

Report of the Director, West Yorkshire Pension Fund, to the meeting of West Yorkshire Pension Fund Pension Board to be held on 13 August 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 come under the remit of the Pensions Regulator.

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.

A Register of Breaches of Law is therefore maintained in accordance with the Pensions Regulators requirements and WYPF Breaches procedure.

Recommendation

It is recommended that the Local Pension Board note the entries on the Register of Breaches of Law.

Rodney Barton
Director

Portfolio

Report Contact Caroline Blackburn
Phone: (01274) 434523
Email: caroline.blackburn@bradford.gov.uk

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 reasonably practicable where a 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.

1.1 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.

1.2 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 or unreported breaches.

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

4 Breaches from April 2019

- 4.1 The entries on the Register of Breaches for 2019/20 relate to the late payment of contributions.

5. Enviroserve

- 5.1 During September 2018 the Fund reported one employer to the Pensions Regulator, Alchemy Facilities Limited, trading as Enviroserve. It is an admission body in WYPF in relation to three contracts awarded to it by 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.
- 5.2 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 of the breach of law as it felt the breach was of material significance.
- 5.3 In May 18 Joseph Norton Academy started a contract with Enviroserve. The Admission agreement to enable the Fund to collect contributions was completed in December 18.
- 5.4 On 31 March 19 two of the scheme employers (Ebor and Victoria) ceased their contracts with Enviroserve and moved the contract to other providers. All outstanding contributions have now been received.
- 5.5 On 31 May Calder High ceased its contract with Enviroserve and moved its contract to another provider. All outstanding contributions have now been received.
- 5.6 On 31 May 19 Joseph Norton ceased its contract with Enviroserve and moved its contract to another provider. WYPF is currently communicating with both Enviroserve and Joseph Norton Academy to ensure outstanding contributions are paid over to the Fund for the period May 18 to May 19.

6 Recommendations

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

7 Appendices

- Appendix A – Register of Breaches 2018/19
- Appendix B – Register of Breaches 2019/20