Key Points

- Trustees, managers, administrators, participating employers, professional advisers and those otherwise involved in advising trustees are under a duty to report breaches of the law.
- It is essential that companies put in place procedures to comply with the Pension Regulator's Code of Practice on reporting breaches of the law.
- Trustees must bear in mind the need to act within the powers and responsibilities afforded to them in the trust deed and rules.
- When deciding whether to report, two points arise: (a) has there been a breach of law and (b) is it of material significance to The Pensions Regulator?
- It is important to have a reporting system in place and to be aware that one party's report does not automatically remove the duty from another party to report the same breach.
- The Pensions Regulator has the power to impose fines and report advisors to their professional governing bodies if they fail to report materially significant breaches.

Main sources

- The Pensions Act 2004 (s 70)
- Pensions Regulator's Code of Practice on "reporting breaches of the law" (2005): link

Summary

Certain people are required to report breaches of the law affecting pension schemes to The Pensions Regulator. Failure to report when required to do so is a civil offence. Reporters should ensure they have effective arrangements in place to enable them to meet their duty to report breaches of the law.

Who is under a duty to report breaches?

A legal duty to report falls on:

- trustees or managers of pension schemes;
- persons otherwise involved in the administration of a scheme, e.g. third party administrators;
- any employer participating in an occupational pension scheme;
- professional advisers; and
- persons otherwise involved in advising a trustee (or manager of a scheme not established under trust) in relation to the scheme, e.g. pensions consultants or IFAs.

Which breaches should be reported?

The duty 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 scheme

has not been, or is not being, complied with.

When considering whether there has been a breach of law, reporters should bear in mind the duty for trustees to administer the scheme in accordance with the terms of its trust deed and rules and exercise their powers for the purpose for which they were given. Failure to do so would be a breach of trust law.

When should a report be made?

There are two points to consider when deciding whether or not to report a potential breach:

More information

Find out more about our Pension team at **gowlingwlg.com/pensions-uk**.
You can listen to or download the other episodes and get additional material at **gowlingwlg.com/pensionpodcasts**.
You can also stay up to date with the latest pension developments at **gowlingwlg.com/en/united-kingdom/insights-resources**.

1. is there reasonable cause to believe there has been a breach of the law?
2. if so, is the breach likely to be of material significance to The Pensions Regulator?

It is a legal requirement that breaches likely to be of material significance to The Pensions Regulator in carrying out any of its functions are reported. Points to consider are the cause, effect, wider implications and reaction to the breach. It is also important to note that reports should be made as soon as reasonably practicable in order to comply with the code.

Reporting arrangements

Organisations should:

(i) ensure that staff are aware of their responsibilities in relation to reporting breaches of law;
(ii) put in place effective procedures for reporting; and
(iii) ensure that staff have received training on those procedures.

Reports must be submitted in writing and (wherever practicable) in the standard format available on The Pensions Regulator's website. Breaches can be reported individually or collectively.

One party's duty to report is not automatically discharged by another party reporting the breach. Once the reporter has made a disclosure to The Pensions Regulator, they will receive an acknowledgment.

This should be forwarded to the trustees or manager by the reporter who can then manage and distribute the original report to those they consider may be likely to come across the breach. An exception to this arrangement will apply in cases where there is a suspicion of dishonesty or other serious wrongdoing by the trustees or managers.

Failure to report

Failure to comply with the obligation to report breaches of the law without a reasonable excuse is a civil offence. The Pensions Regulator may consider imposing a fine or other civil penalty and, also make a complaint to the reporter's professional governing body (if applicable). In determining whether to impose a penalty, The Pensions Regulator will consider the following (this is a non-exhaustive list and further information can be found on the Regulator's website):

- legislation;
- case law;
- the Code of Practice;
- the role of the reporter in relation to the scheme;
- the level of knowledge it would be reasonable to expect the individual to have;
- the procedures in place and whether these procedures were followed;
- the seriousness of the breach;
- any legitimate reasons for the delay in reporting; and
- any other relevant considerations relating to the case in question.

The Pensions Regulator's response

When The Pensions Regulator receives a report of a breach of law, it has discretion over whether to take action. The manner in which The Pensions Regulator will exercise its discretion is likely to depend on the nature of the breach, the circumstances in which it occurred and any other information available to the Regulator. The range of measures it can take include assisting trustees to achieve compliance, providing guidance, removing trustees from office, freezing the scheme and imposing fines where appropriate. (This is a non-exhaustive list and further information can be found on the Regulator's website.)

On 6 April 2015, changes to pensions legislation came into force that are directly relevant to this aspect of the Regulator's Code of Practice.

The Occupational Pension Schemes (Charges and Governance) Regulations 2015 apply to most occupational pension schemes that offer money purchase benefits (subject to various exceptions).

The new regulations introduce one exception to The Pensions Regulator's discretionary approach to taking action over reported breaches of the law described above. They introduce a number of new governance standards that trustees must report against in an annual statement signed by the chair of trustees. Trustees who do not produce this chair's statement will be fined between £500 and £2,000.

More information

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