

REPORT TO:	Pension Committee 19 September 2023
SUBJECT:	Review of Breaches Log
LEAD OFFICER:	Matthew Hallett - Acting 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. RECOMMENDATIONS

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 (TPR) 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 20 June 2023. 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 which govern the LGPS (including in particular the requirements of the Local Government Pension Scheme Regulations 2013);
- 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 Code of Practice No. 14 (Governance and administration of public service pension schemes).

3.3 Since the Committee last reviewed the Log 6 entries have been amended and 1 entry has been added:

- Breach 5 concerning the minutes – at their meeting on 14 March 2023 the Committee agreed to change the rating to green. This wording has been added to the log
- Breach numbers 6, 7 and 8, concerning failure to publish audited accounts in respect of years 2019/20, 2020/21 and 2021/22 due to issues with the Council accounts not being signed off were reported in a letter sent on behalf of the Chairs of the Board and Committee and Officers, by the Head of Pensions & Treasury on 16 March 2023. TPR asked for a timetable of completion, which the Head of Pensions & Treasury has provided, and to be updated on progress against the timetable. This wording has been added to the log.
- Breaches 9 and 11 in respect of failure to pay refunds within the specified period as required under the Local Government Pension Scheme Regulations 2013 (as amended). The admin Team have been told that as soon as they receive a refund claim form for a frozen refund they must act immediately. This wording has been added to the log
- Breach 12 concerning failure of the Council to produce a mandatory discretions policy has been added to the log.

3.4 The Committee requested that a definition of the colour ratings be included in the log. A table has been added to the final page of the log detailing this.

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

The updated Breaches of the Law Log is in Appendix A.

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 significant direct financial implications arising from this report.

Approved by: Allister Bannin 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 TPR, 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 (where such breach is likely to be of material significance to TPR (as below)) as it applies to the management and administration of the Fund:
- 6.3 The duty is to report the matter to TPR 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 TPR
- 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 TPR 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. It should be noted that TPR is expected to publish a new code, the General Code, shortly and the Committee should have regard to the requirements of the General Code when this is published and in force.

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 Assistant Chief Executives directorates on behalf of Dean Shoesmith, Chief People Officer. Date: 5.9.23

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 The breach which is related to the backlog of work which impacts on staff from all equality characteristics in particular sex and age has now been resolved and is rated as green.

Approved by: Naseer Ahmad for Equality Programme Manager, (08/09/2023)

9. OTHER IMPLICATIONS

9.1 None.

Approved by: Allister Bannin on behalf of Jane West, Corporate Director of Resources (Section 151 Officer)

CONTACT OFFICER:

Matthew Hallett, Acting Head of Pensions and Treasury

APPENDIX:

Appendix A: Breaches Log

BACKGROUND DOCUMENTS:

None.