

WARWICKSHIRE  

---

pension fund

Policy for reporting  
breaches of the law to  
The Pensions  
Regulator



## Introduction

In April 2015 the Pensions Regulator (the Regulator) published its Code of Practice no 14 (the Code) on the Governance and administration of public service pension schemes. This is not a statement of law but nonetheless it carries great weight. Some of its contents refer to statutory requirements, whilst others are advisory. A court or tribunal must take into account the Code when determining whether any pensions related legal requirements have been met.

## Legal Requirements

Certain people 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;
- the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.

Those who have an obligation to report ('reporters') for public service pension schemes are:

- scheme managers (meaning, in the case of the Warwickshire Pension Fund (WPF), the Staff and Pensions Committee);
- members of the pension board (meaning, in the case of the WPF, the Local LGPS Pension Board);
- any person who is otherwise involved in the administration of the Fund (and thus members of the Pension Fund Investment Sub-Committee and all of the Fund's officers);
- employers, and any participating employer who becomes aware of a breach should consider their statutory duty to report, regardless of whether the breach relates to, or affects, members who are its employees or those of other employers;
- professional advisers including auditors, actuaries, legal advisers and fund managers; and
- any person who is otherwise involved in advising the managers of the scheme in relation to the scheme (and thus the Fund's three external advisers).

## **Non- compliance under LGPS regulations**

Non-compliance with the LGPS regulations can cover many aspects of the management and administration of the scheme and includes;

- Failure to do anything required under the LGPS Regulations
- Failure to comply with policies and procedures e.g. the Funds statement of investment principles, funding strategy, discretionary policies etc.

## **Requirement to report a breach of the Law**

Breaches of the law which affects pension schemes should be considered for reporting to the Pensions Regulator.

The decision whether to report an identified breach depends on the following;

- If there is reasonable cause to believe there has been a breach of the law
- If so, is the breach likely to be of material significant to the Regulator

## **Reasonable Cause**

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

Reporters should ensure that where a breach is suspected, they carry out checks to establish whether or not a breach has in fact occurred. For example, a member of a funded pension scheme may allege that there has been a misappropriation of scheme assets because they have seen in the annual accounts that the value of the scheme's assets have fallen. However, the real reason for the apparent loss in value of scheme assets may be due to the behavior of the stock market over the period. This would mean that there is not reasonable cause to believe that a breach has occurred.

Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to consult the Pension Services Manager, or Assistant Director Finance , or the Strategy and Commissioning Manager (Treasury, Pension, Audit & Risk) , regarding what has happened.

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.

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 action. A delay in reporting may exacerbate or increase the risk of the breach.

