

# New offences, penalties and powers for the Pensions Regulator: what employers and trustees should know

February 2020

Pension briefing

## HIGHLIGHTS

As expected, following the general election the new government has reintroduced the Pension Schemes Bill and is taking forward changes consulted on in 2018. The Bill will significantly increase the Pension Regulator's powers to require support for defined benefit (DB) pension schemes. In particular:

- The Bill creates new criminal offences, some punishable by up to seven years' imprisonment, plus a new civil financial penalty of up to £1m.
- The circumstances in which the Regulator can issue a contribution notice (CN) requiring funding to be made to a DB scheme will be widened.
- The Regulator will have increased powers to demand information, inspect premises or require an individual to attend an interview.
- The notifiable events regime, requiring the Regulator to be told of specified events, will be extended.
- The scheme specific funding regime will be strengthened, with a new requirement for trustees to prepare a "funding and investment strategy".

This note explains the various changes made by the Bill as it is currently drafted and explores some of the implications for employers, trustees and others. We can expect the Bill to be amended as it passes through Parliament – we will update this note to reflect future developments.



## CONTENTS OF THIS NOTE

- New criminal offences and penalties
- Contribution notices
- Notifiable events
- Information gathering powers
- Scheme funding

This does not cover other changes provided for by the Bill, which include: the introduction of collective defined contribution (CDC) arrangements; the establishment of pension dashboards; and changes to the individual transfer regime to help combat pension liberation fraud.

In this note, references to "sections" are to sections of the Pensions Act 2004, except where otherwise indicated.

## NEW PENALTIES

The Bill creates significant new offences and penalties. Most are aimed at strengthening the Regulator's ability to safeguard accrued rights in defined benefit (DB) schemes. However, the new financial penalty under section 88A may

be imposed in relation to both DB and defined contribution (DC) schemes.

### Section 88A: new financial penalty up to £1m

New section 88A will enable the Regulator to impose a financial penalty (a "**section 88A penalty**") of up to £1 million where it is satisfied that, by reason of an act, section 88A applies to a person. A section 88A penalty may be imposed on individuals as well as on corporate bodies.

Regulations may increase the upper limit for a penalty above £1 million.

Where a section 88A penalty could be imposed on a corporate body and the act in question was done with the consent or connivance of:

- a director, manager, secretary or other similar officer (or someone purporting to act in that capacity); or
- a member (where the corporate body is managed by its members),

a section 88A penalty may be imposed on that person instead of on the corporate.

Similarly, a section 88A penalty may be imposed on a partner of a Scottish partnership.

No section 88A penalty may be imposed on a person who has already been convicted of an offence or required to pay a penalty under section 10 Pensions Act 1995 in respect of the same act, or who is currently subject to criminal proceedings.

To impose a section 88A penalty, the Regulator must issue a notice specifying the amount of the penalty and giving at least 28 days for it to be paid.

Indemnities for trustees or managers for a section 88A penalty out of the assets of the scheme will be prohibited.

### Glossary

**Contribution notice (CN):** a notice issued by the Pensions Regulator requiring the recipient to make an immediate financial contribution to a defined benefit (DB) scheme.

**Financial support direction (FSD):** a direction issued by the Regulator requiring the recipient to put financial support in place in relation to a DB scheme (which could be a financial contribution, or a guarantee/contingent asset).

**Clearance:** parties concerned about intervention by the Regulator may apply for clearance which, if granted, provides comfort that it will not exercise its powers to issue a CN or FSD in relation to a particular transaction. Clearance is usually only granted if the scheme trustees support the application and if either there is no weakening in the employer covenant, or "mitigation" is provided to offset the reduction in the covenant.

**Section 75 debt:** a DB scheme's section 75 debt is the difference between the value of its assets and the value of the liabilities, calculated as if the benefits were being bought out with annuities from an insurance company.

### Avoidance of employer debt: new imprisonable offence and section 88A penalty

Avoidance of a section 75 debt (please see the box below) will be an offence, punishable by imprisonment for up to seven years and / or an unlimited fine.

