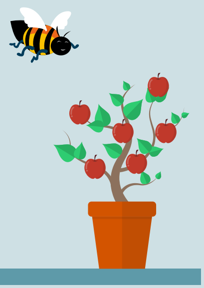
Protecting workplace pensions



TPR Future – a review of the way we work

July 2017

The Pensions Regulator

Foreword

by Lesley Titcomb, Chief Executive, The Pensions Regulator

No organisation exists in a bubble. Over the last twelve years since The Pensions Regulator (TPR) was set up we have witnessed some dramatic shifts in the political, economic and pensions landscape.

We've seen four general elections, a Brexit vote and a recession - as well as persisting economic challenges and rapid advances in technology. Automatic enrolment (AE) has moved from an idea on a page to a highly successful programme and a shift has taken place from defined benefit (DB) to defined contribution (DC) as the major channel for workplace pension savings.

TPR has raised its profile at the same time as coming under greater scrutiny. So it is absolutely right that we take a good look at ourselves and the way we work, taking into account the changes that have already happened and further challenges on the horizon. We need to assess how we continue to be effective and what we need to do differently to be better. We want to make sure that we remain fit for purpose for the future and that our stakeholders have a clear understanding of what to expect from us.

Our Corporate Plan stated that we would review the way we work and how we might need to change in the medium to long term. We have now reached the end of the first phase of the TPR Future work and in this publication I am pleased to provide you with an update on our conclusions so far and our planned next steps.

Introduction

Who we are

We are a non-departmental public body, accountable to Parliament and sponsored by the Department for Work and Pensions (DWP). We were established in 2005 under the Pensions Act 2004 and our main purpose is to regulate all UK workplace pension schemes and to support employers in complying with their AE duties.

Our remit extends across DB, DC and public service (PS) pension schemes. We also have responsibilities for the roll-out of AE and for the regulation of master trusts.

We have strong powers and, where necessary, we will use them. These include:

- appointing independent trustees to ensure a scheme is being properly administered
- banning trustees who are not up to the job
- issuing compliance notices and improvement notices directing employers or trustees to put things right or risk tougher sanctions
- issuing financial penalties for non-compliance
- taking anti-avoidance action to require parties to provide support for DB pension schemes

We have six statutory objectives set out in law, which were given to us by Parliament:

1. to protect the benefits of members of occupational pension schemes
2. to protect the benefits of members of personal pension schemes (where there is a direct payment arrangement)
3. to promote and to improve understanding of the good administration of work-based pension schemes
4. to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
5. to maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008 (AE)
6. in relation to DB scheme funding, to minimise any adverse impact on the sustainable growth of an employer

Our objectives and associated powers serve to ensure employers and trustees comply with their legal duties and help us to secure redress for members and protect the PPF. They also act as a deterrent and thus drive compliance.

As we highlighted in our recent Corporate Plan, as the pension landscape changes, so do the risks and challenges we face in pursuing the objectives given to us by Parliament. It's more important than ever that we indentify how we need to change to perform effectively as an organisation and adapt to the challenges ahead.

As a result of the huge amount of change we are seeing in the industry and continuing political and economic uncertainty, it's the right time to take a step back and analyse where we are as an organisation and where we need to get to over the next few years. This is a natural point to re-evaluate our priorities and work out how the next five to ten years might look.

We've produced this short report to summarise some of the key findings in the TPR Future work to date and the main recommendations we will be taking forward to address the challenges we are seeing.

