Regulatory intervention report

Issued under section 89 of the Pensions Act 2004
in relation to NOW: Pensions Trust

February 2019

Summary

NOW: Pensions Trust is a master trust that was established by NOW: Pensions Limited (NPL) in November 2011. It is a defined contribution (DC) pension scheme which markets itself as a solution for unconnected employers to meet their automatic enrolment duties to their staff. As well as being the scheme's founder, NPL is also its 'trust manager', responsible for ensuring that the scheme operates effectively. NOW: Pensions Trustee Limited is the scheme's trustee.

We started communicating regularly with NPL from mid-2014 in response to a number of complaints from the employers and scheme members. Over a period from late 2014 to early 2015, the scheme moved its administration from Equiniti Paymaster to JLT Benefit Solutions Ltd, which also involved changing the IT platform to a third party provider. This process took several months.

In August 2015, NPL notified us that failures to pay contributions had not been properly monitored or reported since the change of administrator.

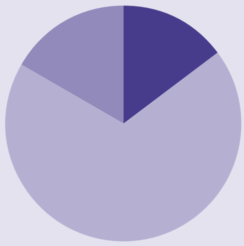
Illustrated summary

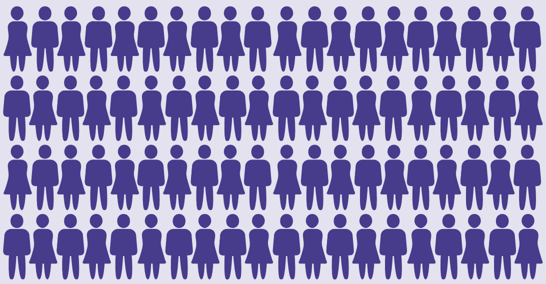
c.£18m

Outstanding contributions as at April 2016

As at April 2016:

18,705 employers
879,795 members
£212m+ assets under management





Number of affected members as at April 2016

265,700

Number of powers used

5

Regulatory action

We intervened after receiving notification of the failure to monitor employer contributions, writing to and meeting frequently with both the trustee and NPL in order to determine the extent of the problems. It soon became clear that the scheme was experiencing serious administrative difficulties, particularly in relation to data submission and data processing. As a result, the trustee and NPL were failing to collect contributions from a number of employers, which meant that in affected cases, while the employee contributions were being deducted from members' salaries by employers, neither these nor the employer contributions were being paid into the scheme and invested. This, in turn, was leading to related difficulties for the trustee and NPL in processing other financial transactions (such as opt-out payments and transfer values).

Both the trustee and NPL assured us that they had identified the issues and would quickly address them. However, they did not meet the proposed timeframes for resolving the backlog of unpaid contributions, which amounted to an estimated £18 million (as at 11 April 2016), affecting approximately 265,700 members.

Despite continuing efforts by NPL and the trustee to resolve the problem, the size of the backlog of unpaid contributions remained significant. Furthermore, many affected employers remained unable to pay (or were not paying) contributions on an ongoing basis. Although NPL proposed to make good any investment loss to members, by putting them back in the same position they would have been in had contributions been collected and processed in a timely manner, we were concerned that the steps they and the trustee were taking were insufficient, and that problems were being allowed to escalate. Accordingly, we determined it was necessary and proportionate for us to intervene by taking enforcement action

In February 2017, we decided to issue a Report Notice requiring NPL to commission an independent, expert report (known as a 'skilled person's report') on the extent of the outstanding issues, the adequacy of the steps being taken by the trustee and NPL to address the situation, and to make recommendations. The trustee agreed to this report, which was provided in two parts: an initial overall assessment, followed by a supplementary report providing further detail on certain issues.

The report highlighted that, while participating employers had to take some responsibility for submitting inaccurate data and needed to co-operate with resolving the backlog, NPL's software platform was struggling to cope with the scale of the scheme, and the trustee and NPL could have been more proactive in addressing the issues. It noted that the software limitations were being addressed by NPL's development of its own automatic enrolment software platform (called Gateway) and that there was a remediation plan in place to address the backlog of outstanding contributions. However, it also reported that the issues remained ongoing, and that the trustee and NPL were still unable to provide a timeframe for fully resolving the situation.

We therefore took further enforcement action by issuing an Improvement Notice to the trustee and a Third Party Notice to NPL. These notices set out specific deadlines for completing a number of steps, including the migration of members to the Gateway platform, and resolving the backlog of unpaid contributions. We discussed the proposed steps and the timeframes in the notices with NPL and the trustee in advance to ensure they were realistic and achievable. The aim was to rectify the outstanding issues within a reasonable period, and put measures in place to ensure that the problems did not re-occur.

