

## Laying down the law

### Pension Schemes Act 2021 – The Pensions Regulator lays down a marker on enforcement



Earlier this year, the Pension Schemes Act 2021 (**PSA21**) introduced important new criminal offences aimed at safeguarding members' interests. These offences are not yet in force. They are expected to become available for use by the Pensions Regulator (**TPR**) on 1 October 2021.

In anticipation of this key date, TPR has underlined its commitment to pursuing criminal investigations and prosecutions where it finds serious misconduct. In its draft policy (**the Policy**) published in March, TPR clarified how it proposes to conduct investigations and prosecutions in connection with the new offences. It is currently considering the comments of firms and others who responded to its consultation exercise and is expected to publish the final version of its policy ahead of the offences coming into force.

### Some brief practical points

#### Criminal and/or civil penalties – how will TPR decide?

The Policy states that TPR's process when deciding whether to use the new criminal offences will be similar to its process for contribution notices (under its existing powers).

While it could use both, the Policy does not explain much about when or how: it will make decisions based on its available resources and what could help deter future bad behaviour.

We may see it using a similar approach to the FCA, which has criminal and regulatory powers. Here, we see investigations started on a "twin track" basis. This can lead to significant practical issues. We and other respondents to

the consultation have invited TPR to clarify issues including when it will try to use its criminal and regulatory powers together and how it will use information it obtains for one purpose (for example in connection with contribution notices) in criminal investigations.

#### Investigations by multiple authorities

The new offences which will soon be available to TPR will provide it with an additional way of dealing with the conduct of companies, individuals and their advisers whose conduct during transactions it considers has negatively affected the interests of members.

However, as demonstrated by the conviction of Dominic Chappell in 2020 for offences of cheating the public revenue, the same underlying facts may spark concurrent or overlapping investigations and, in due course, prosecutions and/or regulatory enforcement action by multiple enforcement authorities, potentially in different jurisdictions.

Investigations can be unnecessarily protracted and costs to suspects and others who may be required to provide information can escalate as the result of duplication or discussions as to which authority should take the lead.

The Policy is currently silent on how TPR proposes to coordinate with and exchange information with other enforcement authorities which may also have an interest in cases in which it may consider using its criminal powers.



## Interaction with other regulatory requirements

The new offences set out in PSA21 which will soon be available to TPR do not exist in isolation. Even if investigations or prosecutions do not proceed, other regulators will be interested in whether suggestions of involvement in conduct negatively affecting members' interests by those subject to separate regulatory or professional rules cast doubt upon their suitability to hold posts requiring licences or approvals.

Senior Managers within UK regulated financial services firms who are commonly involved in pensions related transactions may have particular questions about the interaction between the New Offences and requirements for them to take "reasonable steps" to avoid breaches of separate financial services regulatory requirements.



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For further information on the Pension Schemes Act, including criminal offences, scheme funding, transfers, dashboards and more, read our **Guide to the Pension Schemes Act 2021**