A person may commit this offence by doing an act (or failure to act) or engaging in a course of conduct which:

- prevents the recovery of the whole or part of a section 75 debt;
- prevents a section 75 debt becoming due;
- compromises or settles a section 75 debt; or
- reduces the amount of a section 75 debt which would otherwise become due.

However, an offence will only be committed if:

- the person intended the act or course of conduct to have one of the above effects; and
- the person did not have a reasonable excuse.

Alternatively, the Regulator may impose a section 88A civil penalty of up to £1m for avoidance of employer debt, in circumstances similar to the conditions for the new offence of avoiding an employer debt described above, provided that the "main purpose" test is met. In relation to a section 88A penalty, this means that the main purpose (or one of the main purposes) of the act or failure to act was to have one of the impacts on a section 75 debt set out above.

### Reminder: when is a section 75 debt payable?

Each sponsoring employer participating in a DB scheme has a potential (contingent) liability to pay a "section 75 debt".

A sponsoring employer's section 75 debt is its share of the scheme's overall section 75 debt, determined broadly by reference to the value of the benefits built up by the employer's own employees compared to the value of the total accrued benefits under the scheme. An employer's section 75 debt will include its share of any "orphan liabilities" (liabilities in respect of any members whose employer no longer participates in the scheme and where the former employer has no ongoing obligation to pay contributions).

A sponsoring employer's 75 debt will become due when:

- the scheme goes into winding-up;
- the employer becomes insolvent (or goes into solvent winding-up); or
- where a scheme has multiple employers, one of the employer stops employing active members (employees currently earning pension benefits) when the scheme continues to have active members employed by other employers.

### Conduct risking accrued scheme benefits: new imprisonable offence and section 88A penalty

Risking accrued DB benefits (please see the box below) will be an offence, punishable by up to seven years' imprisonment and / or an unlimited fine.

A person may commit this offence by doing an act (or failure to act) or engaging in a course of conduct which "*detrimentally affects in a material way the likelihood of accrued scheme benefits being received*".

However, an offence will only be committed if:

- the person knew, or ought to have known, that the act or course of conduct would have that effect; and
- the person did not have a reasonable excuse.

Alternatively, the Regulator may also impose a section 88A civil penalty, in similar circumstances to the conditions for the new offence of conduct risking accrued scheme benefits but, in relation to a section 88A penalty:

- there must be a deliberate act or failure to act; and
- it appears that a penalty may not be imposed in respect of a course of conduct.

### What are accrued rights?

For the purposes of the new offence and financial penalty, rights to accrued benefits:

- mean rights which have accrued by the time of the act, failure to act, or the end of a course of conduct (the "**relevant time**");
- are rights calculated as if the member left pensionable service on or before the relevant time; and
- do not include compensation from the Pension Protection Fund (PPF) or Financial Assistance Scheme (FAS).

## New penalties: implications for employers, trustees and others

The circumstances in which the new offences of avoidance of employer debt or conduct risking accrued scheme benefits might be committed (or a section 88A penalty imposed) are wide-ranging and include:

- preventing a section 75 debt becoming due by arranging for a ceasing employer in a multi-employer scheme to continue to employ at least one active member (thus avoiding an employer-cessation event);
- reducing the amount of a section 75 debt which would become due from an employer in a multi-employer scheme, through use of an apportionment arrangement or other statutory mechanism (carried out in accordance with the relevant legislation);
- regular corporate activity such as: payment of dividends; share buybacks; taking on of secured debt with higher priority than the pension trustees; restructuring; or mergers and acquisitions.

There are specific exemptions from both offences for insolvency practitioners, but not for other professionals. Potentially, an offence could be committed not just by a sponsoring employer but also by its parent company, trustees if they agree to the conduct, and advisers who might have "aided and abetted" the commission of the offence.

