

## THE PENSIONS REGULATOR AND THE PENSION PROTECTION FUND

### **What is The Pensions Regulator?**

The Pensions Regulator (TPR) came into being on 6<sup>th</sup> April 2005. Prior to that the pensions "regulator" was the Occupational Pensions Regulatory authority (OPRA). TPR is based in Brighton, in the same offices previously occupied by OPRA. Indeed many of the initial staff were the same.

### **Why the move from OPRA to TPR?**

Basically OPRA was intentionally "light touch". TPR is much more hands on.

The real driving force behind the formation of TPR was the increasing number of final salary schemes that were under-funded. Employers were going into receivership or liquidation, leaving behind under-funded final salary schemes, with many members only getting perhaps 30% or 40% of the benefits they expected. This in turn led to the introduction of The Pension Protection Fund (PPF), and one of the main responsibilities of TPR is to regulate final salary schemes (and in particular their funding) to minimise the future calls on the PPF.

At the same time, the Pensions Act 2005 introduced a major increase in responsibility and required skill levels for trustees (see our leaflet on "Issues for Trustees").

In other words, a more "hands on" regulator was felt necessary.

### **What does TPR do?**

It sets minimum standards by which employers and trustees must run their pension schemes (both final salary and money purchase schemes). TPR tries to avoid being prescriptive, but inevitably, if TPR sets out minimum criteria, they have a tendency of becoming the "norm".

It has several Codes of Practice on its website.

### **How does TPR influence funding of final salary schemes?**

One of TPR's main functions is to ensure that final salary schemes are sufficiently well funded that, should the employer go under, the assets of the schemes are sufficient to ensure that there will be no claim on the PPF (see below for what benefits the PPF will provide).

To do this, TPR has indicated that they would expect final salary schemes to be fully funded on the FRS 17 accountancy basis within 10 years from its first actuarial valuation after 5<sup>th</sup> April 2006. This is on the basis that a scheme that is 100% funded on FRS 17 will generally be fully funded on the PPF basis i.e. there will be no claim on the PPF.

Interestingly, the law requires trustees to use "prudent" actuarial assumptions in funding their scheme – which of course tends to lead to higher company contribution rates, which are unpopular with business. However, rather bizarrely, if there is an actuarial deficit, TPR is quite happy if "realistic" actuarial assumptions are used to fund the deficit! Perhaps a case of having your cake and eating it?

### **What benefits does the PPF provide?**

In most cases, it will top the scheme benefits up to 90% of the full benefit – but no pension increases are provided and there is an overall maximum pension provided of c£28,000 per annum.

So it gives some protection, but nothing like full protection.

### **Why does it not give full protection?**

The simple, but true, answer is that the cost of "guaranteeing" full protection is prohibitive.

**What would full protection cost?**

We said above that TPR wants schemes to be "fully funded" on the FRS 17 basis by soon after 2016. On the face of it, this looks like good news as, according to the company accounts, all schemes will have no deficit.

However, that is wrong! The FRS 17 is an accountancy basis that funds on certain actuarial and financial assumptions on the basis that the scheme will continue.

If the employer went into receivership or liquidation, the scheme would need to be discontinued and wound up. The benefits would, in most cases, need to be bought out with an insurance company i.e. current and deferred annuities would need to be purchased. And the prices of annuities are such that, for a scheme that was 100% funded on the FRS 17 basis, typically only 70% to 75% of the discontinuance/winding up liabilities could be bought.

So to fund 100% discontinuance benefits would probably increase company contributions by a further 40% or so!!

We just hope that finance directors, trustees and members appreciate that, even when a scheme is 100% funded on the FRS 17 basis, it will still be only 70% or so funded on a discontinuance basis.

**Who pays for the PPF?**

It is paid for by a levy on all final salary schemes. The levy is risk based, supposedly based on how well the scheme is currently funded and the covenant of the employer.

The covenant of the employer is based on a rating provided by Dun and Bradstreet. Many employers have queried this rating as being too "risky", and have often been successful in their appeal. However, TPR have recently indicated that they will not in future normally allow any reassessment of the levy as a result of a disagreement regarding the D&B rating.

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