

Compliance and enforcement bulletin

Focus on: **scheme return**

July 2017

The Pensions
Regulator

What is a scheme return and why is it important?

The Pensions Regulator (TPR) is legally obliged to maintain a register of workplace pension schemes. In order to gather information about them and carry out our regulatory duties effectively, we ask the trustees of these schemes to complete a document called a 'scheme return'.

The information we ask for tells us what type of scheme it is and how many members it has, which helps us calculate the annual levy that all schemes must pay (and which is dependent on the size of the scheme). It's also useful in helping us monitor regulatory requirements such as the need to produce a chair's statement or provide evidence of scheme costs and charges.

Scheme returns give us a solid understanding of the pensions landscape as a whole, which in turn feeds into policy formulation and lobbying of central government. The information they contain also alerts us to a risk or a potential risk to members' benefits, ranging from failing to appoint the correct number of member nominated trustees through to significant concerns about the fitness and propriety of the trustees, for example due to a conviction for fraud.

The scheme return asks for up to date contact details for a scheme's trustees and any associated employers, enabling us to communicate with them quickly and effectively. This information is shared with the Pension Tracing Service so that members can search for and secure their pension benefits.

How often does TPR send out a scheme return?

Depending on the size of the scheme, we send trustees and managers a scheme return notice at least every three years, with larger schemes required to complete one annually.

It's the legal responsibility of the trustees to complete a scheme return by the date highlighted in the scheme return notice, and we try to give them at least six weeks' notice to allow sufficient time to contact scheme insurers for the information they need.

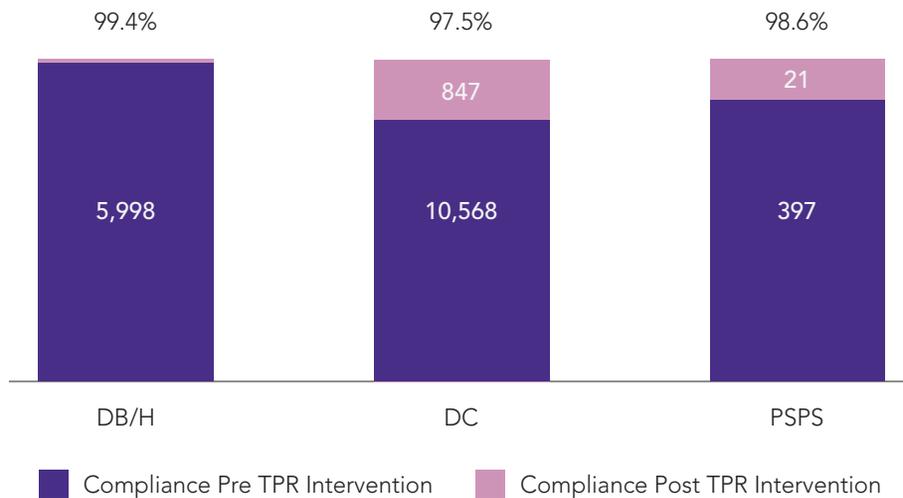
There may be situations where a scheme return is not required – eg if the scheme has been formally wound up or the total membership has reduced to less than two people. However, trustees are legally obliged to tell us about any change in the scheme's status as soon as reasonably practicable.

What does TPR do if a trustee fails to complete a scheme return?

The scheme return plays an integral part in gathering accurate information about pension schemes, which is why we have adopted a zero tolerance approach to non-compliance with this basic duty. We also consider a failure to complete a scheme return to be a symptom of potential wider governance failings and are looking to take greater enforcement action against these in the future. The majority of trustees complete a scheme return, so we will fine the minority who fail.

The enforcement process starts after we've made a number of efforts to encourage the trustees to comply, first by issuing a notification of failure letter and then a warning notice. The graph below demonstrates the improvement in compliance rates after our intervention and includes the volume of additional schemes that have complied. Compliance increased by 7.2 percentage points (847 schemes) for defined contribution (DC) schemes, and by 5 percentage points (21 schemes) for public service schemes. There was no increase in compliance among defined benefit (DB) schemes and we have therefore issued fines to those who failed to act on our requests.

We have issued a total of 88 fines across all scheme types.