### Would clearance help?

The current clearance regime applies only in relation to issuing of CNs and financial support directions (FSDs). Its scope does not extend to the new criminal and civil penalties, though Regulator clearance in relation to an act would help to provide evidence that the act was "reasonable" or that the person had "reasonable excuse" for carrying it out.

Those involved with corporate activity which may fall within the remit of a new offence may wish to have comfort that a prosecution will not be brought. It is to be hoped that the Bill will be amended to narrow the scope of the offences, in response to industry bodies' representations. Guidance from the prosecuting authorities (the Regulator, the Secretary of State, and the Crown Prosecution Service) as to the circumstances in which they are, or are not, likely to prosecute would also be helpful. Otherwise, we can expect the threat of criminal prosecution to have a negative impact on some regular corporate transactions.

### Failure to comply with a contribution notice: new offence and section 88A penalty

The Bill introduces a new requirement for a contribution notice (CN) to specify a date by which the amount specified in the CN must be paid.

A recipient of a CN who fails, without reasonable excuse, to pay the debt due under the CN by the specified date:

- will be guilty of an offence, punishable by an unlimited fine; or
- may be given a section 88A penalty of up to £1m.

### Implications of criminal prosecution for employers, trustees and others

In the case of criminal sanctions, it will be for the Regulator, the Secretary of State or the Director of Public Prosecutions to decide whether to instigate proceedings. A trial would take place either before magistrates or, on indictment, before a

jury. This contrasts with civil cases concerning pension schemes, which are usually heard in the Chancery Division of the High Court with the parties represented by senior barristers who have significant experience in trusts and pension law.

While there will be no criminal liability where the person had a "reasonable excuse", this will be of small comfort to companies and individuals faced with making decisions about corporate restructurings and other legitimate corporate activities, especially where a course of action involves a degree of risk. What is considered a reasonable excuse in relation to an act (or failure to act) will depend on the particular situation. Magistrates and jurors will not usually have experience of running pension schemes or large companies – but criminal liability will hinge on their view of whether there is a reasonable excuse for a course of action.

## CONTRIBUTION NOTICES

The circumstances in which the Pensions Regulator may issue a contribution notice (CN) will be extended. A new "**employer insolvency test**" and an "**employer resources test**" will be introduced, and the Regulator may issue a CN where either of the new tests is met in relation to a person ("target")'s act or failure to act.

The Regulator may only issue a CN (in respect of any test) where:

- it believes it is reasonable to do so, taking into account specified considerations; and
- it issues a warning notice in respect of the CN within six years of the act or failure to act.

### Reminder: when may the Regulator (currently) issue a CN?

At present, the Regulator may issue a CN if it is of the opinion that:

- the "*material detriment*" test is met in relation to the target's act or failure to act; or
- the main purpose or one of the main purposes of the act or failure to act was to:
  - prevent the recovery of the whole or part of a section 75 debt; or
  - prevent a section 75 debt becoming due, compromise or settle a section 75 debt, or reduce the amount of a section 75 debt which would otherwise become due.

Broadly, the material detriment test will be met if the Regulator considers that the target's act (or failure to act) has "*detrimentally affected in a material way the likelihood of accrued scheme benefits being received*".

A person who "*knowingly assists*" in an act or failure to act may also be subject to a CN.

### New employer insolvency test

The employer insolvency test will be met if the Regulator considers that immediately after the target's act or failure to act (the "**relevant time**"):

- the value of the scheme assets was less than the amount of the liabilities (as estimated by the Regulator, on the section 75 debt basis); and

- if a section 75 debt had fallen due from the employer, the target's act (or failure to act) would have materially reduced the amount of the debt likely to be recovered by the scheme.

The new test may also be met by a series of acts, or failures to act.

### Employer insolvency test: defence

The Regulator must not issue a CN in relation to the employer insolvency test where the target meets Conditions A to C below or, alternatively, can rely on Condition D.

