The Actuarial Profession
making financial sense of the future

Whistle-blowing and notifiable events

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Contents

- Whistle-blowing
- Notifiable events

Whistle-blowing

- Reporting breaches of the law to the Pensions Regulator (TPR)
- Decision whether to report
  - Is there reasonable cause to believe that there has been a breach
  - Is the breach likely to be of material significance to TPR
- Not every breach needs to be reported
- TPR has issued a code of practice
  - Regulatory Code of practice 01: Reporting breaches of the law

  available at www.thepensionsregulator.gov.uk

Who should whistle-blow?

- PA95 introduced whistle-blowing duties for scheme actuaries and auditors
- PA04 extended the statutory whistle-blowing duties to most parties involved in running a scheme
  - Sponsoring and participating employers
  - Trustees
  - Administrators
  - Professional advisers
  - Other advisers to a scheme
- PA04 also imposes additional reporting requirements on employers and trustees

When to whistle-blow?

- The requirement to report breaches of the law arises when a duty which is:
  - Imposed by or by virtue of an enactment or rule of law, and
  - Relevant to the administration of a scheme

  has not been complied with

- Code of practice sets out broad principles

- TPR interprets ‘Relevant to the administration of a scheme’ as
  - Anything which could potentially affect members’ benefits or the ability of members and others to access information to which they are entitled

Judgement: ‘Reasonable cause to believe’

- More than merely having a suspicion that cannot be substantiated
- Not necessary to gather all the evidence which TPR would require before taking legal action
- Usually check the facts or events around a suspected breach with the trustees
  - EXCEPT in cases of theft, fraud or other serious offences

Judgement: ‘Material significance’

- What makes the breach of material significance depends on
  - Cause
  - Effect
  - Reaction
  - Wider implications

Cause of the breach

- Likely to be of material significance where the breach caused by
  - Dishonesty
  - Poor governance
  - Inadequate controls resulting in deficient administration
  - Slow or inappropriate decision-making practices
  - Incomplete or inaccurate advice
  - Acting (or failing to act) in deliberate contravention of the law

Effect of the breach

- TPR objectives are to
  - Protect members' benefits
  - Reduce risk of calls on the PPF
  - Promote good administration
- Breaches that adversely affect the following are likely to be material
  - The right money paid to the scheme at the right time
  - Assets appropriately safeguarded
  - Payments from the scheme are legitimate and timely
  - Money purchase contributions are correctly allocated and invested

Reaction to the breach

- TPR does not normally regard a breach as materially significant where
  - Trustees take prompt and effective action to investigate and correct the breach
  - If appropriate, members who are affected are notified

Reporting arrangements

- Reporters should have effective arrangements in place to meet their duty to whistle-blow
- Reliance cannot be placed on waiting for others to report
- Breaches should be reported as soon as reasonably practicable
- Failure to report when required to do so is a civil offence
- No requirement or expectation to search for breaches
- Reports are to be submitted in writing, where possible using the standard format available from TPR's website

Collective and duplicate reporting

- TPR accepts that trustees and their advisers may wish to make a collective report
  - But procedures must be in place to report as soon as reasonably practicable
- Where the trustee is not a corporate body, the duty to report falls on individual trustees
- The requirement to report is not automatically discharged by another party reporting the breach
  - However a breach is not material for the purpose of making further reports once TPR is aware of the breach

TPR's response to whistle-blowing

- TPR has discretion on whether and what action to take
- Measures available include
  - Assisting or instructing trustees (or others) to achieve compliance
  - Appointing trustees to run the scheme
  - Removing trustees from office
  - Freezing the scheme
  - Special measures in connection with the scheme's funding arrangements
  - Fines

Traffic light approach to whistle-blowing

- Red reports: breaches TPR regards as materially significant
  - Persistent or significant departures from the scheme's SIP
  - Frequent cases of incorrect benefits being quoted or paid
  - Consistent late or non receipt of transfer value quotes and benefit statements
- Amber reports: no immediate threat to members' benefits, but concern about the running of the scheme
  - An otherwise closed scheme admitting a new member with significant past service benefits, but inadequate funding
- Green reports: matters about which TPR would not expect to receive a report
  - Isolated failure to pay a member's benefits correctly, or to provide a member with timely or correct information

Notifiable events

- Trustees and employers must report notifiable events to the TPR
  - This applies only to schemes that are eligible to enter the PPF
- The events are designed to give TPR early warning of a possible call on the PPF, and fall into two groups
  - Scheme-related – to be notified by the trustees
  - Employer-related – to be notified by the employers
- TPR has issued a code of practice
  - Regulatory Code of practice 02: Notifiable events

Scheme-related events

- In all circumstances
  - A decision by the trustees to grant benefits on more favourable terms than set out in the TD&R without seeking the scheme actuary's advice and obtaining additional funding

- Where the scheme is less than 100% funded on the PPF levy basis, or there has been a material breach of payments under the SoC
  - A decision by the trustees to compromise an employer debt (in excess of 0.5% of the fund)
  - Making a transfer payment in excess of the lesser of £1.5m and 5% of the fund
  - Granting benefits, the cost of which is in excess of the lesser of £1.5m and 5% of the fund
  - Two or more changes in the past 12 months in the post of scheme actuary or auditor

Employer-related events

- In all circumstances
  - Any employer decision to compromise an employer debt
  - An employer ceasing to have a place of business in the UK
  - An employer trading wrongfully, or where it is known that there is no reasonable prospect of avoiding becoming insolvent
  - Conviction of a senior officer for an offence involving dishonesty
- Where the scheme is less than 100% funded on the PPF levy basis, or there has been a material breach of payments under the SoC
  - Controlling company relinquishes control of the employer
  - Two or more changes in the past 12 months in the post of CEO of FD
  - Any deterioration below investment-grade in the employer's credit rating
  - Any breach in the employer's banking covenant

Limitations of reliance

- This presentation was prepared for the Professions' Actuaries and the Law seminar on 13 September 2005 as an introduction to illustrate the key whistle-blowing and reporting requirements arising from the new pensions framework introduced by the Pensions Act 2004. It was not prepared for any other use or for use by any other party and may well not address their needs, concerns, or objectives.
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