

Report of the Director, West Yorkshire Pension Fund to the meeting of Joint Advisory Group to be held on 29 July 2021

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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 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 any breaches of law is maintained in accordance with West Yorkshire Pension Fund (WYPF) Breaches Procedure.

Recommendations

It is recommended that the Joint Advisory Group note the 2020/21 and 2021/22 Register of Breaches.

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Portfolio:

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Overview & Scrutiny Area:

1. Background

1.1 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.

1.2 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.

1.3 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 a breach 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. Reporting Breaches Procedure

2.1 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 and unreported breaches.

2.2 The Register of Breaches (reported or otherwise) is provided to each Joint Advisory Group meeting, and this will also be shared with the Pension Board.

3. Breaches for 2020/21

3.1 The entries on the Register of Breaches for 2020/21, relate to

- the late payment of employees' pension contributions by employers,
- Non-issue of Annual Benefit Statements by the 31 August 2019 to a small number of active members.
- A divorce implementation order which was not actioned within the 4 month requirement of the Welfare and Pensions Act 1999.

4. Breaches for 2021/22

- 4.1 The entry on the Register of Breaches for 2021/22 relates to the delays in settlement amounts paid to the Fund by Prudential when members have retired. This issue has been reported to the Pensions Regulator as it is deemed to be of material significance. A copy of the report to the Pensions Regulator raising this issue can be found at Appendix C.

5. Recommendation

It is recommended that the Joint Advisory Group note the 2020/21 and 2021/22 Register of Breaches.

6. Appendices

- Appendix A – Register of Breaches 2020/21
- Appendix B – Register of Breaches 2021/22
- Appendix C – Copy of the report to the Pensions Regulator