- **Condition A:** before becoming a party to the act (or failure to act), the target gave "*due consideration*" as to how, if a section 75 debt became due from the employer immediately after the relevant time, the act or failure might materially reduce the amount of a section 75 debt likely to be recovered. Giving "*due consideration*" for this purpose means taking such steps as a reasonably diligent person would have done;
- **Condition B:** the target took all reasonable steps to eliminate or minimise the potential for the act (or failure to act) to have such an effect (where relevant); and
- **Condition C:** having regard to all relevant circumstances, it was reasonable for the target to conclude that the act (or failure to act) would not materially reduce the amount of section 75 debt likely to be recovered.

The target will also have a defence if the Regulator is satisfied that immediately after the relevant time the value of the assets was at least equal to the value of the liabilities (**Condition D**). (The Bill does not set out on what basis the values of the assets and liabilities are to be determined for the purposes of Condition D but it is likely to be the section 75 debt basis).

### New employer resources test

The employer resources test will be met if the Regulator considers that:

- the act (or failure to act) reduced the value of the sponsoring employer's resources (determined in accordance with regulations); and
- that reduction was a "material reduction" relative to the amount of the estimated section 75 debt which would be due from the employer on a winding up, calculated as at the time immediately before the act (or failure to act).

The new test may also be met by a series of acts or failures to act.

### Employer resources test: defence

The Regulator must not issue a CN in relation to the employer resources test where the target can demonstrate that it meets Conditions A to C above, except that "*due consideration*" must be given to the extent to which the act or failure to act might reduce the value of the employer's resources relative to the amount of the estimated section 75 debt.

There is no Condition D defence in relation to the employer resources test.

### Code of practice

The Regulator will be required to explain the circumstances in which it expects to issue a CN in relation to the employer resources test or the employer insolvency test in a code of practice.

### What about financial support directions?

It was expected that the Bill would also strengthen the Regulator's powers to issue FSDs. The Bill is currently silent in relation to FSDs, although provisions could be added as it progresses through Parliament.

### NOTIFIABLE EVENTS

Part 3 of the Bill includes amendments to the requirements to notify certain events to the Pensions Regulator.

#### New notifiable events requirement

A new section 69A will be inserted in the Pensions Act 2004, applicable (broadly) to defined benefit (DB) schemes.

Section 69A will require an "appropriate person" to notify the Regulator of:

- a prescribed notifiable event (including a failure to act) in relation to the employer;
- a material change (as defined in regulations) in a notifiable event, or in the expected effects of a notifiable event; or
- the non-occurrence of a notifiable event.

The Explanatory Notes to the Bill state that the obligation to notify the non-occurrence of a notifiable event only applies where the Regulator has already been notified of the event. However, this is not clear on the face of the Bill.

#### What will be a "notifiable event" under section 69A?

A "notifiable event" for the purposes of new section 69A will be defined in regulations.

According to the February 2019 response to consultation, there will be two new employer-related notifiable events:

- sale of a material proportion of the business or assets of a scheme employer which has funding responsibility for at least 20% of the scheme's liabilities; and
- granting security on a debt to give it priority over debt to the scheme.

What constitutes a "material proportion", "funding responsibility" and "scheme liabilities" (for the purposes of the 20% test) should be set out in regulations, backed up by guidance from the Pensions Regulator to avoid uncertainty for businesses.

It is worth noting that not all granting of security will place pension trustees in a worse position – for example, security given on the refinancing of existing debt on identical terms.

### Background: what is (currently) an employer notifiable event?

Employer notifiable events under the current section 69, are:

- a decision by the employer to take action which will (or is intended to) result in a debt due (or which may become due) to the scheme not being paid in full;
- the employer ceasing to carry out business in the UK (or a decision that the employer will cease carrying out business in the UK);
- an employer's breach of a banking covenant (except where the lender agrees not to enforce the covenant);
- relinquishing control (or deciding to relinquish control) of the employer;
- the conviction of a director (or partner) of the employer for a dishonesty offence.

The government intends to remove "wrongful trading" from the current list of notifiable events.

