


<p style="text-align: center;"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p style="text-align: center;"><b>PENSIONS BOARD</b></p> <p style="text-align: center;"><b>6 February 2019</b></p>	
<p><b>NON-PAYMENT OF PENSIONS CONTRIBUTIONS BY TBAP MULTI ACADEMY TRUST (THE BRIDGE AP ACADEMY)</b></p>	
<p><b>Report of the Mark Grimley – Director of Corporate Services</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For information</b></p>	
<p><b>Key Decision: No</b></p>	
<p><b>Consultation N/A.</b></p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Director: Mark Grimley – Director of Corporate Services</b></p>	
<p><b>Report Author:</b> Trevor Webster Bi-Borough Human Resources Pensions</p>	<p><b>Contact Details:</b> Tel: 0771 5771496 E-mail: <a href="mailto:trevor.webster@rbkc.gov.uk">trevor.webster@rbkc.gov.uk</a></p>

## 1. EXECUTIVE SUMMARY

- 1.1 The TBAP Multi-Academy Trust was established in March 2013 and is an approved DfE Academy Sponsor. The TBAP Executive Board maintains strategic and statutory responsibility for TBAP AP Academies and services including the Bridge AP Academy.
- 1.2 The Bridge AP Academy is a LBHF secondary alternative provision (AP) academy that provides full-time education and support for up to 150 learners who are not accessing mainstream schools.
- 1.3 Accordingly, TBAP are a scheduled body of the LBHF Local Government Pensions Fund.
- 1.4 As detailed in the LBHF Pensions Administration Strategy TBAP have the responsibility to deduct monthly all pension contributions from a member's pay, including Additional Pension Contributions (APCs) and Additional Voluntary Contributions (AVCs) as may be required, and to pay over all

pension contributions within the statutory deadlines in accordance with the requirements of the Administering Authority.

- 1.5 Between July 2017 and March 2018 due to cash flow issues TBAP failed to pay over the employer and employee contributions to the fund in respect of The Bridge AP Academy employees who are members of the Local Government Pension Scheme (LGPS).
- 1.6 The Bi-Borough Retained Pensions Team conducted a series of telephone and written conversations with TBAP until the matter was resolved.
- 1.7 Notwithstanding that all contributions are now up to date (including all back contributions), the Administering Authority fulfilled its responsibility by reporting the issue to the Pensions Regulator.
- 1.8 This matter is now considered closed by the Pensions Regulator and their reply is attached in Appendix 1.
- 1.9 Due to the seriousness of this matter it is appropriate to notify the Pensions Board of this issue.

## **2. RECOMMENDATIONS**

- 2.1 That this report be noted

## **3. ACTIONS TAKEN BY THE ADMINISTERING AUTHORITY**

- 3.1 In late 2017, through the Bi-Borough Pensions Team, the Administering Authority appointed a dedicated resource to monitor contributions from Scheduled and Admitted Bodies.
- 3.2 As a result of the appointment of this resource the missing contributions from TBAP was monitored and discovered and contact made with TBAP that resulted in the contributions being brought up to date.
- 3.3 A weekly monitoring tracker of Scheduled and Admitted body contributions is continuing to be produced and appropriate action taken when contributions are not received on time.
- 3.4 The LBHF Pensions Administration Strategy will be reviewed in 2018/19 and resent to all Scheduled and Admitted bodies to remind them of their responsibilities.
- 3.5 The Bi-borough Retained Pensions team are in discussion with the LBHF Pensions Administrators Surrey County Council regarding the introduction of a new software system that will reconcile contributions monthly to the member's record. The introduction of this new system will further enhance management control over the process. It is envisaged that this will be introduced to all

Scheduled and Admitted Bodies through a rolling programme during the financial year 2018/19.

**4. EQUALITY IMPLICATIONS**

4.1 None

**5. LEGAL IMPLICATIONS**

5.1 None

**6. FINANCIAL IMPLICATIONS**

6.1 None

**7. IMPLICATIONS FOR LOCAL BUSINESS**

7.1 None

**8. COMMERCIAL IMPLICATIONS**

8.1 None

**9. IT IMPLICATIONS**

9.1 None

**10. RISK MANAGEMENT**

10.1 N/A

**11. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

11.1 None

**LIST OF APPENDICES:**

**Appendix 1:** Letter from the Pensions Regulator dated 12<sup>th</sup> November 2018

## The Pensions Regulator

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www.thepensionsregulator.gov.uk  
www.trustee toolkit.com

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The Scheme Manager  
Local Government Pension Scheme  
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FAO Maria Bailey  
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Sent by SecureMAIL to: [Maria.Bailey@rbkc.gov.uk](mailto:Maria.Bailey@rbkc.gov.uk)

12 November 2018

Our reference: **PSR 10272022**, C117382271

Dear Ms Bailey,

**Breach of Law (BoL) report in relation to TBAP Multi Academy Trust (The Bridge AP Academy) (the Employer)**

Thank you for your time and assistance in responding to our questions on the conference-call we held on 17 September 2018. I have met with my case team since then and we have considered the information you have provided. This letter sets out our key findings and conclusions on this case.

