

ERPF - Employer Bulletin 2

Important Information about The Pensions Regulator

Dear Employer

Please read and distribute this bulletin to all Finance Directors, HR and Payroll colleagues who provide pensions information to the East Riding Pension Fund (ERPF).

Purpose of this email

To make you aware of your legal duty to report to The Pensions Regulator (the Regulator) if you become aware that there has been a breach of the legal requirements that govern the ERPF. Failure to report a breach is a civil offence which can result in a fine on the persons who fail to report it.

Background

There are many and various laws relating to the Local Government Pension Scheme (LGPS) which place a statutory duty on certain people including you and your colleagues as officers of an employer who participates in the ERPF to report material breaches of the Law to the Regulator. In April 2015, the Regulator published its Code of practice no. 14 (the Code) on the governance and administration of public service pension schemes to assist schemes to establish a procedure so that those with a responsibility to report breaches are able to meet their legal obligations.

East Riding Pension Fund procedure

The attached "Procedure for Reporting Breaches of the Law to the Pensions Regulator" relates to all of the ERPF areas of operation. The following persons are required to report breaches of the Law to the Regulator where they have reasonable cause to believe that a legal duty, which is relevant to the administration of the LGPS has not been, or is not being, complied with and the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions:

- the scheme manager (in the case of ERPF, East Riding of Yorkshire Council as administering authority);
- all members of the Pensions Committee;
- all members of the ERPF Local Pension Board;
- all officers involved in the administration of the ERPF;
- officers of employers participating in the ERPF;
- professional advisors including auditors, actuaries, legal advisers and fund managers; and
- any person who is otherwise involved in advising managers of the ERPF in relation to the LGPS.

Examples of breaches

The following are examples of the possible effects (with possible causes) of breaches which are considered likely to be of material significance to the Regulator in the context of the LGPS:

- conflicts of interest of Pensions Committee or Local Pension Board members, resulting in them being prejudiced in the way in which they carry out their role and/or the ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements;
- poor internal controls leading to schemes not being run in accordance with their scheme regulations and other legal requirements;
- risks not being properly identified and managed and/or the right money not being paid to, or by the scheme, at the right time;
- inaccurate or incomplete information about benefits and scheme information provided to members, resulting in members not being able to effectively plan or make decisions about their retirement; and
- poor member records held resulting in member benefits being calculated incorrectly and/or not being paid at the right time.

The following two examples, from an employer’s perspective, help to illustrate whether a breach is likely to be of material significance to the Regulator.

Example 1

An employer is late in paying over employee and employer contributions, and so late that the employer is in breach of the statutory period for making such payments. The employer is contacted by officers from the administering authority, and immediately pays the moneys that are overdue, as well as improving its procedures so that in future contributions are paid over on time. In this instance there has been a breach but members have not been adversely affected and the employer has put its house in order regarding future payments.

The breach is therefore not material to The Pensions Regulator and need not be reported but it will be recorded.

Example 2

An employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. The employer is also late in paying Additional Voluntary Contributions (AVCs) to the Prudential. The employer is contacted by officers from the administering authority, and it eventually pays the moneys that are overdue, including AVCs to the Prudential. This has happened before, with there being no evidence that the employer is putting its house in order. In this instance there has been a breach that is relevant to The Pensions Regulator, in part because of the employer’s repeated failures, and also because those members paying AVCs will typically be adversely affected by the delay in the investing of their AVCs.

The breach is therefore material to The Pensions Regulator and must be reported and recorded.

Next Steps

Please read the procedure which sets out the key issues of establishing “reasonable cause” and deciding “material significance” in relation to a breach. A decision tree is included to show the process for deciding whether the breach is materially significant and the process for reporting the breach to the Regulator.

As an officer of an employer participating in the ERPF, you will find that the e-learning program “Reporting Breaches of the Law” on the Regulator’s website very useful in helping you understand your legal obligations.

Accessing the Regulator's website

Please follow the steps below

- Log on to www.thepensionsregulator.gov.uk
- Select – the Public Service tab
- Under Further resources heading select – Code of Practice
- Select – Code of Practice 14 – Governance and administration of public service pension schemes
- On the left side select - Learning Resources
- Select - Go to the Public Service Toolkit
- Create an account / Register
- Once into the e-learning portal, select Reporting Breaches of the Law

There is an assessment at the end of the module with a pass mark and, once achieved, a development record will be generated as evidence of your knowledge and understanding.

Kind regards,

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