

TPR consultation—complying with dashboards regulations and consequences of non-compliance

Pensions analysis: The Pensions Regulator (TPR) is consulting on its draft pensions dashboards compliance and enforcement policy. The policy sets out TPR's expectations on how trustees and scheme managers should comply with the dashboards legislation and its approach to enforcement in the event of a breach of legislation. Katherine Carter, professional support lawyer in the Pensions practice at Mayer Brown International LLP, considers the consultation, its key aspects, the implications for pension schemes and providers, and the next steps.

This analysis was first published on Lexis®PSL on 13 January 2022 and can be found [here](#) (subscription required).

The 'Dashboards compliance and enforcement policy: consultation document' can be viewed [here](#).

What is the background to TPR's consultation?

Pensions dashboards will allow an individual to view information about all their pension savings (including their state pension) on a single website, even where the individual has savings in multiple pension schemes. The Money and Pensions Service (MaPS) will provide a non-commercial dashboard, while other entities will be able to provide dashboards if they are authorised to do so by the Financial Conduct Authority (FCA). The legislative framework for the pensions dashboard ecosystem is set out in the [Pension Schemes Act 2021](#), while the Pensions Dashboards Regulations 2022, [SI 2022/1220](#) set out the detailed requirements.

Broadly, trustees and managers will have to meet requirements relating to:

- cooperation and connection to the dashboard ecosystem
- provision of pensions data to the dashboards
- record-keeping and reporting

The requirements only apply to schemes with 100+ active and/or deferred members.

Under the legislation, TPR is responsible for regulating trustees' and managers' compliance with these requirements.

What are the key aspects of the consultation?

The policy notes that TPR will be clear in its expectations and will provide tools and education to help people meet their duties. It will take a pragmatic approach to compliance and will work with schemes to reach the best outcome for members. However, where TPR encounters instances of wilful or reckless non-compliance, it will take a robust enforcement approach.

In monitoring compliance and taking action, TPR intends to focus on breaches that it considers pose the greatest risk to members' ability to receive a complete and accurate picture of their pensions, and therefore make appropriate decisions. In particular, it will focus on:

- connection compliance
- failure to return a match made or a possible match where one should have been returned
- failure to provide data in line with the legal requirements, in particular where the benefit value provided is not sufficiently recent

TPR expects trustees and managers to:

- read, consider and implement its guidance where appropriate, as well as standards and guidance issued by MaPS
- operate adequate internal controls in line with its new code of practice
- keep clear audit trails of how they took steps to prepare to comply with the dashboards duties, keep a record of compliance as set out in MaPS' reporting standards, keep a record of steps taken to resolve any issues that arose, and keep records of their matching policy, and the steps taken to improve their data

TPR expects third parties such as employers, administrators and advisers to help and support schemes in meeting their duties appropriately.

TPR plans to put in place a framework for monitoring and identifying risk of non-compliance, using multiple sources of evidence, including regular data from the non-commercial dashboard run by MaPS, whistleblowing reports and additional information requested from schemes on an ad hoc basis.

Where TPR identifies, or suspects, that there has been a breach of legislation, it will consider if an investigation is appropriate and, if necessary, take regulatory action. Broadly, the more serious the matter, the more likely it is that TPR will take action. The factors that TPR may take into account when deciding whether regulatory action is necessary include:

- the impact of the breach on the member(s)
- the number of members affected
- whether the breach is the result of wilful non-compliance or if there are circumstances outside the scheme's control
- the scheme's compliance history and the duration of any breaches
- the extent to which the scheme has considered MaPS' and TPR's guidance
- the scheme's openness and co-operation with TPR

TPR will be able to issue compliance notices to trustees, managers and third parties. It will also be able to issue penalty notices to trustees and managers and, where a third party has failed to comply with a compliance notice, to third parties. The maximum penalty per breach will be £5,000 for individuals and £50,000 in all other cases, but TPR may be able to issue penalties for a number of breaches simultaneously. TPR can also use its existing powers including the power to issue an information request under [section 72](#) of the [Pensions Act 2004](#) and the power to suspend, prohibit or appoint a trustee under [sections 3–9](#) of the [Pensions Act 1995](#).

The policy also covers how schemes can challenge enforcement action taken by TPR against them, how TPR will work with partner agencies and regulators such as MaPS and the FCA; TPR's approach to publishing information about dashboards compliance and enforcement, and reviews and updates to the policy. In addition, the policy contains an appendix setting out scenarios illustrating how TPR might approach instances of non-compliance in practice.

What are the implications for pension schemes and providers?

As the draft policy acknowledges, pensions dashboards present a major challenge for the industry, and schemes and providers will need to undertake a substantial amount of work to prepare for compliance. The potential for breaches to occur is high and schemes and providers will need to be aware of the potential consequences of non-compliance. However, TPR intends to take a risk-based and proportionate approach and to intervene only to the extent necessary to address harm or reduce risk. Schemes and providers are therefore more likely to face significant penalties where they commit breaches that are persistent, intentional or indicate dishonesty.

What happens next?

The consultation closes on 24 February 2023 and TPR intends to publish the finalised policy in spring 2023.

The staging timetable under which schemes will connect to the dashboards ecosystem will be based on scheme size and type, with the first tranche of schemes (defined contribution master trusts with 20,000+ members) being required to connect by 31 August 2023. The point at which the public will be able to use pensions dashboards (known as the Dashboards Available Point (DAP)) has not yet been set. The government is required to give at least six months' notice of the 'DAP and may only do so once it is satisfied that the dashboards ecosystem is ready to support widespread use of pensions dashboards.

Interviewed by Banita Kalia

Katherine Carter is a professional support lawyer in the Pensions practice at Mayer Brown International LLP. Katherine has wide-ranging experience in all aspects of occupational pension scheme provision, including ongoing administration and compliance, investment issues, the pensions aspects of corporate transactions and scheme mergers and winding ups.

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