**Reporting breaches of the law**

We have noted from the BoL report, which David Coats submitted to us in May 2018, that TBAP, the Employer, failed to pay employer and employee contributions into the London Borough of Hammersmith & Fulham Pension Fund (the Scheme). We understand that these breaches were in respect of contributions for the period of July 2017 through to March or April 2018 (with the exception of the contributions due for September 2017, which were paid). During our conference-call, you explained that you were aware of the non-payments since August 2017 when the July 2017 payment was due. Whilst we understand that you interacted with the Employer from that time while the Employer sought to establish whether the contributions had been overpaid in the past and the contribution amounts which were due going forward, which was finally confirmed in March 2018, it was only when the Employer stated in May 2018 that they were unable to make the outstanding payments due to their 'cash-flow issues' that the breach was reported to The Pensions Regulator (TPR).

As discussed during our call, this is a very significant period of time for breaches of this kind to have persisted and to have been reported as late as they were. In particular, we regard any failure to pay to the Scheme contributions which have been deducted from employees' pay as

an extremely serious matter, irrespective of cause. Regardless of the efforts made by the Scheme Manager to understand the cause of the breaches and pursue rectification, it is the Scheme Manager's legal obligation to make TPR aware of breaches which are likely to be of material significance to us within the legislative timeframe.

The Scheme Manager must report payment failures which are likely to be of material significance to the regulator within a reasonable period, in the case of employee contributions, and as soon as reasonably practicable, in the case of employer contributions. The Code sets out TPR's view on what constitutes a 'reasonable period' and 'as soon as reasonably practicable'. The Code also gives examples of when a breach would be of material significance to TPR. These examples include any payment which has been outstanding for more than 90 days from the due date.

A penalty may be applied to any Scheme Manager who has failed to take all reasonable steps to comply with their duty to report late payment of employee contributions. A penalty may also be applied to any Scheme Manager who has failed without reasonable excuse to comply with their duty to report late payment of employer contributions.

These duties and accompanying practical guidance are clearly set out in our Code of practice 14, in the section 'Maintaining contributions' (paragraphs 147 – 186 of the Code), specifically under the sub-heading of 'Reporting payment failures which are likely to be of material significance to the regulator' in paragraphs 173 – 186.

[www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx#s16855](http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx#s16855)

Please also see the relevant sections here:

[www.thepensionsregulator.gov.uk/public-service-schemes/reporting-breaches-of-the-law.aspx#s15892](http://www.thepensionsregulator.gov.uk/public-service-schemes/reporting-breaches-of-the-law.aspx#s15892)

[www.thepensionsregulator.gov.uk/public-service-schemes/maintaining-contributions.aspx](http://www.thepensionsregulator.gov.uk/public-service-schemes/maintaining-contributions.aspx)

### **Internal controls**

The Scheme Manager is required to establish and operate internal controls - systems, arrangements and procedures - in order to run the scheme in accordance with the scheme rules and legislation. One of the critical elements of internal controls is effective risk management whereby risks are detected in a timely manner and actively managed by the scheme manager.

In line with my comments under the first section above, even though the Scheme Manager was aware of the issue from an early stage, effective internal controls, including risk management practices, do not seem to have been operated. The Scheme Manager should have had adequate mechanisms in place to regularly monitor contributions from employers and be able to verify the contribution rates and calculation of contributions. This in turn would enable the Scheme Manager to robustly challenge employers who alleged there had been overpayments of contributions. Robust challenge to the Employer at an early stage may have achieved a quicker resolution. The Scheme Manager should also have taken steps to ensure that contributions continued to be paid to the Scheme while any necessary reconciliations were carried out, thus protecting members and scheme assets.

TPR can take action where a scheme manager has failed to establish and operate adequate internal controls. Such action could include issuing an improvement notice or appointing a skilled person to provide us with a report.

