

Written evidence from The Pensions Regulator NPS0005

Our role

TPR is a non-departmental public body established under the Pensions Act 2004. Our sponsoring body is the Department for Work and Pensions (DWP), and Parliament sets the legal framework within which we operate.

Introduction

The Pensions Regulator (TPR) welcomes this opportunity to provide written evidence to the committee's inquiry into Norton Pension Schemes and the Fraud Compensation Fund. Comprehensive details related to TPR's actions related to the Norton Pension Scheme can be found in our recently published Regulatory Intervention Report¹.

Executive Summary

- TPR replaced Stuart Garner as a trustee of the Schemes with an Independent Trustee, Dalriada Trustees Ltd, and as a result of TPR's prosecution for employer-related investments offences, he received a suspended prison sentence and was banned from acting as a company director for three years. His three-year company director ban also has the effect of preventing him from acting as a trustee of any pension scheme during that period. Since this prosecution, TPR has taken further regulatory action to ban Stuart Garner from ever being a trustee again.
- In June 2020, following findings of breach of trustee duties and maladministration, the Pensions Ombudsman (TPO) directed Mr Garner to pay compensation to members, and on the strength of those directions the schemes' independent trustee issued a demand requiring Mr Garner to pay approximately £15.7 million (a sum factoring the schemes' shortfall and additional factors, such as interest).
- At all stages of our and other agencies' investigations, we coordinated effectively with organisations in both the criminal justice system and the pensions landscape in order to ensure the best possible result for victims of Mr Garner's action.
- We are committed to ensuring the Independent Trustee, Dalriada Trustees, secures compensation for the victims and have been working together with them and the Fraud Compensation Fund (FCF) in order to do so.
- We continue to work with the Pension Scams Action Group (PSAG), we have delivered a joint Threat Assessment with the National Fraud Intelligence Bureau (NFIB), we are working with our partners, in particular, the National Economic Crime Centre (NECC) to develop frameworks for improving the assessment of criminal activity and intelligence sharing.
- TPR has evolved materially as a regulator since 2013 with our clearer, quicker, and tougher approach, alongside a focus on criminal cases. The new regulations on pension money transfers have seen improvements in reducing the risk to savers.

¹ The Pensions Regulator (2023) *'Donnington MC, Dominator 2012 and Commando 2012 pension schemes: Regulatory intervention report'* [Online] Available at: [Donnington MC Dominator 2012 and Commando 2012 pension schemes - Regulatory intervention report | The Pensions Regulator](#) (Accessed 27.10.23)

The Committee's Questions

1. Does TPR have the powers it needs to prevent trustees acting dishonestly and in breach of their trustee duties, leading to the loss of pension scheme assets, as happened in the Norton case according to the Pensions Ombudsman;

TPR has a range of powers including civil regulatory and criminal powers to address breach of duties and/or criminal conduct by trustees.

In the case of Stuart Garner, TPR used:

- its regulatory powers to ban Stuart Garner from acting as a trustee,
- its regulatory powers to install an independent trustee to enable it to manage the schemes, communicate with victims and make an application to the Fraud Compensation Fund (FCF).
- its criminal powers to successfully prosecute Stuart Garner for three serious pension scheme investment offences.

As a result of Mr Garner's criminal conduct, he was sentenced to eight months imprisonment, suspended for two years, for each of three counts of breaching employer-related investment (ERI) rules².

He was also disqualified from acting as a company director for three years and ordered to pay TPR's costs of £20,716. TPR took further regulatory action to ban Stuart Garner from ever being a trustee again.

TPR has recently been given a set of powers in the Pension Schemes Act 2021 to enhance our regulatory toolkit. These include extended powers to compel individuals to attend for interview and criminal sanctions for pension avoidance.

Alongside TPR's new powers, pension scheme trustees and scheme managers have been given new obligations to help prevent pension money loss from occurring with the introduction of the 'Transfer Regulations' which came into force in November 2021³.

These regulations, require trustees of ceding schemes to carry out specified forms of due diligence on statutory transfers and to refuse a statutory transfer, or refer the member to guidance before allowing a transfer, if the due diligence shows certain risk indicators.

