

Reporting Breaches of the Law to the Pensions Regulator Policy 2022

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1. Introduction

- 1.1 This is the Reporting Breaches of the Law to the Pension Regulator Policy of Northamptonshire Pension Fund managed by Northamptonshire County Council (the Administering Authority).
- 1.2 In April 2015 the Pensions Regulator (the Regulator) published its Code of Practice no 14 (the Code) Governance and administration of public service pension schemes. The code refers both to statutory duty as well as advisory and practitioners have a duty to follow the code in reporting breaches of the law.
- 1.3 There are many and various laws relating to the Local Government Pension Scheme, with many and various people having a statutory duty to report material breaches of the law to the Regulator. To assist, the 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. This document is that procedure, which relates to all of the Fund's areas of operation.

2. Policy Objectives

- 2.1 The Funds' objectives related to this policy are as follows:
- To have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance.
 - To manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers.
 - To ensure the relevant stakeholders responsible for managing, governing and administering the Fund, understand their roles and responsibilities and have appropriate skills and knowledge to ensure those attributes are maintained in a changing environment.
 - To continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate.

3. Purpose of the Policy

- 3.1 The purpose of the policy is to –
- Ensure individuals have the correct understanding and necessary skills to be able to identify and report breaches as they arise
 - Ensure that stakeholders of the Fund are given appropriate information in order to understand the consequences of a breach and
 - Ensure adequate procedures are in place to fully comply with the Code of Practice.

4. Effective date

- 4.1 This policy was first approved by the Pension Committee on 23 October 2015 and has been subject to the following reviews:

| Date of review | Effective Date | Type of review |
|-----------------|-----------------|----------------|
| 12 October 2018 | 13 October 2018 | Full review |

5. Review

5.1 This Policy on Reporting Breaches of the law to the Pensions Regulator is expected to be appropriate for the long-term but it will be reviewed every 2 years to ensure it remains accurate and relevant.

6. Scope

6.1 The policy applies to:

- officers of the Fund
- members of the Pension Committee
- members of the Pension Board
- employers of the Fund
- service providers
- relevant stakeholders and
- professional advisors.

7. Legal Requirements

7.1 Individuals (as identified in paragraph 6) 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 scheme 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.

8. Reasonable Cause

8.1 Having 'reasonable cause' to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

8.2 Checks need to be made in order to ensure a breach has occurred and that the report is not made on suspicion alone. If an individual does not feel they can be 100% certain of a breach it would be prudent to discuss the case with a senior colleague or advisor to the Fund, however if the suspicion is around theft, fraud or other serious offences where discussions may alert the those implicated or impede the actions of the police or a regulatory authority, the reporter should go to the Regulator directly and at the earliest opportunity.

8.3 In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Regulator may require before taking legal action particularly if it is a significantly material breach. A delay in reporting may exacerbate or increase the risk of the breach.

8.4 If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.

9. Material Significance

9.1 In deciding whether a breach is likely to be of material significance to the Regulator, it would be advisable for the reporter to consider the:

cause of the breach - e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law

effect of the breach - does the nature of the breach lead to an increased likelihood of further material breaches. Is it likely to cause, for example; ineffective internal controls, lack of knowledge and understanding, inaccurate records, potential for further breaches occurring

reaction to the breach - e.g. taking prompt and effective action to resolve a breach, notifying scheme members where appropriate and

the wider implications of the breach - e.g. where a breach has occurred due to lack of knowledge or poor systems and processes making it more likely that other breaches will emerge in the future.

9.2 When deciding whether to report, those responsible should consider these points together. Reporters should take into account expert or professional advice, where appropriate, when deciding whether the breach is likely to be of material significance to the Regulator.

9.3 When deciding whether a breach is of material significance, those responsible should consider other reported and unreported breaches of which they are aware. However, historical information should be considered with care, particularly if changes have been made to address previously identified problems.

