TPR Investigation and Prosecution of Criminal Offences
Comments from the Association of Consulting Actuaries (ACA)

ASSOCIATION OF CONSULTING ACTUARIES

PRESS RELEASE: IMMEDIATE

ACA critical of lack of clarity in TPR Criminal Offences draft guidance

22 April 2021 – In our response to the TPR's consultation on the investigation and prosecution of the new criminal offences guidance, the Association of Consulting Actuaries (ACA) accepts the high-level policy intent to protect pension schemes, but more clarity is needed in TPR's policy to limit the risk of adverse unintended consequences, given the very significant penalties involved and the wide range of individuals potentially in scope of the new powers.

Commenting on the draft guidance, ACA Chair, Patrick Bloomfield said:

*"We accept Government's intent to give TPR new powers, but a lack of clarity on the circumstances in which the powers **could** be used will have important unintended consequences for the schemes, their sponsors and the wider pensions industry. There is concern that the powers could be used in a wide range of circumstances and it is not certain where the line will be drawn."*

The ACA response says it is the Association's view that:

- The criteria for selecting cases for investigation is too widely drafted,
- The "reasonable excuse" guidance casts doubt on whether many typical business activities – such as payment of dividends – would satisfy the statutory exemption; and
- Building on the existing material detriment guidance is helpful, but this needs to be tightened to reflect the more significant penalties and increased scope of the new powers.

The ACA response adds that the lack of clarity in these details will impact behaviours and lead to unintended consequences, such as:

- Contribution payments being deferred, so they can count as "mitigation" at a later date,
- Discouraging individuals from acting as trustees,
- Discouraging guarantees from parent companies,
- Discouraging investment in companies that sponsor UK pension schemes; and
- Stifling innovation for DB schemes generally.

ACA Pension Schemes Committee Chair, Peter Williams, commented:

"To the extent that it is not possible to provide clarity now, it would be helpful if the guidance could be updated regularly, to provide additional clarity as regulatory experience develops."

Patrick Bloomfield added:

"We encourage the Regulator to work with the other authorities who have powers to prosecute these offences, to reassure industry that prosecution will not take place in circumstances other than those set out in TPR's policy. The ACA has written a joint letter with other industry bodies, making this point to the Minister for Pensions and Financial Inclusion."

Contacts for further information:

Patrick Bloomfield, ACA Chair at patrick.bloomfield@hymans.co.uk - 020 7082 6111
Peter Williams, ACA Pension Schemes Committee Chair at peter.williams@aon.com - 01372 733763
Chintan Gandhi, ACA PR Committee Chair at chintan.gandhi@aon.com - 01372 733322
David Robertson, ACA Secretariat at david.robertson@aca.org.uk – 020 3102 6763

About the Association of Consulting Actuaries (ACA)

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes. The ACA is the representative body for UK consulting actuaries, whilst the Institute and Faculty of Actuaries is the professional body.

Association of Consulting Actuaries Limited · First Floor · 40 Gracechurch Street · London · EC3V 0BT
Tel: +44 (0)20 3102 6761 · Email: acahelp@aca.org.uk · Web: www.aca.org.uk
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