

# Technical Briefing

No.11



## Reporting breaches of the Law

### Overview

The Pensions Act 1995 introduced the requirement for trustees and specified advisers to report schemes to OPRA that breached the law (the so-called whistle-blowing requirement). Section 70 of the Pensions Act 2004 now replaces that requirement with a much wider whistle-blowing requirement.

The new requirement was effective since 6 April 2005 and covers all occupational, personal and stakeholder pension schemes. The duty to inform the Pensions Regulator falls upon trustees, employers, advisers and service advisers. The Pensions Regulator has issued a Code of Practice which sets out the minimum information each report should contain, amongst other things.

As with the previous regulations, the duty to report overrides the duty of confidentiality.

Failure to notify attracts the civil penalties contained in the Pensions Act 1995 of a maximum fine of up to £5,000 for an individual and up to £50,000 in any other case.

### Notifiable Events

Two criteria must be considered in deciding whether to report to the Pensions Regulator.

- Is there reasonable cause to believe a breach has occurred?
- Is the breach likely to be of material significance to the Pensions Regulator?

The Code of Practice sets out the Pensions Regulator's view of what is:

- a breach of trust
- relevant to the administration of the scheme
- reasonable cause to believe

- likely to be of material significance.

In when deciding whether a breach is materially significant, consideration must be given to (i) the cause of the breach, (ii) its effect, (iii) the reaction to the breach, and (iv) the wider implications of the breach.

Examples of materially significant causes of a breach of the law are:

- Dishonesty
- Poor governance
- Inadequate controls
- Slow decision-making procedures
- Incomplete / inaccurate advice
- Deliberate contravention of the law

Examples of materially significant effects following a breach of the law are:

- With regard to protection of members' benefits
  - the correct contributions are paid at the correct time
  - assets are properly safeguarded
  - scheme payments are legitimate and timely
  - scheme funding complies with the regulations
  - trustees properly consider and act upon investment policy
  - money purchase contributions are properly allocated and invested
  - trustees properly consider and act upon investment policy
  - money purchase contributions are properly allocated and invested
- With regard to reduction in the risk of PPF compensation
  - The Pensions Regulator is informed of notifiable events
  - Trustees comply with the PPF requirements during the assessment period





## No. 11

- With regard to good governance
  - Schemes are administered properly and appropriate records maintained
  - Members receive accurate, clear and impartial information without delay

Reaction to the breach will be regarded as materially significant if:

- Prompt and effective action is not taken to remedy the breach
- Measures put in place to reduce the risk of recurrence
- Parties are not pursuing corrective action to a proper conclusion
- Members have not been notified of the breach where it would have been appropriate to do so

The wider implications of a breach are more likely to be of material significance where:

- The occurrence of the breach makes it appear more likely that other breaches will emerge due to a lack of appropriate knowledge and understanding by the trustees
- Other schemes (perhaps run by the same trustees or organisation) may also be affected

The Pensions Regulator expects each advisor to have effective reporting arrangements in place in this regard. Further, advisers cannot place reliance on other advisers to report – each adviser must ensure they have made a report once they become aware of a breach. Joint reports can be made between trustees, employers and advisers as long as the submission is not unduly delayed.

Failure to notify attracts the civil penalties contained in the Pensions Act 1995 of a maximum fine of up to £5,000 for an individual and up to £50,000 in any other case.

Copies of the Pensions Regulator's Code of Practice can be obtained from its website.

### **Further Information**

The Pensions Regulator has issued a Code of Practice to help ensure advisers, trustees and companies recognise when a breach of the law has occurred and make clear the reporting requirements placed upon them in such a situation. The Code of Practice can be found at: <http://www.thepensionsregulator.gov.uk/pdf/reportingBreachesCop.pdf>

### **CPRM Commentary**

The new regulations extend the whistle-blowing requirements to cover many more parties involved with pension schemes and the instances in which a report must be made whilst reducing the time limits within which a report must be made.

If you would like further advice on this or other pension issues, please contact either Walker Yule or Philip Wheeler in Edinburgh (0131 220 8247) or Simon Chrystal in Newcastle (0191 233 9408).