9.4 The decision tree provides a “traffic light” system of categorising an identified breach and has been provided by the Regulator in the form of additional guidance:

Green – not caused by dishonesty, poor governance or a deliberate contravention of the law and its effect is not significant and a plan is in place to rectify the situation. In such cases the breach may not be reported to the Regulator but should be recorded in the Pension Services breaches log

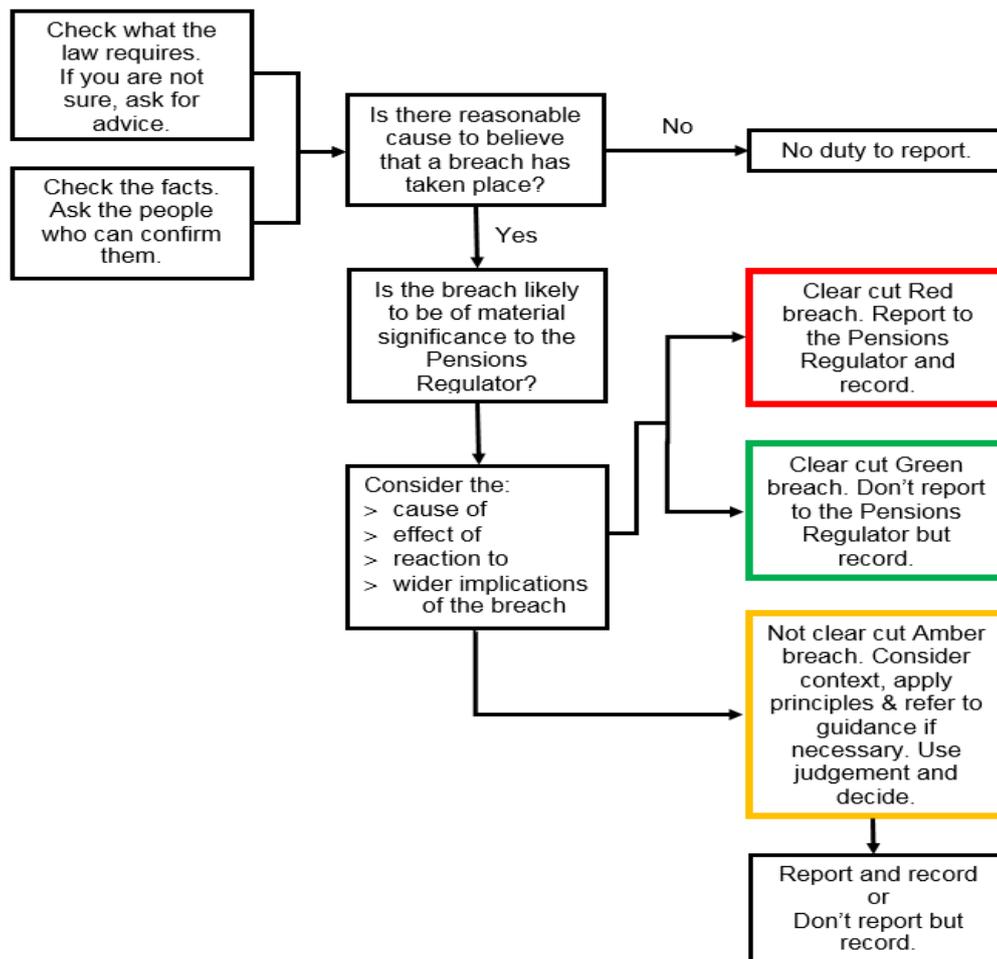
Amber – does not fall easily into either green or red and requires further investigation in order to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. The Head of Pensions will need to decide whether to informally alert the Regulator of the breach or likely breach, formally reporting the breach if it is subsequently decided to categorise the breach as red

Red - caused by dishonesty, poor governance or a deliberate contravention of the law and having a significant impact, even where a plan is in place to rectify the situation. The Head of Pensions must ensure all such breaches are reported to the Regulator in all cases

It should be noted that failure to report a significant breach or likely breach is likely, in itself, to be a significant breach.

9.5 Northamptonshire Pension Fund will use the Pension Regulators traffic light framework as a means of identifying whether any breach is to be considered as materially significant and a reportable event.

