

<b>REPORT TO:</b>	<b>Pension Board 23 March 2023</b>
<b>SUBJECT:</b>	<b>Review of Breaches Log</b>
<b>LEAD OFFICER:</b>	<b>Matthew Hallett - Acting Head of Pensions and Treasury</b>

## **1. RECOMMENDATION**

The Board 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 Board to monitor breaches on a regular basis. This report presents the current log (Appendix A) for the Board’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 Board last reviewed the Log no new entries have been added, 4 entries have been amended and no entries have been deleted. Breach 5 concerning failure to publish Committee and Board meeting minutes has been amended as the Committee decided to change the rating to green in their meeting of 14 March 2023. Breaches 6,7 and 8 concerning failure to publish audited fund accounts has been amended to reflect that this breach has now been reported to the Pensions Regulator.
- 3.4 At the previous Pension Board meeting the Board decided the failure to publish the audited Annual Report and Accounts for 2019/20, 2020/21 and 2021/22 should be reported to The Pensions Regulator as decision making based on 3 years of unaudited accounts posed a risk to the Fund. The Head of Pensions & Treasury has sent a letter reporting the breach to The Pensions Regulator on behalf of the Pension Committee, Pension Board and Officers of the Fund.
- 3.5 The Board 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. DATA PROTECTION IMPLICATIONS**

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

**NO**

**Approved by:** Matthew Hallett 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.