Havering
LONDON BOROUGH

PENSIONS COMMITTEE **31 October 2012**	

Subject Heading:	**WHISTLEBLOWING REQUIREMENTS OF THE PENSIONS ACT**
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Policy context:	Pensions Act 2004
Financial summary:	None

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	[]
Excellence in education and learning	[]
Opportunities for all through economic, social and cultural activity	[]
Value and enhance the life of every individual	[x]
High customer satisfaction and a stable council tax	[]

SUMMARY

1. On the 6 April 2005 the whistle blowing requirements of the Pensions Act 2004 came into force. This extended whistle blowing obligations to nearly everyone connected with running a pension scheme, in particular administering authorities and employers. The Pensions Regulator issued a Code of Practice (CP1) that set out guidance on how to comply.

2. The basic requirement of this law was that nearly all persons who are involved with a pension scheme have a duty to give a written report as ‘soon as

reasonably practicable' to the Pensions Regulator where they have 'reasonable cause to believe' that there has been a breach of law 'relevant to the administration of the scheme' which is 'likely to be of material significance to the Regulator'. The Code discusses each of these issues, in particular what the regulator sees as materially significant.

3. For administrating authorities and employers, an initial requirement was to establish procedures to identify any breaches, and then evaluate and if appropriate report to the Regulator. These were put in place during 2005 and part of this was to undertake an annual review. This represents the annual review for the year up to 30 September 2012.

RECOMMENDATIONS

Members note the results of the annual review and that no breaches have been reported.

REPORT DETAIL

1. On the 6 April 2005 the whistle blowing requirements of the Pensions Act 2004 came into force. This extended whistle blowing obligations to nearly everyone connected with running a pension scheme, in particular trustees, administering authorities (for the Local Government Pension Scheme (LGPS)) and employers. The Pensions Regulator then issued a code of practice (CP1) that set out guidance on how to comply**.**

The basic requirement of this law was that nearly all persons who are involved with a pension scheme have a duty to report 'as soon as reasonably practicable' to the Pensions Regulator where they have 'reasonable cause to believe' that there has been a breach of law 'relevant to the administration of the scheme' which is 'likely to be of material significance to the Regulator'. The code discusses each of these issues, in particular what the Regulator sees as materially significant.

For administering authorities and employers, an initial requirement was to establish procedures to identify any breaches, evaluate these breaches and, if appropriate, report them to the Regulator.

Since the requirement came into force on the 5 April 2005, no possible breaches have been reported to the Group Director of Finance and Commerce. Consequently no reports have been made to the Regulator.

2. The Code of Practice provided the following guidance:

a) There is a requirement to report breaches

- Breaches of the law which affect pension schemes should be considered for reporting to the Pensions Regulator.

- The decision whether to report requires two key judgements:

    i. Is there reasonable cause to believe there has been a breach of the law;
    ii. If so, is the breach likely to be of material significance to the Pensions Regulator?

- Not every breach needs to be reported.

b) The requirement to report applies to:

- Trustees of trust based schemes

- Advisers and service provider (including those carrying out tasks such as administration or fund management)

- Managers of schemes not set up under Trust (including administering authorities for the LGPS), and

- Employers sponsoring or participating in work-based pension schemes.

c) The requirement applies to occupational and personal pension schemes (including stakeholder schemes).

d) The reporting arrangements are that:

- All reporters should have effective arrangements in place to meet their duty to report breaches of the law.

- Reliance cannot be placed on waiting for others to report.

- Breaches should be reported as soon as reasonably practicable.

Failure to report when required to do so is a civil offence.

The Pensions Regulator's objectives are to protect the benefits of pension scheme members to reduce the risk of calls on the Pension Protection Fund (PPF), and to promote the good administration of work-based pension schemes.

