

# The Pensions Regulator

Frank Field MP  
Work & Pensions Select Committee  
House of Commons  
LONDON  
SW1A 0AA

24 June 2016

Dear Mr Field

1. Further to our letter to the committee of 20 May, this submission provides some further information on our role in the regulation of occupational pension schemes, the current legal framework for defined benefit (DB) pension schemes and our powers to intervene where necessary.
2. Ultimately the framework we operate in is a matter for Parliament, but TPR works collaboratively with Government and the Department for Work and Pensions (DWP) in particular, in discussing our role, any emerging issues, and the legislative framework in general.
3. Since TPR was first set up by the Pensions Act 2004, our regulatory role has changed significantly. We have recently been given new powers relating to the governance and administration of defined contribution (DC) schemes and the regulation of public service pension schemes. The upcoming Pensions Bill, subject to Parliament's agreement, will further extend our role in the regulation of master trusts which are becoming more popular following the introduction of Automatic Enrolment.
4. This existing pressure on our operational budget, which is funded by a levy on pension schemes, already requires us to think carefully about our resources. Should Parliament deem that the requirements and/or nature of our approach to DB regulation should change, for example by requiring us to adopt a more supervisory, as distinct from regulatory, role, it will of course be necessary to look again at our resources and capabilities in the light of this and, as part of this, any financial burden this is likely to create for pension schemes.
5. Since TPR's evidence to the Committee on 9 May and our subsequent correspondence, the Committee has announced that it will carry out a further inquiry into pensions law and the regulatory framework for DB schemes more generally. We believe that the current framework, and our role within it, operates as intended by Parliament but we understand that recent events have brought into sharp relief how the current framework operates in practice.

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6. We set out our views below on four key themes which we think it may be helpful to consider as part of this inquiry. We have already communicated these themes to the DWP and we understand they are considering them. At this point these are only initial considerations which require further thought, particularly on their potential interaction with the wider framework, and we would of course be very happy to discuss these in more detail over the coming weeks with you and with the DWP as our sponsoring department.

## Theme 1 - Information gathering

7. As a risk-based regulator, information is at the core of our work. The information we need in order to understand the risks in the pensions landscape, to target our interventions, and to meeting our statutory objectives, flows to the regulator via a number of routes:
  - **The Scheme Return** - is how we capture information in order to compile and maintain our register of pension schemes, a requirement under s.59 of the Pensions Act 2004. We issue scheme return notices periodically under s.63 of the Pensions Act 2004, and under s.65, the scheme return notice must require certain information from the scheme. The information in the scheme return is wide ranging, informing TPR's oversight of both DB and DC schemes. As well as information required in statute, we use it to collect other information required for the exercise of our functions – these are known as 'discretionary items'.
  - **Scheme Specific Funding Regime** – includes various requirements linked to the submission of information on funding plans and deficit recovery plans, where a deficit exists, to TPR. This allows us to intervene, should we have concerns that the assumptions underpinning the proposed funding arrangement or recovery plan are imprudent or unrealistic, taking into account the strength of the employer covenant.
  - **The Notifiable Events framework** - Section 69 of the Pensions Act 2004 places a duty on the trustees of DB schemes and their sponsoring employers to notify TPR when certain events occur. Regulations made under section 69 of the Pensions Act 2004 set out which events have to be notified. The onus is on trustees and sponsoring employers to contact TPR and a failure by trustees to report a notifiable event to us constitutes a material breach and can be subject to a civil penalty.
  - **Information gathering powers** – s.72 of the Pensions Act 2004 is broadly framed and allows TPR to issue a notice requiring trustees, scheme managers, professional advisers, employers or any other person who appears to us to hold, or to be likely to hold, relevant information to produce a document or provide specified information to the Regulator. The information or document requested must be relevant to the exercise of TPR's functions.

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- **Whistleblowing** - s.70 of Pensions Act 2004 places a duty on trustees and providers to report breaches of the law to TPR, and also covers
    - Employers
    - Professional Advisors
    - And other persons involved in advising the trustees or managers
8. Our experience of using these existing mechanisms is that on occasion and in specific circumstances they can be inflexible and pose some challenges to operate and enforce in practice. We think it could be useful to consider whether a more flexible information gathering power, along with a general duty on parties to cooperate with the regulator, would improve the efficiency and effectiveness of our information gathering. Additional information gathering powers, for example the ability to compel parties who we believe may have relevant information to submit to an interview with us could also prove useful to our work.

## **Theme 2 - Clearance and anti-avoidance**

9. As we have explained to the Committee, we have strong anti-avoidance powers which were introduced in the Pensions Act 2004. These are:
- A Contribution Notice which requires a specified amount to be paid into the pension scheme by an individual or company where TPR has concluded there is a deliberate attempt to avoid a statutory debt either to the scheme or to the Board of the PPF or an act or deliberate failure to act has detrimentally affected in a material way the likelihood of the accrued scheme benefits being received; and
  - A Financial Support Direction where TPR can require support to be given by another employer, company or individual to an underfunded scheme if it has decided that the sponsoring employer is a service company or is insufficiently resourced, and there is a sufficiently resourced connected or associated party, i.e. the previous as well as the current owner to support a final salary pension scheme within the group.
10. These powers are designed to act as a deterrent to poor behaviours and enable us to put appropriate support in place for a pension scheme. We have shown that we are prepared to use our anti-avoidance powers against such behaviour, as was shown in our handling of the cases involving Sea Containers and the Lehman Brothers group and a complex investigation into the Carrington Wire Defined Benefit Pension Scheme which resulted in a £8.5m settlement with two Russian companies.
11. Employers who want assurance on whether our anti-avoidance powers may be engaged in respect of a planned corporate transaction can apply for Clearance ahead of the transaction. Clearance is a voluntary process and in the vast majority of circumstances, we believe it would be disproportionate for there to be a requirement for Clearance to be obtained ahead of corporate transactions.

