

Warwickshire Local Pension Board

Date: Thursday, 19 September 2019
Time: 2.00 pm
Venue: Committee Room 1 - Shire Hall

Membership

Councillor Dave Parsons
Councillor Parminder Singh Birdi

Items on the agenda: -

1. Introductions and General Business

(1) Apologies

(2) Board Members' Disclosures of Interests

2. Delays in provision of payroll data

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The public reports referred to are available on the Warwickshire Web

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**Local Pension Board of the Warwickshire
Pension Fund**

19 September 2019

Delays in provision of Payroll Data

Recommendation

That the Local Pension Board:

- Notes the criteria set out in the public sector toolkit for the assessment of potential breaches;
- Considers the council's assessment of the potential breach - that this should be categorised as a breach and logged on the local breach register but does not require referral to the Pensions Regulator.
- Supports the actions to be undertaken to ensure that the service learns from the situation and that better service is developed going forward.

1 Introduction

- 1.1 At its recent meeting members of the Pension Board questioned whether the delay in the provision of pension information for employees of the County Council and, other employers who are WCC payroll clients and members of the Local Government Pension Scheme (LGPS), constituted a breach of law and should be reported to the Pension Regulator (TPR).
- 1.2 More information was requested from the county council in order for the Board to determine what action, if any, needs to be taken. To help the Board reach a decision, this briefing note has been compiled to:
- provide information on what constitutes a breach
 - establish the impact of the delays
 - detail the processes in place to ensure a repeat of the situation does not reoccur

2 Background

- 2.1 The Local Government Pension Scheme Regulations require scheme managers to maintain complete and accurate records and ensure that adequate internal controls are in place including systems and processes, to support record keeping requirements and ensure that they are effective at all time. To this end the pension administration team has arrangements in place to collect information from employers on a monthly basis.
- 2.2 Employers within the Warwickshire Pension Fund are required to provide the

pension fund with accurate and timely information relating to their members in order that the pension fund can correctly administrate members' pensions and pay members accurately and on time. Information provided will include updates to pay grades, starters, leavers, etc.

- 2.3 Warwickshire County Council and a number of other employers utilise a payroll system called iTrent and this is the source of information provided to the pensions administration team.
- 2.4 Following the implementation of the new iTrent payroll system, some delays were experienced in receiving the information on a monthly basis. In particular, the Warwickshire Pension Fund (WPF) administration team did not receive notification of new starters, leavers and amendments to records (such as changes of hours, address etc.) for members of the LGPS.
- 2.5 The delays in receiving the information has meant that WPF were not able to provide information to some members and former members quickly. The delay in the provision of this information has also impacted on some members who may not have been aware at the time of their rights in the LGPS for specific events; for example, declaring previous pension rights available for transfer from a previous pension scheme.
- 2.6 None of these issues have resulted in a long term detriment on scheme members as issues of this type can be dealt with retrospectively. However, following escalation of this issue to senior managers, processes were put in place to ensure that urgent transactions, i.e. those that had an immediate impact on scheme members such as retirements and death in service, were prioritised for notification to the WPF so that they could be processed quickly.
- 2.7 In total there were approximately 5,800 adjustments that needed to be made. The majority of these related to Warwickshire County Council staff transferring to different roles across the council and therefore there was no impact on the fund.
- 2.8 There were however 27 pension transfer requests and 491 refund of pension contributions to those opting out of the scheme that were delayed. These were dealt with on a case by case basis and prioritised for action as and when they arose.
- 2.9 Following escalation to senior managers, immediate action was taken to clear the backlog. Records are now fully up to date and processes are working to ensure that information is received on a monthly basis. Regular monitoring processes have also been put in place to ensure management oversight on an ongoing basis.

