

The Actuarial Profession

making financial sense of the future

Whistle-blowing and notifiable events

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▪ 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

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Whistle-blowing

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

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Whistle-blowing

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 schemehas 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

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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

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Judgement: 'Material significance'

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

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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

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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

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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

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Whistle-blowing

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

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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

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Whistle-blowing

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

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Whistle-blowing

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

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Notifiable events

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

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