There are certain circumstances, referred to as red flags, which mean that a statutory transfer cannot proceed, or amber flags where a member must obtain guidance from MoneyHelper⁴ before the transfer may proceed.

Under these regulations, trustees must check for an employment link between the member and the receiving scheme (where the receiving scheme is an occupational pension scheme, which is not a public service pension scheme, an authorised Master Trust or an authorised Collective Money Purchase Scheme) and must receive evidence of that employment link before a transfer can proceed.

² Contained in s.40 of the Pensions Act 1995 and regulation 12 of the Occupational Pension Schemes (Investment) Regulations 2005.

³ The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (SI 2021/1237) Available at: <https://www.legislation.gov.uk/uksi/2021/1237/made> (assessed 29.09.23)

⁴ www.moneyhelper.org.uk

In the case of the three schemes of which Stuart Garner was the trustee, the employer was Manorcrest Ltd, a dormant company incorporated in 2012. Under the current regulations, in these circumstances we would expect trustees of a ceding scheme to request evidence from the transferring member that demonstrates an employment link with the receiving scheme. When trustees believe there is no employment link this is a red flag, and the transfer cannot proceed; if the evidence is inconclusive as to whether there is an employment link, the member will be required to attend a guidance session with MoneyHelper before the transfer can proceed.

We believe that because of the new transfer regulations the risks of similar situations arising now are much lower.

TPR and TPO have been engaging in dialogue about the extent to which we can utilise our respective powers to their full effect. We have already engaged with the Work and Pensions Committee on the benefits of TPR, TPO and FCF relying on the information/evidence contained in a decision made by each other to avoid duplication of information gathering and to increase efficiency of the decision-making process. This provides an expedited process and TPR and TPO continue to work to identify scenarios where a legislative change, in this regard, could enhance the efficiency of the process and are liaising with the FCF as appropriate.

Another example of where TPR and TPO have engaged to enable a more streamlined process for our respective cases is where TPR may use its freezing order power to prevent the dissipation of assets in cases where TPO has an ongoing case. TPR and TPO have agreed that where the TPO has identified that scheme assets are being dissipated or at risk of dissipation, TPR will consider, concurrent to an investigation by TPO, applying for a freezing order or make an application for the appointment of an independent trustee to protect scheme assets.

We continually review the extent and utility of our powers and where we find our existing regulatory or prosecution powers are limiting our ability to protect savers, we engage with DWP to highlight those concerns.

We believe the combination of the new regulatory model, introduction of new powers, including the transfer regulations, and better cross industry coordination will lead to a more proactive response and so better protection for savers.

1a) Are there the right regulatory arrangements to prevent a similar case happening again?

TPR are confident that the right regulatory arrangements are now in place to prevent a similar case happening again, this confidence is a result of the strong working arrangements that we now have in place with TPO and FCF. These improved working arrangements, together with our robust fast-track approach to whistle-blowers, close work with PSIG, and our Corporate Strategy help to prevent similar cases.

TPR does however, recognise that the complex regulatory landscape can be difficult for victims to navigate and are working with the TPO and FCF to ameliorate this situation.

TPR is now a clearer, quicker, and tougher regulator, determined to protect savers. We are clearer in how we set our expectations of those we regulate; quicker to intervene to prevent problems from developing by using the range of regulatory tools available to us, and tougher in the action we take where we discover breaches of law.

As a risk-based regulator, we consider a multitude of factors when examining how we address risks to pension schemes, including the extent to which the result would meet the outcomes we

are seeking to deliver through our corporate strategy and by working with other partner agencies and the resources available to us.

Further, under our new ways of working, whistle-blowing reports, such as on Employer Related Investment (ERI), are now fast-tracked to our Investigations team. We are more proactive in following up on the wider intelligence picture of cases and will consider the appointment of independent trustees where appropriate.

We have monthly tripartite meetings with the TPO and FCF, working together to ensure that our joint cases are monitored and coordinated through a streamlined end-to-end process. This arrangement has enabled us to progress our cases more quickly and will enable the return of compensation to victims at greater pace.

We continue to lead the industry coordination through the Pension Scams Action Group (PSAG) partners to build a better picture of pension risks, intelligence sharing and in doing so provide a joined-up pensions industry response to tackle these risks.

