Adapt and overcome

The Pensions Regulator (TPR) has upped the standards it expects of trustees when completing their chair's statements, creating new challenges. Jack Gray assesses how trustees have had to change to meet the new expectations and whether TPR's non-compliance penalties are sufficient

Since April 2015, trustees of defined contribution workplace pension schemes have been required to produce an annual governance statement, signed by their chair. TPR has said that it expects the statement to provide a "meaningful narrative of how, and the extent to which, the governance requirements have been complied with".

Three years later, in April 2018, the regulator issues new regulations that require trustees to provide additional information on investment charges and transaction costs to be made available online.

Rising challenges

Chair's statements are often lengthy and detailed, requiring trustees to obtain data and produce documents in a way members can understand. This is where challenges can arise.

"The difficulties come from the level of detail required," begins Norton Rose Fulbright pensions lawyer, Shane O'Reilly.

"In some ways the trustees are beholden to how much detail their investment fund manager will give them, because you have to do things like assessing what the charges and costs are, whether they're good value for money.

"To make that kind of assessment trustees need quite a lot of information both from the managers who operate the funds and in conjecture with their investment consultants."

It can be even more difficult for trustees that have changed fund managers to obtain the data, as the statement is retrospective on the previous year, and getting up-to-date information can be challenging.

Overcoming obstacles

To overcome this issue, O'Reilly recommends that trustees ensure they are aware that they need to engage with their fund managers and that they understand all their internal processes, training requirements and legislative updates.

Despite the challenges facing trustees, Dalriada Trustees senior trustee representative, Vassos Vassou, believes that the changes been positive for members.

He explains: "TPR's increased engagement and regulation on chair's statements has had a positive effect on badly governed DC schemes.

"It has helped highlight to those schemes what they should be doing going forwards to help improve member outcomes.

"For those schemes that are already well governed, the increased governance requirements are more of a compliance exercise, which means that trustees of those schemes sometimes view this as extra red tape with unnecessary adviser fees."

Penalties

TPR has also shown that it is not afraid to punish those who do not comply with their requirements, with trustees that do not produce a statement liable to a fine of between £500 and £2,000.

In April 2019, TPR fined two scheme trustees £2,000 each for failing to include the required information in their annual statement.

Commenting, TPR executive director, Nicola Parish, says: "As these cases clearly demonstrate, we are prepared to defend our penalties in court.

"It is the law for trustees to produce chair's statements and make sure they contain all the necessary information.

"We continue to expect high standards of trustees and will take action when chair's statements are not compliant with the law."

Vassou believes that the penalties are sufficient, especially for professional trustees. He says: "The consequences of not complying with chair's statement regulations are sufficient from a professional trustee perspective.

"Incurring a fine can affect you and your reputation, which is the last thing that any professional trustee, or for that matter, any other trustee would want."

Looking towards the future

Although TPR's changes have broadly been welcomed, O'Reilly thinks that a proportional approach would be better, as most members are in default funds, but the regulations apply equally to all funds.

He concludes: "If there's one default fund that covers 80-85 per cent of the membership, then they may have 20 extra funds that only a handful of people are in, but the same information has to be applied.

"If it were possible to make some sort of proportional approach, I think that would certainly be welcomed by trustees."

Written by Jack Gray