



## **Memorandum of Understanding between the Department for Work and Pensions and The Pensions Regulator**

### **Preamble and parties**

1. This Memorandum of Understanding ('**MOU**') reflects the arrangements agreed for effective co-operation and co-ordination between the Department for Work and Pensions ('**DWP**') and The Pensions Regulator ('**TPR**'), and the respective roles of each, in relation to the prosecution of offences in England and Wales under sections 58A and 58B of the Pensions Act 2004 ('**PA04**') (each referred to in this MOU as an '**Offence**' and together the '**Offences**').
2. DWP is entering into this MOU as the ministerial department for which the Secretary of State for Work and Pensions is responsible. The Secretary of State is a designated prosecutor for the Offences in England and Wales.
3. TPR is entering into this MOU as the regulator of work-based pension schemes under the PA04. TPR is a designated prosecutor for the Offences in England and Wales and for the equivalent offences in Northern Ireland.

### **Purpose and scope**

4. The purpose of this MOU is to facilitate and provide a framework for arrangements for the co-operation and co-ordination between DWP and TPR in relation to the prosecution of the Offences in England and Wales by setting out:
  - a. the principles governing the respective roles of DWP and TPR,
  - b. the role of TPR's published policy and/or guidance on its approach to the investigation and prosecution of the Offences in this context, and
  - c. principles and arrangements for co-operation and the exchange of relevant information.

### **Roles of DWP and TPR as regards sections 58A and 58B of the PA04**

5. The general roles of DWP and TPR are described in a Memorandum of Understanding between DWP, TPR and the Pension Protection Fund dated February 2008<sup>1</sup> (the '**Tripartite MOU**'). In the event of any conflict between the Tripartite MOU as it applies between DWP and TPR and this MOU, the Tripartite MOU takes precedence.
6. The Tripartite MOU records four guiding principles on the division of responsibility between DWP and TPR: the principles of 'clear accountability', 'transparency', 'no duplication', and of regular and appropriate 'information exchange'. The latter two principles are particularly engaged by this MOU.

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<sup>1</sup> Memorandum of understanding between DWP, PPF & The Pensions Regulator

### **The principle of 'no duplication'**

7. DWP provides the overarching regulatory framework that governs the operation of TPR. It has a primary role in the stewardship of TPR, but no responsibilities in the operational activities of TPR.
8. TPR is a non-departmental public body, established under the PA04, with functional responsibility for the regulation of all work-based pension schemes. TPR's powers are designed to further its statutory objectives, which include:
  - a. the protection of benefits under occupational pension schemes of, or in respect of, members of such schemes,
  - b. reducing the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund, and
  - c. promoting and improving understanding of the good administration of work-based pension schemes.
9. Consistent with the principle of no duplication, while both the Secretary of State and TPR are designated prosecutors for the Offences, it is expected that TPR will bring prosecutions under the Offences rather than the Secretary of State.
10. Subject to paragraph 11, it is expected that the Secretary of State would not initiate a prosecution against a person for an Offence where TPR has decided against prosecution.
11. It is expected that the Secretary of State would only bring prosecutions of the Offences if TPR ceases to exist, if its ability to prosecute is otherwise hindered, or in other exceptional circumstances.

### **The role of TPR's published policy and/or guidance**

12. Should the Secretary of State decide to prosecute an Offence, they will consider TPR's then current policy and/or guidance on TPR's approach to the investigation and prosecution of the Offences, as published from time to time by TPR.

### **The principle of 'information exchange'**

13. In light of the respective roles, as described in the Tripartite MOU, of DWP and TPR, and of the fact that both the Secretary of State and TPR are designated prosecutors for the Offences in England and Wales, the parties agree to share information as set out in paragraphs 14 to 17.
14. DWP, on behalf of the Secretary of State, will inform TPR:
  - a. if the Secretary of State is approached to consider or commence investigation or prosecution of the Offences; and
  - b. before the Secretary of State brings a prosecution under either or both of s58A and s58B of the PA04.
15. If DWP informs TPR of a potential or actual investigation or prosecution pursuant to paragraph 14, DWP will, subject to applicable law, provide TPR with information it requests about that investigation or prosecution.

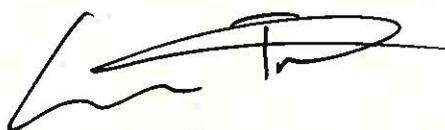
16. Information sharing between (i) DWP and/or the Secretary of State and (ii) TPR will be in accordance with and subject to applicable law, and the recipient shall maintain the confidentiality of that information, subject to applicable law.
17. DWP and TPR will liaise where relevant, to the extent permitted by law and having regard to their respective roles and objectives, in response to Freedom of Information requests or other enquiries from the public relevant to the content of this MOU, and will consult with each other before releasing information originally belonging to the other to any third party.

#### **Arrangements**

18. This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between DWP and TPR from the provisions of this MoU.
19. The arrangements set out in this MOU are subject to what is permitted and required by law (including the obligation of TPR to have regard to its statutory objectives when considering each case to which this MOU applies). This MOU does not operate to restrict the powers of either the Secretary of State or TPR as set out in sections 58A and 58B of the PA04 or otherwise.

#### **Review and publication of this MOU**

20. DWP and TPR will from time to time review the operation of this MOU and revise or replace it as appropriate.
21. This MoU may be terminated by either DWP or TPR at any time by giving notice to the other.
22. Each of DWP and TPR may publish this MOU and refer to it publicly.



**Laura Trott**  
Minister for Pensions  
Signed on behalf of the Secretary of State for Work  
and Pensions, The Rt Hon Mel Stride, on

Date: 07/02/2023



**Erica Carroll**  
Director of Enforcement  
Signed on behalf of The Pensions Regulator on

Date: 07/02/2023