Over many years, we have worked to prevent savers' losses and take criminal action when appropriate. We run large-scale public awareness campaigns and lead a multi-agency response to the threat through the Pension Scams Action Group (PSAG). We have helped to implement new protections brought in by the Pension Schemes Act 2021⁵ and produced guidance for the 'transfer regulations'.

We continue to evolve our approach and have introduced our strategy⁶ that brings a stronger focus on prevention and enhances cross-industry collaboration.

We want to prevent savers falling victim to criminals. We will deliver this through our commitment to:

- educate savers about the threat that criminals present.
- encourage higher standards that prevent practices which lead to saver harms.
- fight criminal activity through the prevention, disruption, and punishment of criminals.

This approach has been developed as part of our strategic priority of 'Security' as set out in our Corporate Strategy⁷. This outlines a strategic goal to keep all savers' money secure.

TPR's Pledge campaign has also had a significant industry impact. The Pledge is a voluntary action which pension schemes can take to demonstrate their commitment to combatting pension scams. It is a two-step process which commits schemes to taking action to protect members and follow the principles of the Pension Scams Industry Group (PSIG) Code of Good Practice, and then encourages schemes to self-certify that they are fulfilling the Pledge principles.

Since its launch, more than 600 schemes have now made the Pledge, meaning that an estimated

⁵ Pensions & Lifetime Savings association (2021) 'COMBATING PENSION SCAMS – A CODE OF BEST PRACTICE', Available at: <https://www.plsa.co.uk/Policy-and-Research/Document-library/Combating-Pension-Scams-a-Code-of-Good-Practice> (Accessed 28.09.23)

⁶ TPR - 'Our Strategy to combat Pensions Scams' [Online] Available at: [Our strategy to combat pension scams | The Pensions Regulator](#) (Accessed 13.10.23)

⁷ TPR (2021) 'TPR Strategy: Pensions of the Future' [Online] Available at: [Corporate Strategy Pensions Future | The Pensions Regulator](#) (Accessed 28.09.23)

16 million savers are better protected. We have made real progress with establishing an industry norm: almost 60% of Pension Scams Industry Forum (PSIF) members and Master Trusts have now taken the Pledge. Additionally, 324 schemes have self-certified, and we will continue to nudge more schemes to do so through our communications.

TPR, TPO, PSAG partners and industry have utilised the current regulatory arrangements to ensure a multifaceted approach to tackling pension crime. We continue to work with each partner to ensure we are maximising all opportunities to deliver security for savers.

2. Could different regulatory arrangements have delivered a faster resolution of the Norton case, or a similar case?

In 2013 when this case first emerged, we had not yet formed a criminal team, nor did we have the strong pensions' industry relations such as we have today. We now have a fully functioning industry group focusing on 'criminality'.

TPR's operating model has evolved since 2013 with a much stronger focus on prevention and disruption. With the development of our new regulatory model, new strategy and greater cross-industry coordination in developing our understanding of the criminal picture, there has been significant progress.

Whilst it would not be correct for TPR to speculate as to what might have happened if our new regulatory model had then been in place, we do believe that now we are set up to address Employer Related Investment cases quicker and more effectively.

3. How could co-ordination with other (non-pension) bodies be improved?

In relation to improving our co-ordination with pension bodies, TPR, TPO and the FCF now have regular tri-partite meetings focused on co-ordination and sharing of intelligence and evidence between the three agencies to ensure, where appropriate/possible, members are able to receive compensation in a timely way. The meetings are effective in allowing us to prioritise pension cases where we identify an opportunity to bring about recourse for members through a series of actions including a TPO determination, a TPR IT appointment and FCF compensation.

We have worked well with both non-pension and pension bodies. These include TPO, Dalriada (the schemes' independent trustee), and the FCF to secure compensation for scheme members impacted by Mr Garner's actions and in bringing him to justice.

Furthermore, we have provided information to Leicestershire Police and worked closely the City of London Police throughout the process, and following both Mr Garner's guilty pleas and sentence hearing we provided updates on the proceedings to victims within hours of them happening.

On criminal cases more broadly, we are also part of several working groups designed to focus on criminal activity, for example the National Economic Crime Centre (NECC) Strategic Governance Group (SSG) which looks to direct the wider response to fraud nationally.

