Strong action

Pensions Age looks at some recent examples of the industry's regulators flexing their enforcement muscles

TPR's latest compliance and enforcement bulletin

The Pensions Regulator's (TPR) latest compliance and enforcement bulletin, published in March, revealed a slight increase in the use of most of the regulator's auto-enrolment (AE) powers during the six months to December 2023.

However, this was in line with TPR's expectations, given the continuing large wave of small and micro employers who were due to meet their re-enrolment responsibilities in this period.

In particular, TPR issued 29,489 compliance notices, up from 25,106 in the previous period, 17,451 unpaid contribution notices, compared to 15,994 in the previous period, and 19,538 fixed penalty notices, up from 17,178.

In addition to this, it issued 8,400 escalating penalty notices, up from 7,944 in the previous period.

Whilst AE enforcement activity had increased, TPR's frontline regulation (FLR) powers showed a moderate decrease, with 193 statutory powers used in the period between July and December 2023, down from 263 in the preceding six-month period.

Indeed, TPR said that it has seen an overall improvement in compliance with FLR duties, including chair's statement and scheme return requirements, which is reflected in a continued reduction in the number of fines issued.

TPR issued its first climate reporting fine

Last year, TPR issued its first fine against a pension scheme for failing to publish a report on trustees' management and governance of climate-related risks and opportunities.

The ExxonMobil Pension Plan was fined £5,000 for failing to meet new Taskforce on Climate-related Financial Disclosures (TCFD) aligned regulations, which came into force in October 2021.

TPR discovered that it was unable to locate the report, which was due to be published by 31 July 2022, as part of its broader investigation into the availability of TCFD reports and environmental, social and governance (ESG) compliance.

The regulator subsequently wrote to the scheme trustee, with the report then published six days later.

In response, the scheme trustee confirmed that while they had produced the report and the scheme administrators had uploaded it by the deadline, a faulty URL meant the report was not published on a publicly available website until 10 August.

The trustees emphasised that they had not realised the URL was not functional, assuring TPR that they took their climate reporting obligations seriously, and that their non-compliance was inadvertent.

However, TPR stressed that schemes in scope of the regulations must publish their climate change report by a set deadline on a publicly available website so savers can be assured trustees are making decisions which take into account climate risks and opportunities.

Given this, TPR issued a mandatory penalty of £5,000 in May 2023, opting for an amount above the minimum because it was a corporate body and to reflect the nature of the breach.

The matter was resolved in July 2023 when the ExxonMobil Pension Plan trustees paid the penalty.

Pension fraudsters ordered to hand over assets

In January, two pension fraudsters were ordered to hand over the majority of their assets after a Proceeds of Crime Act (POCA) investigation by TPR, with the money to be returned to the pension schemes affected by the duo.

The successful conclusion to the investigation also means that Dalriada Trustees, the independent trustees running the affected schemes, can now take steps to further progress the claims on the Fraud Compensation Fund.

Alan Barratt and Susan Dalton were previously jailed for a total of 10 years for their roles in a scam that saw more than 200 savers tricked into transferring £13.7m into fraudulent schemes.

The pair will now also be required to make financial amends, as the POCA saw Barratt and Dalton ordered to pay £9,771 and £25,010 respectively.

According to TPR investigators, the amounts represent the vast majority of Barratt and Dalton's remaining assets, although if further assets are linked to the pair in future, the regulator can ask the court to increase the amount payable under a confiscation order.

If Barratt or Dalton fail to pay, they risk a further jail term and will still be liable for the ordered sums, plus interest.

Former pension trustee received suspended sentence over illegal loans

In January, former Worthington Employee Pension Top Up Scheme trustee, Stephen Smith, was given a 10-month jail term, suspended for 12 months, after admitting to using scheme funds to make five prohibited loans to entities connected to the scheme's sponsoring employer.

At his sentencing at Burnley Crown Court, Judge Unsworth KC told Smith he would also have to complete 150 hours of unpaid work in the community and pay £1,000 in prosecution costs.

Smith previously pleaded guilty to making five prohibited loans totalling around £700,000, but pleaded not guilty to a sixth charge of making a prohibited investment.

During a prosecution by TPR, the court heard that Smith played a central role in running the scheme but failed to act in the best interests of its beneficiaries or with impartiality, and was negligent in the performance of his trustee duties.

TPR also confirmed that although Smith was not a trustee at the time of the failed investment, ultimately all scheme monies were lost as the loans were converted into another employer-related investment that failed.

FCA, advisers and the BSPS

Last year saw the Financial Conduct Authority (FCA) issue fines and ban a number of advisers due to their poor advice, particularly with regards to British Steel Pension Scheme (BSPS) members.

For example, in March 2023, the FCA fined Inspirational Financial Management (IFM), which is in administration, £897,840, after it found that the firm poorly advised members to transfer out of DB pension schemes, including the BSPS.

The FCA also banned IFM adviser, Arthur Cobill, and IFM director, William Hofstetter, from advising customers on pension transfers and pension opt-outs. Hofstetter was also banned from holding any senior management function at any regulated firm.

In addition to this, Cobill and Hofstetter agreed to pay £120,000 and £40,000, respectively, to the Financial Services Compensation Scheme (FSCS) to contribute to compensation for IFM's customers.

June last year saw the FCA ban Denis Lee Morgan of Pembrokeshire Mortgage Centre (PMC) Limited (in liquidation) from advising any customers on pension transfers and opt outs, and from holding any senior management function in a regulated firm.

According to the FCA, Morgan demonstrated a lack of competence in his oversight of PMC's pension transfer advice process between 8 June 2015 and 7 December 2017, during which he had a number of BSPS clients.

The following month, Paul Steel of Estate Matters Financial was banned by the FCA from working in financial services, with £850,000 to be paid in redress to the FSCS.

According to the FCA, Steel provided unsuitable advice to customers to transfer out of their DB pensions, including the BSPS.

September saw the FCA fine former Active Wealth company director, Darren Reynolds, £2,212,316 for dishonest pension transfer advice to over 670 customers, 150 of which were BSPS members, and banned him from working in financial services.

In October, the FCA banned Simon Hughes of S&M Hughes Limited from advising customers on pension transfers and opt outs, and from holding any senior management positions in regulated firms, due to advice failings.

Hughes has also been told to pay £158,600 to the FSCS to contribute to the redress due to his customers, most of which were members of the BSPS.

Meanwhile, November 2023 saw two former advisers of West Wales Financial Services Limited (WWFS) (in liquidation) being banned by the FCA from advising customers on pension transfers and pension opt-outs, due to their unsuitable pension transfer advice to customers, including BSPS members.

The two advisers were also required to pay £67,688 to the FSCS to contribute towards the compensation owed to WWFS customers.