3 Legal requirements

- 3.1 Pension Scheme Administrators are required to record any breaches onto a log and, if deemed material, this should be reported to The Pensions Regulator. The identification, management and recording / reporting of breaches is important. It is a requirement of the Code of Practice and failure to report a material breach can result in the Regulator taking action, including the imposition of a fine.
- 3.2 WPF has a pension breaches policy which sets out the requirements in relation to recording and reporting breaches. A log exists and is used however the occurrence of delays in receiving the payroll information was not recorded on the log. The lack of compliance has been addressed and all staff reminded of the processes.
- 3.3 To assist Local Authorities in determining how breaches are defined, a public service toolkit is available and provides guidance on when a breach may be appropriate to log locally or report to The Pensions Regulator. This is attached at the Appendix to the report.

4 Assessment of Potential Breach

- 4.1 In assessing a potential breach and whether it is materially significant and should be reported to the Regulator, the toolkit sets out an approach for consideration that takes into account the following factors:

Cause	e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law.
Effect	Does the nature of the breach lead to an increased likelihood of further material breaches? Is it likely to cause, for example, ineffective internal controls, lack of knowledge and understanding, inaccurate records, potential for further breaches occurring.
Reaction	e.g. taking prompt and effective action to resolve a breach, notifying scheme members where appropriate.
Wider Implications	e.g. where a breach has occurred due to lack of knowledge or poor systems and processes making it more likely that other breaches will emerge in the future.

- 4.2 In addition to this, the Regulator has produced a decision tree to assist schemes in identifying the severity of breach and whether it should then be reported. When determining materiality of any breach or likely breach the following ‘traffic light’ system should be considered:

Green	Not caused by dishonesty, poor governance or deliberate contravention of the law and its effect is not significant and a plan is in place to rectify the situation. In such cases, the breach may not be reported to the Regulator, but should be recorded in the Council’s breaches log.
Amber	Does not fall easily into either green or red and requires further investigation in order to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. The Council will need to decide whether to informally alert the Regulator of the breach or the likely breach, formally reporting the breach if it is subsequently decided to categorise the breach as red.
Red	Caused by dishonesty, poor governance or a deliberate contravention of the law and having significant impact, even when a plan is in place to rectify the situation. The Council must report all such breaches to the Regulator in all cases.

- 4.3 Utilising the Public Sector toolkit and the definitions above, an assessment of the potential breach has been carried out and the council’s assessment is that the potential breach should be categorised as ‘Amber’. This means that the issue needs to be recorded on the WPF breaches log but is not required to be reported to the Regulator as it does not meet the materiality threshold. The rationale for the assessment is that:

- (i) the majority of adjustments related to staff transferring roles within the same organisation which could be rectified retrospectively and had no impact on scheme members or the fund
- (ii) for only a small percentage of scheme members (518 out of 50,000 members) was action identified that needed to be taken promptly and these cases were prioritised and dealt with
- (iii) based on the information available, the delays have not resulted in any long term detriment on scheme members or the fund
- (iv) significant actions have been and are being put in place to ensure the issues have been rectified and do not reoccur.
- (v) our understanding is that the Regulator is unlikely to be interested in isolated errors that are rectified promptly and adequately such as an error resulting from teething problems with a new payroll system.

5 Lessons Learned

- 5.1 The current situation provides an opportunity to learn from mistakes and review and improve processes in this area. It is important that WCC takes stock of the position and implements changes. A number of changes and actions have been set up following lessons learned:
- A review of all end to end processes to ensure they remain fit for purpose;
 - Development of key metrics for the service and oversight and consideration of progress against these to be undertaken by the finance management team on a monthly basis;
 - A refresh of the data breach protocol and sign off by the Local Pensions Board to include role and responsibilities of all parties involved in the WPF;
 - Reporting of the breaches log to the Local Pensions board on a regular basis;
 - Training to pensions administration staff to ensure they fully understand their roles and responsibilities.

