



**Havering**  
LONDON BOROUGH

## **PENSIONS COMMITTEE**

**Subject Heading:**

Introduction of the Policy for Reporting Breaches of the Law

**SLT Lead:**

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**Policy context:**

The Pensions Regulator General Code of Practice and 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**

Following the introduction of the Pensions Regulators (tPR) new General (Single) Code of Practice for Occupational Pension Schemes, the London Borough of Havering Pension Fund (the Fund) is required to implement a policy for reporting breaches of the law. The new policy will become effective from 1 April 2025 and is attached as Appendix A to this report.

In 2005, the Fund introduced a whistleblowing policy and whilst the intent remains the same, the policy for reporting breaches of the law will replace that document to ensure compliance with the new code.

The policy ensures clear direction for the identification, recording and reporting of a breach of the law.

This report also presents the annual review for the year to 31 March 2024 and confirms no material breaches of the law have been reported and consequently no reports to tPR have been made.

## **RECOMMENDATIONS**

It is recommended that Committee:

- approve the policy for reporting breaches of the law
- note there have been no reportable breaches for the 12 month period to March 2024

## **REPORT DETAIL**

1. Since the introduction of the whistleblowing requirements of the Pensions Act 2004, the Fund has complied with the Havering whistleblowing policy. In March 2024 the Pensions Regulator's General (Single) Code of Practice (the code) for occupational pension schemes came into effect and a new policy for reporting breaches of the law is now required to ensure compliance with the code.
2. The policy will be effective from 1 April 2025 and ensures clear direction on the types of breach, how to identify them and the recording, monitoring and reporting of breaches. It also covers the role of the responsible officer, named

as the Strategic Director of Resources) who will oversee the management and execution of the breaches policy.

3. Guidance within the code will be used to determine any breaches materiality and whether it should be reported to tPR. The code defines a material breach as an occurrence where:
  - A significant proportion of fund membership is affected
  - There is a significant effect on the benefits being paid
  - There is a pattern of recurrence
  - Knowledge and understanding is insufficient resulting in the scheme not being properly governed or administered and/or leading to a breach of other legal requirements
  - Unmanaged conflicts of interest lead to prejudice, ineffective governance or administration
  - The scheme is not run in line with its own governance documents and legal requirements
  - Risk is not properly managed and/or money is not paid to or by the scheme at the right time
  - Accurate information is not provided to fund members to aid effective decision making
  - Records are not accurately maintained resulting in incorrect benefit payment
  - Governing bodies or anyone associated with the scheme misappropriate fund assets
4. The final decision regarding a breaches materiality will be made by the responsible officer after consultation with parties deemed to be appropriate, for example legal services, pensions committee or professional advisers.
5. All identified breaches, however minor, will be recorded in a log maintained by the Pensions Projects and Contracts Manager and will be reported to the Local Pensions Board and Pensions Committee on an annual basis.
6. The Local Pensions Board have reviewed the draft policy.
7. During the period 1 April 2023 to 31 March 2024, 12 minor administration breaches were noted. These were not assessed as materially significant and no report to the Pensions Regulator was made.

## **IMPLICATIONS AND RISKS**

### **Financial Implications and risks:**

There are possible financial penalties on non-compliance with the new General Code of Practice hence the need to have the new policy in place.

**Legal Implications and risks:**

Section 70 of the Pensions Act 2004 sets out specific requirements for reporting breaches of the law where the responsible 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.

The duty would encompass reporting by whistle blowers. The Employment Rights Act 1965 provides protection for employees making a whistleblowing report to tPR.

If the responsible body commits a breach of the law tPR would normally issue a statutory notice setting out the breach but if that is not complied with tPR can issue penalty notices for failure to comply with a statutory notice, or to address particular kinds of breach.

-a fixed penalty notice. The fine is fixed at £400 and must be paid within the period set out in the penalty notice.

- escalating penalty notice where a fixed penalty notice is not paid. The fine will be a daily rate of £50 to £10,000, depending on the number of staff. The fine will continue to grow at the daily rate until compliance with the statutory notice, or until the tPR stops it.

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.

The proposed policy appears to cover all the relevant legal issues and requirements

**Human Resources Implications and risks:**

The Council has a whistle blowing/confidential reporting policy that this policy 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;

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- 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

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