

Report of the Managing Director of West Yorkshire Pension Fund to the meeting of Joint Advisory Group to be held on 25 January 2024

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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.

EQUALITY & DIVERSITY:

None

Euan Miller
Managing Director WYPF

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 (Appendix A) relate to:

- Contributions being paid late by employers and therefore not being received by the fund until after the deadline of the 19th day of the following month.
- the non-issue of Annual Benefit Statements by the 31 August 2023 for a small number of active members.

3.2 Two employers shown on the Register of Breaches are in the process of being reported to the Pension Regulator for the failure to pay outstanding employee and employer contributions. These employers are:

- RFM Group Services Ltd (Sandy Lane Primary School)
- Relish School Food Ltd (Highfield School)

4. LEGAL APPRAISAL

4.1 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.

5. RECOMMENDATIONS

It is recommended that the Joint Advisory Group note the entries and action taken on the Register of Breaches.

6. APPENDIX

➤ Appendix A – Register of Breaches 2023/2024