

LONDON BOROUGH OF CROYDON

REPORT:	Pension Board	
DATE OF DECISION	17 October 2024	
REPORT TITLE:	Review of Breaches of the Law	
CORPORATE DIRECTOR / DIRECTOR:	Jane West, Corporate Director of Resources (Section 151 Officer)	
LEAD OFFICER:	Matthew Hallett – Head of Pensions and Treasury	
CONTAINS EXEMPT INFORMATION?	NO	[Public]

1. SUMMARY OF REPORT

- 1.1 This report presents an extract from the Breaches of the Law Log (Appendix A) for the Pension Fund and highlights any changes made since the last review carried out at the Pension Board meeting held on 25 July 2024.

2. RECOMMENDATIONS

The Board is recommended:

- 2.1.1. To review and note the contents of the extract from the Pension Fund Breaches of the Law Log.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure an accurate record of Breaches of the Law is kept helping demonstrate good governance.

4. BACKGROUND AND DETAILS

- 4.1 The Pension Act 2004 (“The Act”, s 70) imposes duties on certain persons to report breaches of the law to The Pension’s Regulator 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.
- (f) a scheme strategist or scheme funder of a Master Trust scheme within the meaning of Part 1 of the Pension Schemes Act 2017 (see section 39 of that Act)

(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 General Code of Practice a Breaches Log is maintained by the Fund. This report presents an extract of breaches from the current Breaches Log. The extract contains breaches which are still being dealt with by Officers, the Board and the Committee.

4.2 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:

- 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 the General Code of Practice

4.3 The current Breaches Log extract includes 11 items reported to the Board. Since the Board last reviewed the log 1 new entry has been added, 4 entries have been amended and 2 entries have been deleted.

4.4 Breaches 6,7,8 and 15 concerning failure to publish audited fund accounts have been updated.

The Government is proposing secondary legislation in order to facilitate a return to timely, purposeful audits of local body accounts. The secondary legislation would amend the Accounts and Audit Regulations (2015) to set a series of backstop dates.

If the legislation is passed it would mean that for all financial years up-to-and-including 2022/23 the audited accounts must be published by 13 December 2024.

Where auditors have been unable to complete audits, they will issue a 'disclaimed' or 'modified' audit opinion.

The audited accounts for the financial year 2023/24 will need to be published by 28 February 2025.

With this in mind we are working towards producing and publishing the draft Pension Fund Annual Report and Accounts for 2021/22 and 2022/23 by 31 October 2024 and the draft for 2023/24 by 30 November 2024.

We are expecting the auditor to issue a disclaimed audit opinion for 2020/21, 2021/22 and 2022/23. We are anticipating that the auditor will be able to audit the 2023/24 accounts and issue a modified audit opinion in time for the 28 February 2025 deadline.

4.5 Breach 2 concerning the annual benefit statements for August 2021 has been removed from the log extract as it is now over 3 years old and Breach 12 concerning the Council's mandatory discretions has been removed from the log extract as it has now been resolved and the policy is in place.

4.6 Breach 16 concerning the annual benefit statements for August 2024 has been added to the log.

4.7 The Board is asked to consider the breaches of the law as reported in the extract from the Breaches of the Law Log attached in Appendix A.

5. CONSULTATION

- 5.1** Officers have previously consulted with both the Pension Committee and Local Pension Board on the template for the Breaches of the Law Log which forms the basis of Appendix A.

6. CONTRIBUTION TO COUNCIL PRIORITIES

- 6.1** Ensuring regulatory compliance, good stewardship and best practise are applied to the Council's Pension Fund.

7. IMPLICATIONS

7.1 LEGAL IMPLICATIONS

- 7.1.1.** Burges Salmon LLP (a legal advisor appointed to the Pension Fund) comments that the Pension Board's 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.
- 7.1.2.** Section 70 of the Pensions Act 2004 ('the Act') imposes a requirement on any Officer with delegated powers related to the management of the Fund, the Pension Committee and the Pension Board ('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.
- 7.1.3.** 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
- 7.1.4.** 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.
- 7.1.5.** TPR has published guidance in its new General Code of Practice (see section: "Reporting to TPR: Whistleblowing – reporting breaches of the law").
- 7.1.6.** Comments approved by Burgess Salmon LLP. (05/09/24)

8. APPENDICES

8.1 Appendix A - Pension Fund Breaches of the Law Log.

9. BACKGROUND DOCUMENTS

9.1 None