

The essential guide to how we publish information about cases

July 2018

The Pensions
Regulator

Executive summary

This document sets out our approach to publishing information under section 89 of the Pensions Act 2004 about regulatory and enforcement decisions.

This includes how we consider the use of section 89 powers for reserved¹ and non-reserved functions² under the Pensions Act 2004 and functions under the Pensions Act 2008³.

The Pensions Regulator

We are the UK regulator of work-based pensions. We are a non-departmental public body established under the Pensions Act 2004. Our sponsoring body is the Department for Work and Pensions (DWP) and Parliament sets the legal framework.

We are responsible for regulating occupational pension schemes and some aspects of work-based personal pensions. We are also responsible for maximising employer compliance with their duties under the Pensions Act 2008. From April 2015, we will have responsibility for regulating the governance and administration, but not the funding, of public service schemes.

Our commitment

We are committed to being as open and transparent as possible in relation to our regulatory and enforcement actions. As part of this commitment, we proactively publish information under the Freedom of Information Act 2000 via our publication scheme⁴.

1
For reserved regulatory functions the decision whether to exercise a power is made by our Determinations Panel: www.tpr.gov.uk/procedures

2
For non-reserved regulatory functions the decision whether to exercise a power is not made by our Determinations Panel but by a member of staff (Staff Determinations): www.tpr.gov.uk/staff-determinations

3
Our compliance and enforcement strategies and policies for automatic enrolment, defined benefit and defined contribution are available at: www.tpr.gov.uk/strategy

4
Our Freedom of Information policies and procedure are available here: www.tpr.gov.uk/foi

Section 89

Section 89 of the Pensions Act 2004 gives us the power to publish information on cases where we have exercised or considered exercising our powers. This may include information⁵ that we have obtained in the course of the exercise of our statutory functions.

We are mindful of our obligations towards those who supply information to us, in particular, where that information involves commercially or market sensitive information. We expect those supplying us with information to identify whether it is sensitive. We will take into account any representations made on sensitivity of information when considering publication and will, as far as is practicable to do so in the particular circumstances of each case, seek to avoid publishing commercially, market/price or otherwise sensitive information.

Our ability to publish information about our activities plays an important part in enabling us to deliver on our commitment to transparency.

Section 89 gives us discretion as to the format of publication.

A publication issued under section 89 may take the form of a determination⁶ that records a decision of the Determination Panel. Or it may be a report describing the background to, and the action taken in, a particular case whether against employers, trustees, scheme providers, managers or other third parties. Press releases and other statements may also be issued under section 89.

A publication under s89 may be amended subsequently where it is appropriate to do so, for example to correct factual inaccuracies, or may be removed from our website where we consider that continued publication is no longer appropriate.

⁵ Information we obtain may be 'restricted information' within the meaning of section 82 of the Pensions Act 2004. If so, we, and any person who receives the information directly or indirectly from us, is subject to the restrictions on its further use and disclosure set out in that section.

⁶ See paragraph 29 of the Determinations Panel procedure: www.tpr.gov.uk/dp-procedure

Why publish?

We use our powers under section 89 to increase transparency and understanding of our decisions and actions. When deciding whether to publish, we take into account our statutory objectives and one or more of the following aims:

- ▶ **Transparency**
We recognise that it is in the public interest to ensure that everyone has a greater understanding of how we exercise our statutory functions. An important aim of publication is to increase understanding of how and when we have used our powers.
- ▶ **Education and guidance**
To provide guidance to improve practices, behaviours and compliance with legal obligations which otherwise might lead to intervention; and to encourage higher standards by sharing good practice.
- ▶ **Deterrence**
To deter unlawful or improper practices or behaviours, to increase awareness of such practices or behaviours and to inform others who may be adversely affected by such practices or behaviours.

We will not publish if doing so does not fulfil any of the above aims and is not in the public interest. Where one or more aims of publication will be met, we will also take account of other issues when considering whether to publish, for example:

- ▶ any adverse impact on market behaviours – which can include commercial and/or price sensitivity issues
- ▶ prejudice to investigations by other bodies
- ▶ disclosure of information protected under the:
 - **Official Secrets Act**
Lawful processing of security and/or intelligence information
 - **General Data Protection Regulation and Data Protection Act 2018**
Protection around the processing of personal data
 - **Human Rights Act 1998**
Protection for ECHR rights to a private life, right to carry on a business/engage in trade
 - **Public Interest Disclosure Act 1998**
Protected disclosure by a whistleblower.

continued over...

Why publish? continued...

Where we decide that it is appropriate to publish, external parties will, where it is practicable to do so, be given prior notification of publication and, usually be given the opportunity to comment. It will not always be the case that parties will be given an opportunity to comment. We will, however, take into account the views of parties and will consider whether the requested changes affect the purpose of publication. It will be our decision as to whether to amend the publication and ultimately what information to publish.

Our policy is not to fetter our discretion to publish information about the use, or consideration given to the use, of our powers, under section 89.

Timing

We will always take into account the need to ensure the orderly announcement of information. This includes complying with the requirements for the control and release of market sensitive information.

In the interests of fairness, where the special procedure⁷ is engaged, we will usually publish only the final notice.

Accountability

We are a publicly accountable body with a range of responsibilities and powers to tackle problems in pension schemes and non-compliance with automatic enrolment duties. We use these powers in a risk-based and targeted manner. Our approach is to:

- ▶ encourage high standards in running schemes
- ▶ encourage a pro-compliance culture among employers (and their advisers)
- ▶ identify and anticipate problems; deterring and preventing where possible; and effective detecting of non-compliance when it occurs, and
- ▶ concentrate on achieving successful outcomes.

You can find more information about our publications under s89 on our website at: www.tpr.gov.uk/section-89.

If you want to know more about transparency and how we work, or if you are dissatisfied with any particular aspect of our work visit: www.tpr.gov.uk/about-us.

⁷ A special procedure is typically used when it is necessary to exercise our functions immediately. The final notice will be issued only after the Determinations Panel has completed the compulsory review of a special procedure decision. Find out more here: www.tpr.gov.uk/special-procedure

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www.trusteetoolkit.com

Free online learning for trustees

www.pensionseducationportal.com

Free online learning for those running public service schemes

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