

London Borough of Enfield

PENSION BOARD

Meeting Date: 2 December 2020

Subject: Procedure for Recording and Reporting Breaches

Cabinet Member: Cllr Maguire

Executive Director: Fay Hammond

Key Decision: []

Purpose of Report

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.
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.
3. This report sets out the "Procedure for Reporting Breaches' 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.

Proposal(s)

4. The Pension Board are recommended to:
 - i) note the contents of this report and the attached Appendix 1; and
 - ii) note the Enfield Pension Fund Procedure for Recording and Reporting Breaches at Appendix 2.

Reason for Proposal(s)

5. 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.

6. 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

Relevance to the Council's Corporate Plan

7. Good homes in well-connected neighbourhoods.
8. Build our Economy to create a thriving place.
9. Sustain Strong and healthy Communities.

Background

10. 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:
 - a) Scheme managers (in this case the Council as the Administering Authority, with responsibility delegated to the Pension Policy and Investment Committee);
 - b) Pension Board Members Persons otherwise involved in the administration of the scheme;
 - c) Employer;
 - d) Professional advisers; and
 - e) Persons otherwise involved in advising the Scheme Manager in relation to the scheme.
11. 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:
 - a) 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?
 - b) 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.
12. 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.

13. 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.
14. The relevant section (points 241-275) of The Pensions Regulator's Code of Practice can be found at Appendix 1 to this report.
15. **ENFIELD PENSION FUND – ACTIONS TAKEN**
16. 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:
 - a. Sets out the law on reporting breaches, and those to whom it applies
 - b. Provides guidance on how to confirm the facts when a breach is suspected
 - c. Provides guidance on determining whether or not a breach is likely to be of material significance to the Regulator
 - d. Sets out the appropriate level of seniority for decision-making when determining whether or not to report
 - e. Provides appropriate timescales for reporting
 - f. Provides guidance on dealing with complex cases
 - g. Sets out an early reporting procedure for serious breaches (e.g. where dishonesty is suspected)
 - h. Sets out the procedure for reporting a breach to the Regulator
17. 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.
18. 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.

Safeguarding Implications

19. Poor corporate governance and unsustainable business practices can impact on share prices and increases the risk that the Fund may experience a loss of value in its investments in the future

Public Health Implications

20. none.

Equalities Impact of the Proposal

21. The Council is committed to Fairness for All to apply throughout all work and decisions made. The Council serves the whole borough fairly, tackling

inequality through the provision of excellent services for all, targeted to meet the needs of each area. The Council will listen to and understand the needs of all its communities.

Environmental and Climate Change Considerations

22. None

Risks that may arise if the proposed decision and related work is not taken

23. Lack of robust governance inevitably involves a degree of risk.
24. 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.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

25. This is a noting report.

Financial Implications

26. 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.
27. 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

Legal Implications

28. 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.
29. 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.

30. 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
31. 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).

Workforce Implications

32. The employer's contribution is a significant element of the Council's budget and consequently any improvement in investment performance will allow the Council to meet this obligation easily and could also make resources available for other corporate priorities.

Property Implications

33. None

Options Considered

34. There is no alternative option.

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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

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).