

TOUGHER REGULATION TAKES HOLD AS PENSION REGULATOR STEPS UP REQUESTS FOR INFORMATION

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Deals and cases

Almost 1,000 requests for information about pension schemes administration, funding and legislative compliance have been made by the Pensions Regulator over the past 10 years, according to data obtained by Herbert Smith Freehills under a Freedom of Information request.

The data shows that the highest number of requests (162) were made last year. The figures obtained by Herbert Smith Freehills also show that the five years to June 2019 saw a 133 percent increase in the number of requests, compared to the previous five year period.

Under Section 72 of the Pensions Act 2004, the Pensions Regulator can require individuals or organisations to produce any documents or information which the Regulator considers relevant to its oversight of workplace pension schemes.

Herbert Smith Freehills' request shows that the Regulator is increasingly seeking information from pension scheme trustees, corporate sponsors, advisers and service providers. There is also evidence to suggest the Regulator is increasingly likely to enforce its requests for information. Between 2010 and 2016, for example, there were no enforcement actions, but this changed in 2017, with enforcement action being taken in 4 cases. This was repeated in 2018.

[Samantha Brown](#), partner in Herbert Smith Freehills' employment, pensions and incentives practice, says: "Requests from the Regulator can be wide ranging and can require information to be provided within a very short time-frame. Whether it's trustees, sponsors or other organisations asked to provide information, parties should engage co-operatively as failure to comply with a Section 72 request, without reasonable grounds, is a criminal offence which may result in an unlimited fine."

The Pensions Regulator has previously announced details of cases where fines have been imposed, most notably resulting in [a criminal conviction for Dominic Chappell](#), the former director and majority shareholder of the company that bought BHS for £1. It is against this backdrop that Herbert Smith Freehills has launched a guide outlining how to respond to Section 72 requests, available [here](#).

Brown continues "Anyone who receives a section 72 notice should review the scope of the request carefully and consider early on whether an extension may be needed. Relevant information and documents should be reviewed to check whether any should be withheld or redacted, for example, on privilege or data protection grounds. The cost of complying with a section 72 notice can quickly rack up and trustees and sponsors should check whether they may also be on the hook for costs incurred by their advisers and service providers."

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