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12. The threat of anti-avoidance action already concentrates minds in such scenarios, albeit there will always be some individuals who are prepared to take that risk. Given the vital role of acquisitions and mergers in the UK economy it would be inappropriate for TPR to comment in detail on this issue, but making such pre-clearance compulsory would raise significant and important questions, which would include the potential delay in key business decisions which are often time critical. It would also have significant resource implications for TPR and our levy payers.
13. However, we can see a case for a more targeted solution such as imposing a requirement to involve TPR in certain circumstances; for example, where there is significant underfunding and/or the transaction puts the security of the scheme at risk. Further work would be needed in order to determine how such a requirement could work in practice, in particular on where the onus for notifying TPR might lie.
14. In this context, we also think it would be useful to explore whether building on the trustees' role as the first line of defence for pension scheme members by strengthening the duty and requirements for sponsoring employers to cooperate with and provide information to trustees would be a useful reform.

## **Theme 3 - Scheme funding and triennial valuations**

15. The current legislative framework for scheme funding aims to achieve a balance between protecting members, reducing risk to the PPF and not putting an undue burden on employer sponsors. The introduction of scheme specific funding in the Pensions Act 2004 moved away from a rigid, rules-based standard for funding (the Minimum Funding Requirement). This change was due, in part, to its inflexibility, and it was replaced by a flexible, principles-based approach where trustees and employers have a great deal of freedom in agreeing the appropriate level of funding for their scheme.
16. TPR does play a role in ensuring the funding and recovery plans negotiated between trustees and sponsors are appropriate, asking them to recast them if we have concerns, and we have powers to impose a recovery plan and funding target if necessary
17. However, there is a great deal of divergence in the approaches taken by schemes and we believe there are a variety of ways in which the framework could be adjusted to give greater clarity to schemes as well as improvements that could be made to make us more effective in this arena. For example, consideration could be given as to whether a more ongoing supervisory-type role for TPR would be appropriate; perhaps, in the approval of and setting limits to recovery plans for high risk schemes and ensuring that the scheme is being treated fairly by the employer.
18. Other areas within the scheme funding framework which could be improved include the statutory timescales and processes for scheme valuations. Valuations are almost exclusively carried out once every three years, with limited annual updates, while schemes have a 15 month timeframe for agreeing and submitting valuations and recovery

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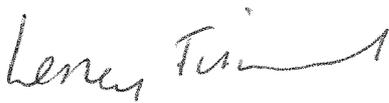
plans to TPR. A more risk-based and segmented approach to the requirements, such as more regular monitoring and supply of information to TPR for higher risk schemes, while reducing burden for well-run/funded schemes, could be beneficial for all parties. Additionally, given developments in the tools and technology available to schemes, and the fact that schemes are now well-versed in the requirements of the scheme specific funding regime, it should be possible for most schemes to complete their valuations and submit them to us more quickly so shortening the 15 month submission period would ensure we received information on a more timely basis.

## Theme 4 - Scheme Governance

19. Good governance is vital to the effective running of pension schemes. The chairs of trustees of DC schemes are already required to complete a 'chair's statement' confirming the scheme's adherence to some key governance principles. Such a requirement could be extended to DB and public service pension schemes as a way to encourage good governance across all pension schemes.
20. Finally, there are a large number of small schemes across the DB and DC landscape. Many of these are not in a position to benefit from economies of scale and are less able to adopt best practices set out by our guidance. This is not necessarily to criticise the trustees or sponsors of smaller schemes, some of whom are diligent and perform their roles competently. Consolidation may yield significant benefits for members, sponsors and the PPF, as well as for TPR as we may be able to focus our regulation and target our efforts on a smaller pool of schemes. This is a complex area, but given the significant potential benefits, we believe it worthwhile exploring and have been in discussion with the DWP and PPF on this issue.

I hope you find these thoughts helpful. We would be very happy to discuss any aspect with you further.

Yours sincerely



Lesley Titcomb  
**Chief Executive**

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## **Annex A – Background on the Pensions Regulator’s role and overall approach**

1. The Pensions Regulator is the UK regulator of work-based pensions. We are a non-departmental public body sponsored by the DWP but are operationally independent from Government.
2. The Pension Act 2004 set TPR up to be both principle and risk-based and our approach to regulation is to educate, enable and only enforce where necessary. Trustees act as the first line of defence for scheme members, as they are required by trust law to act in the interests of the scheme beneficiaries, and work closely with their sponsoring employers in the running and managing of schemes. We recognise that trustees have a complex and difficult role, with ever-increasing demands placed on them by new legislation, and we need to be careful in what additional responsibilities we place on them.
3. TPR’s regulatory approach relies on us receiving information where there is a problem and focusing on putting things right. However, we aim to achieve good outcomes more quickly and straightforwardly by using a consensual approach. The Pension Protection Fund acts a safety net for members of DB schemes where sponsors are insolvent. In order to prevent abuse of the PPF safety net, Parliament has given TPR strong anti-avoidance powers. We continuously review our approach and look for ways to be more proactive and efficient in how we regulate and the use our powers.