

WIRRAL COUNCIL

PENSION COMMITTEE

16 NOVEMBER 2015

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| SUBJECT: | REPORTING BREACHES OF THE LAW TO THE PENSION REGULATOR |
| WARD/S AFFECTED: | ALL |
| REPORT OF: | STRATEGIC DIRECTOR OF TRANSFORMATION AND RESOURCES |
| RESPONSIBLE PORTFOLIO HOLDER: | |
| KEY DECISION? | NO |

1.0 EXECUTIVE SUMMARY

- 1.1 This report provides Members with an overview of the enhanced role of the Pensions Regulator and the requirement to report breaches of pension law as defined within section 13 (7) and 70 (2) a of the Pension Act 2004 to the Pension Regulator.
- 1.2 In April 2015, the Regulator published its Code of Practice Number 14 (the Code) on the governance and administration of public service pension schemes to assist schemes with their administration and governance responsibilities and to establish a procedure in assessing breaches of material significance to the regulator.
- 1.3 Merseyside Pension Fund's proposed Breaches Policy and operational procedure for identifying breaches under both the jurisdiction of the Pension Regulator, and any non compliance under the Local Government Pension Regulations, is attached as an appendix to the report. A decision tree based on the traffic light system of Red, Amber and Green is included within the policy to assess whether the breach is materially significant and the process for reporting the breach to the Regulator.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 Under the Pension Act 2004, Wirral Council as administering authority of Merseyside Pension Fund, are under a legal obligation to consider making a report to the Regulator, if they become aware that there has been a breach of the legal requirements, relating to the administration and management of Merseyside Pension Fund. Failure to report a breach when required to do so is a civil offence which can result in a fine on the persons who fail to report.

2.2 The following persons are required to report breaches of the law to the Regulator where they have reasonable cause to believe that a legal duty, which is relevant to the administration of the LGPS has not been, or is not being, complied with and the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions:

- the scheme manager (Wirral Council as the administering authority)
- all members of the Pensions Committee
- all members of the Local Pension Board
- all officers involved in the administration of the Fund
- officers of employers participating in the Fund
- professional advisors including auditors, actuaries, legal advisers and Fund managers; and
- any person who is otherwise involved in advising managers of MPF in relation to the LGPS.

2.3 To assist the Regulator's code states that a procedure should be established to ensure that those with a responsibility to make reports are able to meet their legal obligations.

Procedure for reporting procedures of the law to the Regulator

2.4 The Code sets out practical guidance on the procedures to follow in formulating a policy to enable people to raise concerns and facilitate the objective consideration of those matters within an appropriate timescale.

2.5 The Code recommends that the procedures should include the following features:

- a process for obtaining clarification of the law around the suspected breach where needed
- a process for clarifying the facts around the suspected breach where they are not known
- a process for consideration of the material significance of the breach by taking into account its cause, effect, the reaction to it, and its wider implications, including (where appropriate) dialogue with the scheme manager or pension board
- a clear process for referral to the appropriate level of seniority at which decisions can be made on whether to report to the Regulator

- a system to record breaches even if they are not reported to the Regulator (the record of past breaches may be relevant in deciding whether to report future breaches, for example it may reveal a systemic issue); and
 - a process for identifying promptly any breaches that are so serious they must always be reported.
- 2.6 The Code requires that a material breach should be reported to the Regulator as soon as is reasonably practicable but no later than one month after becoming aware of the breach or likely breach. Where a breach is so significant that the Regulator may have to intervene urgently (e.g. in the case of serious fraud) then it should be brought to the attention of the Regulator immediately by way of a telephone call.
- 2.7 In order to comply with the requirements of the breaches policy, the Fund needs to appoint a senior officer to be responsible for the management and execution of the policy. This person will be responsible for the oversight of recording and reporting breaches (and likely breaches).
- 2.8 The responsible officer needs to have an objective view of the potential breaches and it is therefore suggested that this should be an officer outside of the pension fund. The Monitoring Officer has been identified as the most suitable candidate and Members are asked to note and approve this appointment.
- 2.9 Where a breach or potential breach is identified officers in consultation with the Monitoring Officer will undertake the necessary steps to determine whether a breach or likely breach should, or should not, be reported to the Regulator.
- 2.10 Given the relatively short deadline of one month to report breaches to the Regulator, and recognising that officers will only be able to present the breaches log to the Committee and Local Pension Board at scheduled meetings, it is suggested that an Electronic Decision Notice (EDN) process be adopted.
- 2.11 As the role of the Local Pension Board is to ensure the efficient and effective governance and administration of the LGPS it is further proposed that the EDN's be sent to the Board and that they approve the decision of whether or not to report a specific breach (or likely breach) to the Regulator.
- 2.12 The breaches log itself will be presented both to the Committee and the Pension Board on a six monthly basis.

All breaches of the law will be recorded including those that are not reported to the Regulator together with any incidence of non compliance under the LGPS regulations which are not specifically under the remit of the Pension Regulator

- 2.13 Once the procedure is approved, all persons required to report breaches of the law will be informed of their legal obligations. All officers involved in the administration of the Fund have undertaken the e-learning program “Reporting Breaches of the Law” on the Regulator’s website.

3.0 RELEVANT RISKS

- 3.1 The code outlines the importance of identifying, managing and reporting breaches as failure to report without a reasonable excuse is a civil offence which can result in civil penalties.

- 3.2 Members of the Pensions Committee and the Local Pension Board will be informed of all breaches and the actions taken for each breach as part of the Pension Fund review of the Risk Register

4.0 OTHER OPTIONS CONSIDERED

- 4.1 Not relevant for this report

5.0 CONSULTATION

- 5.1 Not relevant for this report

6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

- 6.1 None associated with the subject matter.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 7.1 There are none arising from this report

8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 8.1 All persons required to report breaches of the law must be trained to ensure awareness of the policy for evaluating and reporting breaches under the Fund’s procedure and will be encouraged to test their knowledge and understanding of their legal obligations by completing the e-learning program “Reporting Breaches of the Law” on the Regulator’s website.

9.0 LEGAL IMPLICATIONS

- 9.1 The Code requires that the Fund undertakes robust checks to ensure that a breach has actually occurred before reporting it to the Regulator and must not act on the suspicion of a breach having occurred. This may involve obtaining legal advice to confirm that a breach has actually occurred.

10.0 EQUALITIES IMPLICATIONS

- 10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No, because Department of Communities and Local Government undertake equality impact assessments with regard to the statutory duties under the LGPS.

11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

11.1 There are none arising from this report

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

12.1 There are none arising from this report

13.0 RECOMMENDATION

13.1 Members are asked to:

- Note and adopt the breaches policy
- Note and approve the appointment of the responsible officer
- Note and approve that an EDN process be adopted to obtain agreement from Board Members when a breach should or should not be reported to the Regulator

14.0 REASON/S FOR RECOMMENDATION/S

14.1 To ensure compliance with the statutory duties placed on Merseyside Pension Fund under relevant Pension Law and the Code of Practice Number 14 which relates to the governance and administration of public service pension schemes.

**REPORT
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APPENDIX

Merseyside Pension Fund Breaches Policy 2015

| Briefing Note | Date |
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