

North Yorkshire Fire and Rescue Authority**Pension Board****29 July 2015****Adoption of Breaches Procedure****Report of the Legal Adviser, Monitoring Officer and Secretary to the Authority****1.0 Purpose of Report**

- 1.1 To invite the Board to consider arrangements to meet the duty of Pension Board members to report breaches of law.

2.0 Background**2.1 External Reporting - Breaches of Law**

- 2.1 In accordance with section 70 of the Pensions Act 2004 (“the 2004 Act”), certain individuals must report to the Regulator as soon as reasonably practicable where that individual has reasonable cause to believe that:

- (a) a duty which is relevant to the administration of the Scheme, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with; and
- (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.

- 2.2 This obligation directly applies to each individual who is a member of the Local Pension Board. In addition, it also extends to the Scheme Manager, participating employers in the Scheme, any person who is otherwise involved in the administration of the Scheme, any person who is otherwise involved in advising the Scheme Manager and, in some circumstances, professional advisors of the Scheme Manager.

2.3 Implementing adequate arrangements

- 2.3.1 The Local Pension Board should have effective arrangements in place to meet its duty to report breaches of law. The Regulator’s (draft) Code of Practice no 14 entitled “Governance and administration of public service pension schemes” (“the Code of Practice”), paragraphs 234 to 235, identify the procedures that should be established and operated to ensure that members of the Local Pension Board are able to meet their legal obligations.

2.4 Judging whether a breach must be reported

- 2.4.1 The decision whether to report requires two key judgments:
- (a) Is there reasonable cause to believe there has been a breach of law?
 - (b) If so, is the breach likely to be of material significance to the Regulator?

2.4.2 Paragraphs 237 to 251 of the Code of Practice provide guidance as to what is meant by 'reasonable cause' and how to judge whether a breach is likely to be of 'material significance' to the Regulator.

2.5 Submitting a report to the Regulator

2.5.1 Reports must be submitted in writing. Paragraphs 251 to 259 of the Code of Practice specifies how and the format in which a report should be submitted.

2.5.2 The requirement to report applies to all those subject to the reporting duty who become aware of a breach that is likely to be of material significance to the Regulator; it is not automatically discharged by another party reporting the breach. However, in practice, where the Local Pension Board considers there has been a breach it may be appropriate to inform and review this with the Scheme Manager and (where appropriate) the Manager's advisor(s) so that a collective report can be submitted. An exception to this arrangement will apply in cases where there is a suspicion or dishonesty or other serious wrongdoing by the Scheme Manager and/or the Manager's advisor(s).

2.6 Non-compliance

2.6.1 Failure to comply with the obligation imposed to report breaches of law without 'reasonable excuse' is a civil offence under section 10 of the Pensions Act 1995. An individual member of a Local Pension Board could be fined up to £5,000. Therefore it is important to ensure that members of the Pension Board receive the appropriate training and have access to the appropriate professional advice and to officers.

2.7 External Reporting - Annual Report

2.7.1 It would be good practice for the Local Pension Board to consider publishing an annual report of the Local Pension Board's activities for that year for circulation to Scheme employers and members.

2.7.2 The Local Pension Board should consider with the Scheme Manager whether it would be appropriate to detail these activities as part of any annual report the Scheme Manager may issue or to publish its own separate report.

2.8 External Reporting - The Regulator

2.8.1 If the Regulator has reasonable grounds to suspect or believe that a member of a Local Pension Board:

- (a) has misappropriated any assets of the Scheme or is likely to do so; or
- (b) has a conflict of interest in relation to the investment of assets of the Scheme,

the Regulator must report the matter to the Scheme Manager. However, given that a Board member should not have access to Scheme assets or be involved in the investment of Scheme assets (especially given that the Scheme is unfunded) then the exercise of this duty should not be applicable to the Scheme.

3.0 Recommendation

3.1 The Pension Board is asked to consider arrangements for members to meet the duty to report breaches of law.

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Background Documents: Firefighters' Pension Scheme - Guidance on the creation and
operation of Local Pension Boards in England

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