The journey of a workplace saver

Automatically enrolled into a pension
deciding how much to save

Changing jobs
investing in other types of pension

Understanding your retirement options
getting free guidance and advice

Saving more into your pension
topping up

Checking on your pension
Making sure your investment is working for you

Finding lost pension pots
Pension Tracing Service

Drawing your pension
Choosing which option is right for you

How TPR protects you along the way

Automatic enrolment
Ensuring your employer enrols you into a workplace pension

Protecting your DB scheme
Taking action in avoidance cases

DC scheme governance
Making sure your scheme is well run and provides good value

Funding
Working with your scheme employer and trustees to make sure your DB scheme is well funded

Public service schemes
Making sure they are well governed and administered

Pension scams
Helping you to spot the dangers and knowing where to get help

Taking enforcement action against trustees and employers where our standards have not been met

Making sure your pension pot is protected
So you receive the benefits you're entitled to

The changing pensions landscape

The pensions landscape is a very different place from 12 years ago, when we began our 'educate, enable and enforce' approach to regulation. During this time, our number of statutory objectives has grown and we have been given new responsibilities and powers, including AE, master trust authorisation and public service scheme governance and administration. We've seen a huge shift from DB to DC pensions and the roll-out of AE. Our remit has also been extended to oversee the governance and administration of PS schemes.

The way people save for retirement has also changed significantly. As well as the shift from DB to DC accumulation and the introduction of AE, people now have more freedom and choice around how they take their retirement benefits.

We have seen huge advances in technology. Pension schemes and employers have had to weather difficult economic conditions.

The changing risks

As the landscape has shifted, so have the risks we and others need to address. Alongside the government, the industry and other regulatory bodies, we work hard to improve the knowledge and understanding of those running schemes, ensure schemes are well-run and help members to be informed about the important decisions they need to make about their pension savings.

The main current risks we highlighted in our 2017-20 Corporate Plan included sub-scale schemes, poor standards of stewardship, disorderly scheme failures, poor data and security and the economic and market outlook. These remain our areas of focus.

During the past 12 months, the legislative and regulatory framework for DB schemes, along with our involvement with a number of high-profile cases, has attracted a significant amount of attention. The current uncertain UK economic environment could put further pressure on DB schemes as employers struggle to fund them. As DB schemes close, there is also a risk that the employer covenant may weaken over time.

We have also been vocal on the benefits and risks of master trust schemes, which have become increasingly important as a result of AE. And there are other ongoing risks, which impact much of our day-to-day work. The value of DC members' benefits may suffer due to poor governance and administration, failures of contributions and high charges. DB schemes may fail to recover deficits due to economic conditions, weak employer support, under-funding and poor decision-making. We also continue to make sure that those entitled to save into a pension scheme receive this opportunity.

The review

In light of this changing landscape and regulatory risk and to get an objective view, we commisioned an external review by PwC and further research by Britain Thinks. We sought to understand current perceptions of TPR, consider what the future pensions landscape and risk profile might look like and examine how our regulatory approach might need to change in response to this. We invited feedback on our long-term strategic challenges – such as likely developments in the global economy, through to our approach to meeting our objectives and understanding our operational needs. This included whether our 'educate, enable, enforce' approach is still appropriate. The review and research engaged a broad range of external stakeholders – and our internal teams – to assess the effectiveness of our current approach and operating model.

Our external partners conducted:

29
1-2-1 meetings with external stakeholders

+

11
round table meetings bringing together over **100** organisations

+

40
meetings with TPR executives and our internal teams

What we were told

TPR is generally considered to be doing a good job and on the right track. Our stakeholders feel we take a pragmatic and principled approach and our increasingly proactive communications and sharper focus on emerging issues was welcomed. The implementation of AE was seen as a success so far. These positive perceptions provide us with a strong foundation on which to build.

Stakeholders also offered a number of helpful suggestions on how we could improve our approach and better support those we regulate. These included being clearer and being more prescriptive about what we actually want them to do to meet their legal duties. They asked us to provide examples of good and bad practice and to be tougher when people don't do what we expect, using the full range of our powers.

We were also encouraged to be more proactive in anticipating risks and issues, use more innovative approaches to address them and to make better use of technology and data.

Here are some examples of the comments we received from across the industry.

“The work they're doing on pension scams is particularly good. Before, they weren't involving stakeholders but this year it was a much more forthright conversation and they were prepared to work together.

