

Non-Executive Report of the: PENSIONS BOARD 16 March 2020	 TOWER HAMLETS
Report of Neville Murton, Corporate Director, Resources	Classification: unrestricted
Review of Policy for Reporting and Recording Breaches of the Law	

Originating Officer(s)	Miriam Adams, Pensions & Investments Manager
Wards affected	All

Introduction

This report provides the Board with the Policy for Reporting Breaches of the Law. Breaches can occur in relation to a wide variety of the tasks normally associated with the administrative function of a scheme such as keeping records, internal controls, calculating benefits and making investment or investment-related decisions.

This Policy has been developed to assist those individuals who have a legal responsibility to report certain breaches to the Regulator in determining whether a breach they have identified should be reported. It has also been developed to assist the Administering Authority, in ensuring it is aware of all breaches of the law in relation to the Fund and that these are appropriately recorded and then dealt with

There is a statutory obligation to report ‘materially significant’ breaches of the law to the Pensions Regulator (TPR) under section 70 of the Pensions Act 2004 for the persons involved in running or advising Pension Schemes.

Recommendations:

Members are asked to

- note the contents of this report;
- review the Policy for reporting breaches of the law;
- Note the recommendation to delegate the responsibility for implementation of this policy to the S151 Officer; and
- recommend that the Pensions Committee approve the Policy (Appendix A)

1. REASONS FOR THE DECISIONS

- 1.1 A breach of the law is “an act of breaking or failing to observe the law, or code of conduct”. In the context of the LGPS, this encompasses a failure to do

anything required under the Regulations, Framework or overriding legislation as well as potentially extending to the provision of incorrect information no matter how large or small.

- 1.2 It is important to appreciate that you cannot abdicate responsibility to report a breach by relying on any other parties to do so.

2. ALTERNATIVE OPTIONS

- 2.1 There are no alternative options to this report.

3. DETAILS OF REPORT

- 3.1 Although breaches are not an area covered in detail in the recommendations of Phase I and II of the Good Governance review from a good governance perspective having a clear policy to help individuals who have a legal responsibility to report certain breaches to the Regulator to understand the process to identify when breaches should be reported in practice is best practice in line with the outcomes based approach to governance that the Scheme Advisory Board have recommended in Phase I and II of their report.
- 3.2 TPR's Code of Practice 14 requires the administering authority be satisfied that those responsible for reporting breaches, under the legal requirements and TPR guidance and TPR guidance understand requirements and that appropriate procedures are in place to meet their legal obligations for underlying and assessing breaches (paras 244, 245 and 246 of the Code. Having a Breaches Policy enables the administering authority to demonstrate compliance.
- 3.3 Paragraph 246 requires that breaches need to be recorded in accordance with the procedures in place, therefore to comply with the Code of Practice, it is essential that there needs to be recording of breaches to the breaches log which needs to be regularly reported to the Pensions Committee and Pensions Board.
- 3.4 It is anticipated that TPR are due to move from Code of Practice 14 to a Singular Modular Code later in 2020 so compliance with any new requirements arising from that change will be brought back to Committee and Board at the next available date after its release.

4. AIMS AND OBJECTIVES OF THE POLICY

- 4.1 The draft policy as per TPR Guidance sets
 - The law on reporting breaches, and those to whom it applies.
 - Provides guidance on how to confirm the facts when a breach is suspected

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- Provides guidance on determining whether a breach is likely to be of material significance to the Regulator
- Sets out the appropriate level of seniority for decision making
- Provides appropriate timescales for reporting
- Provides guidance on dealing with complex cases
- Sets out an early reporting procedure for serious breaches
- Sets out procedures for reporting to the Regulator
- Sets out a quarterly reporting procedure

5. FINANCIAL IMPLICATIONS

- 5.1 Ensuring compliance with the Code may result in additional work for the Fund's officers and advisers, bringing an associated increase in costs to be met by the Fund; however, and such costs will be immaterial in the context of the Fund value of £1.7bn.

6. LEGAL COMMENTS

- 6.1 Section 70 of the Pensions Act 2004 obligates employers to report breaches of the law to the Regulator. Section 70(2) imposes a duty on on certain people involved in running or advising a pension scheme to report 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.

A person who fails without reasonable excuse to comply with the duty to report, can be subject to a civil penalty. The duty to report breaches under the Act overrides any other duties those subject to the duty may have, except where legal privilege applies.

- 6.2 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.

6.3 The draft LB Tower Hamlets procedure for recording and reporting breaches of the law is very comprehensive and provides detailed guidance to those with a responsibility to report breaches of the law to the Pensions Regulator.

7. ONE TOWER HAMLETS CONSIDERATIONS

7.1 The employer's contribution is a significant element of the Council's budget and consequently any improvement in costs management will reduce the contribution and increase the funds available for other corporate priorities.

8. BEST VALUE (BV) IMPLICATIONS

8.1 Effective management of breaches in legislation can in the long-term result in great cost saving to the Fund.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

9.1 There is no direct Sustainable Action for A Greener Environment implication arising from this report.

10. RISK MANAGEMENT IMPLICATIONS

10.1 The rigorous robust management of LBTH Pension Fund results in better quicker and more effective decision making which can lead to better Fund performance and reduction in the contribution required from the Council towards the Fund.

10.2 Lack of robust governance inevitably involves a degree of risk. Not adhering to the overriding legal requirements could impact on meeting the ongoing objectives of the Pension Fund. In addition, where scheme managers or pension boards fail to address poor standards and non-compliance with the law, TPR will consider undertaking further investigations and taking regulatory action.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

11.1 There are no crime and disorder reduction implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

There are no linked reports to this agenda item

Appendices

Appendix 1 – Conflict of Interest Policy

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

Good Governance in the LGPS

Officer contact details for documents:

- Miriam Adams – Pensions & Investments Manager x4248
Email: Miriam.adams@towerhamlets.gov.uk
Mulberry House, 5 Clove Crescent E14 2BG