

Fine work

✓ **The number of fines imposed by The Pensions Regulator has ramped up in recent months, as it continues on its mission to be ‘clearer, quicker and tougher’. But are punitive measures such as fines the most effective way to change behaviour and improve standards?**

Yes

One might argue that the fines imposed to date have been relatively small in the context of the breaches – so perhaps not overly punitive.

However, the purpose of a fine is two-fold 1) imposing a financial penalty and 2) imposing a reputational penalty. In some respects, ‘naming and shaming’ (as demonstrated by publishing a list of offenders) can be more damaging to a company than a financial penalty – particularly for high-profile offenders. TPR has typically undertaken its regulatory responsibilities with a ‘comply or explain’ approach. When it becomes aware of a potential breach, TPR tends to proactively engage with the relevant party to try and support rectifying the issue and only if this process fails, will it resort to more penal enforcement. So it’s probably safe to assume that the fines imposed to date were after meaningful and repeated efforts by TPR to work with relevant parties in achieving compliance. Equally, it is understandable that breaches (and fines), particularly around auto-enrolment, could ramp up as the number of employers needing to comply has increased substantially.

P-Solve associate director Damon Hopkins

There’s no doubt that TPR is living up to its new mantra of ‘clearer, quicker, tougher’, and fines are just one part of



that. In isolation they would have limited effect, but combined with the various other actions that we’re seeing they build a picture of a regulator who is standing up to be counted in a range of areas.

The regulator uses different tools for different issues. Fines tend to be focused on governance and compliance issues, with stronger action reserved for more substantial issues. The fines themselves are normally modest, and for most schemes will be more of an annoyance and an embarrassment than a financial deterrent. In many cases the fines will be passed on to advisers who haven’t done what they should, and those advisers are likely to be hurt more by the reputational damage and impact on their client relationship than the amounts involved.

For schemes that accidentally fail minimum standards I think the fines will be effective. They provide a gentle but noticeable (and public) reminder that doing so has real consequences. For schemes or sponsors who are deliberately avoiding their duties, I suspect that stronger action will be required.

Aon retirement practice partner Paul McGlone

No

Few if any real-world issues can be answered neatly in this way; ‘sometimes’ might be better! If pushed though, I would have to say ‘no’, as a rule punishment generates resentment rather than reformed behaviour. If TPR wants to be appreciated rather than hated, it could make a good start on the right track to change behaviour and improve standards by appointing a named account manager to each scheme. Building a relationship is the key to successful engagement and co-operation. At the moment, TPR risks being perceived as ‘all stick and no carrot’.

Aries Insight director Ian Neale

In the heavily regulated and complex environment of occupational pension schemes, structural and educational measures are far more effective to change behaviour and improve standards.

Indeed, improved communication and greater engagement with those in the pensions industry can be the most effective tool at The Pensions Regulator’s disposal. And where necessary, The Pensions Regulator has a raft of statutory powers to reinforce and help shape behaviour and standards.

The theory is that fines punish wrongdoing, deter repetition and act as a warning to others. But other than in exceptional circumstances, I am not convinced of the merits of fines in the pensions environment.

Sackers partner Peter Murphy

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