

Defined Benefit: The Pensions Regulator Powers Team
DWP Consultation Coordinator
4th Floor
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29 April 2020

Dear Sir / Madam

**Strengthening the Pensions Regulator's Powers:
Contribution Notice and Information Gathering Powers Regulations 2021**

The Association of Professional Pension Trustees (APPT) acts as the representative body for trustees of occupational pension schemes who fall within the Pension Regulator's description of professional trustee as set out in its August 2017 policy document.

The APPT maintains a set of standards for professional trustees to improve and provide assurance on the quality of professional pension trustees. The APPT also oversees the process by which members may become Accredited professional pension trustees.

The APPT acts as the collective voice of the profession and we estimate that our members work as trustees on over 1,500 defined benefit (DB) schemes. Our members also sit on a large number of trustee boards for defined contribution (DC) schemes including DC master trusts. Our members each typically work on multiple appointments and in total are responsible for managing schemes with assets of over £750 bn.

In preparing our response to your questions, we have considered our experience of working with pension schemes across the spectrum of circumstances (large/small, well funded/poorly funded, weak covenant/strong covenant etc.). In particular, we have provided general comments as well as more specific comments covering the Resources Test and the security of our members' benefits.

General Comments

The APPT welcomes DWP's desire to strengthen the contribution regime and make it more effective. For larger organisations, we believe the new regime will result in sponsors taking a more cautious approach to members' interests with an increase in the number seeking clearance. We believe this means TPR will require additional resources to process these clearance applications in a timely manner. For smaller organisations, who do not routinely seek legal input from advisers, there is a risk that they are unaware of the new requirements in the Pensions Schemes Act 2021 ("the Act") and so do not provide the information to trustee for "business as usual" activities such as refinancing.

The APPT would not wish for the new contribution notice regime to lead to additional delays in the recovering funds from sponsors. This is because such delays may mean that vulnerable people do not receive their benefits when they should and some may never receive them if they pass away in the interim period. To support such vulnerable pension scheme members, we would welcome the introduction of mitigation measures incorporated into the proposals (for example interim payments that can be used to support members until the full recovery is made).

The APPT also welcomes the proposed strengthening of the information gathering powers. However, some trustees note that their members may be disadvantaged if a sponsor is weakened by the imposition of a substantial fine on that sponsor and so we believe TPR should exercise plenty of discretion over the fines it has the power to impose.

Overall, the new Act will help the APPT with the professionalisation of our industry and will encourage wider adoption of best practice regarding covenant advice, contingency planning and conflicts of interest. On the flip side, the Act may lead to fewer lay trustees coming forward either because they are still employed by the company and therefore conflicted or because of the additional complications and potential consequences for them set out in the Act.

Resources Test

Our members have raised some concerns regarding the "Resources Test" referred to in the consultation. It has been noted that the normalised profits before tax definition simply represents a moment in time and not a more holistic view of the sponsoring employer's overall position. The definition is also a historic one (up to 18 months out

of date) and may no longer be relevant. For example, changes to cashflows as a result of Covid19 or significant refinancing program may be missed by the historic analysis. The application of the Resources Test will need to be flexible enough to consider the impact of significant changes to circumstances since the accounting data was prepared.

It seems that the definition of “normalised” is itself open to interpretation. This may lead to different sponsors or advisers producing differing analysis as part of the Resources Test. This will make it more difficult for our trustees when they are considering company proposals affecting the pension scheme.

There is a focus on profit for this test. Our members feel that the cash position is also an important consideration to take into account for the Resources Test and assume cash will be considered as part of the overall assessment.

Security of benefits

Many of the restructuring exercises APPT members agree to with their sponsoring employers are successful in improving the long-term security of our pension scheme members' benefits. In many cases, without the restructuring process, sponsoring employers would become insolvent and our pension scheme members would enter the Pensions Protection Fund. The new Regulations seek to protect pension scheme members from the unscrupulous few, but in doing so, they should not jeopardise the frequency, ease or success of valid restructuring exercises that ultimately mean our pension scheme members get paid in full, month after month and year after year.

We believe that the new Regulations will lead to more sponsoring employers engaging with Trustees earlier in a transaction process than before. That is beneficial for pension schemes. We also believe that the threat of heavier penalties for employers will mean that pension schemes get a fairer deal more easily and more quickly than before. This represents an important improvement in the position APPT members will be in. The position for pension scheme members will also improve by extension.

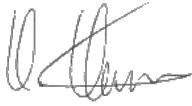
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Your faithfully



Vassos Vassou
On behalf of the APPT Council
Association of Professional Pension Trustees

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