“I would like to see them talking more about how they would like things to be, providing some vision, rather than the very factual 'here is what we are doing, here is how many people we have fined.'

“After 12 years of educate/enable/enforce, TPR needs to be more prescriptive as to what minimum standards are, and move to enforcement if schemes have not complied or explained.

“Keep evolving because you are evolving in the right way so far. Try to hold on to your pragmatic and principled approach.

“I think the senior team is doing a good job. They are getting there, but it is a tough job. My advice is to keep doing the same thing.

What the review found

When the review was complete, we analysed with our external partners all the comprehensive results from the interviews, discussions, round table groups and meetings that took place during the process.

There were a number of recommendations for us to consider. We assessed them in turn and grouped them in the most effective way for us to be able to take them forward and implement changes.

We decided to split the main recommendations into six key groups on which to focus:

External reputation

- Significantly improved reputation, based on recent sharper focus of TPR
- Relationships with key partners as good as they have ever been
- AE success recognised

Broadening our regulatory approaches

- Expand our range of regulatory approaches – eg more proactive work with higher risk schemes, thematic reviews
- Make stronger use of standards-based regulation, monitoring and enforcing against compliance

Improving regulatory activity

- Improve the efficiency, effectiveness and consistency of our casework and other regulatory processes
- Improve regulation through innovative use of data

TPR's identity

- Do more to build and communicate a clearer identity
- Clarify our relationship to other regulators (FCA), which is a particular source of confusion

Exercising our powers

- Broaden our body of casework to exercise a full range of our legal powers, including those that are used rarely or not at all
- Test legal powers in mitigation of current regulatory risks

Evolving our operating model

- Enhance capability for horizon scanning – the identification and prioritisation of regulatory risks
- Establish and implement a clear strategy for the use of data and technology

How we will change

We have analysed the wealth of feedback we received and consolidated it into the following five opportunities for change:

1

Clarifying our identity and improving how we engage

We need to build and communicate a clearer identity, so that our priorities and focus are well understood by a broader range of stakeholders and clarifying our relationship with other regulators, such as the FCA.

2

Setting clear expectations

We want to be clearer about the standards we expect those we regulate to follow and the outcomes we expect them to achieve. We will drive up standards through being clear on the requirements and clear on the consequences of not meeting these requirements – including taking enforcement action where appropriate.

3

Improving our regulatory oversight

We need to develop a broader range of regulatory approaches to apply across the spectrum of our responsibilities. Our 'educate, enable, enforce' approach is no longer an appropriate response to all the responsibilities within our remit. We will increase our horizon scanning capability and make better use of technology and data.

