The art of regulation

TPR's Lesley Titcomb sits down with Theo Andrew to discuss TPR's new joint FCA strategy, the biggest challenges facing pensions and what she will miss about The Pensions Regulator

You recently announced a new strategy with the Financial Conduct Authority (FCA), what was the catalyst behind the new approach?
We have worked closely with the FCA since it came into existence. The new strategy we have announced is a chance to show how we are deepening this relationship and to set out our joint view of the pensions landscape and the emerging risks and harms within that.

The two things we highlighted were understanding the customer journey better, which is important given the decumulation challenges people now face, and the other thing was to help trustees and independent governance committees to assess value for money in their schemes. The indications from consultations was that they would like to see more on that.

One manifestation is the secondment programme, but I should stress that is not new. We have been seconding staff to and from the FCA and other regulators for a while. Seconding people to work on master trust authorisation is not unusual in the slightest and given that the FCA and PRA operate authorisation regimes … it's probably not surprising. We have seconded a few others for a number of reasons as well. It's two to three people so it's not huge numbers.

It is important to say that when we are given new responsibilities by parliament we do work out how much those are going to cost to execute and then we approach the Department for Work and Pensions (DWP) for additional resources – sometimes you get that and sometimes you don't. Over the past few years the DWP have responded positively to our requests for additional resources, whether for this or our new TPR future regulatory model.

Given TPR's growing remit and particularly its new supervisory regime, resource issues have been highlighted as a potential issue for the regulator. How does it plan to combat these?
We have some choices to make there; the new regulatory model is risk based, so depending on your view of risk and where you want to draw the various risk bars, you will need more or less resource to deal with those and we are still in the process of developing and implementing our model.

We are testing it out and a good example is the one-to-one supervision of 25 schemes. That will give us a clearer idea of what resource we need to apply to that and you can scale up accordingly. It then depends on where you draw the line, how many of these schemes does our board think we should subject to one-on-one supervision. If it says 75 that gives you one answer in terms of resourcing, if it says 25 that gives you another.

That also means that a lot of resource we have directed to the way we do regulation now will be redirected towards the new regulation model and how we do it in the future. The question is how much do you need on top of that depending on where you draw the risk bars.

TPR's new authorisation regime for master trusts is now open for business. How are those master trusts exiting approaching the winding up process?
The government put specific protections for these master trusts in place. They are not allowed to raise the charges in order to fund the winding up so it has to do it out of the existing resources, which is a very important protection. If they trigger a wind up they have to come and talk to us to get them through that process in as orderly fashion as possible.

It will vary case by case. I was involved at the FCA in winding up a number of investment firms. The issues are around what happens to the members funds that are already saved through that scheme and how to ensure that the employers who are relying on that scheme to meet their automatic enrolment duties can source that service from elsewhere. It will then depend on the state of the records as to how easy or difficult that situation is.

DB consolidation is high on the agenda

at the moment. What is TPR doing to ensure it is properly regulated?
We are very clear we would like a new regulatory regime for the new consolidators and we are very pleased that the government intends to consult on that. As a regulator we are very focused on how we can use the existing regime effectively as possible to protect the members.

What we have said to *[new DB consolidators]* is keep talking to us, which they are doing. To anybody else emerging, as well as employers and trustees who are considering this, if you are going with this we expect you to come to us for clearance.

In practice, there is a huge commercial incentive for any employer who is considering this to come for us for clearance because they will want to know they are successfully absolving themselves of the responsibility of the scheme. We can then use that clearance process to try and secure safeguards for the savers. We can review arrangements, point out weaknesses and where things can be improved.

For example, in the trusteeship and governance of the consolidator, we can, if necessary, try and secure legal undertakings. We are obviously awaiting the government proposed regime with interest and when we see where that is going we can look at what we can ask the superfunds to voluntarily demonstrate their compliance with us before it comes into action.

You would expect to see some common features with master trust authorisation, but it won't be identical because some of the risks are different but there will be many overlapping areas.

Some in the industry are calling on triennial valuations to be scrapped, what are your thoughts on this?
First of all valuation techniques have moved on a pace over the past few years and it is a lot easier to generate a valuation of a scheme and to keep that up to date.

However, from our perspective as a regulator, what we are proposing under TPR Future is to move away in our DB regulation from the biggest schemes, to a more supervisory approach where we engage with them and sometimes their employer on an ongoing basis. We think that has two advantages. Firstly, we can intervene more proactively at the optimum point in the cycle, putting more resources into proactive work to ensure that problems don't arise in the first place. Secondly, by using a range of regulatory techniques other than supervision to be able to have an impact on a wider range of schemes.

For example, we are taking 50 smaller schemes at the moment, highlighting a potential issue between the balance of deficit contribution ratios (DRC) and dividends. We are asking them to explain their particular circumstance to us and we will judge whether to take action of varying intensity. We are calling it Regulatory Approaches, which will enable us to hit varying schemes of

different sizes. Meanwhile you've got the one-to-one supervision of the highest risk schemes going on.

In assessing how risky a scheme is there are a variety of factors to take into consideration and those vary on whether you are talking about DB, DC or public service or master trust. One of the factors is size. It could be size in members or assets or deficit, it is never a simple answer.

Being a trustee is already an onerous responsibility. They have to abide by a set of requirements in the law and in our codes already. Our TPR Future approach in itself does not add to that burden as set out in the law and our codes. Does one-to-one supervision mean that we will be contacting the trustee more frequently? Potentially yes. Is that a burden? Not necessarily because what trustees are telling us is that they want us to be clearer quicker and tougher in what we do. We may be engaging with them more, some may see that as a burden but others might see it as an advantage.

It is important to say we are thinking about this in the context to all schemes, not just the ones subject to one-to-one supervision. We will also looking at how we can provide efficient access to all the other schemes who are lower risk, who want to know how to assess the regulator for more information.

We have re-platformed our website and we will now be revamping the content of the website so we can we provide tools on our web for a trustee on how to deal with a situation.

It's important in demonstrating that regulation is to help and support those doing the right thing. Effective regulation is as much about supervisions, education and engagement than it is about enforcement.

Looking forward, what are the main challenges facing the regulator?

I think there is a real challenge about how you use data and analytics to make you a more effective regulator. It's what the police forces used to call intelligence-led policing. It's about getting that intelligence and to direct your resources as a result. All regulators are by necessity resource constrained, you can't do everything you would like to do and you can't regulate all risk out of the system. So how do you pick where you put your resource? I think it is a really interesting challenge for us and all regulators over the next few years about how you use data effectively in regulation.

Let's also not forget the DC investments. As we all know uncertainty tends to generate volatility so it behoves all schemes trustees to ask themselves about the uncertainly that is generated by Brexit because that can have an impact of scheme funding, but also what it means for the investment strategies. Have they re-examined their hedging arrangements, all that kind of thing.

The regulator's new approach has had a positive effect over the past few months – are you proud of what you have achieved during your time at TPR?

I'm hugely proud of what we have achieved in the organisation. When I look back at the recompense we have achieved for savers through the anti-avoidance actions, over £1 billion have gone back into schemes.

When I look at how we are going through a real wholesale engineering of our regulatory model, when I look at how we now go out and engage with the pensions industry and our stakeholders, people are telling us that our engagement feels different, we are hearing that from schemes.

I have had two memorable occasions over the past two weeks, including somebody at church who said I am a Nortel pensioner, and thanks to TPR we are now going to get increases to our pensions that we didn't think we are going to get. That was a really good feeling.

I shall miss TPR and regulation and the pensions industry greatly, but that doesn't mean that *[leaving]* is not the right thing to do.

Written by Theo Andrew