- 9.6 Once a breach or likely breach has been identified, regardless of whether it needs to be reported to the Regulator, the Governance and Regulations Manager, in consultation with the Head of Pensions must review the circumstances of the breach in order to understand why it occurred, the consequences of the breach and agree the corrective measures required to prevent re-occurrence, including an action plan where necessary.
- 9.7 Significant breaches must also be reported to the Section 151 officer and Chair of the Pension Committee and Local Pension Board, or in the absence of the Chair, the respective Vice Chair, and full details are to be submitted at the next available meeting. A decision tree should be used as a tool for determining whether a breach is significant as below:



- 9.8 Reporters need to take care to consider the effects of the breach, including any other breaches occurring as a result of the initial breach and the effects of those resulting breaches.
- 9.9 Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, the Pensions Regulator will not normally consider this to be materially significant.
- 9.10 A breach is likely to be of concern and material significance to the Pensions Regulator where a breach has been identified and those involved:
- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence
 - are not pursuing corrective action to a proper conclusion and
 - fail to notify affected scheme members where it would have been appropriate to do so.

10. Guidance on reporting a breach to the Pensions Regulator

- 10.1 Before submitting a report responsible officers should obtain clarification of the law around the suspected breach via an appropriate method. A judgement would need to be made on whether the Regulator would regard the breach as being material.
- 10.2 Some matters could be urgent, if for example a fraud is imminent, whilst others will be less so. Non-urgent but material breaches should be reported to the Regulator within 30 working days of them being confirmed, and in the same time breaches that are not material should be recorded.
- 10.3 Some breaches could be so serious that they must always be reported, for example a theft of funds by anyone involved with the administration or management of the Fund. It is difficult to be definitive about what constitutes a breach that must always be reported, as a rule of thumb if a breach may lead to criminal prosecution or a serious loss in public confidence it is deemed that this type of breach that must always be reported.
- 10.4 The preferred methods of reporting for the Northamptonshire Pension Fund are via the Pensions Regulator exchange portal or via email, however, reports can also be submitted by post or by fax.
- 10.5 Any report that is made (which must be in writing and made as soon as reasonably practicable) should be dated and include as a minimum:
- full name of the Fund
 - description of the breach or breaches
 - any relevant dates
 - name of the employer or scheme manager (where known)
 - name, position and contact details of the reporter and
 - role of the reporter in relation to the Fund

Additional information that would assist the Pensions Regulator would include, the reason the breach is thought to be of material significance; the address of the Fund; the pension scheme's registry number; and whether the concern has been reported before.

- 10.6 Reporters should mark urgent reports as such and draw attention to matters they consider particularly serious. They can precede a written report with a telephone call, if appropriate.
- 10.7 Reporters should ensure they receive an acknowledgement for any report they send to the Regulator. Only when they receive an acknowledgement can the reporter be confident that the Regulator has received their report.
- 10.8 The Regulator will acknowledge all reports within five working days of receipt, however it will not generally keep a reporter informed of the steps taken in response to a report of a breach as there are restrictions on the information it can disclose. The reporter should provide further information or reports of further breaches if this may help the Regulator to exercise its functions. The Regulator may make contact to request further information.
- 10.9 Breaches should be reported as soon as reasonably practicable, which will depend on the circumstances. In particular, the time taken should reflect the seriousness of the suspected breach.

10.10 In cases of immediate risk to the Fund, for instance, where there is any indication of dishonesty, the Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies. They should only make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently reporters should make these necessary checks. In cases of potential dishonesty the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should use the quickest means possible to alert the Regulator to the breach.