4

Using a wider range of regulatory interventions

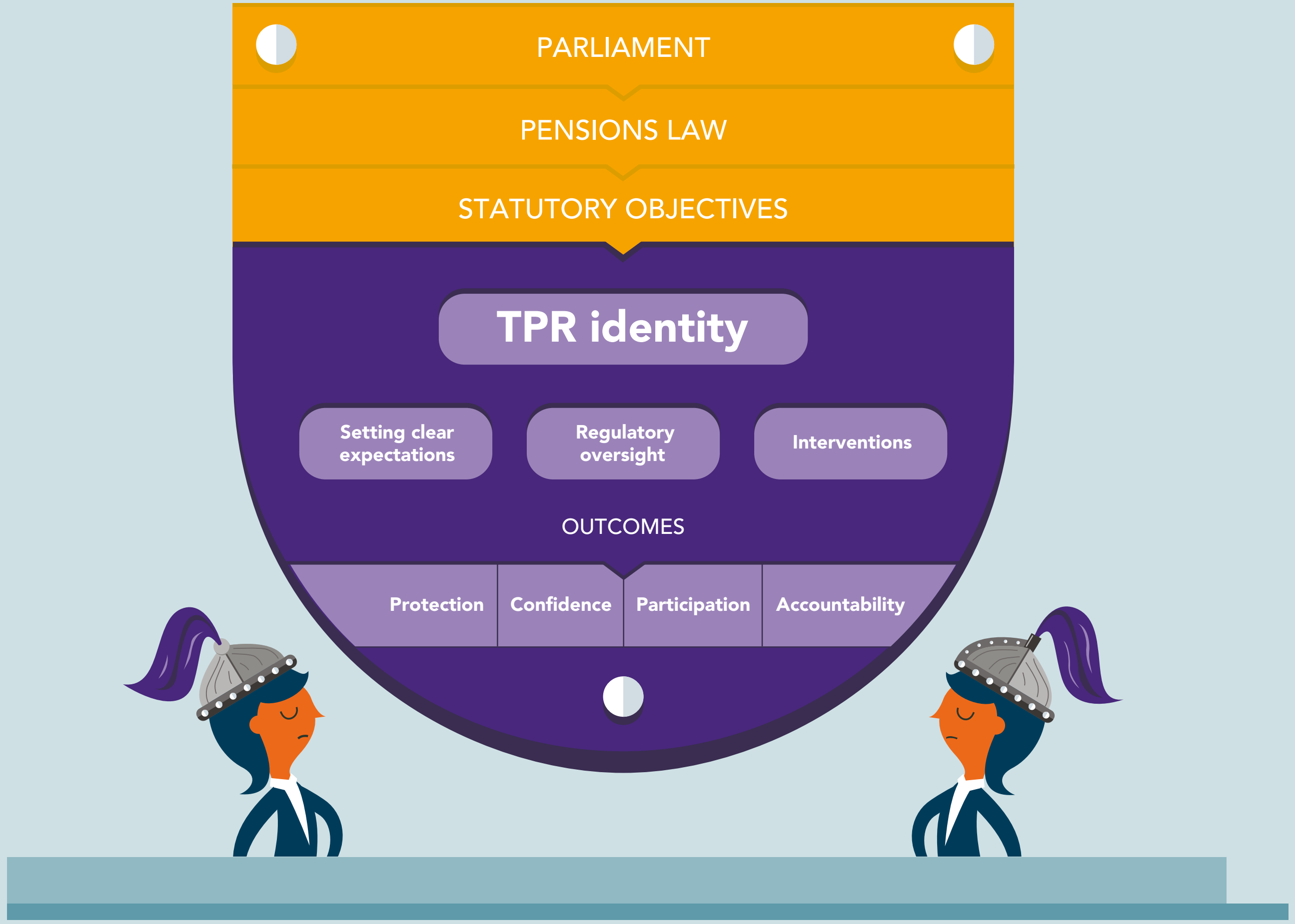
We will broaden our approach to casework to exercise the full range of our legal powers across all of our pension responsibilities. We will supplement this through targeted communications and clear guidance.

5

Being more efficient and effective

We will focus on improving the efficiency, effectiveness and consistency of our casework and other regulatory processes and create a more adaptable approach to meet the fluctuating challenges we face.

TPR: protecting workplace pensions



1

Clarifying our identity and improving how we engage

A clear identity is part of our regulatory toolkit. It provides clarity on our purpose, priorities and approach to those we regulate. Our identity is simple, it explains what we do:

TPR protects workplace pensions.

We make sure employers provide their staff with a pension. We work with other public bodies to protect the pension savings people build up during their working lives. We do this by:

- **setting clear expectations** – ensuring the standards expected of those we regulate are clear, consistent and well understood
- **having regulatory oversight** – proactively and intelligently monitoring and assessing the performance of employers, intermediaries and pension schemes against our standards
- **intervening** – taking action in way that is proportionate, decisive and effective in securing compliance with duties and delivering good outcomes for members

In doing this, we seek to achieve the following outcomes:

- **Protection** – of members and PPF so members receive the benefits they're entitled to
- **Confidence** – increased confidence in pension savings
- **Participation** – increased saving in workplace pensions
- **Accountability** – empowered trustees and governing bodies held to account

We do not operate alone in regulating the pensions industry. Our remit is set by the DWP, but we work in partnership with other public bodies, as well as with the pensions industry and those we regulate. We want to work more effectively with our stakeholders to understand the challenges they face and identify emerging risks. We want to do more to help stakeholders work collaboratively to find solutions to challenging issues and we want to make ourselves more approachable to those we regulate to enable them to test ideas with us outside of a formal regulatory environment.