- as soon as reasonably practicable after the appropriate person becomes aware of the notifiable event, material change, or non-occurrence of a notifiable event; and
- if required by regulations, at least a prescribed period before the notifiable event or material change.

At the same time as providing the notification and accompanying statement to the Regulator, the appropriate person must give copies of these to the trustees.

In consultation the DWP proposed bringing forward the time at which notice of certain events should be given, such as to the agreement of heads of terms. Concerns were raised that "heads of terms" is not sufficiently well-defined and would not be helpful as a trigger for notification. In response, the government intends to assess the impact on business of the proposed changes.

### Will there be any exceptions?

The Regulator may direct that the section 69A notification requirement will not apply in certain circumstances.

The Regulator has a similar power in relation to the existing requirements under section 69 and has used this to provide that certain events need not be notified where the scheme is at least fully funded on the Pension Protection Fund (PPF) basis and other conditions are met.

It would be logical for the Regulator to make similar exemptions in relation to the new notification requirements but whether it will do so remains to be seen.

### Who is an appropriate person?

An "appropriate person" for the purposes of section 69A will mean each of the following:

- the scheme employer;
- a person connected with the employer;
- an associate of the employer; and
- a person in a prescribed description.

Section 69A duties will therefore apply also to other companies in the employer's corporate group, as well as to directors and, potentially, to a director's spouse/civil partner and certain other relatives (plus to any other persons prescribed in regulations).

In contrast, only scheme employers and the trustees or managers are subject to the current notification requirements under section 69 (there is power for regulations to apply section 69 to other persons, but this has not been used).

To avoid multiple notifications of the same event, it would be sensible for the notification requirement to be satisfied when one of the appropriate persons has given notice of the notifiable event on behalf of all the appropriate persons.

### Accompanying statement

Notice of a notifiable event, or of a material change in a notifiable event, must be sent with an "accompanying statement" containing prescribed information, including a description of:

- the notifiable event;
- any adverse effects of the event on the scheme;
- steps taken to mitigate the adverse effects; and
- any communication with the trustees or managers about the event.

### When must notification be given?

The notification must be given:

### Penalties for non-compliance

Knowingly or recklessly providing the Regulator with information which is materially false or misleading in relation to duties under the existing section 69 or new section 69A will be a criminal offence under section 80, punishable by a fine or by imprisonment for up to two years.

Civil fines of up to £1m under new section 88A may be imposed on a person who, without reasonable excuse, fails to comply with the requirements under section 69A. Section 88A will also apply to failure to comply with section 69.

### Code of practice

The Regulator will be required to cover the notification requirements under the new section 69A in a code of practice.

Given the serious sanctions for non-compliance, it is to be hoped that the Regulator gives clear indication and examples of the events which should be notified and of the information expected in the accompanying statement.

## INFORMATION GATHERING POWERS

As expected, the Bill significantly increases the Pensions Regulator's powers to obtain information from individuals and businesses.

### Power to interview

The Regulator will be able to require individuals to attend an interview to answer questions and provide explanations on matters which are relevant to the exercise of the Regulator's functions.

The scope of the interview power is wide-ranging, and may be applied to:

- a trustee or manager of an occupational or personal pension scheme;
- a professional adviser in relation to an occupational pension scheme;
- an employer in relation to an occupational pension scheme;
- an employer which makes direct payments to a personal pension scheme in relation to its employees; or
- any other person the Regulator considers holds, or is likely to hold information relevant to the exercise of its functions

Failure, without reasonable excuse, to attend an interview, answer a question or provide an explanation as required will be an offence, punishable by a fine or by imprisonment for up to two years.

The current provision which prohibits the Regulator from requiring a person to give information which might incriminate the person or the person's spouse or civil partner, will be removed.

### Inspection of premises

The Regulator's existing power will be extended to permit it to enter and inspect "premises liable to inspection" to investigate whether:

- there are grounds for issuing a contribution notice (CN) or financial support direction (FSD) in relation to an occupational pension scheme; or
- requirements of specified pension legislation are being, or have been, complied with in relation to an occupational or personal pension scheme.