Our work with the SGG feeds into the National Fraud Strategy. The main aim of this is to ensure a joined-up approach to tackling fraud by understanding the problem, the impact of fraud, and enhancing the ability to respond to fraud. We are also part of other NECC-led working groups that focus on threat assessments and frameworks for improving the assessment of fraud and other criminal related allegations. Further, there is an ongoing focus on the development of future communications campaigns with the Financial Conduct Authority (FCA).

TPR recognise that coordination could be improved by closer working with NECC and, in an effort to remedy this, we are currently developing an active partnership with the NECC. We are seconding TPR staff to NECC, using NECC's existing infrastructure to expand and support PSAG's fraud prevention capability and to provide connectivity for PSAG into wider law enforcement networks. Working with NECC, we will also support and help to coordinate a multi-agency response to tackle pension criminality effectively.

We see room for improvement by building on the work of Pension Scams Action Group (PSAG). As part of PSAG's action plan, we have recently set up a Victim Support sub-group to help minimise the impact on victims. The Money and Pensions Service (MaPS) is leading this group within PSAG.

As a result of ongoing coordination, last June, PSAG published a joint threat assessment from TPR and the National Fraud Intelligence

Bureau (NFIB) on the threat from pension criminality. This joint threat assessment aims to provide an up-to-date picture of the risks to members within the pension scams landscape providing enhanced cross visibility to identify and put in place remedies to such threats.

4. How could communications with scheme members of collapsed pension schemes be improved while at the same time protecting scheme assets?

The Victims' Code⁸ creates requirements for all law enforcement and regulators and TPR fully complies with them.

We take our obligations under the Victims' Code extremely seriously and TPR has communicated extensively with members to keep them up to date with the progress of the criminal investigation and prosecution which TPR delivered.

Communication with savers is an essential part of the role of the trustee. There few current limits on the cost of communicating with members. However, the need to ensure members are kept aware of events should be balanced against incurring unnecessary charges. Therefore, attention should be paid to ensuring that any communication is necessary, timely and comprehensive.

5. How could the process for applying to the Fraud Compensation Fund (FCF) be simplified and sped-up?

The Fraud Compensation Fund (FCF) is a fund of last resort and there are a number of eligibility conditions, as set out in legislation, which must be met before they can receive and progress a formal application for FCF compensation.

The FCF legislation requires trustees to obtain any recoveries of value, following an insolvency event, to the extent that they may do so without disproportionate cost and within a reasonable time.

The FCF are exploring options to ensure the fastest possible route to payment once an eligible claim is received. In particular, the FCF are exploring whether it may be possible, through the potential use of asset assignment, for a claim to progress to payment despite having an outstanding potential recovery.

⁸ Ministry of Justice (2021) 'Code of Practice for Victims of Crime in England and Wales' [Online] Available at: [MoJ Victims Code 2020 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) (Accessed 02.10.2023)

We will support the FCF in identifying ways to improve the process to speed up compensation to victims.

6. What claims might the FCF expect in future and are there schemes which might be eligible but do not have the support to make a claim.

In terms of the first part of the question, we have been helping the FCF compile a list of the schemes that we are aware of that, should the eligibility criteria be met, may apply for compensation. However, this not a definitive list and it should be noted that the intelligence picture on potentially eligible schemes is constantly evolving.

Although, under the legislation a claim for compensation may be made by a trustee, an administrator or beneficiary of a scheme, or their representative, in practice the FCF legislation requires schemes to have a trustee in place in order to progress a claim. This can create a practical barrier for schemes where the existing trustees are either incapable or unwilling to put in a claim. The only other option under the current framework is for TPR to appoint a professional independent trustee (IT) under our existing powers.

However, it is not possible to do this for all schemes, as schemes which would benefit from an IT appointment may have no assets and neither are there any assets in the employers linked to them. If an IT were to be appointed under these circumstances a professional trustee would likely look to recoup their fees through FCF compensation once the scheme is approved. The merits of this arrangement would vary according to the nature of the individual case.

We are working with the FCF and the professional trustees on our Register who we would look to appoint to these schemes to find solutions to these issues. Where a change in legislation is required, this will be raised with DWP.

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