We will ensure that all stakeholders have a clear understanding of the difference between what we and other regulators do.

How we will get there

To further clarify our identity and improve how we engage with our stakeholders we will:

- clarify how responsibilities are split between those we work with such as the FCA and PPF
- review the relationships we have with those we regulate and those who advise them

A snapshot: who's who in pensions regulation

An employer has to give their staff access to a pension, but can choose what type of scheme to offer. They can opt for group personal pensions, where all employees can save into the same scheme but have individual contracts with the pension provider, known as contract-based workplace pensions. Or they can choose to use trust-based schemes. The trustees of these schemes have a legal duty to run them in the best interests of members and liaise with the employer to make sure they are properly supported.

The FCA and TPR can regulate different activities related to the same scheme. For example, we oversee the contributions made by employers and how the trustees are running the scheme, while the FCA regulates the asset managers who invest on behalf of the scheme and oversees regulation of the retirement products members may purchase.

TPR
We regulate trust-based workplace pensions and some aspects of contract-based workplace pensions, eg the payment of contributions. We also regulate employer compliance in respect of their AE duties.

We work with employers and those running pensions, such as trustees, scheme managers and advisers.

FCA
The FCA regulates providers offering contract-based workplace pensions and individual personal pensions.

The FCA regulates finance professionals, including advisers and asset managers.

HMRC
Her Majesty's Revenue and Customs registers pension schemes for tax approval purposes.

PPF
The Pension Protection Fund is there to pay compensation to DB members where an employer goes insolvent.

Pensions Ombudsman
The Pensions Ombudsman impartially investigates complaints of pension schemes, beneficiaries, employers or trustees.

TPAS/MAS
The Pensions Advisory Service is there to provide free information and guidance on financial matters including pensions.

2

Setting clear expectations

Many of the trustees and employers we regulate are not pension experts. Much of the time they dedicate to pensions is their own and we need to make it as easy as possible for them to fulfil their duties.

With the renewed clarity of our identity comes the opportunity for us to be clearer on our expectations of others. In this way, we can optimise the limited time and resources that trustees and employers spend on their pension schemes and increase the likelihood of good outcomes for pension members.

We therefore want to be clearer about the processes we expect those we regulate to follow and the outcomes we expect them to achieve. We will be clear on the requirements and clear on the consequences of not meeting them.

This does not mean we will introduce new requirements. Much of what we expect is already set out in legislation and across our codes of practice and guidance. What it does mean is that we will be clearer in communicating what our expectations are and providing examples of good and bad practice wherever possible. We will make it much clearer to trustees and employers, through our engagement with them, that we'll take action where they're falling short.

Being clearer on our expectations is not just about the messages we put out through our codes, guidance and statements. It's also about the day-to-day interactions we have with trustees, employers and their advisers on issues that affect them individually – the conversations we have and the emails we write. Through our engagement with trustees and employers, we will seek to provide more targeted support and ensure they have clarity of what is expected of them.

And by being clearer on the standards we expect, we'll be better able to measure and monitor those standards and understand how people are doing through our regulatory oversight.

How we will get there

We will:

- provide clarity on the standards and behaviours expected of trustees in our forthcoming 21st century trustee campaign, including examples of good and bad practice
- provide appropriate guidance for master trusts as the new Pension Schemes Act is implemented, including how we will operate the authorisation and supervision regimes
- take action against those we see not meeting those standards
- publicise the actions we have taken

3

Improving our regulatory oversight

By setting clearer expectations of those we regulate we'll be better able to measure and monitor whether they are being met. Where they are not, we will decide on the most appropriate response.