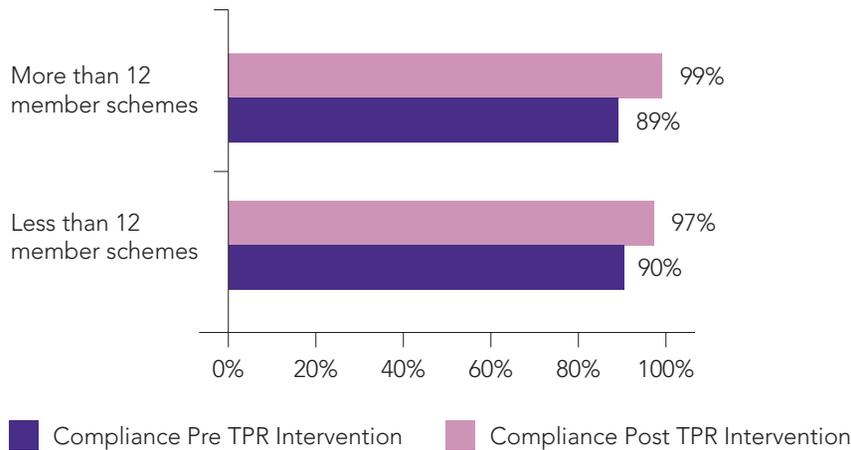


Data as at 7 June 2017

Scheme compliance

Trustees of smaller defined contribution schemes are more likely to fail

As the table above demonstrates, compliance rates among DB and public service pension schemes are higher than for DC schemes, especially among those with fewer than 12 members. The graph below



Data as at 7 June 2017

illustrates compliance rates pre and post intervention according to size of scheme.

We would therefore encourage trustees of smaller schemes to ensure they have sufficient knowledge and understanding of their role to carry it out effectively. Our website has straightforward advice and guidance for all types of schemes, and this, along with email communications and the Trustee toolkit, gives trustees the information they need. For more information visit: www.tpr.gov.uk/scheme-return

Misunderstanding scheme return duties is not an excuse

A number of trustees who failed to complete their scheme return told us they had already completed a pension scheme return (PSR) for HMRC, but this return is different from the scheme return we issue. In other cases, some trustees were unaware that a scheme return needed to be completed, or where to find the relevant scheme information. Trustees have a duty to maintain sufficient knowledge and understanding of their role, their scheme and the law in order to fulfill their duties and avoid regulatory action. The law requires a scheme return to be completed – we do not accept ignorance of these basic duties as an excuse for not

completing the scheme return.

Lessons learned from our casework

Case study 1 – trustees had not taken all reasonable steps to comply

This DC scheme with three members had a scheme return due date in November 2016. We sent them a scheme return notice in the post in October 2016, telling them what information we needed and giving them enough time to contact their pension provider for any further details. They didn't send back the scheme return in time, so our case team decided to investigate further.

One of the case team's priorities is to establish whether anyone from the scheme has been in touch to demonstrate that they've taken reasonable steps to complete the scheme return. In this instance, they found no such evidence and therefore issued a notification of failure letter, warning them of a potential penalty. Two weeks later and after no response to our letter, we sent them a warning notice detailing the case team's findings and giving them one more opportunity to get in touch with us and discuss what reasonable steps they'd taken, or to complete the scheme return. We had no reply to this letter, nor did we receive a scheme return.

The case team referred the scheme to the Determinations Panel in February 2017. A day later, the scheme's trustee called to say that they had finally submitted the return, and blamed the delay on the scheme provider not posting the requested information. The case team concluded that this did not affect their case as the trustees had requested the information from the provider after the due date and no further chaser attempts had been made, the case team concluded that the trustees had not made all reasonable efforts to comply – they should have requested the information they needed as soon as they received the notice. The Panel determined that a fine of £300 should be issued.

Message to trustees

It's the legal responsibility of the trustees (or managers of the scheme) to complete a scheme return. Where information is required from third parties this should be requested to allow sufficient time for a response prior to the due date:

www.tpr.gov.uk/scheme-return

Case study 2 – scheme return completion delegated but not checked

We sent this 52 member DC scheme a scheme return notice in September 2016, with a due date of November 2016.

As the trustees hadn't made contact to give a reason for the non-submission, we sent them a notification of failure letter and, two weeks later, a warning notice which included the case team's findings and evidence.

Two days later the case team received an email from the scheme trustee, who asked us to reconsider our enforcement action as the employee responsible for completing the scheme return had retired and their replacement hadn't forwarded on the scheme return notice. The case team did not accept this as a valid reason for non-compliance and referred the case to the Panel, who determined that a fine of £500 should be issued.

Message to trustees

It's the legal responsibility of the trustees (or managers of the scheme) to complete a scheme return. If this job has been unofficially delegated to someone else, the trustee should make sure that the necessary action has been taken. Please see: www.tpr.gov.uk/scheme-return

How to contact us

0345 600 1011
www.tpr.gov.uk

www.trusteetoolkit.com
Free online learning for trustees

www.pensionseducationportal.com
Free online learning for those running public service schemes

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