

West Northamptonshire Council

Pension Committee

12/10/2022

Mark Whitby – Head of Pensions

Report Title	Reporting Breaches of the Law to the Pensions Regulator Policy
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Contributors/Checkers/Approvers

MO	Jennifer Affie on behalf of Catherine Whitehead	22 September 2022
S151	James Smith on behalf of Martin Henry	20 September 2022
Head of Pensions	Mark Whitby	18 August 2022

List of Appendices

Appendix A – Proposed Reporting Breaches of the Law to the Pensions Regulator Policy 2022

Appendix B – Comparison between the 2018 and 2022 Policy

1. Purpose of Report

- 1.1 To present the review of the Northamptonshire Pension Fund’s Reporting Breaches of the Law to the Pensions Regulator Policy to the Pension Committee.

2. Executive Summary

- 2.1 The report contains the 2022 review of the Northamptonshire Pension Fund’s Reporting of Breaches of the Law to the Pensions Regulator Policy. The report provides the legislative background of why the policy is required (5.1) along with details of the proposed changes (5.2).

3. Recommendations

- 3.1 The Pension Committee is asked to approve the revised Reporting Breaches of the Law to the Pensions Regulator Policy as set out below.

4. Report Background

- 4.1 In line with the Pensions Regulator's Code of Practice number 14 (Governance and administration of public service pension schemes); the Fund has put a non-statutory policy in place that sets out the mechanism for reporting breaches of the law to enable it to demonstrate that as set out in the Code the Council has robust policies to include the monitoring and the reporting of any breaches to enable it to comply with the relevant legislation and its statutory duty.
- 4.2 The policy ensures that those with a responsibility to report breaches of the law can meet their legal obligations, by analysing situations effectively to make an informed decision on whether a breach has been made.
- 4.3 The policy was first approved by the Pension Committee in October 2015 following the implementation of the 2014 Code of practice no.14 and was subsequently reviewed and approved in October 2018.
- 4.4 The Pension Regulator's new code of practice was due to come into force in November 2021 but has been postponed until Autumn 2022 so review of this policy was postponed. However, it is felt prudent to review now based on the current code and other necessary changes that are detailed in section 5.2 of this report. A further review will be carried out within 6 months of the new code coming into effect.
- 4.5 The draft revised Policy is located in appendix A and the comparison of changes document is in appendix B.

5. Issues and Choices

5.1 The Pensions Regulator Code of Practice

- 5.1.1 The Code of Practice identifies those individuals responsible for reporting breaches of the relevant law and the associated legal requirements. 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.
- 5.1.2 The policy provides the process to report a breach to the Regulator and details surrounding timescales and urgency of cases.
- 5.1.3 The policy also identifies the need to record breaches that are not of material significance to the Regulator in order that processes can be improved to avoid repeated occurrences.
- 5.1.4 Examples of breaches of material significance and non-material significance are documented in the appendix of the policy, the purpose is to put into context the policy and when it may need to be enforced. Individuals will need to apply the principles of the policy when deciding whether to report a breach.

5.2 Changes to the Policy

- 5.2.1 The below table documents the proposed changes to the policy:

Number/ Section	Proposed change
Whole Policy	General tidying up of – <ul style="list-style-type: none"> • Job titles • Branding • Chairman/woman references • Fund references • Removal of references to LGSS • Contact details updated • Full details in replace of full report when the Committee/Board is to be updated of a breach. A full report may not always be necessary and an update via the Governance and Compliance Report maybe more appropriate.
4.	<u>Effective date</u> A table has been incorporated to clearly show the previous reviews.
6	<u>Scope</u> Service providers added to the list that the policy applies to.
9.4/9.5/9.7	<u>Material significance</u> Clarification on the traffic light framework and decision tree. Administering Authority (AA) reference changed to Head of Pensions as a single point for decision as AA is too vague and could result in no responsibility being taken.
10.4.	<u>Guidance on reporting a breach to the Pensions Regulator</u> Preferred methods of reporting for the Northamptonshire Pension Fund added
12.	<u>The Pensions Regulator’s response to a report of a breach of the law</u> Additional section added to demonstrate potential measures that could be taken by the Regulator.
13.	<u>Failure to report</u> Additional section added to highlight factors the Regulator would consider if a report has not been made or not been made in a timely manner as required.
14.4	<u>Whistleblowing protection and confidentiality</u> Statement added on Regulator expectations for reporters

5.3 Local Pension Board Review

5.3.1 The revised policy was presented to the Board on 30 June 2022 for consideration with no further amendments required.

6 Implications (including financial implications)

6.1 Resources and Financial

6.1.1 Failure to adhere to the policy and to implement effective controls to prevent breaches of the law may result in fines for those charged with responsibility of the Fund.

6.2 Legal

6.2.1 Failure to adhere to the policy and to implement effective controls to prevent breaches of the law may result in fines or other civil penalty for those charged with responsibility of the Fund.

6.3 Risk

6.3.1 The Pension Committee and Pension Board have an obligation to ensure that breaches of the law that are considered to be of a material significance and as such notifiable to the Pensions Regulator are reported accordingly.

6.3.2 The risks associated with Pension Committee and Pension Board members not having the required level of knowledge and understanding surrounding reporting breaches of the law to the Pensions Regulator have been captured in the Fund’s risk register as detailed below.

Risk	Residual risk rating
Information may not be provided to stakeholders as required	Green
Those charged with governance are unable to fulfil their responsibilities effectively	Green
Risk of fraud and error	Green
Failure to administer the scheme in line with regulations and guidance	Green
Failure to understand and monitor risk compliance	Green
Failure to provide relevant information to the Pension Committee/Pension Board to enable informed decision making	Green

6.3.3 Please see the [Northamptonshire Pension Fund Risk Register](#) executive summary

6.4 Communication Implications

6.4.1 All individuals who are involved in the administration of the Fund will be advised of their obligations to report breaches of the law and the associated procedure as detailed in the policy.

6.4.2 The policy will be published on the Pensions Service website.

6.5 Relevant Pension Fund Objectives

6.5.1 The following objectives as per the Business Plan have been considered in this report –

- 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 the 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

6.6 Consultation

6.6.1 Not applicable.