

# Report of the Director, West Yorkshire Pension Fund to the meeting of Joint Advisory Group to be held on 31 January 2019

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**Subject: Register of Breaches of Law**

## **Summary statement:**

In accordance with the Public Service Pensions Act 2013, from April 2015 all Public Service Pension Schemes now come under the remit of The Pensions Regulator.

Section 70 of the Pensions Act 2004 imposes a requirement to report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:

- (a) a legal duty relating to the administration of the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance to The Pensions Regulator in the exercise of any of its functions.

A register of any breaches of law is maintained in accordance with West Yorkshire Pension Fund (WYPF) Breaches procedure.

## **Recommendations**

This report and entries on the Register of Breaches of Law are noted.

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Director WYPF

**Portfolio:**

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**Overview & Scrutiny Area:**

## **1. Background**

1.1 Section 70 of the Pensions Act 2004 (the Act) imposes a requirement to report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:

- (a) a legal duty relating to the administration of the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance to The Pensions Regulator in the exercise of any of its functions.

1.2 This requirement applies to:

- a trustee or manager of an occupational or personal pension scheme;
- a member of the pension board of a public service pension scheme;
- a person who is otherwise involved in the administration of an occupational or personal pension scheme;
- the employer in relation to an occupational pension scheme;
- a professional adviser in relation to such a scheme; and
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

1.3 The Act states that a person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse. The duty to report breaches under the Act overrides any other duties the individuals listed above may have. However the duty to report does not override 'legal privilege'. This means that, generally, communications between a professional legal adviser and their client, or a person representing their client, in connection with legal advice being given to the client, do not have to be disclosed.

## **2 Reporting Breaches Procedure**

2.1 A record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). WYPF maintains a record of all reported and unreported breaches.

2.2 The Register of Breaches (reported or otherwise) is provided to each Joint Advisory Group meeting, and this will also be shared with the Pension Board.

### **3 Breaches from April 2018**

- 3.1 The entries on the Register of Breaches for 2018/19 relate to either late payment of employer contributions or the non-issue of Annual Benefit Statements (ABS).
- 3.2 All entries, apart from the one listed at 4, are not considered to be of material significance and have therefore not been reported to The Pensions Regulator.

### **4 Breach of Law reported to The Pensions Regulator**

4.1 During September 2018 the Fund reported one employer to the Pensions Regulator.

Alchemy Facilities Limited, trading as Enviroserve is an admission body in WYPF in relation to three contracts awarded to it by other scheme employers participating in the Fund. Two of Enviroserve's admissions started on the 1 November 2017 and the third commenced on 1 January 2018.

4.2 Despite numerous attempts by the Fund to contact Enviroserve contributions were outstanding for a number of months. The fund took the decision to notify the Pensions Regulator (see Appendix B – a copy of the notification to the Pensions Regulator) of the breach of law as it felt the breach was of material significance.

4.3 Since 13 September 2018 Enviroserve have paid all outstanding contributions to the Fund for all three contracts (See details on Appendix A). In addition all contributions due from November onwards have been received in full on time.

The Fund has charged Enviroserve for the costs involved in receiving the contributions late and these costs amount to £652.80.

### **5 Recommendations**

It is recommended that the Joint Advisory Group note the entries and action taken on the Register of Breaches.

### **6 Appendix**

- Appendix A – Register of Breaches 2018/9
- Appendix B – Report to the Pensions Regulator.