's objectives set out in legislation are to:

- protect the benefits of members of occupational pension schemes
- protect the benefits of members of personal pension schemes (where there is a direct payment arrangement)
- minimise any adverse impact on the sustainable growth of an employer (defined benefit only), in relation to the exercise of its functions under Part 3 only
- promote, and to improve understanding of the good administration of work-based pension schemes
- reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
- maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008

These objectives shape their approach and they have discretion over how to achieve them. They do not prioritise one over another.

What do they do?

Their principal aim is to prevent problems from developing and work with those involved with providing and running a pension scheme, namely:

- trustees
- employers
- pension professionals

How do they regulate and enforce?

Primarily, they seek to be proactive, rather than just react when things go wrong. They have therefore adopted the following approach.

- Educate – they will educate those responsible for running schemes to fulfil their legal duties. They help them develop systems and behaviours that support the standards defined by the regulatory framework.
- Enable – their aim is to enable trustees to fulfil their accountabilities to scheme members. This can be done for example by providing codes of practice and guidance material.
- Enforce – ultimately they may need to theme enforcement powers, for example by sanctions, including the prohibition or suspension of scheme trustees. However they use this as a last resort, when the approach to educate and enable has been exhausted.

What powers do they have?

TPR has a range of powers which are granted by law in order to enable them to meet their objectives. They theme these powers with the aim of putting things right and keeping schemes on the right track for the long term. Their powers fall into three broad categories.

- Investigating schemes: how they gather information to help identify and monitor risks.
- Putting things right: what they can do where problems have been identified.
- Acting against avoidance: how they ensure that employers do not sidestep their pension obligations.
- In the case of master trusts, they authorise and supervise the running of a master trust scheme.

What enforcement powers do they have?

Where TPR decides that action must be taken to protect the security of members' benefits, they have a range of options available. The action taken will, of course, depend on the circumstances of the problem. These are some examples of the regulatory action they may take.

- They can issue an improvement notice to individuals or companies, or a third party notice, requiring specific action to be taken within a certain time.
- They can take action, on behalf of a scheme, to recover unpaid contributions from the employer if the due date for payment has passed.
- Where wind-up is pending and they believe that members' interests may be at risk, they can issue a freezing order. This order temporarily halts all activity within the scheme, so that they can investigate concerns and encourage negotiations.
- They can prohibit trustees who they do not consider to be fit and proper persons for the role.
- Where breaches have occurred, they can impose fines.
- They can prosecute certain offences in the criminal courts.

- They can look to deauthorise a master trust scheme, triggering its wind-up, where they are no longer satisfied it meets the authorisation criteria.

Who are the Determinations Panel?

The Pensions Act 2004 lists certain reserved regulatory functions (including theme of powers to appoint or suspend scheme trustees, to require a person to pay a penalty or to direct a person to take certain other actions). These reserved regulatory functions are exercised by a Determinations Panel on behalf of TPR. Other functions may be delegated to the Determinations Panel.

The Determinations Panel is appointed by TPR. It is a committee, comprising a chairman and six other people, all of whom have legal, business and/or pensions knowledge.

A right of appeal to The Pensions Regulator tribunal exists in relation to Determinations Panel decisions.

How do they request information?

TPR collects information about individual schemes via the scheme return process. You will learn more about that later in this tutorial.

They also collect information about schemes in a broad sense, by conducting research which provides an oversight of trends in the industry and alerts TPR to any area which may require regulatory attention.

They also carry out targeted thematic reviews to ensure that they gather information in a structured way. This provides relevant and specific information that TPR can analyse to see if schemes comply with the law and the codes of practice they have laid down.

A risk-based approach

Risks do not present themselves evenly across the market and one of the core tasks for TPR is to identify and prioritise risks. They do this by focusing regulatory interventions on those schemes which represent the highest risks and where interventions will have the greatest impact.

In this way, they match their resources according to the level of risk posed so that interventions are proportionate to the risk identified. At the same time, they remain consistent in their approach across schemes and employers with similar risk profiles.

They have embedded risk management through risk committees and the approach of linking strategy to execution is overseen by the Board and senior management team. TPR also produces measures for effectiveness and the impact of interventions by issuing key performance indicators (KPIs) regularly.

TPR operates in the key areas of defined contribution (DC), defined benefit (DB) automatic enrolment and master trusts, each representing their own risk framework. Each of these core areas has adopted an evidence-based approach to measuring risk. On this basis, they have set up a strategy for the intervention required to deal with these risks. This is a dynamic activity, adapting as the market and risks change over time.

Codes and guidance

As a trustee, you need to comply with the relevant pensions legislation. But as the tutorial on legislation shows, there is rather a lot of it, and it can be quite daunting to find your way round it.

TPR has developed a number of regulatory tools to enable them to meet their statutory objectives and to help you understand what is required.

Codes of practice

The purpose of the codes of practice issued by TPR is to provide practical guidelines to trustees and others on the requirements of pension legislation and set out standards of conduct and practice expected of those who must meet the requirements.

Whilst codes of practice are not statements of law, and there is no penalty for failing to comply with them, a court or tribunal must take any relevant provisions of a code of practice into account in determining whether the legal requirements have been met.

Pensions law is often amended which means that TPR needs to update an existing code of practice from time to time. They therefore recommend that when referring to a code of practice, you check that you have the latest version.

Regulatory guidance

A code of practice is not the only regulatory document they issue. To help trustees, employers and others understand what the law requires with regard to regulating pension provision, TPR has issued a series of 'regulatory guidance' documents.

These are essential for trustees to help broaden their understanding of pensions law and associated legislation that affect running a work-based pension scheme.

Code-related guidance

TPR also issues 'code-related guidance' in relation to individual codes of practice. This guidance is designed to complement the associated code of practice and should therefore be read in conjunction with it. The guidance provides further explanation about some of the matters covered by the code and can include illustrative case studies and examples.

Website

You can find codes of practice, regulatory guidance and code-related guidance on TPR's website at **www.tpr.gov.uk/doc-library**. It also has other supportive material for trustees, such as Q&As, checklists for compliance, outcomes of pensions related research, statements and reports, e-services such as webinars and, of course, the Trustee toolkit. You can sign up for news-by-email at **www.tpr.gov.uk/subscribe**.

Reporting to TPR

Trustees need to communicate with TPR, but what is it they need to communicate? There are three main categories.

Providing information

TPR maintains a register of work-based pension schemes, and to keep this accurate, it needs trustees to provide information about their scheme. They obtain some of this information by sending out a new scheme return to trustees at least once every three years (though many schemes receive a return every year). Trustees are required by law to complete this.

Following changes introduced by the Pensions Act 2014, schemes with no more than four members will only have to complete a scheme return every five years. Trustees are required by law to complete the scheme return.

Reporting breaches

Trustees must also report breaches of the law.

Notifiable events

Trustees of defined benefit (DB) schemes must notify the TPR within a reasonable period of time when certain events occur. You can learn more these events in the 'Notifiable events' code of practice at **www.tpr.gov.uk/code2**.

The regulation of notifiable events is designed to give TPR early warning of a possible call on the PPF. Currently this applies to DB schemes only.

More information can be found in the Tutorial: 'Trustee liabilities and protections' in the Module: 'The trustee's role'.

Master trusts: If you are a trustee of a master trust scheme, further notification requirements apply including those relating to 'significant events' and 'triggering events'.

See our Code of Practice 15 at http://www.tpr.gov.uk/docs/code-15-authorisation-and-supervision-of-master-trusts.pdf for more details