

<b>REPORT TO:</b>	<b>Pension Committee</b> <b>11 October 2022</b>
<b>SUBJECT:</b>	<b>Review of Breaches Log</b>
<b>LEAD OFFICER:</b>	<b>Matthew Hallett - Acting Head of Pensions and Treasury</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> Sound Financial Management: This report forms an important component of the governance arrangements for the stewardship of the Pension Fund.	
<b>FINANCIAL SUMMARY:</b> Financial risks relating to the Pension Fund are substantial and can impact on the General Fund of the Council.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	

## **1. RECOMMENDATION**

The Committee is asked to:

- 1.1 Consider the contents of the Pension Fund Breaches Log, Appendix A, and to comment as appropriate.

## **2. EXECUTIVE SUMMARY**

- 2.1 It is consistent with The Pension Regulator's Code of Practice that the Pension Fund maintains a breaches log detailing incidences where breaches have occurred. In line with the recommendations of the Aon Hewitt Governance Review, on 15 September 2020 the Committee agreed the revised Reporting Breaches of the Law Policy. This included a requirement for the Committee to monitor breaches on a regular basis. This report presents the current log (Appendix A) for the Committee's consideration and comment.

## **3 DETAIL**

- 3.1 The Pension Act 2004 ( "The Act", s 70) imposes duties on certain persons to report breaches of the law as follows:

70 Duty to report breaches of the law

(1) Subsection (2) imposes a reporting requirement on the following persons—

- (a) a trustee or manager of an occupational or personal pension scheme;
- (aa) a member of the pension board of a public service pension scheme;
- (b) a person who is otherwise involved in the administration of an occupational pension scheme;
- (c) the employer in relation to an occupational pension scheme;
- (d) a professional adviser in relation to such a scheme;
- (e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

(2) Where the person has reasonable cause to believe that—

- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,

he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section. This is subject to section 311 (protected items).

(4) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section.

In line with this legislation and the Pensions Regulator's Code of Practice a Breaches Log is maintained by the Fund. In their Governance Review Aon Hewitt recommended that the log was reviewed regularly by the Pension Committee. It was last reviewed on 25 May 2021. The current log is attached (Appendix A).

3.2 In this context a breach of the law occurs when a duty which is relevant to the administration of the Fund, and is imposed by or by virtue of legislation or rule of law, has not been or is not being complied with. In the context of the LGPS this can encompass many aspects of the management and administration of the LGPS, including failure:

- to do anything required under the Regulations;
- to do anything required under overriding legislation, applicable statutory guidance or codes of practice;

- to maintain accurate records;
- to act on any fraudulent act or omission that is identified;
- to comply with policies and procedures (e.g. the Fund's statement of investment principles, funding strategy, discretionary policies, etc.);
- of an employer to pay over member and employer contributions on time;
- to pay member benefits either accurately or in a timely manner;
- to issue annual benefit statements on time or non-compliance with the Code.

3.3 Since the Committee last reviewed the Log 2 entries have been removed, 2 entries have been added and 5 entries have been amended.

- The entries that have been removed are failure to issue annual benefit statements in August 2019 as this is now outside the 3 year period of the log and failure to pay a refund of scheme contributions which was removed at the Pension Board's request as they are satisfied that all reasonable steps have been taken to resolve the issue.
- The entries that have been added are failure to issue annual benefit statements in August 2022 and failure to publish audited Fund accounts for 2021 by 30 September 2021.
- As detailed on the Breaches Log, it is not possible to issue 100% of benefit statements as there will always be cases that are being worked on or that have outstanding queries which are being pursued. This is the case across other Local Authorities also. Any cases where statements are not issued will be entered onto the administration system as a task to be completed and will be resolved as part of the normal work of the team.
- Failure to publish audited Fund accounts by 30 September 2021 has been added to the log along with details of the reasons for this. The Pension Fund Accounts have been prepared and now need to be audited. The audit for the 2019/20 accounts is substantially complete subject to final reviews. However, the audit opinion cannot be signed due to ongoing issues related to the London Borough of Croydon accounts. The Council and auditors need to resolve the issues around the accounting treatment of Croydon Affordable Homes LLP. Due to the delays with 2019/20, the 2020/21 Pension Fund Accounts have not been audited. The current expectation is that the Council accounts and therefore as part of those, the Pension Fund accounts for 2019/20, will be signed off in October 2022 and the audit for the 2020/21 accounts will take place between October and December 2022. The draft Fund accounts were presented to the Pension Committee at the 3 December 2021 meeting.
- The entries that have been amended are in respect of failure to issue annual benefit statements in August 2020, failure to issue annual benefit statements in August 2021, failure to inform 100% of scheme members of their calculated benefits, failure to produce meeting minutes and the entry concerning failure to publish the Fund accounts for 2019/20.

