

Committee:	Date:
Local Government Pensions Board	28 February 2018
Police Pensions Board (Delegated Authority)	
Subject: Reporting Breaches of the Law – Proposed Policy	Public
Report of: The Chamberlain and the Comptroller & City Solicitor	For Decision
Report author: Kate Limna (Chamberlain's) and Richard Jeffrey (Comptroller & City Solicitor)	

Summary

The Pensions Regulator (the Regulator) acquired authority over public sector pension schemes under provisions in the Public Service Pensions Act 2013. The Regulator issued a Code of Practice in April 2015 titled "Governance and Administration of Public Service Pension Schemes."

It is a statutory Code, which means that a Court or Tribunal must take any relevant provisions into account in determining any legal proceedings.

Part of the Code deals with the obligations on scheme managers, members of Pensions Boards, officers and others to report breaches of the law to the Pensions Regulator. The Code sets out the steps that should be taken in the event of a suspected breach, including establishing internal procedures to investigate the suspected breach.

The Corporation of London engaged Barnett Waddingham, the external actuary, to draft an appropriate policy and procedures document to apply to both the Corporation of London's Local Government Pension scheme and the City of London Police Pension scheme. The document is attached at Appendix 1.

Recommendations

Local Government Pensions Board:

Members are asked to approve the procedures set out in the attached "Reporting Breaches of the Law – City of London Policy & Procedure."

Police Pensions Board:

The Town Clerk in consultation with the Chairman and Deputy Chairman of the Police Pension Board is asked to approve the procedures set out in the attached "Reporting Breaches of the Law – City of London Policy & Procedure".

Main Report

Background

1. The Pensions Regulator has jurisdiction over public sector pension schemes, including local authority and police schemes. In April 2015 the Regulator issued Code of Practice no 14, titled "Governance and Administration of Public Service Pension Schemes."
2. The Code includes provisions relating to the obligations on scheme managers, members of Pensions Boards, officers, professional advisers and others to report breaches of the law to the Pensions Regulator. The Code sets out the broad steps that should be taken in the event of a suspected breach, including establishing internal procedures to investigate the suspected breach, and identifying individuals with specific responsibilities.
3. These provisions are not mandatory legal requirements, but the Code is a statutory Code with the effect that any court or tribunal must have regard to the Code, where relevant, in determining any legal dispute; for example, if the Regulator takes legal action against a scheme manager for failing to report a breach of the law.

Current Position

4. The Corporation of London's external actuary, Barnett Waddingham, was requested to draft a policy and procedure, to apply to the Corporation's dual role as scheme manager of the local authority pension scheme and the police pension scheme. The draft policy and procedure, which is recommended to be adopted by both Boards, is attached in Appendix 1.
5. At the meeting of the Police Pensions Board on 9 January 2018 there was a discussion concerning reporting breaches of the law, and it was considered by the Members of that Board that there should be a 30-day deadline from the discovery of the breach to the reporting to the Regulator, if appropriate. Board members should be notified of the circumstances by email unless there is a convenient Board meeting within that period.
6. The proposed policy and procedure adopts this course of action, except in cases of seriousness where the Regulator requires a faster reporting, or if the breach constitutes a crime and disclosure of actions being taken needs to be restricted. Members will also note that it is a requirement of the Code that the Breaches of the Law register is updated immediately at various points in the procedure, and the register is reported to every meeting of the Board.

Major aspects of the proposed policy and procedure

7. The important aspects that Members will wish to note are:
 - (1) There is a wide range of people who are defined as "reporters" and subject to the reporting requirement. They include the scheme managers, the Members of the Pension Boards, officers involved in scheme administration, and anyone who advises the scheme managers, including professional advisers.
 - (2) The document defines the identity of the officer with day-to-day responsibility for managing the process (the Corporate Treasurer), and defines the Deputy Chamberlain as the person who will make the final decision on reporting to the Regulator. At the same time, the Comptroller and City Solicitor as Monitoring

Officer is notified. The final version of the document will also identify those officers who will act in the absence of the Corporate Treasurer or Deputy Chamberlain.

- (3) The policy provides a method for assessing and considering suspected breaches, providing guidance as to the relevant considerations to be taken into account. Once the investigation is complete the case is referred to the Deputy Chamberlain and to the Comptroller and City Solicitor.
- (4) The Deputy Chamberlain assesses the material significance of the breach and determines whether it is Red (always reportable), Amber (reportable depending on the circumstances) or Green (not reportable). Guidance and examples are given in the policy and in the Code of Practice.
- (5) If at the outset, or at any time through the investigation, it is considered that the breach is Red it must be reported immediately.
- (6) A Breaches of the Law register has to be maintained, and updated at every stage of the investigation. The register will be a joint Corporation of London scheme and police pension scheme register, and it is required to be presented to each meeting of each Board.
- (7) If a suspected breach involves a criminal offence, then the breach will be red and must be reported immediately. Care should be taken not to do anything which might alert the people implicated.

Conclusion

8. The report has been circulated to the Members of the Police Pensions Board and, as this Board does not meet until May, approval to the Breaches Policy has been delegated to the Town Clerk in consultation with the Chairman and Deputy Chairman.

Appendices

Appendix - "Reporting Breaches of the Law – City of London Policy & Procedure."

Background Papers

None

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