



## PENSIONS COMMITTEE

24 November 2015

Report

**Subject Heading:**

**WHISTLEBLOWING REQUIREMENTS  
OF THE PENSIONS ACT**

**CMT Lead:**

**Andrew Blake Herbert**

**Report Author and contact details:**

*Debbie Ford*  
*Pension Fund Accountant*  
*01708432569*  
[Debbie.ford@onesource.co.uk](mailto:Debbie.ford@onesource.co.uk)  
Pensions Act 2004

**Policy context:**

Pensions Act 2004

**Financial summary:**

**None**

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

Havering will be clean and its environment will be cared for  
People will be safe, in their homes and in the community  
Residents will be proud to live in Havering

### **SUMMARY**

On the 6 April 2005 the whistle blowing requirements of the Pensions Act 2004 came into force. 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

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Pensions Regulator issued a Code of Practice (CP1) that set out guidance on how to comply.

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, and then evaluate and if appropriate report to the Regulator. These were put in place during 2005 and part of this procedure was to undertake an annual review. This represents the annual review for the year up to **30 September 2015**.

Since the requirement came into force on the 5 April 2005, no possible breaches have been reported to the Deputy Chief Executive Communities and Resources.

### **Consequently no reports have been made to the Regulator**

#### **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. 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'.
2. The Act was updated in 2015 to include changes required under the Public Services Pensions Act 2013 in relation to the establishment of a pension board and states that the requirement to report now applies to:
  - a) a trustee or manager of an occupational pension scheme;
  - b) *a member of the pension board of a public service pension scheme;(new)*
  - c) a person who is otherwise involved in the administration of an occupational pension scheme;
  - d) a professional adviser in relation to such a scheme;
  - e) a person who is otherwise involved in advising the trustees or managers of an occupational pension scheme in relation to the scheme.

3. The Pensions Regulator issued a code of practice (CP1) that set out guidance on how to comply with the requirement to report breaches of the law.
4. The Pensions Regulator's objectives are to protect the benefits of pension scheme members and to promote the good administration of work-based pension schemes.
5. **The Pensions Regulator 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. The Pensions Regulator does not normally regard a breach as materially significant where the trustees or managers (or their advisers and service providers) take prompt and effective action to investigate and correct the breach and its causes, and, where appropriate, to notify any members whose benefits have been affected.

**b) Likely to be of material significance to the Pensions Regulator'**

The legal requirement is that breaches likely to be of material significance to the Pensions Regulator in carrying out any of its functions must be reported.

What makes the breach of material significance depends on:

- The cause of the breach
- The effect of the breach
- The reaction to the breach
- The wider implications of the breach

When reaching a decision whether to report, the reporter should consider these points together.

**c) The reporting arrangements are that:**

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

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- 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.

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

### **6. Actions to ensure compliance / reporting**

a) The named officer for reporting issues to within Haverling is the Deputy Chief Executive Communities and Resources. 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;

b) The Deputy Chief Executive Communities and Resources 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.

c) The Deputy Chief Executive Communities and Resources 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

d) 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.

e) *In relation to protecting members' benefits:*

- Substantially the right money is paid into the scheme at the right time;

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*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 and adoption of an investment strategy*
- Contributions in respect of money purchase AVCs are correctly allocated and invested;  
*Confirmed via audit and accounts*

f) *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.*

g) *In addition:*

- A note has been included in the annual report provided to scheme members along with where to raise concerns.
- Fund Managers are requested to disclose any reportable governance issues as part of the Fund's monitoring process.
- 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.
- All Fund employers have been notified of the whistleblowing requirements.

- There is a named officer to maintain record of all breaches, assessments and actions taken – the Deputy Chief Executive Communities and Resources.
  - Staff are reminded of the procedures
7. 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.
8. **There have been no reported breaches.**

## **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 notice 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:**

This report sets out the Whistle blowing requirements of the Pensions Act and the report highlights that there have been no identified breaches. This means that there are not any direct equality implications.

However, there could be future cases related to anyone connected with the running of the pension scheme where there is a dimension of discrimination or victimisation based upon protected characteristics. In these cases, reference should be made to the Council's wider Whistle Blowing and Confidential Reporting Policy in order to comply with the Equality Act 2010.

**BACKGROUND PAPERS**

Background Papers List

Pensions Regulator Code of Practice 01