

REPORT OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES		
Reporting Breaches Procedure Pensions Board - 28th July 2015	Classification Public	Enclosures Two
	Ward(s) affected ALL	AGENDA ITEM NO. 6

1. INTRODUCTION

- 1.1 Those involved in running or advising Pension Schemes have a statutory obligation to report 'materially significant' breaches of the law to The Pensions Regulator (TPR) under section 70 of the Pensions Act 2004. Since 1st April 2015, TPR's oversight powers have been extended to cover the administration and governance of public service schemes, including the Local Government Pension Scheme (LGPS). Part of TPR's remit has been to put in place a Code of Practice covering these aspects of scheme management; the Code includes a section providing guidance on how to identify and assess the significance of breaches of the law.
- 1.2 This report sets out the 'Reporting Breaches Procedure' for the Fund, to help ensure compliance with section 70 of the Pensions Act 2004 and with the 'reporting breaches' section of TPR's Code of Practice. The report provides a summary of the recommendations set out in the Code and details the actions taken by the Hackney Pension Fund to ensure that all those involved in the management of the Pension Scheme understand its requirements. This report largely reproduces the report provided to Pensions Committee at its meeting in June.

2. RECOMMENDATIONS

The Pensions Board is recommended to:

- **Adopt the Reporting Breaches Policy (at Appendix 2 to this report) as it relates to the Pensions Board.**

3. RELATED DECISIONS

- Pensions Committee 31st March 2015 – TPR Code of Practice Compliance Checklist
- Pensions Committee 24th Jun 2015 – TPR Code of Practice and draft Reporting Breaches Procedure
- Pensions Board 28th July 2015 – Adoption of Training Policy as it relates to Pension Board

4. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

- 4.1 In recent years there has been an increased focus on the governance of LGPS funds, with the introduction of oversight powers for TPR and the publication of the Code of Practice being good examples of this. Ensuring compliance with the Code may result in additional work for the Fund's officers and advisers, bringing an

associated increase in cost to be met by the Fund; however, any such costs will be immaterial in the context of a £1.1bn Fund.

- 4.2 The Pensions Regulator's Compliance and Enforcement policy sets out the Regulator's approach to regulatory compliance. It makes clear that the Regulator expects to educate and enable schemes to improve their standard of governance. However, where no action is taken by scheme managers address poor standards, enforcement action will be taken, which may include financial penalties.

5. COMMENTS OF THE CORPORATE DIRECTOR OF LEGAL, HR AND REGULATORY SERVICES

- 5.1 The Public Sector Pensions Act (2013) extended the oversight powers of the Pensions Regulator to the administration and governance of public service schemes, including the LGPS. As such, those involved with the management of LGPS funds are now required to report breaches of scheme regulations to The Pensions Regulator under section 70 of the Pensions Act 2004.

- 5.2 Scheme regulations under this duty includes any legislation relevant to the administration and governance of the scheme. Such regulations will include:

- LGPS Regulations 2013
- LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014
- LGPS (Amendment) (Governance) Regulations 2015.

Additionally, the Regulator stipulates that scheme regulations include:

- Certain legislative provisions, to the extent that they override provisions of the scheme regulations, or which have effect in relation to a scheme and are not otherwise reflected in the scheme regulations, and
- Any provision which the scheme regulations do not contain but which the scheme rules must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes)

- 5.3 There are no immediate legal implications arising from this report.

6. REGULATORY BACKGROUND

- 6.1 Section 70 of the Pensions Act 2004 requires that certain people involved in running or advising a pension scheme must report 'materially significant' breaches of the law to TPR. For public service schemes, those subject to this reporting requirement ('Reporters') are:

- Scheme managers (in this case the Council as the Administering Authority, with responsibility delegated to the Pensions Committee)
- Pension Board Members
- Persons otherwise involved in the administration of the scheme
- Employer
- Professional advisers
- Persons otherwise involved in advising the Scheme Manager in relation to the scheme.

- 6.2 The Regulator's Code of Practice helps reporters to determine whether or not a breach needs to be reported, setting out two key judgements to enable a decision:

- Does the reporter have reasonable cause to believe there has been a breach of the law
- If so, does the reporter believe that this is likely to be of material significance to the Regulator?

The Code provides practical guidance on the factors reporters should consider in making these key judgements, and the process for making a report to the Regulator should this be required.

- 6.3 The Code also highlights the need for schemes to be satisfied that those with statutory responsibility for reporting breaches have a sufficient level of knowledge and understanding to fulfil their duty. The Code recommends that training be provided for Scheme Managers and Pension Board members, and for all others with a duty to report to be familiar with the legal requirements and processes and procedures for reporting.
- 6.4 TPR also recommends that schemes should establish and operate 'appropriate and effective' procedures that enable people to raise concerns and allow the objective consideration of any breaches identified. They should also set out appropriate timescales for reporters to consider whether or not a breach should be reported.
- 6.5 The relevant section (points 241-275) of The Pensions Regulator's Code of Practice can be found at Appendix 1 to this report.

7. HACKNEY PENSION FUND – ACTIONS TAKEN

- 7.1 The Reporting Breaches Policy for the Hackney Pension Fund at Appendix 2 to this report was formally approved for the London Borough of Hackney Pension Fund at its meeting on the 24th June 2015.
- 7.2 As per the Regulator's guidance, the policy:
- Sets out the law on reporting breaches, and those to whom it applies
 - Provides guidance on how to confirm the facts when a breach is suspected
 - Provides guidance on determining whether or not a breach is likely to be of material significance to the Regulator
 - Sets out the appropriate level of seniority for decision-making when determining whether or not to report
 - Provides appropriate timescales for reporting
 - Provides guidance on dealing with complex cases
 - Sets out an early reporting procedure for serious breaches (e.g. where dishonesty is suspected)
 - Sets out the procedure for reporting a breach to the Regulator
- 7.3 In line with the Regulator's recommendation for training to be provided to Scheme Managers and Pension Board Members, the training session at the 24th June Pensions Committee covered in brief the reporting of regulatory breaches as part of the wider session on Pensions Legislation and Governance. In addition, it is proposed that further dedicated training for the Pensions Board covers this area in more detail for the Board.
- 7.4 The policy also sets out a quarterly reporting procedure for all breaches, irrespective of whether or not they are reported to the Regulator. The record of all breaches (reported or otherwise) will be included in the quarterly Monitoring Report at each Pension Committee, and this will also be shared with the Pension Board, as they are being provided with copies of the Pensions Committee papers.

Appendices

1. Reporting Breaches – The Pensions Regulator Code of Practice extract on Reporting Breaches
2. LBH Pension Fund Procedure for Reporting Breaches of the Law

Background papers: None

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