

REPORT TO:	Pension Committee 3 December 2021
SUBJECT:	Review of Breaches Log
LEAD OFFICER:	Nigel Cook Head of Pensions and Treasury
CORPORATE PRIORITY/POLICY CONTEXT: Sound Financial Management: This report forms an important component of the governance arrangements for the stewardship of the Pension Fund.	
FINANCIAL SUMMARY: Financial risks relating to the Pension Fund are substantial and can impact on the General Fund of the Council.	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

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 a requirement of The Pension Regulator for the Pension Fund to maintain 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;

- (b) a person who is otherwise involved in the administration of such a 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 the Pensions Regulator requires that 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 is “an act of breaking or failing to observe a law, agreement, or code of conduct.” 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 1 entry has been removed and 3 entries have been amended. The entry removed is in respect of failure of the

scheme employer to obtain a report from a Registered Medical Practitioner as it applied to October 2017 and is outside of the previous three year period covered by the log. The entries that have been amended are in respect of failure to pay a refund of scheme contributions which has been updated to show case numbers at 31 October 2021 and the average value of each refund, the entry around failure to produce meeting minutes which has been updated in light of the report being considered by the Committee at the 3 December 2021 meeting and the entry concerning failure to publish the Fund accounts for 2019/20; a report is going to committee to be considered at the 3 December 2021

- 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: Richard Ennis, Interim Corporate Director of Resources (Section 151) and Deputy Chief Executive

6. LEGAL CONSIDERATIONS

- 6.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the Pension Committees role is to ensure the Fund is properly operated in accordance with the Local Government Pensions Scheme Regulations (“the Regulations”) all other relevant legislation and best practice as advised by the Pensions Regulator, including 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 pension fund:

- a trustee or manager of an occupational or personal pension scheme;
- a member of the pension board of a public service pension scheme;
- a person who is otherwise involved in the administration of such an occupational or personal pension scheme;
- the employer in relation to an occupational pension scheme;
- a professional adviser in relation to such a scheme; and

- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.
- 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 individuals listed above 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 In addition, under the Pensions Regulator's Code: *Reporting breaches of the Law*, the Pensions Regulator has responsibility for regulatory oversight of the governance and administration of public service pension schemes, including the Local Government Pension Scheme (LGPS). 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.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law and Deputy Monitoring Officer on behalf of the Interim Director of Law and Governance.

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

Approved by: Dean Shoesmith, Interim Chief People Officer

8. EQUALITIES IMPACT

- 8.1 There are no equalities impacts arising from this report.

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: Dean Shoesmith, Interim Chief People Officer

CONTACT OFFICER:

Nigel Cook, Head of Pensions and Treasury,
Resources Department, ext. 62552.

APPENDIX:

Appendix A: Breaches Log

BACKGROUND DOCUMENTS:

None.