

LONDON BOROUGH OF CROYDON

REPORT:	Pension Committee	
DATE OF DECISION	12 December 2023	
REPORT TITLE:	Review of Breaches of the Law Log	
CORPORATE DIRECTOR	Jane West, Corporate Director of Resources (Section 151 Officer)	
LEAD OFFICER:	Matthew Hallett, Acting Head of Pensions & Treasury	
CONTAINS EXEMPT INFORMATION?	No	Public

1 SUMMARY OF REPORT

- 1.1 This report presents the current Breaches of the Law log (in Appendix A) for the Pension Fund and highlights any changes made since the last review carried out at the Pension Committee meeting held on 19 September 2023.

2 RECOMMENDATIONS

The Committee is recommended:

- 1.2 to review and note the contents of the Pension Fund Breaches of the Law Log.

3 BACKGROUND AND DETAILS

- 1.3 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. It was last reviewed on 19 September 2023. An extract from the current Breaches Log is attached (Appendix A).

1.4 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).

- 1.5** The extract of the current Breaches Log includes 12 items reported to the Committee and excludes items over 3 years old. Since the Committee last reviewed the Log 3 new entries have been added, 4 entries have been amended and 3 entries have been deleted.
- 1.6** Breaches 1 concerning Annual Benefit Statements dated August 2020 which is now over 3 years old, breach 4 concerning the administration backlog which has now been completed and breach 5 concerning meeting minutes which are now up to date have been removed.
- 1.7** Breach 6 concerning failure to publish audited fund accounts has been amended to reflect that the 2019/20 accounts have now been published and are expected to be signed off in February 2024 and breaches 7 and 8 concerning the 2020/21 and 2021/22 accounts have been updated to show that they are now expected to be finalised by June 2024. Breach 12 concerning employer discretions has been updated.
- 1.8** Breach 13 has been added concerning failure to issue 100% of benefit statements by 31 August 2023. Breach 14 concerning failure to pay a refund within required timescales has been added. Breach 15 concerning failure to publish audited fund accounts for 2022/23 has been added.
- 1.9** The Committee is asked to consider the contents of the Breaches Log and to comment.

The updated Breaches of the Law Log is attached as Appendix A.

4 CONSULTATION

- 2.1** Officers have previously consulted with both the Pension Committee and Local Pension Board on the template for the Risk Register which forms the basis of Appendix A.
- 2.2** Officers consult with the Fund's advisers when considering the risks associated with the Pension Fund.

5 IMPLICATIONS

2.3 FINANCIAL IMPLICATIONS

2.3.1 There are no significant direct financial implications arising from noting this report.

Approved by: Allister Bannin, on behalf of Jane West, Corporate Director of Resources (Section 151 Officer) (Date 30/11/2023)

2.4 LEGAL IMPLICATIONS

2.4.1 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.

2.4.2 Section 70 of the Pensions Act 2004 (‘the Act’) imposes a requirement on the Pensions Committee and 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:

2.4.3 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

2.4.4 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.

2.4.5 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.

2.5 EQUALITIES IMPLICATIONS

2.5.1 The Council has a statutory duty to comply with the provisions set out in Sec 149 of the Equality Act 2010. The Council must therefore have due regard to:

2.5.1.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.

2.5.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

2.5.1.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.5.2 There are no equality implications arising from this report.

Approved by: Naseer Ahmad on behalf of the Equalities Manager. (24/11/2023)

2.6 HUMAN RESOURCES IMPLICATIONS

2.6.1 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 will be dealt with as appropriate under the Council's HR Policies and Procedures.

Approved by: Dean Shoesmith, Chief People Officer. (Date 24/11/2023)

3 APPENDICES

6.1 A: Pension Fund Breaches of the Law Log.

4 BACKGROUND DOCUMENTS

7.1 None
