Department for Work & Pensions

Minister for Work and Pensions (Lords)
4th Floor
Caxton House
Tothill Street
LONDON
SW1H 9DA

0207 340 4000

www.gov.uk/dwp

The Lord Sharkey
House of Lords
London SW1A 0PW

20th March 2023

Dear Lord Sharkey,

**PRIVATE MEMBER'S BILL –
PENSIONS DASHBOARDS (PROHIBITION OF INDEMNIFICATION)**

As promised during the debate on the Second Reading of the Pensions Dashboards (Prohibition of Indemnification) Bill, I am writing to you to answer your questions about penalties.

You asked for more information about the penalties specified in the Pensions Dashboards Regulations 2022 and how they were determined to be an adequate deterrent.

Section 238G (4) of the Pensions Act 2004, as inserted by section 119 of the Pension Schemes Act 2021, sets out that the amount of a penalty imposed under the regulations in respect of a failure or contravention must not exceed £5,000 in the case of an individual, and £50,000, in any other case. The Pensions Dashboards Regulations 2022 therefore include provision for the maximum penalty permissible by the primary legislation. As I mentioned during the debate, this is intended to be consistent with penalties included in many other areas of pensions legislation. If there are multiple contraventions of the Regulations, TPR may issue multiple penalty notices which we believe provides a significant deterrent to non-compliance.

The Pensions Regulator has a published monetary penalties policy which sets out its risk-based approach to penalties, and that the following principles guide them to determining the amount of a penalty:

- The penalty should be proportionate to the nature of the breach and any harm caused.
- The amount of the penalty should aim to change the behaviour of the person in breach.
- The penalty should aim to deter repetition of the breach among the wider regulated community.
- Any relevant aggravating or mitigating factors may be taken into account.

You also asked about the statutory maximum fines which could be issued upon summary conviction or conviction upon indictment under the provisions in the Bill. Additionally, you asked for reassurance that the extent of the recovery of any funds illegally diverted as reimbursement for penalties would be taken into account when deciding the appropriate penalty for that action.

In respect to any fines which may be imposed for convictions, the decision makers would be the Magistrates or the Crown Court and it would be up to them to consider the starting point as set out within any sentencing guidelines, accounting for any mitigating or aggravating circumstances as appropriate. Fines must be issued in accordance with the Sentencing Code, set out in the Sentencing Act 2020. Section 125 of the Sentencing Code requires that fines must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

Finally, you also asked how the Government had determined the penalties in the Bill to be an adequate punishment or deterrent. The Bill seeks to amend section 256 of the Pensions Act 2004 to extend an existing prohibition. The Government considers it to be appropriate that the penalties should be consistent with the existing provisions in that Act.

I hope this clarifies these issues. I will place a copy of this letter in the House library.

With best wishes.

James

VISCOUNT YOUNGER
PARLIAMENTARY UNDER SECRETARY OF STATE FOR WORK AND PENSIONS (LORDS)