6 Financial Implications

- 6.1 There has been a one off cost of dealing with the backlog in a short space of time, 4 temporary staff were engaged within the administration team and 1 within WCC payroll. Turnover and vacancy savings within the pensions administration team are however likely to be available to offset this cost.
- 6.2 Ongoing there will be costs associated with iConnect and member self-service, and the overall capacity of the team is being reviewed in light of the continuing increase in demand on the administration function which may increase costs. A further report will be presented to the Board to look at current capacity and future developments that will ensure the delivery of an improved and sustainable administration service.
- 6.3 The funding of the administration service is not constrained by the same funding issues as the administering authority, these costs will be funded by the pension fund.

7 Background Papers

None

	Name	Contact Information
Report Author	Neil Buxton	neilbuxton@warwickshire.gov.uk
Assistant Director (Interim)	Lisa Kitto	lisakitto@warwickshire.gov.uk
Strategic Director	Rob Powell	robpowell@warwickshire.gov.uk

This report was circulated to members of the Warwickshire Local Pension Board prior to publication

Public Service toolkit downloadable

Example breaches of the law and the traffic light framework

Introduction

Certain people involved with the governance and administration of a public service pension scheme must report certain breaches of the law to The Pensions Regulator. These people include scheme managers, members of pension boards, employers, professional advisers and anyone involved in administration of the scheme or advising managers. You should use the traffic light framework when you decide whether to report to us. This is defined as follows:

- Red breaches must be reported.
- Amber breaches are less clear cut: you should use your judgement to decide whether it needs to be reported.
- Green breaches do not need to be reported.

All breaches should be recorded by the scheme even if the decision is not to report.

When using the traffic light framework you should consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach, before you consider the four together.

As each breach of law will have a unique set of circumstances, there may be elements which apply from one or more of the red, amber and green sections. You should use your own judgement to determine which overall reporting traffic light the breach falls into.

By carrying out this thought process, you can obtain a greater understanding of whether or not a breach of the law is likely to be of material significance and needs to be reported.

You should not take these examples as a substitute for using your own judgement based on the principles set out in the draft public service code of practice as supported by relevant pensions legislation. They are not exhaustive and are illustrative only.

Knowledge and understanding required by pension board members

Example scenario: The scheme manager has breached a legal requirement because pension board members failed to help secure compliance with scheme rules and pensions law.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
Red	Pension board members have failed to take steps to acquire and retain the appropriate degree of knowledge and understanding about the scheme's administration policies	A pension board member does not have knowledge and understanding of the scheme's administration policy about conflicts of interest. The pension board member fails to disclose a potential conflict, which results in the member acting improperly	Pension board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative/non-compliant entrenched behaviours The scheme manager does not take appropriate action to address the failing in relation to conflicts	It is highly likely that the scheme will be in breach of other legal requirements. The pension board do not have an appropriate level of knowledge and understanding and in turn are in breach of their legal requirement. Therefore, they are not fulfilling their role to assist the scheme manager and the scheme is not being properly governed
Amber	Pension board members have gaps in their knowledge and understanding about some areas of the scheme's administration policies and have not assisted the scheme manager in securing compliance with internal dispute resolution requirements	Some members who have raised issues have not had their complaints treated in accordance with the scheme's internal dispute resolution procedure (IDRP) and the law	The scheme manager has failed to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding or affect member benefits	It is possible that the scheme will be in breach of other legal requirements. It is possible that the pension board will not be properly fulfilling their role in assisting the scheme manager
Green	Pension board members have isolated gaps in their knowledge and understanding	The scheme manager has failed to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding or affect member benefits	Pension board members take action to review and improve their knowledge and understanding to enable them to properly exercise their functions and they are making quick progress to address gaps in their knowledge and understanding. They assist the scheme manager to take prompt and effective action to remedy the breach	It is unlikely that the scheme will be in breach of other legal requirements. It is unlikely that the pension board is not fulfilling their role in assisting the scheme manager