11. Process for reporting and recording material and non-material breaches within Northamptonshire Pension Fund

11.1 The following table details the process for reporting material and non-material breaches –

| Type of Breach | Timescale for reporting | Internal actions | Further actions |
|--------------------------------|--|--|---|
| Urgent and Material | Responsible officer informs Head of Pensions and Governance team, the breach is reported immediately to the Pensions Regulator. | Governance team to keep record of breach and investigate options to prevent further occurrence. The Governance team will also liaise with the Pension Regulator where applicable to come to a satisfactory resolution. | These breaches must also be reported to the Section 151 Officer, Chairs of both the Pension Committee and Local Pension Board, with full details to be submitted at the next available meeting for members. |
| Non urgent and material | Responsible officer informs Head of Pensions and Governance team, the breach is reported within 30 days to the Pensions Regulator. | Governance team to keep record of breach and investigate options to prevent further occurrence. | Report non urgent and material breach at next Pension Committee/Pension Board meeting. |
| Immaterial | Responsible officer informs Head of Pensions and governance team within 30 days. | Governance team to keep record of breach and investigate options to prevent further occurrence. | Report immaterial breach at next Pension Committee/Pension Board meeting. |

12. The Pensions Regulator's response to a report of a breach of the law

The Regulator has discretion over whether to take action and if so what action to take. The decision will depend upon the breach and the circumstances surrounding it. There are a number of measures the Regulator can take, including the following –

- assisting or instructing the Fund to achieve compliance
- providing education or guidance
- imposing fines where appropriate

13. Failure to report

13.1 Failure to comply with the obligation imposed by the requirement to report breaches of the law without 'reasonable excuse' is a civil offence. In order to establish whether a reporter has a reasonable excuse for not reporting as required or for reporting later than expected, the Regulator will look at the following factors –

- the legislation, case law, the code of practice and associated guidance
- the role of the reporter in relation to the scheme
- the training provided to the individual, and the level of knowledge it would be reasonable to expect the individual to have
- the procedures put in place to identify and evaluate breaches and whether the procedures have been adhered to
- the seriousness of the breach
- any reasons for the delay in reporting

13.2 If a civil penalty is being considered, directly affected parties will receive a warning notice identifying the alleged breach and specifying the relevant function. The Regulator in addition may find it appropriate to make a complaint to the Administering Authority.

14. Whistleblowing protection and confidentiality

14.1 The Pensions Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report. The Regulator understands the potential impact of a report on relationships, for example, between an employee and their employer.

14.2 The statutory duty to report does not, however, override legal privilege. This means that oral and written communications between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

14.3 The Regulator will do its best to protect a reporter's identity (if desired) and will not disclose the information except where lawfully required to do so. It will take all reasonable steps to maintain confidentiality, but it cannot give any categorical assurances as the circumstances may mean that disclosure of the reporter's identity becomes unavoidable in law. This includes circumstances where the regulator is ordered by a court to disclose it.

14.4 The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the regulator. Consequently, where individuals employed by firms or another organisation having a statutory duty to report disagree with a decision not to report to the regulator, they may have protection under the ERA if they make an individual report in

good faith. The Regulator expects such individual reports to be rare and confined to the most serious cases.

In all cases, the Regulator expects reporters to act conscientiously and honestly, and to take account of expert or professional advice where appropriate.

15. Training

- 15.1 The Head of Pensions will ensure that all relevant Officers, Pension Committee members and Local Pension Board members receive relevant signposting to this policy and provide appropriate training as required.

16. Contact details

- | | | |
|------|--|--|
| 16.1 | The Pensions Regulator Napier House Trafalgar Place Brighton BN1 4DW 0345 6000707 customersupport@tpr.gov.uk | Mark Whitby Head of Pensions One Angel Square Angel Street NN1 1ED mark.whitby@westnorthants.gov.uk |
|------|--|--|

17. Further guidance

Section 70(1) and 70(2) of the Pensions Act 2004:

www.legislation.gov.uk/ukpga/2004/35/contents

Employment Rights Act 1996:

www.legislation.gov.uk/ukpga/1996/18/contents

Occupational and Personal Pension Schemes (Disclosure of Information)

Regulations 2013 (Disclosure Regulations):

www.legislation.gov.uk/uksi/2013/2734/contents/made

Public Service Pension Schemes Act 2013:

www.legislation.gov.uk/ukpga/2013/25/contents

Local Government Pension Scheme Regulations (various):

<http://www.lgpsregs.org/timelineregs/Default.html>(pre 2014 schemes)

<http://www.lgpsregs.org/index.php/regs-legislation>(2014 scheme)

The Pensions Regulator's Code of Practice:

<http://www.thepensionsregulator.gov.uk/doc-library/codes.aspx>

Appendix 1 - Examples of breaches, but not limited to -

Example 1

An employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. It is contacted by officers from the administering authority, it immediately pays the moneys that are overdue, and it improves its procedures so that in future contributions are paid over on time. In this instance there has been a breach but members have not been adversely affected and the employer has put its house in order regarding future payments. The breach is therefore not material to the Regulator and need not be reported.