Havering via the Investment Committee (now Pensions Committee), agreed the following:

3. Actions to ensure compliance / reporting

3.1 The named officer for reporting issues to within Havering is the Group Director of Finance and Commerce. Should he be notified of a breach he will set out a plan to:

- Obtain clarification of the law where it is not clear to the reporter;

- Clarify the facts around the suspected breach where these are not known;

- Consider the material significance of the breach taking into account its cause, effect, the reaction to it, and its wider implications, including, where appropriate, dialogue with the trustees or managers;

- Establish an adequate timeframe for the procedure to take place that is appropriate to the breach and allows the full report to be made as soon as reasonably practicable;

The Group Director or a nominated person will then review and assess if a report should be made to the Pensions Regulator. This will normally be within one month of receiving all the appropriate information.

3.2 The Group Director or nominated person will maintain a system to record breaches even if they are not reported to the Pensions Regulator (the principal reason for this is that the record of past breaches may be relevant in deciding whether to report future breaches); and

3.3 In order to ensure there is a process for identifying promptly any breaches including those that are so serious they must always be reported, it was agreed that an annual assessment against the following will be carried out and reported alongside the Pension Fund accounts. This assessment has been carried out and confirms the following is acceptable.

In relation to protecting members' benefits:

- Substantially the right money is paid into the scheme at the right time;
  Confirmed via audit and accounts

- Assets are appropriately safeguarded;
  Confirmed via Pension Committee monitoring

- Payments out of the scheme are legitimate and timely;
  Confirmed via audits and accounts

- The Fund is complying with any legal requirements on scheme funding which apply to the LGPS;
  Regular actuarial reviews take place and all regulation changes implemented.
- The Administering Authority is properly considering the investment policy and investing in accordance with it;
  Confirmed via work of Pensions Committee

- Contributions in respect of money purchase AVCs are correctly allocated and invested;
  Confirmed via audit and accounts

In relation to promoting good administration:

- Schemes are administered properly and appropriate records maintained;
  Confirmed via audit and triennial valuation

- Members receive accurate, clear and impartial information without delay.
  Confirmed via Pensions Committee workplan and attendees.

3.4 In addition:

a) A note has been included in the annual report provided to scheme members along with where to raise concerns.

b) Monitoring reports from Managers include active confirmations they do not believe there is anything to report.

c) Procedures are in place for staff within the Borough dealing with the pension fund (this would include Finance, Accounting, Payroll and HR staff as well as Pension Administration staff) covering what they should do if they become aware of a possible breach and also (in very broad terms) whether there are any areas of pensions law etc. they would be expected to know about in their particular role.

d) All Fund employers have been notified of the whistleblowing requirements.

e) There is a named officer to maintain record of all breaches, assessments and actions taken – the Group Director.

f) Staff are reminded of the procedures

There have been no reported breaches.

3.5 Should a breach occur the named officer will write to all Pensions Committee Members setting out action taken and do a full report at the next available Committee.

IMPLICATIONS AND RISKS

Financial Implications and risks:

There are no implications arising directly as the work will be managed within existing resources by, if necessary, re-prioritising work. There are, however, possible financial penalties on non compliance, hence the need to have procedures in place.

Legal Implications and risks:

In determining whether the legal requirements of the Pensions Act have been met, a court or tribunal may take into account any relevant Codes of Practice. Section 70 of the Pensions Act introduces specific requirements for whistleblowing on the persons specified in paragraph 2(b) above where the person has reasonable cause to believe that a duty which is relevant to the administration of the scheme in question and which is imposed by law has not been or is not being complied with and the failure is likely to be of material significance to the pensions Regulator. Failure to notify can result in a penalty of £5,000 (max) being imposed on an individual and £50,000 on a corporation.

It is therefore necessary for the Council to have in place certain procedures which draw this to the attention of those persons covered by the legislation and enable any report to be considered and, where appropriate, brought before the Pensions Regulator.

Human Resources Implications and risks:

The Council has a whistle blowing/confidential reporting policy which this procedure will complement. There is a need for staff to be informed of the requirements and what they should do if they become aware of a possible breach. The actions proposed should ensure that this is the case. The principles of whistle blowing will be adhered to in relation to anonymity.

Equalities implications and risks:

There are no equalities implications to this report

BACKGROUND PAPERS

Pensions Regulator Code of Practice