The inspection of premises may be carried out at any reasonable time.

#### What are "premises liable to inspection"?

For the purposes of this power, the Regulator may currently only enter premises if its inspector has reasonable grounds to believe that:

- scheme members are employed there;
- documents relevant to scheme administration are kept there; or
- the administration of the scheme, or work connected with scheme administration, is carried out there.

As amended, the Regulator will also be able to inspect premises where its inspector has reasonable grounds to believe that:

- documents relevant to the administration of the business of a scheme employer are kept there;
- the administration of a scheme employer's business, or work connected with that administration, is being carried out there; or
- in relation to a sponsoring employer of a DB scheme, documents relevant to a change of ownership of the employer, or of a significant asset of the employer, are being kept there.

These amendments represent a significant expansion of the Regulator's powers, both in terms of the premises which may be inspected and the purpose of an inspection. Current powers are restricted to checking whether legislative requirements are being met. As amended, the Regulator will be able to enter business premises and investigate commercial matters, such as share or asset sales or other activity, which may impact the employer's covenant and, therefore, the likelihood of accrued benefits being paid by the scheme.

The changes also throw open the possibility that advisers' offices may be inspected, where the advisers hold documents relevant to sales and acquisitions which might give the Regulator cause to issue a CN or FSD. Legal advice is exempt from inspection or disclosure – but advice from other advisers, such as covenant advisers or the scheme actuary, is not so protected.

#### Inspection of premises: who is an employer?

For the purposes of the Regulator's power to inspect premises, an "employer" will:

- include a former employer of an occupational pension scheme; and
- have the meaning given to "employer" for the purposes of the particular legislation under consideration.

#### Information powers: fixed penalties

The Regulator may issue a fixed penalty to a person it considers has:

- failed to comply with a notice to provide information or attend an interview;
- failed to comply with a requirement under the Regulator's power to inspect premises; or
- prevented or hindered an inspector exercising the Regulator's information gathering powers.

The amount of the fixed penalty must be determined in accordance with regulations and may not exceed £50,000.

#### Information powers: escalating penalties

The Regulator may also impose an escalating penalty for failure to comply with a notice to provide information or attend an interview.

An escalating penalty will be calculated by reference to a daily rate provided for in regulations, and must not exceed £10,000.

It is not clear whether an escalating penalty may be imposed in addition to a fixed penalty.

## Providing false or misleading information to the Regulator or trustees: section 88A penalties

A section 88A penalty of up to £1m may be imposed on a person who "knowingly or recklessly" provides the Regulator or the trustee of a DB scheme with information which is "false or misleading in a material particular".

The Regulator may impose this penalty where the misleading information is given:

- in purported compliance with certain statutory obligations; or
- where the person giving the information intends (or could reasonably be expected to know) that it would be used by the Regulator in exercising certain functions or by the trustee in its capacity as trustee of the scheme.

## SCHEME FUNDING

The Bill will also amend the current scheme specific funding regime applicable to DB schemes.

### Funding and investment strategy

Trustees will have to adopt a **funding and investment strategy ("FIS")** for ensuring that benefits under the scheme can be provided over the long term, taking into account prescribed matters and principles.

The FIS must specify:

- the intended funding level as at the "**relevant date**" or relevant dates (using prescribed actuarial methods or assumptions if required); and
- the intended investments to be held on the relevant date or dates.

The employer's agreement to the FIS will be needed, except where the trustees have unilateral power to set contributions in relation to the scheme funding requirements.

More detailed requirements will be set out in regulations, including how the "relevant date" should be set and how often the FIS must be reviewed.

Changes made by the Bill will require a scheme's technical provisions (please see the box below) to be calculated in a way consistent with the scheme's FIS.

The requirement for employer consent to the FIS will sit uneasily with the current statutory position that trustees have unilateral power to invest the scheme assets. If the FIS provisions pass into law unchanged, the trustees' negotiating position could be undermined.

