

Title of Report	Reporting Breaches Procedure - Policy Review
For Consideration By	Pensions Committee
Meeting Date	15th June 2022
Classification	Open
<u>Ward(s) Affected</u>	All
<u>Group Director</u>	Ian Williams, Group Director Finance & Corporate Resources

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 and the Code includes a section providing guidance on how to identify and assess the significance of breaches of the law. The Code is due to be updated in autumn 2022 but based on the draft Single Code it is not expected that the requirements around reporting breaches will change significantly.
- 1.2. This report includes the Fund's Breaches Procedure which has been reviewed and updated. Generally, unless otherwise specified, the Fund's policy is to review policies every three years (or sooner if required, for example, due to changes in legislation). This Policy has reached the review date and has had some recommended updates as set out in this cover report.

2. **Recommendations**

- 2.1. **The Pensions Committee is recommended to:**
- **Approve the updated Reporting Breaches Policy**

3. **Related Decisions**

- 3.1. Pensions Committee 23rd July 2018 – Last update of Breaches Procedure

4. **Comments of the Group Director of Finance and Corporate 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 £1.9bn 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 to address poor standards, enforcement action will be taken, which may include financial penalties.

5. **Comments of the Director of Legal, Democratic and Electoral Services**

5.1. The Public Service 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 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 include 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

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 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
- Employers
- Professional advisers
- Persons otherwise involved in advising the Scheme Manager in relation to the scheme.

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

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

The Code provides practical guidance on the factors that individuals 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 the 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 individuals to consider whether or not a breach should be reported.

7. **Hackney Pension Fund - Actions Taken**

7.1. The Breaches Procedure for the Hackney Pension Fund at Appendix 1 to this report was first formally approved for the London Borough of Hackney Pension Fund at its meeting in June 2015 and an updated version was approved in July 2018. This update is part of the program of regular review set out in the Pension Fund Business Plan.

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. Updates made to the policy since it was last approved are:

- Adding clarification to the introductory section
- Updating to reference the new Pension Regulator's Single Code, due to be published in autumn 2022
- Adding a section referencing other policies and procedures that may also apply to individuals subject to this Breaches Procedure
- Updating the key steps in determining whether a breach has occurred, determining its significance and whether it should be reported
- Updating the decision tree diagram
- Adding in a new appendix setting out some example breaches
- Updating contact details

Appendices

Appendix 1 - Reporting Breaches Procedure

Background documents

None

Report Author	Name: Rachel Cowburn Title: Head of Pensions Email: rachel.cowburn@hackney.gov.uk Tel: 020 8356 2630
Comments for the Group Director of Finance and	Name: Jackie Moylan Title: Director, Financial Management Email: jackie.moylan@hackney.gov.uk

Corporate Resources prepared by	Tel: 020 8356 3032
Comments for the Director of Legal, Democratic and Electoral Services prepared by	Name: Georgia Lazari Title: Team Leader (Places) Email; georgia.lazari@hackney.gov.uk Tel: 0208 356 1369