Example 2

A large employer is late in submitting its statutory year-end return of pay and contributions in respect of each of its active members and as such it is in breach. Despite repeated reminders it still does not supply its year-end return. Because the administering authority does not have the year-end data it is unable to supply, by 31 August, annual benefit statements to the employer's members. In this instance there has been a breach which *is* relevant to the Regulator, in part because of the employer's failures, in part because of the enforced breach by the administering authority, and also because members are being denied their annual benefits statements.

Example 3

A member of the Pension Committee owns a property; a report is made about a possible investment by the Fund, in the same area in which the member's property is situated. The member supports the investment but does not declare an interest and is later found to have materially benefitted when the Fund's investment proceeds. In this case a material breach has arisen, not because of the conflict of interest, but rather because the conflict was not reported.

Example 4

A pension overpayment is discovered and thus the administering authority has failed to pay the right amounts to the right person at the right time. A breach has therefore occurred. The overpayment is however for a modest amount and the pensioner could not have known that (s) he was being overpaid. The overpayment is therefore waived. In this case there is no need to report the breach as it is not material.

Example 5

Several overpayments are discovered and thus the administering authority has failed to pay the right amounts to the individuals concerned due to a process failure. The administering authority has failed to put a process in place to avoid reoccurrence and the combined amount is significant. In this instance there has been a breach which *is* relevant to the Regulator, in part because of the authority's failure to implement a new/improved process and in part because of the enforced breach by the administering authority.

Appendix 2 - Examples of Scheme Disclosures

Any deadline not achieved under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 is classed as a breach of the law, it is the responsibility of Northamptonshire Pension Fund to assess whether these are likely to be of material significance to the Pensions Regulator.

The table below sets out some of the key disclosure requirements that schemes must satisfy so that they do not breach the disclosure regulations –

| Information | Requirement |
|---|--|
| Provision of basic scheme information to a prospective member | Within one month of the scheme receiving their job holder information. If no such information has been received, within two months of them joining the scheme. |
| Provision of scheme's annual report | Within two months of the request being received. |
| Benefit statements for benefits other than Defined Contribution | Within two months of the request being received. |
| Provision of summary funding statements | Within a reasonable period (normally three months) after the last date on which the scheme is legally required to obtain an actuarial valuation. |
| Provision of information on death of a member | Within two months of the scheme being notified of the death. |
| Rights and options to be provided to early leavers | Within 2 months after being notified by the member or their employer that active membership has ceased. |

Appendix 3 - Other matters that are likely to be of material significance to the Pensions Regulator

The below table demonstrates matters that the Pension Regulator is likely to deem of material significance in regard to Northamptonshire Pension Fund meeting its statutory objectives –

| |
|--|
| Pension Committee and Pension Board members not having the appropriate degree of knowledge and understanding, which may result in the Committee/Board not fulfilling its role, the Fund not being properly governed and administered. |
| Pension Committee and Pension Board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role. |
| Adequate internal controls not being established and operated, which may lead to the Fund not being run in accordance with the Scheme's Regulations and other legal requirements, risks not being properly identified and managed and/or the right money not being paid to or by the Fund at the right time. |
| Accurate information about benefits and Scheme administration not being provided to Scheme members and others, which may result in members not being able to effectively plan or make decisions about their retirement. |
| Appropriate records not being maintained, which may result in member benefits being calculated incorrectly and/or not being paid to the right person at the right time. |
| Anyone involved with the administration or management of the Fund misappropriating any of its assets, or being likely to do so, which may result in assets not being safeguarded. |
| Any other breach which may result in the Fund being poorly governed, managed or administered. |