Based on the conversation we held, we understand that a close monitoring mechanism with allocated resource has now been put in place which you assured us is appropriate to address

any future similar risks. You may also wish to consider preparing a pension administration strategy under the LGPS Regulations 2013 (to the extent this has not already been done), setting out the Scheme Manager's policies in relation to various matters including the circumstances in which the Scheme Manager may consider giving written notice to any of its Scheme employers on account of that employer's unsatisfactory performance in carrying out its Scheme functions.

Please refer to the relevant sections of the Code 14 in the links below:

[www.thepensionsregulator.gov.uk/public-service-schemes/internal-controls-and-managing-risks.aspx](http://www.thepensionsregulator.gov.uk/public-service-schemes/internal-controls-and-managing-risks.aspx)

Sections in particular 147 – 172 in [www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx#s16851](http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx#s16851)

[www.thepensionsregulator.gov.uk/docs/PS-reporting-breaches-examples-traffic-light-framework.pdf](http://www.thepensionsregulator.gov.uk/docs/PS-reporting-breaches-examples-traffic-light-framework.pdf)

[www.thepensionsregulator.gov.uk/docs/public-service-internal-controls-checklist.pdf](http://www.thepensionsregulator.gov.uk/docs/public-service-internal-controls-checklist.pdf)

#### **Communication with the members**

We are also disappointed that the members affected were not informed of the breach. The Scheme Manager is required to notify members of an employer's failure to pay to the Scheme contributions deducted from their pay where the Scheme Manager has reasonable cause to believe that the failure is likely to be of material significance to TPR. We note your view that this is a sensitive area and any such communication would have caused concern among members and potentially other parties, such as parents of pupils attending the academy. However, the legislation is in place to protect members and it was their legal right to be informed of the situation.

A penalty may be applied to any scheme manager who has failed to take all reasonable steps to comply with this duty.

Going forward, we expect the Scheme Manager to meet their legal duties, and follow the code and guidance provided on our website in so doing:

[www.thepensionsregulator.gov.uk/public-service-schemes/communicating-to-members.aspx](http://www.thepensionsregulator.gov.uk/public-service-schemes/communicating-to-members.aspx)

[www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf](http://www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf) (in particular paragraphs 149 and 184)

#### **Pension board knowledge and understanding**

In this case, we are not aware of the extent to which the pension board was involved in the matter or whether it assisted the Scheme Manager in the handling of the breaches.

Pension board members must have knowledge and understanding of the scheme rules, documented scheme administration policies and the law relating to pensions, sufficient for them to exercise the functions of their role. They should be able to identify and, where relevant, challenge any failure to comply with the scheme regulations and other legislation relating to governance and administration as well as any failure to meet the standards and expectations set out in any relevant codes of practice issued by TPR.

We expect the Scheme Manager to share the contents of this letter with the pension board members and remind them of our expectations of them. The relevant section of the code and guidance can be found on our website:  
[www.thepensionsregulator.gov.uk/public-service-schemes/knowledge-and-understanding-duty-on-board-members.aspx](http://www.thepensionsregulator.gov.uk/public-service-schemes/knowledge-and-understanding-duty-on-board-members.aspx)

### **Conclusion**

Despite our disappointment with the Scheme Manager's failings, including the delay in reporting the breaches, and in the case of members' communication, the lack of any action, we are pleased that the contributions were eventually paid in full by the Employer. We also note your reassurance that you have put appropriate mechanisms in place since May 2018 to monitor contributions being paid into the Scheme on a monthly basis.

Given the points we have raised above, we would expect all persons acting on behalf of the Scheme Manager to enhance their knowledge and understanding of the Scheme Manager's legal duties in running a Public Service Pension Scheme. This can be done through the PSPS section of TPR's online training platform 'Trustee Toolkit' [www.thepensionsregulator.gov.uk/public-service-schemes/learn-about-managing-public-service-schemes.aspx](http://www.thepensionsregulator.gov.uk/public-service-schemes/learn-about-managing-public-service-schemes.aspx) and/or any suitable external training. A wealth of information is also available on our website, such as the public service code of practice and accompanying guidance.

Based on the information supplied, the Regulator does not intend to take any further action in relation to the late payment of employee or employer contributions.

Please be aware that, should additional information be reported, we do reserve the right to reconsider this decision.

Please note that we are also writing to the employer organisation, TBAP, reminding them of their duties as a participating employer in several local government pension funds.

You should share and discuss the content of this letter with all relevant parties such as all who act on behalf of the Scheme Manager and the members of the Pension Board; please also consider sharing it with the Scheme's advisors where appropriate.

For more information on our risk-based approach please see our website at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

Yours sincerely



**Halé Ucar**  
Case Manager  
Frontline Regulation Directorate