

MUNICIPAL YEAR 2019/2020 REPORT NO.

MEETING TITLE AND DATE:

Local Pension Board
23rd January 2020

REPORT OF:

Director of Finance

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Agenda – Part:	Item:
Subject: Enfield of Pension Fund Procedure for Recording and Reporting Breaches Policy	
Wards: All	
Key Decision No:	
Cabinet Member consulted:	

1. EXECUTIVE SUMMARY

- 1.1 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.
- 1.2 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.
- 1.3 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 Enfield Pension Fund to ensure that all those involved in the management of the Pension Scheme understand its requirements.

2. RECOMMENDATIONS

The Pension Board is recommended to:

- i) note the contents of this report and the attached Appendix 1;
- ii) note the Enfield Pension Fund Procedure for Recording and Reporting Breaches (at Appendix 2) as it relates to the Pension Board.

3 BACKGROUND

- 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 Pension Policy and Investment Committee);
- Pension Board Members Persons otherwise involved in the administration of the scheme;
- Employer;
- Professional advisers; and
- 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 1 to this report.

ENFIELD PENSION FUND – ACTIONS TAKEN

3.6 A draft reporting breaches policy for the Enfield Pension Fund is provided for the noting of the Board at Appendix 2 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 January Board 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 meeting of the Pensions Board, and this will also be shared with the Pension Policy and Investment Committee.

4. ALTERNATIVE OPTIONS CONSIDERED

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

5. REASONS FOR RECOMMENDATIONS

5.1 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.

5.2 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.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

i) 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 £1.26bn Fund.

ii) 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.

6.2 Legal Implications

- i) Employers are under a whistleblowing duty, imposed by [section 70](#) of the PA 2004, to report breaches of law to the Regulator. The regime applies in the same way to employers and trustees.
 - ii) Under the statutory whistleblowing requirements contained in the Pensions Act 2004 (PA 2004) trustees, scheme administrators, employers, professional advisers and others must report certain "breaches of law" to the [Pensions Regulator](#) as soon as reasonably practicable. Failure to comply with this duty could lead to a fine of up to £5,000 for individuals or £50,000 for companies
 - iii) The statutory whistleblowing provisions are contained in [section 70](#) of the PA 2004. The legislation is supplemented by the following codes and guidance published by the Regulator:
 - [Code of practice 01: Reporting breaches of the law](#) (Reporting Breaches Code).
 - [Guidance on reporting breaches of the law](#) (Reporting Breaches Guidance).
 - [Code of practice 14: Governance and administration of public service pension schemes](#) (Public Service Pension Schemes Code).
- a) 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.
 - b) There are no immediate legal implications arising from this report.

7. KEY RISKS

- 7.1 Lack of robust governance inevitably involves a degree of risk.
- 7.2 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.

Background Papers

- i) Code of practice 01: Reporting breaches of the law (Reporting Breaches Code).
- ii) Guidance on reporting breaches of the law (Reporting Breaches Guidance).
- iii) Code of practice 14: Governance and administration of public service pension schemes (Public Service Pension Schemes Code).

Appendices

- Appendix 1: The Pensions Regulator Code of Practice (Extracts in relation to Procedure in Recording & Reporting Breaches)
- Appendix 2: Enfield Pension Fund Procedure for Recording and Reporting Breaches of the Law