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### TPR consultation raises stakes for all employers and trustees, says Sackers

Sacker & Partners LLP (Sackers), the UK's leading specialist law firm for pensions and retirement savings, has commented on the Department of Work and Pensions' consultation, published yesterday, *Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator*.

The Government's online-only consultation puts forward its proposals to bolster The Pensions Regulator's (TPR's) powers.

**Janet Brown, Partner at Sackers, commented:** "With a mixture of video content and questions, this is the first DWP pensions consultation to have been presented solely by way of online access. Guiding respondents through the information and questions, it may provoke some chatter about the consultation's chosen delivery method, as much as its headline grabbing content on fines, penalties, prosecutions and what employers need to tell TPR.

Very much the star of the show in the Government's March 2018 White Paper on Protecting Defined Benefit (DB) Pensions, TPR's powers are set to be considerably strengthened by:

- **Making it compulsory for employers to tell TPR about a wider range of corporate events, known as "notifiable events" in the legislation:** Given the need to be proportionate, it is proposed that only transactions exceeding a specific risk threshold should be notifiable. For example, the sale of a "material proportion" of the business or assets of a sponsoring employer with funding responsibility for at least 20% of the scheme's liabilities. Also added to the list of notifiable events are the granting of security on a debt to give it priority over the scheme, restructuring of the employer's board and the taking of independent pre-appointment insolvency /restructuring advice.
- **Introducing a new "declaration of intent":** meaning both trustees and TPR "are provided with meaningful information without putting undue burdens on businesses". The current proposal is for the statement to be prepared, in consultation with the trustees, prior to "relevant business transactions". It will require employers to have appropriately considered the effect of certain corporate transactions on any DB scheme, and to put forward proposals for mitigating any detrimental impact. "Relevant business transactions" will only include those posing the highest potential risk to DB schemes, such as the sale or takeover of a sponsoring employer. The consultation recognises that there will be overlap between new notifiable events and the declaration of intent regime.
- **New enforcement powers:** TPR wants to be 'clearer, quicker, tougher' and the consultation includes a great deal of information on criminal offences, civil penalties and possible custodial sentences. Whilst existing penalties (a civil penalty of up to £5,000 for

individuals or £50,000 for corporates) will remain for low-level non-compliance, it is proposed that TPR will have new powers to issue a civil penalty of up to £1 million for more “serious breaches”. The idea here is that these powers can be used to deal with more serious behaviour, which has resulted in actual harm to the pension scheme or has the potential to do so if left unchecked. Fulfilling the Government’s manifesto, there will also be new criminal offences to punish the limited - but serious - cases of wilful or grossly reckless behaviour in relation to a DB scheme.”

The Government has also proposed bolstering the anti-avoidance regime of contribution notices and financial support directions.

**Brown continued:** “As expected, the consultation proposes a radical overhaul of TPR’s powers. If implemented in their current form, they will raise the stakes considerably for all employers and trustees involved in occupational pension schemes. However, we hope that TPR will target its more draconian powers towards those employers whose behaviour clearly warrants it. The aim appears to change the nature of boardroom discussions on pensions, so the situation is not reached where TPR needs to bring out the big guns.”

“With no draft regulations accompanying the consultation, the likely impact of the new powers will be highly dependent on careful and clear drafting, so as to avoid any unintended consequences. TPR’s resources, and its ability and appetite to use its new powers, will also be crucial in determining their ultimate effectiveness. It therefore remains to be seen whether the Government’s proposals will help the Regulator in fulfilling its new ‘clearer, quicker and tougher’ mantra.”

- ENDS -

**Notes to Editors:**

Sacker & Partners LLP (Sackers) is a top tier commercial law firm specialising in advising DB and DC pension scheme trustees, employers, providers and corporate investors on all aspects of their pension arrangements.

Widely viewed as leaders in the field, Sackers advises more of the UK's top 200 pension funds than any other law firm. Sackers is consistently ranked in the top tier for pensions by both leading UK legal directories (Chambers UK and the Legal 500) and has been for the last twenty years.

Based in London, Sackers provides support to trustee boards, sponsoring employers, providers and Government bodies across a range of areas, including day to day scheme management, funding and investment, risk and litigation.

Sackers is an active member of the Pensions and Lifetime Savings Association and The Association of Pensions Lawyers and is technical legal expert partner to the Pensions Management Institute and PensionChair. Sackers also works closely with TPAS, the SPP, APPT and the Pensions Investment Academy.

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