Havering
LONDON BOROUGH

PENSIONS COMMITTEE **21 November 2017**

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

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]
Connections making Havering	[X]

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 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 2017**.

Since the last review report that was presented to the Committee on 22 November 2016, a non-compliance to Regulations was reported to the Chief Executive Officer and Section 151 officer and subsequently reported to the Pensions Regulator. **Paragraph 8 outlines the reported non- compliance.**

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.

- 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.

Havering 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 Havering is currently the Interim Statutory Section 151 Officer. Should she be notified of a breach she 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 Interim Statutory Section 151 Officer 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 Interim Statutory Section 151 Officer 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;
  Confirmed via external audit of accounts

- Assets are appropriately safeguarded;
  Confirmed via external audit of the accounts and Pension Committee monitoring

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

- The Fund is complying with any legal requirements on scheme funding which apply to the LGPS;
  The Fund's Funding Strategy Statement is produced in conjunction the Fund's Actuary and any regulation changes are reviewed and implemented where required.

- The Administering Authority is properly considering the investment policy and investing in accordance with it;
  Confirmed via work of Pensions Committee and the adoption of a Statutory Statement of Investment Principles.

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

f) In relation to promoting good administration:

- Schemes are administered properly and appropriate records maintained;
  Confirmed via external audit of the accounts and triennial valuation data verifications

- Members receive accurate, clear and impartial information without delay.
  Confirmed via methods as set out in the Fund's Communication Strategy.

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 Interim Statutory Section 151 Officer.

- 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. **Havering, along with a number of other funds, did not manage to deliver the annual benefit statements to deferred members by the statutory deadline of 31 August in 2016. The failure to meet this deadline was due to a lack of resource at the time. The statements were later distributed by the 18 October 2016. This was non- compliant with the *Local Government Regulations 2013 - Regulation 89 (2) - the statement must be issued no later than five months after the end of the Scheme year to which it relates.***

9. **Non-compliance was reported to The Pensions Regulator (TPR) on the 14 November 2016 (too late to report this under last year's report) and was informed of future processes to mitigate the risk of not achieving this going forward.**

10. **No further action/correspondence has been received from the TPR.**

11. **A robust plan was put in place to mitigate risk of not meeting the deadline going forward which included an annual planner to manage resources during busy periods and the introduction of member self-service. The deadlines for 2017 were met.**

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. The TPR has not issued any financial penalties as a result of the reported non-compliance outlined in Paragraph 8.

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.

There is no indication of any breach and therefore there appears to be no requirement to report any matters to 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
TPR letter dated 14 November 2016