NPL and the trustee were fully involved with this process, and also took two voluntary steps with our full support. First, they requested that we remove them from our published list of pension schemes with master trust assurance. Second, they appointed an independent trustee, Dalriada Trustees Limited, to the trustee board in October 2017 to help with the required improvements.

We also issued two penalties to the trustee:

- A penalty of £50,000 for failing to process core financial transactions promptly and accurately over the period 6 April 2015 to 8 August 2017
- A penalty of £20,000 for failing to report late payments of contributions to certain members.

The powers we used

- Skilled Person's Report
- Improvement Notice
- Third Party Notice
- Penalty Notice
- Section 10 fine

Outcome

All of the members and participating employers have now been moved onto the new Gateway system. In addition, NPL has worked closely with participating employers to reconcile member data and collect the backlog of outstanding contributions, and has rebuilt the data records of over 350,000 members. NPL have demonstrated to us that almost all of the work needed to resolve the historic administrative issues has now been completed. While there are still some cases of outstanding contributions, and some member records to rebuild so that collected contributions can be invested, these largely relate to insolvency cases, or cases which can be classed as ‘business as usual’ for a master trust of this size and scope. Further, NPL have given us assurances that they will continue to work proactively to address these cases, liaising closely with both employers and any relevant insolvency practitioners and seeking to recover any monies owed. We are continuing to monitor the progress being made.

We would encourage any remaining affected employers or insolvency practitioners to work with the trustee and NPL to ensure that contributions are promptly paid over and invested. The trustee and NPL have assured us that they will continue to liaise with employers, insolvency practitioners and members to resolve any problems that have been encountered in the past. NPL have also put systems and processes in place to monitor contributions going forward, and to ensure that the administrative problems they experienced do not re-occur in the future. We are also continuing to work with the trustee and NPL to ensure that cases of unpaid contributions are correctly reported to us by the trustee.

NPL is also making good any investment loss to members, by putting them back in the same position they would have been in had contributions been collected and processed in a timely manner. Where losses to member benefits have occurred due to employer insolvency, they are being thoroughly considered by both the trustee and NPL on a case by case basis. NPL will provide compensation in these circumstances if it is clear that the losses have been caused by NPL

Members who have been automatically enrolled into the scheme should now see their contributions being promptly paid and invested for their benefit. There has been a genuine change in the scheme’s governance and administration. This has been supported by both changes in key personnel, and by NPL and the trustee adopting a more proactive approach and taking responsibility for making improvements. Both members and participating employers should benefit from this going forward.

Our approach

We expect trustees to take responsibility for good administration, and to ensure the prompt collection of contributions so they can be invested for the benefit of scheme members. It is not enough for trustees merely to try to process core financial transactions promptly and accurately – they must ensure that this actually happens.

All pension schemes, including master trusts, should be in no doubt that we will take decisive action if we become concerned about the way in which schemes are being run.

Timeline

December 2014-January 2015: Scheme administration moved from Equiniti to JLT.

27 August 2015: NPL notifies TPR that, since the change of administrator, failures to pay contributions had not been properly monitored or reported.

21 April 2016: NPL advises TPR that the amount of outstanding contributions was approximately £18 million.

1 December 2016: TPR issues Warning Notice for Skilled Person's report.

7 February 2017: Determination Notice for Skilled Person's report

5 May 2017: Skilled Person's Report received.

30 June 2017: Supplementary Report received.

24 July 2017: Scheme is removed from TPR's published list of schemes with master trust assurance, at request of trustee.

23 August 2017: TPR issues Warning Notice for Improvement Notice and Third Party Notice.

10 October 2017: Dalriada is appointed to the trustee board as an independent trustee director.

19 October 2017: TPR issues:

- Determination Notice for Improvement and Third Party Notices
- Warning Notice for a penalty for reporting failures, and
- Penalty Notice for £50,000 for failing to process core financial transactions.

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Timeline continued...

16 November 2017: Trustee applies for a review of amount of £50,000 Penalty Notice.

17 November 2017: TPR issues Improvement Notice to the trustee and Third Party Notice to NPL.

5 December 2017: Independent review confirms amount of £50,000 Penalty Notice.

21 December 2017: Penalty Notice for £50,000 paid.

25 January 2018: Determination Notice to issue £20,000 penalty for reporting failures.

26 February 2018: TPR issues Penalty Notice for £20,000.

28 February 2018: Penalty Notice for £20,000 paid.

July 2018: Date for completion of all substantive steps in the Improvement Notice and Third Party Notice.

December 2018: Following extensive communication, TPR notify NPL and the Trustee that the remaining issues can now be regarded as business as usual.

The regulator's consideration and approach to individual cases is informed by the specific circumstances presented by a case, not all of which are referred to or set out in this summary report.

This summary report must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Employers and other parties should, where appropriate, seek legal advice on the facts of their particular case.

The Pensions Regulator

Regulatory intervention report: NOW: Pensions Trust

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