While some trustees have already adopted long term funding plans and have set triggers for future changes to the investment of scheme assets, the new requirements will put these measures on a more formal footing and may expose trustees to greater scrutiny from the Regulator if their strategy is unsuccessful.

### Statement of strategy

As soon as reasonably practicable after determining (or revising) a scheme's FIS, the trustees must prepare a written "**statement of strategy**" setting out:

- the FIS ("**Part 1**" of the statement); plus the following matters ("**Part 2**" of the statement);

- the extent to which the FIS is being successfully implemented;
- where the FIS is not being successfully implemented, what steps are proposed to remedy the position, including details on timing;
- the main risks in implementing the FIS and how these will be mitigated or managed;
- reflections on any significant earlier decisions relevant to the FIS, including lessons learned which have or may affect other decisions; and
- any matters prescribed in regulations.

The employer must be consulted when preparing or revising Part 2 of the statement of strategy but its consent is not needed.

The statement of strategy must be signed by the chair of trustees.

The requirement to report on how well the FIS is being implemented is similar to the existing requirement to include a statement on the implementation of the scheme's statement of investment principles (SIP) in the annual report. In addition, from 1 October 2020 trustees will also have to report on the implementation of their policy on the exercise of rights and engagement activities in relation to the scheme's investments.

### Glossary: technical provisions

- A scheme's "**technical provisions**" means the value of assets needed to meet the scheme's liability to pay current and future benefits, calculated on an ongoing actuarial basis (that is, assuming that the sponsoring employer will continue to fund the scheme).
- Schemes must have a valuation on this basis at least every three years.
- The actuarial assumptions used when valuing the technical provisions are usually negotiated between the employer and trustees (unless the scheme rules give trustees unilateral powers) and must include an element of "prudence".
- This valuation determines the level and duration of any contributions the sponsoring employer(s) must pay to the scheme (including contributions to make good any deficit).

## Compliance

The Pensions Regulator may impose civil penalties under section 10 Pensions Act 1995 on trustees for failure to take all reasonable steps to secure compliance with the requirements for a FIS and a statement of strategy. A section 10 penalty may be up to £50,000 for a corporate body and up to £5,000 for an individual.

The Regulator may also require the trustees to revise their FIS in accordance with its directions.

## CONTACT US

We would be pleased to speak to employers, trustees or other professionals who would like to discuss any of the issues

covered in this note. For further information, please speak to your usual Hogan Lovells contact or one of the pension partners listed below.

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

### KEY HOGAN LOVELLS PARTNERS

<b>Katie Banks</b>	<b>+44 20 7296 2545</b>	<b>katie.banks@hoganlovells.com</b>
<b>Duncan Buchanan</b>	<b>+44 20 7296 2323</b>	<b>duncan.buchanan@hoganlovells.com</b>
<b>Claire Southern</b>	<b>+44 20 7296 5316</b>	<b>claire.southern@hoganlovells.com</b>
<b>Edward Brown</b>	<b>+44 20 7296 5995</b>	<b>edward.brown@hoganlovells.com</b>
<b>Faye Jarvis</b>	<b>+44 20 7296 5211</b>	<b>faye.jarvis@hoganlovells.com</b>



### Pensions360: the full picture

[www.hoganlovells.com/pensions360](http://www.hoganlovells.com/pensions360)

#### About Pensions360

Hogan Lovells' broad cross-practice capability covers the full spectrum of legal advice from lawyers who understand pension clients; advising on issues from scheme investments, corporate restructurings and transactions, to funding solutions and interaction with the Regulator or the courts. The ability to draw on specialists from other practices who are not only experts in their field but have an in-depth understanding of pension issues sets us apart from our competitors.

**[www.hoganlovells.com](http://www.hoganlovells.com)**

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see [www.hoganlovells.com](http://www.hoganlovells.com).

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

© Hogan Lovells 2020. All rights reserved. [L1802/CLUCASII/9681086.4]