

Report of the Managing Director, West Yorkshire Pension Fund to the meeting of Local Pension Board to be held on 20 March 2024

AI

Subject: Register of Breaches of Law

Summary statement:

In accordance with the Public Service Pensions Act 2013, from April 2015 all Public Service Pension Schemes come under the remit of the Pensions Regulator.

Section 70 of the Pensions Act 2004 (the Act) imposes a requirement to report a matter to The Pensions Regulator 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 in the exercise of any of its functions.

A Register of Breaches of Law is therefore maintained in accordance with the Pensions Regulator's requirements and WYPF Breaches procedure.

EQUALITY & DIVERSITY:

None

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Portfolio:

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Overview & Scrutiny Area:

1. SUMMARY

- 1.1 In accordance with the Public Service Pensions Act 2013, from April 2015 all Public Service Pension Schemes come under the remit of the Pensions Regulator.
- 1.2 A Register of Breaches of Law is maintained in accordance with the Pensions Regulator's requirements and WYPF Breaches procedure.

2. BACKGROUND

- 2.1 Section 70 of the Pensions Act 2004 (the Act) imposes a requirement to report a matter to the Pensions Regulator as soon as reasonably practicable where a 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 in the exercise of any of its functions.
- 2.2 This requirement applies to:
 - 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 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.
- 2.3 The Act states that a person can be subject to a civil penalty if he or she fails 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.
- 2.4 A record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). WYPF maintains a record of all reported or unreported breaches.
- 2.5 The Register of Breaches of Law (reported or otherwise) is provided to each Joint Advisory Group meeting, and is also shared with the Pension Board

3. BREACHES

3.1 The entries on the Register of Breaches for 2023/2024 to date relate to:

- Contributions being paid late by employers and therefore not being received by the Fund until after the deadline set out in the Pensions Administration Strategy.

Two employers continued to fail to pay member and employer contributions to the Fund by the required date. A decision to deem these continued failures to pay the outstanding contributions as a material significance has resulted in the Fund taking the step to report these employers to the Pension Regulator and to notify the affected members.

One employer has since made the outstanding payment (RFM Group Services limited) and the Fund is continuing to work with the other employer to ensure payment is received as soon as practicable.

- The non-issue of Annual Benefit Statements by 31 August 2023 for a small number of active members.

4. OTHER CONSIDERATIONS

- None.

5. FINANCIAL & RESOURCE APPRAISAL

- None.

6. RISK MANAGEMENT AND GOVERNANCE ISSUES

- None.

7. LEGAL APPRAISAL

Appendix A details whether each Breach has been deemed to be of material significance and as a result been reported to the Pensions Regulator in accordance with Section 70 of the Pensions Act 2004

8. OTHER IMPLICATIONS

8.1 SUSTAINABILITY IMPLICATIONS

- None

8.2 TACKLING THE CLIMATE EMERGENCY IMPLICATIONS

- None

8.3 COMMUNITY SAFETY IMPLICATIONS

- None

8.4 HUMAN RIGHTS ACT

- None

8.5 TRADE UNION

- None.
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8.6 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

- None

9. NOT FOR PUBLICATION DOCUMENTS

- None

10. OPTIONS

- None

11. RECOMMENDATIONS

It is recommended that the Local Pension Board note the entries and action taken on the Register of Breaches

12. APPENDIX

Appendix A – Register of Breaches 2023/24

13. BACKGROUND DOCUMENTS

None