Scheme record-keeping

Example scenario: An evaluation of member data has identified incomplete and inaccurate records.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
Red	Inadequate internal processes that fail to help employers provide timely and accurate data, indicating a systemic problem	All members affected (benefits incorrect/not paid in accordance with the scheme rules, incorrect transactions processed and poor quality information provided in benefit statements)	Action has not been taken to identify and tackle the cause of the breach to minimise the risk of recurrence nor to notify members	It is highly likely that there are wider scheme issues caused by inadequate processes and that the scheme will be in breach of other legal requirements
Amber	A failure by some – but not all – participating employers to act in accordance with scheme procedures, indicating variable standards of implementing those procedures	A small number of members affected	Action has been taken to identify the cause of the breach, but progress to tackle it is slow and there is a risk of recurrence	It is possible that there are wider scheme issues and that the scheme may be in breach of other legal requirements
Green	A failure by one participating employer to act in accordance with scheme procedures, indicating an isolated incident	No members affected at present	Action has been taken to identify and tackle the cause of the breach and minimise the risk of recurrence	It is unlikely that there are wider scheme issues or that the scheme manager will be in breach of other legal requirements

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Providing information to members

Example scenario: An active member of a defined benefit (DB) public service scheme has reported that their annual benefit statement, which was required to be issued within 17 months of the scheme regulations coming into force, has not been issued. It is now two months overdue. As a consequence, the member has been unable to check:

- personal data is complete and accurate
- correct contributions have been credited
- what their pension may be at retirement

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
Red	Inadequate internal processes for issuing annual benefit statements, indicating a systemic problem	All members may have been affected	Action has not been taken to correct the breach and/or identify and tackle its cause to minimise the risk of recurrence and identify other members who may have been affected	It is highly likely that the scheme will be in breach of other legal requirements
Amber	An administrative oversight, indicating variable implementation of internal processes	A small number of members may have been affected	Action has been taken to correct the breach, but not to identify its cause and identify other members who may have been affected	It is possible that the scheme will be in breach of other legal requirements
Green	An isolated incident caused by a one off system error	Only one member appears to have been affected	Action has been taken to correct the breach, identify and tackle its cause to minimise the risk of recurrence and contact the affected member	It is unlikely that the scheme will be in breach of other legal requirements

Extra resource Example breaches of the law and the traffic light framework 4

Internal controls

Example scenario: A DB public service scheme has outsourced all aspects of scheme administration to a third party, including receiving contributions from employers and making payments to the scheme. Some contributions due to the scheme on behalf of employers and members are outstanding.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
Red	The administrator is failing to monitor that contributions are paid to them in time for them to make the payment to the scheme in accordance within the legislative timeframes and is therefore not taking action	The scheme is not receiving the employer contributions on or before the due date nor employee contributions within the prescribed period	The administrator has not taken steps to establish and operate adequate and effective internal controls and the scheme manager does not accept responsibility for ensuring that the failure is addressed	It is highly likely that the administrator is not following agreed service level standards and scheme procedures in other areas. The scheme manager is likely to be in breach of other legal requirements such as the requirement to have adequate internal controls
Amber	The administrator has established internal controls to identify late payments of contributions but these are not being operated effectively by all staff at the administrator	The scheme is receiving some but not all of the employer contributions on or before the due date and employee contributions within the prescribed period	The scheme manager has accepted responsibility for ensuring that the failure is addressed, but the progress of the administrator in training their staff is slow	It is possible that the administrator is not following some of the agreed service level standards and scheme procedures in other areas. It is possible that the scheme manager is in breach of other legal requirements
Green	Legitimate late payments have been agreed by the scheme with a particular employer due to exceptional circumstances	The employer is paying the administrator the outstanding payments within the agreed timescale	The scheme has discussed the issue with the employer and is satisfied that the employer is taking appropriate action to ensure future payments are paid on time	It is unlikely that the employer is failing to adhere to other scheme processes which would cause the scheme manager to be in breach of legal requirements

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