

## **PENSIONS COMMITTEE**

**12 November 2019**

**Subject Heading:**

**WHISTLEBLOWING REQUIREMENTS  
OF THE PENSIONS ACT**

**SLT Lead:**

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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 2019**.

No possible breaches have been reported to the named officer for reporting issues to within Havering which is the Chief Operating Office/Statutory Section 151 Officer. 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;
  - 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 Pensions Committee, agreed the following:

6. Actions to ensure compliance / reporting

a) The named officer for reporting issues to within Havering is currently the Chief Operating Officer/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 Chief Operating Officer/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 Chief Operating Officer/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 the work of Pensions Committee and the adoption of a Statutory Investment Strategy Statement.*
- 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 the 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.
- The London CIV is regulated by the Financial Conduct Authority (FCA) and, in line with the requirements of the FCA has in place a range of policies and procedures to ensure good governance, in line with legislative and regulatory requirements. These include a whistleblowing policy. Regulatory oversight includes requirements to report to the Board and the FCA, and an oversight function exercised by the Depository.

- 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 are aware of the whistleblowing requirements and is accessible via the pension's website: [yourpension.org.uk](http://yourpension.org.uk) [Havering-Fund-Employers](http://yourpension.org.uk).
  - There is a named officer to maintain record of all breaches, assessments and actions taken – the Chief Operating Officers/Statutory Section 151 Officer.
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.

## 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 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. Existing and new Finance, Accounting, Payroll, HR and Pension Administration staff should be briefed on the procedure so that they are fully aware of their responsibilities (if they become aware of a possible breach) and how it complements the corporate policy. 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:**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- i. the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ii. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- iii. foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment/identity.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants

Note here the equalities and social implications of, and risks relating to, the proposed decision.

An Equalities Assessment (EA) will normally be required. Where the EA suggests that there is a significant impact upon ANY of the "protected characteristics", the EA must be an appendix to the report. In all other cases, the EA must be treated as a background paper.

An EIA is not considered necessary regarding this matter as the protected groups are not directly or indirectly affected

**BACKGROUND PAPERS**

**Background Papers List**

None