Putting strategy into action

The Pensions Regulator (TPR) has emphasised that it will take action against those trustees who ignore employer-related investment rules. Sophie Smith considers the recent action taken by the regulator on employer-related investment (ERI) breaches

The Pensions Regulator (TPR) has been cracking down on pension scams over the past year, having published a new scam-fighting strategy in light of concerns that the cost-of-living crisis may leave savers vulnerable.

In this, TPR said it was primarily, although not solely, concerned with seven kinds of scams, including employer-related investment (ERI) breaches.

And the work to tackle these issues is already delivering results; two former pension scheme trustees recently received suspended sentences for making illegal loans of £236,000 from a company pension scheme to the scheme's employer, following a prosecution by TPR.

Former company directors of Eastman Staples, Andrew Kyprianou and Colin Werb, were sentenced to 16 months in jail for each offence, suspended for two years, and were also ordered to carry out 250 hours of unpaid work.

Although the pair initially pleaded not guilty, they later changed their pleas, admitting two counts of making prohibited ERI. Both defendants were also charged with providing false or misleading information to TPR contrary to section 80 of the Pensions Act 2004.

The charges relate to two loans, an initial £96,000 loan and a second £140,000 loan, paid from Eastman Machine Company Limited Superannuation Scheme to Eastman Staples Limited, contrary to section 40(5) of the Pensions Act 1995.

TPR initially challenged Werb regarding the £96,000 payment in 2018, only to be told it was being used as working capital for the business and repaid on a monthly basis with 5 per cent interest, while Werb failed to mention the £140,000 payment made earlier.

Kyprianou also told TPR the money was withdrawn from the pension scheme and paid to the company to support it in the face of the adverse effects of Brexit.

However, both Werb and Kyprianou changed their story in later interviews with TPR, stating that the payments were instead used as investments on behalf of the scheme in a disused church, with a view to potentially converting it into offices and a community space.

Despite this, TPR found that the church was not registered in the scheme's name and there was no independent evidence to support these assertions.

Furthermore, although the pair had fabricated minutes to disguise the loans as investments, investigators found communications describing earlier payments from the scheme as loans.

Since proceedings began, the defendants have sold the church and paid the proceeds of sale to the scheme, with £270,000 paid into the scheme.

TPR director of enforcement, Erica Carroll, also highlights the case as a reminder to all trustees on the rules around ERI and a warning that TPR will prosecute those who ignore them.

"Despite being experienced business people and having been warned by their adviser about payments between scheme and employer, Werb and Kyprianou continued to flout laws designed to protect pension savers," she states, arguing that the duo "recklessly used money meant for their staff's retirements to prop up their company despite the risk to the scheme – and their employees' pensions".

Looking ahead, Carroll also emphasises the importance of proportionality in the regulator's approach, stressing however, that TPR will take tough action where needed, stating: "During the initial months of the global pandemic, we supported trustees and the industry with guidance, advice and regulatory flexibility. We will continue to act in a proportionate way during this current period of economic pressure, but that does not mean trustees and employers should be complacent. Legal duties remain regardless of external pressures.

"We will not be relaxing our stance on those who abuse their position of trust because circumstances are challenging. We will continue to be tough on scammers, fraudsters, criminal gangs and those who fail to treat savers fairly; we stand ready and willing to use our regulatory powers, or prosecute against those who break the law."

Written by Sophie Smith