

# Alert to risks in the economic downturn

## A statement by the Pensions Regulator

**The Pensions Regulator (the regulator) recognises and values the essential role played by pension trustees, employers, managers and their advisers in the governance of pension schemes, especially now during the economic downturn. The vast majority of schemes are well run by dedicated and hard-working individuals.**

High standards of professionalism demonstrated by those responsible for running and advising pension schemes remain of critical importance in the current economic climate.

In October 2008 and February this year the regulator set out general position to trustees and employers facing depleted asset values and increased pension scheme deficits in the current economic climate. The regulator reassured employers that the current scheme funding regime is flexible enough to cope with the impact of the downturn, and that we will continue to regulate funding on a scheme specific basis. Our operational processes are designed and equipped to reflect the prevailing conditions.

In explaining the position of trustees of a scheme in deficit being akin to an unsecured creditor, we reminded trustees that they can renegotiate recovery plans to repair scheme deficits, as we believe that the best security for a pension scheme is a viable employer. To identify what is reasonably affordable we encouraged employers and trustees to engage in open dialogue with reference to our guidance, and to contact us if concerned.

For members of Defined Contribution (DC) schemes where members have more responsibility for the level of their eventual pensions, we encouraged review of investments, contributions and target retirement dates. Trustees should have clear and appropriate processes for members approaching retirement. They should refer to our guidance on member communication, and members should contact their provider and refer to the Financial Services Authority (FSA) for information: [www.moneymadeclear.fsa.gov.uk](http://www.moneymadeclear.fsa.gov.uk).

The regulator continues to monitor the economic situation closely, working with the Pension Protection Fund (PPF), the FSA and key partners and we remain assured that the regulatory framework is flexible enough to cope with the impact of the economic downturn.

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The economic downturn may accentuate the vulnerability of some schemes to certain actions which give us cause for concern. Legislation requires those in statutory whistle-blowing roles, and others including scheme members, to bring these matters to the regulator's attention. We encourage all those who might be aware of behaviour that would give cause for concern to contact us. This statement sets out our general position with regard to such behaviour.

### **Dishonesty and fraud**

Good governance of pension schemes is more, not less, important during the downturn. The most extreme risk of unacceptable behaviour is dishonesty and fraud. Whilst fraud and dishonesty are very rare the risk is nonetheless real. For example scheme members may be targeted to access their pension assets through trust-busting or pension liberation activities. Those who attempt to engage in such behaviour are at risk of both civil and criminal investigation. Where criminal behaviour occurs the regulator will take action in concert with the relevant authorities to secure assets for members and to sanction against wrong-doing.

Reassuringly, in such cases where fraud has occurred and the sponsoring employer has become insolvent or is unable to continue to support the pension scheme as a going concern, member benefits will be protected by the Fraud Compensation Fund.

### **Behaviours which unacceptably increase risks**

Behaviours which unacceptably increase risks to members' benefits, the PPF and all levy-paying schemes include avoidance of employer debt, inappropriate transfers for individuals from under-funded schemes that would not subsequently have the resources or adequate employer support, as well as employer-related self-investment and poor practice associated with transfer incentive exercises. The regulator will investigate and take steps to prevent or sanction against such behaviour where appropriate.

The regulator has a variety of powers to sanction behaviour and protect schemes including penalties for breaches of legislation, powers to remove and appoint trustees, powers to reverse transactions carried out under value, powers to freeze and wind-up schemes, and our anti-avoidance powers which can require associated employers to support a scheme or require the payment of the full section 75 debt.

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### Whistle-blowing

Alongside our continuing focus on the risks in the system, whistle-blowing reports provide a key source of information used by the regulator in fulfilling our responsibilities, and we remind people of this statutory duty.

The duty applies to those involved in running occupational and personal pension schemes including employers, trustees, advisers, managers and administrators. The duty requires the reporting of materially significant breaches of any legislation or rule of law concerning the administration of pension schemes and is not limited to pension legislation and includes trust law and common law. Employees and pension scheme members should report any concerns to trustees, whose duty it is to protect their interests. Trustees should contact us if they have any concerns regarding the above risks and behaviours.

The whistle-blowing duty overrides any other duties a reporter may have such as confidentiality, and any such duty is not breached by making a report. The regulator has produced a code of practice '*Reporting breaches of the law*' which explains that breaches which are of material significance should be reported to the regulator: <http://www.thepensionsregulator.gov.uk/codes/code-reporting-breaches.aspx>. We would consider that any breaches which involve dishonesty are likely to be of material significance and should therefore be reported.

If trustees, or anyone else involved in pension scheme governance, have any doubts about their responsibilities, they should contact the regulator.

We will continue to remain vigilant through the economic downturn and would encourage trustees, employers, advisers, managers and administrators to do the same and to contact us if they have concerns.

### How to contact us

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