We will increase our insight into risk and compliance by having more robust regulatory oversight processes. We will use data and intelligence to identify areas of risk.

We will focus on improving our systems and implementing our data strategy to make better use of the data we collect. This will then enable us to undertake more targeted and risk-based interventions, including thematic reviews and more frequent inspections.

How we will get there

We will:

- monitor and report against our established regulatory requirements
- collect information and intelligence from a wider range of sources so we can better understand the external environment and be more proactive in predicting issues and trends
- collect appropriate data and use better supporting technology – we'll be getting new tools and seeking new sources of data
- be more visible in areas where we have traditionally been less prominent, for example in our engagement with small schemes
- be asking to meet those we regulate so they can explain how they're meeting the expectations we've set
- be doing more thematic work where we can assess emerging risks across a number of schemes or employers, for example into maintaining contributions into DC schemes and themes relating to our 21st century trustee work

4

Using a range of regulatory interventions

We already intervene through using our regulatory powers, so that trustees and employers become compliant and meet their responsibilities. However, stakeholders have told us that we could be tougher in holding people to account for breaching pensions law. We also know from our experience of implementing AE that visible policing by a regulator affects behaviours, and encourages compliance.

We therefore intend to broaden the range of our regulatory interventions and draw from the full spectrum of our powers, supplemented by targeted communications with clear guidance. We intend to use our powers more frequently, and more quickly, drawing on our improved regulatory oversight to decide on the appropriate intervention and moving swiftly to the appropriate resolution. We'll publicise where and how we have used our powers to influence the behaviour of others.

How we will get there

- We will continue to test the wider and swifter use of our powers.
- We will push the boundaries so we use our powers to maximum effect.
- If we find that any of our powers are not fit for purpose we will make a case to government to get them changed.

Oversight and interventions: How we're already changing

We have increased our focus on ensuring compliance with basic duties, which can be an indicator of broader governance issues. Schemes are required by law to provide information to TPR in a scheme return and last year we began issuing fines under s10 of the Pensions Act 2004 against schemes that were failing in their legal duty. We used our publication powers to highlight cases where this power has been used.

We are investigating a number of funding cases which may result in us formally exercising our powers to impose a recovery plan under s231 of the Pensions Act 2004. The potential use of this power has previously influenced cases where agreement was eventually reached without the need for a Determinations Panel hearing.

We are committed to using our powers in an innovative way and recently used our power to appoint a skilled person (under s71 of the Pensions Act 2004) for the first time, helping to break the deadlock between trustees and employer in a funding and restructuring case (the Hoover case).

We recently secured our first criminal convictions involving non-compliance with our power to request information under s72 of the Pensions Act 2004.

5

Being more efficient and effective

Our aim for this transformation is to improve our performance still further as a regulator through more efficient and effective processes. Part of this work includes looking at how we manage our casework and other processes and empowering our staff to ensure they can get on with their jobs while remaining supported and knowing when to escalate issues if required. We're also looking at how we measure and manage our performance to ensure we are meeting our responsibilities to key stakeholders.

TPR Future will help us direct the best use of our resources to achieve the best outcomes for pension scheme members and the taxpayer.

How we will get there

- create a more adaptable approach to meet the fluctuating challenges we face, with staff able to carry out a range of regulatory interventions targeting the risks we see at that time
- nurture a culture of trust to enable our staff to use their skills and knowledge wisely and be open to challenge of their decisions
- streamline our governance and clarify accountabilities and decision-making authority at all levels of the organisation
- review and refine our processes to help people to do their jobs, not hinder them – and ensure we have the optimal blend of resources working on each process.

Next steps

Thank you to everyone who has been involved in this review. We are now undertaking the next phase to develop and pilot our new approaches and ways of working.

We will update you on the progress we have made with our new approach in spring 2018.

In the meantime, please look out for further communications around 21st century trustees and forthcoming thematic reviews.

How to contact us

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The Pensions Regulator