



► **The Pensions Regulator has a new approach, acting quickly, clearly and decisively. But is the new, much tougher, regime working? And how are trustees responding? Sara Benwell explores**

Harder, better, faster, stronger

▣ Summary

- The Pensions Regulator has adopted a faster, clearer and tougher approach.
- Trustees have concerns about how some of the new powers are being used.
- DC regulation is overburdening trustees.
- The industry hopes for temperate regulation for master trusts.

If you think The Pensions Regulator is a soft touch, think again. In 2017, the watchdog shifted gears – using all its powers, doling out fines and coming down hard on schemes or employers it feels are failing members.

It's not been a gradual shift, but a conscious decision. A TPR spokesperson explains: "We are being clearer in our expectations, acting more quickly when we see a problem and being tougher on

those who put people's pensions at risk. That means fines for employers who don't give their staff the workplace pensions they are entitled to, fines for those trustees not getting the basics right and bans for unfit trustees."

Better communications

The improvements in clarity and speed have gone down well.

Aon Hewitt partner Paul McGlone

comments: "We've seen clearer requests from TPR in areas such as discount rates and minimum contributions, which leave trustees and sponsors in no doubt of their position.

"We've seen much faster response times, including faster turnaround of communication and even direct answers to questions in meetings, which has been a rare thing in the past."

However, the new, tougher approach has been less universally accepted.

More intervention on DB

Many of the new muscles being flexed by the regulator focus on intervention on underfunded DB schemes. TPR is acting retrospectively on cases, and clamping down on employers not making the

necessary contributions to keep schemes afloat.

The PLSA's deputy director of DC, lifetime savings and research, Nigel Peale, comments: "TPR has stated that it wants to be 'clearer, quicker and tougher' and we are beginning to see that with increased enforcement activity, which has certainly 'shaken the tree' and heightened focus around trustee boards and in the advisory community. Rarely or never-used powers have been dusted off and utilised to secure criminal convictions, gather information or address failings."

It has been particularly hard on failure to comply with Section 72 notices. If you receive one and fail to act in time, the regulator will seek a criminal conviction – ex-BHS boss Dominic Chappell's trial is in January.

It used its powers 'to appoint a skilled person' for the first time – settling a dispute around deficit repair contributions between Hoover and its trustee board. And there is evidence it is using its anti-avoidance powers more widely too – recovering over £1 billion for DB schemes to date.

TPR not only has teeth, but it is using them too. And for many this has been positive.

Pan Governance managing director Steve Delo says: "I think TPR are targeting DB schemes sensibly and, if the trustee boards react proactively to that engagement, the regulator's involvement can be a powerful catalyst for improved funding plans and additional parent company covenant support."

An over-focus on valuation deadlines
However, there is a concern among

trustees that a focus on valuation deadlines means the regulator has lost sight of what really matters – the outcome.

Sackers partner Ian Pittaway explains: "Previously TPR was looking for a timetable to conclusion of the overdue valuation – now the tone of the letters is much more direct, driving the trustee forward to reach a conclusion with the threats of fines and penalties if agreement is not reached. The actual outcome of the negotiation seems less relevant than getting it concluded."

Able Governance director and independent trustee, Nick Boyes, has also spotted this. He adds: "I know of a case where the valuation process was coming to a satisfactory conclusion within the 15-month deadline. A late, unforeseeable, change in the circumstances of the principal employer led the trustees to seek to renegotiate the terms of ongoing contributions due to the perceived change in the strength of the employer covenant. The regulator seemed more concerned about the legislative timetable than securing proper support for the scheme."

And some feel the regulator needs to hold employers to account as well as the trustees. As Pittaway puts it: "TPR directs its fire mainly at trustees – appearing to forget that a funding negotiation needs two to agree."

Fines for DC schemes

In the DC world, trustees are faced with an ever-growing list of things to do, and are clearly feeling the pinch.

The regulator has cracked down – and is using its 'compliance with basics' powers for the first time. It issued 37 fines to trustees between July and September 2017 for not sending in their scheme return on time and 18 fines for not submitting a chair's statement.

Delo hopes for a softer approach here. He says: "I believe DC governance is still on a journey to get to the standards needed but I would like to see TPR

be more collaborative and supportive here – less focus on the stick approach (penalties, sanctions etc). DC boards are generally trying hard and some of the issues are rather like nailing jelly to a wall. For example, freedom and choice moved the goalposts on what DC pension schemes are about – no wonder it is taking time for trustees to get their heads around the right way forwards."

With DC, there's an acceptance that governance needs to be better, but not through the current approach.

Boyes comments: "Many professional trustees have exchanged war stories relating to fines meted out by the regulator. Rather than being seen as a mark of shame, this power is starting to have less impact as it is used with more frequency. This is seen most clearly with penalties relating to Chair's Statements on DC schemes. It seems that any technical shortcoming is being pounced on regardless of the circumstances of the scheme or the potential to risk for members. The recently published checklist for producing a compliant statement is, however, a helpful move."

Over-burdened trustees

Another area of concern is the burden this additional work is putting on trustees. Even those who understand the need for more regulation are worried.

Delo explains: "The challenge for TPR is to properly target their interventions and use of their powers. There is a danger that, in wanting to be seen to be tough, they could hit those trustees that are trying hard but struggling with the sheer volume of work and technical challenges (but who are broadly doing the right things) as opposed to the true laggards who are operating in an outmoded, conflicted way and are oblivious to how serious pensions governance has become.

"The industry needs engaged and motivated lay trustees – we could do without good people being put off the role due to heavy-handed intervention



on situations that don't merit it. The key mantra here is 'proportionality.'

This is as much of an issue in DB, where Pittaway fears trustees are not getting the support they need from TPR. He says: "There can sometimes appear in letters or telecoms with TPR a presumption that the trustees are useless or in the pocket of the employer. Nothing could be further from the truth in most cases, but TPR can, on occasion, have a dim view of trustee competence and that can be demotivating for trustees when they are putting their all into running a scheme effectively."

What next?

Next in sight for TPR is the thorny issue of master trusts, which it plans to tackle with powers afforded under the Pensions Schemes Act. A TPR spokesperson says: "For the first time, master trusts will have to be authorised by us before they

can open for business. To remain in the market they will also have to demonstrate to us on an ongoing basis that they continue to meet the strict authorisation criteria, including provisions to ensure member funds are protected in the event of a scheme wind up."

Here, it seems most people will welcome more regulation. Since 2010, there has been a 2,000 per cent increase in memberships of master trusts and there are now 7.1 million members enrolled in one – so it's vital to ensure those savings are protected.

Regulatory harmony

The existence of two regulators is still a cause for concern and the future of master trust regulation will be a real litmus test for it.

Trustees will be hoping that TPR take an approach that is both temperate and in harmony with the FCA's regulatory

regime for GPPs.

However, appetite for one consolidated regulatory body has dwindled, as most understand that it would only create a period of turmoil for schemes.

Royal London's director of policy, Steve Webb, concludes: "Even with a single regulator you would still need the specialist skills needed to work with employers and trustees on the one hand, and with pension providers, IGCs and financial advisers on the other. Importantly, having a single regulator would require an Act of Parliament and parliamentary time is very limited. If the world of pensions was given a limited amount of time to put new laws in place, would merging regulators really be the top priority?"

 **Written by Sara Benwell, a freelance journalist**