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# REQUESTS FOR INFORMATION FROM THE PENSIONS REGULATOR HOW TO RESPOND

PRACTICAL GUIDE





The Pensions Regulator is being more proactive in its approach to regulation. As such, it is increasingly common for pension scheme trustees, corporate sponsors, advisers and service providers to receive requests for information from the Regulator, both formal and informal.

Requests can be wide-ranging and require information to be provided within a very short timescale. This guide sets out the key actions that you should take if you receive an information request.

### Responding to formal requests – “Section 72 notices”

Under section 72 of the Pensions Act 2004, the Regulator can require an individual or organisation to produce any document or provide any other information that is relevant to the exercise of the Regulator’s functions.

A Section 72 notice may be served on trustees, corporate sponsors, advisers, administrators or any other person who holds or appears to hold relevant information.



**747**

The Regulator has issued **747** section 72 notices in the past five years.



**£100k +**

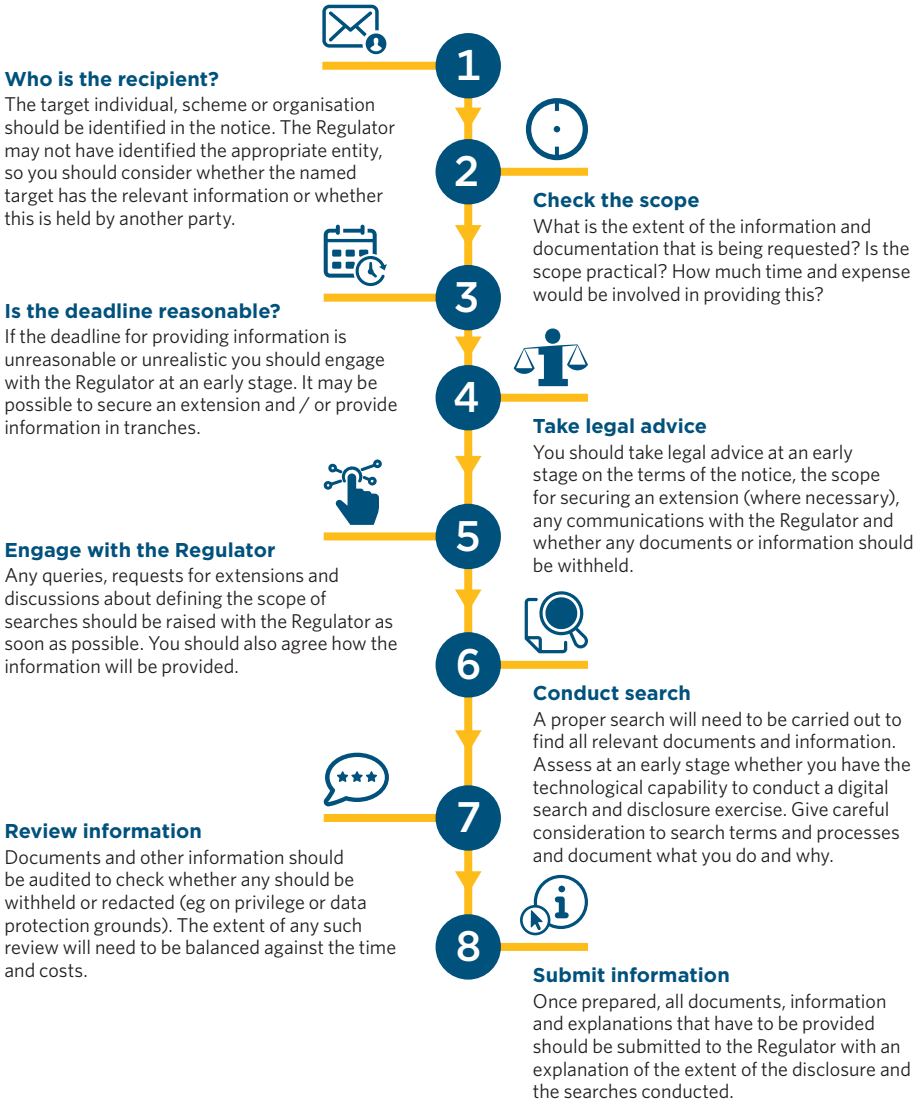
The cost of complying with a section 72 notice can run to tens or hundreds of thousands of pounds.



**Insurance**

Recipients should check whether their costs may be covered by insurance or any contractual terms.

## What should you do if you receive a Section 72 notice?



## Scope for challenging request

There may be scope to challenge a Section 72 request for information, either directly with the Regulator or by way of judicial review, where:

- the information requested is outside the Regulator's powers (eg it is not relevant to the exercise of the Regulator's functions)
- the request itself is unreasonable, and / or
- the deadline for providing the information is unreasonable or unfair.

Any such challenge should be made promptly, with legal advice sought on relevant time limits.

## Cost of compliance

The cost of complying with a Section 72 notice can be substantial. As a matter of good governance, trustees should:

- check whether this cost would be covered by their scheme's insurance policy, and
- check whether they may be on the hook for costs incurred if their scheme administrator, advisers or other service providers are required to comply with a Section 72 request.

Sponsors should also check whether they may be responsible for covering the cost of complying with a Section 72 notice under the terms of engagement with their advisers.

## Deadlines

Deadlines imposed by the Regulator must be fair and rational. What that means depends on each particular case but considerations such as the volume of documents and information requested and where and how these are held will be relevant.

## Do not ignore!

Failure to comply with a Section 72 request, without reasonable excuse, is a criminal offence which may result in an unlimited fine. Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys a document requested under section 72 may also be fined and/or face imprisonment for up to two years.

Additionally, the Regulator has power to impose a fixed penalty of £400 for failure to comply with a Section 72 request, and, for continued failures, escalating penalties which can reach £10,000 per day.

## Privileged documents

Documents which are legally privileged can, and normally should, be withheld from the Regulator.

Privilege is a complex area, so legal advice should be obtained.

## Responding to informal requests for information

Trustees, sponsors and other organisations may also be asked to provide information to the Regulator on a voluntary basis. Where this happens, they should still review the request in light of the issues outlined above (including the cost of providing the information and whether any documents or information are

covered by legal privilege or should be withheld on other grounds).

However, parties should engage co-operatively, as it is likely to be easier to manage the scope of an informal request for information and the timescale and costs involved than it would be if the Regulator issues a formal Section 72 notice.

### Document-intensive reviews

We have a dedicated team of lawyers and legal assistants who carry out large-scale document reviews on contentious and regulatory matters. The team works out of Belfast and uses cutting-edge technology so as to provide a cost-effective service.

The team has helped various clients respond to substantial Section 72 requests, reviewing documents for relevance and legal privilege.

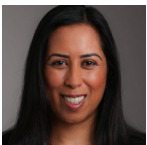
## Key contacts



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