3.4 The Committee is asked to consider the contents of the Breaches Log and to comment.

#### **4. CONSULTATION**

- 4.1 Officers have previously consulted with both the Pension Committee and Local Pension Board on the template for the Breaches Log which forms the basis of the report.

#### **5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 5.1 There are no financial considerations arising from this report.

**Approved by:** Alan Layton on behalf of Jane West, Corporate Director of Resources (Section 151 Officer)

#### **6. LEGAL CONSIDERATIONS**

- 6.1 Burges Salmon LLP ( a legal advisor appointed to the Pension Fund) comments that the Pension Committees role is to ensure the Fund is properly operated in accordance with the Local Government Pensions Scheme Regulations 2013 (“the Regulations”) all other relevant legislation and best practice as advised by the Pensions Regulator, including relevant financial, governance and administrative matters.
- 6.2 Section 70 of the Pensions Act 2004 (‘the Act’) imposes a requirement on the following persons (‘reporters’) to report breaches of the law as it applies to the management and administration of the Fund:
- 6.3 The duty is to report the matter to The Pensions Regulator in writing 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
- 6.4 Under the Act a person can be subject to a civil penalty if they fail to comply with this requirement without a reasonable excuse. The duty to report breaches under the Act overrides any other duties the relevant individuals 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.
- 6.5 The Pensions Regulator has published guidance in the Code of Practice no 14 (Governance and administration of public service pension scheme (‘the Code’). Paragraphs 241 to 275 of the Code deal with reporting breaches of the law.

## 7. HUMAN RESOURCES IMPACT

- 7.1 The Council will need to ensure appropriate action and advice is provided to retiring employees and retired employees in its capacity as the employer and pensions scheme administrator

Any implications arising from this report for Council employees or staff will be dealt with as appropriate under the Council's HR Policies and Procedures.

**Approved by:** Gillian Bevan, Head of Hr, Resources and Chief Executives on behalf of Dean Shoesmith, Chief People Officer

## 8. EQUALITIES IMPACT

- 8.1 The Council has a statutory duty to comply with the provisions set out in the Equality Act 2010. In summary, the Council must in the exercise of all its functions, "have due regard to" the need to comply with the three arms or aims of the general equality duty. These are to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

- 8.2 Having due regard means to consider the three aims of the Equality Duty as part of the process of decision-making. This means that decision makers must be able to evidence that they have taken into account any impact of the proposals under consideration on people who share the protected characteristics before decisions are taken. In this instance it would be beneficial to consider Age, Sex.

- 8.3 The report highlights that one breach involves not issuing annual benefits statements. This is often where members of staff are leaving, transferring service in or retiring and could potentially therefore impact on the basis of age. However, there is no data to confirm this and the reason for the delay in issuing statements is that these events can affect the benefit statements and it is considered better to delay issuing these in this situation rather than issue incorrect statements.

**Approved by:** Gavin Handford, Director of Policy, Programmes and Performance

## 9. ENVIRONMENTAL IMPACT

- 9.1 There are no environmental impacts arising from this report.

**10. CRIME AND DISORDER REDUCTION IMPACT**

10.1 There are no crime and disorder impacts arising from this report.

**11. DATA PROTECTION IMPLICATIONS**

**11.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

**NO**

The Director of Human Resources comments that this report relates to matters relating to the administration of the LGPS and the Croydon Pension Fund.

**Approved by:** Alan Layton on behalf of Jane West, Corporate Director of Resources (Section 151 Officer)

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**CONTACT OFFICER:**

Matthew Hallett, Acting Head of Pensions and Treasury

**APPENDIX:**

Appendix A: Breaches Log

**BACKGROUND DOCUMENTS:**

None.