

Non-Executive Report of the: Pensions Committee 30 th June 2016	 TOWER HAMLETS
Report of: Zena Cooke, Corporate Director of Resources	Classification: Unrestricted
Reporting Breaches Procedure	

Originating Officer(s)	Bola Tobun, Investment & Treasury Manager
Authorising Officer(s)	Neville Murton, Service Head of Finance & Procurement
Wards affected	All wards

Summary

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.

TPR's oversight powers have been extended to cover the administration and governance of public service schemes, including the Local Government Pension Scheme (LGPS) since 1st April 2015. 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.

This report sets out a draft '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 Tower Hamlets Pension Fund to ensure that all those involved in the management of the Pension Scheme understand its requirements.

Recommendations

Members are recommended:

- to approve the Reporting Breaches Policy (at Appendix Y to this report and
- to note the duties required of the Pensions Committee in its capacity as Scheme Manager.

1. REASONS FOR THE DECISIONS

- 1.1 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 the Fund.

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.

2. ALTERNATIVE OPTIONS

- 2.1 The Policy coming before Pensions Committee for approval helps to demonstrate compliance with both regulation and guidance provided by TPR.

3. DETAILS OF REPORT

- 3.1 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.

- 3.2 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.

- 3.3 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.

- 3.4 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.
- 3.5 The relevant section (points 241-275) of The Pensions Regulator's Code of Practice can be found at Appendix Y1 to this report.

TOWER HAMLETS PENSION FUND – ACTIONS TAKEN

- 3.6 A draft reporting breaches policy for the Tower Hamlets Pension Fund is supplied for the approval of the Committee at Appendix Y to this report. 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
- 3.7 In line with the Regulator's recommendation for training to be provided to Scheme Managers and Pension Board Members, a training session will be provided at the September Committee meeting to cover the reporting of regulatory breaches.
- 3.8 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 Pensions Committee, and this will also be shared with the Pensions Board.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The comments of the Corporate Director Resources are incorporated in the report

5. LEGAL COMMENTS

- 5.1 Section 70(2) of the Pensions Act 2004 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. Thus communications between a professional legal adviser and their client or someone representing the client, in connection with legal advice being given to the client do not have to be disclosed.

. 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.

5.2 The Code 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.

5.3 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.

5.4 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.

5.5. In operating the procedure, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). The Committee may take the view that having a robust procedure in place for reporting materially significant breaches of the law will

support compliance with the Council's statutory duties in respect of proper management of the Pension Fund.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Any costs associated with meeting the policy and related legal changes are immaterial in the context of the Pension Fund and any such costs are recharged to the Pension Fund.
- 6.2 A viable pension scheme also represents an asset for the recruitment and retention of staff to deliver services to the residents.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The costs of not adhering to either the legislation or indeed applying best practice could be significantly higher and pose risks to the financial management of the Pension Fund.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There is no Sustainable Action for A Greener Environment implication arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 Lack of robust governance inevitably involves a degree of risk.
- 9.2 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, including enforcement action.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

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

Linked Reports, Appendices and Background Documents

Linked Report

- [None]

Appendices

- Appendix Y – Reporting Breaches Policy
- Appendix Y1 – The Pensions Regulator's Code of Practice

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

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

- The Pensions Act 2004
- The Pensions Regulator's Code of Practice

Officer contact details for documents:

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