## Determining whether the breach is likely to be of material significance

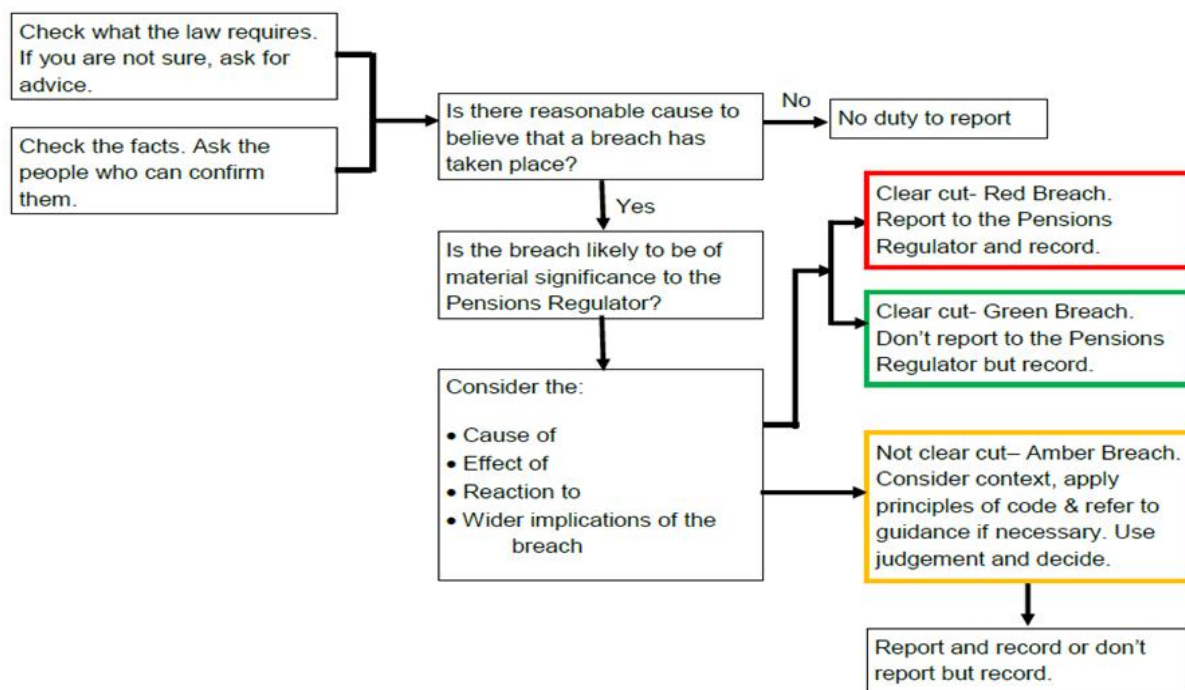
In deciding whether a breach is likely to be of material significance to the Regulator, it would be advisable for the reporter to consider the:

- cause of the breach;
- effect of the breach;
- reaction to the breach; and
- the wider implications of the breach.

The reporter should use the traffic light framework set out by the described in Appendix A to help assess whether the breach is of material significance and to formally support and document their decision. It will be necessary to consider a number of factors:

Cause	e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law.
Effect	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	e.g. taking prompt and effective action to resolve a breach, notifying scheme members where appropriate.
Wider Implications	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.

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. A decision tree is provided below to show the process for deciding whether or not a breach has taken place and whether it is materially significant and therefore requires to be reported.



## Submitting a report to the Regulator

Before you submit a report you should obtain clarification of the law around the suspected breach. If:

- you are a member of the Staff and Pensions Committee, Investment Sub-committee, Local Pension Board or you are an external adviser, please contact the Monitoring Officer;
- you are an actuary, auditor or other external agent, please contact the Pensions Services Manager
- you represent an employer, please contact the Pensions Services Manager
- you are an officer of the Fund and you work in Administration, please contact Strategy and Commissioning Manager (Treasury, Pension, Audit & Risk).

The person you contact will consider in the round whether the Regulator would regard the breach as being material. They will also clarify any facts, if required. If the case is difficult, they will seek advice, as required.

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 (see later).

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, but one test is: might it reasonably lead to a criminal prosecution or a serious loss in public confidence?

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 help the Regulator includes:

- the reason the breach is thought to be of material significance to the Regulator;
- the address of the Fund;
- the pension scheme's registry number (if available); and
- whether the concern has been reported before.

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.

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.

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.

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.

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.

### **Recording breaches that are not reported to the Regulator**

Breaches that are found not to be material to the Regulator must still be recorded. This is so that if similar breaches continue, then they become material. Recording all breaches also highlights where improvements are required, to try and prevent similar breaches.

Breaches that are not being reported should be recorded on the breaches log on the pension fund website. Please contact the Pension Fund Services manager.

### **Whistleblowing protection and confidentiality**

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.

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.

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. The Regulator 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.

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.

### **Warwickshire County Council whistleblowing policy**

The Council has its own whistleblowing policy. The person contacted about the potential breach, will take this into account when assessing the case.

## **Further information**

If you require further information about reporting breaches or this procedure, please contact:

Liz Firmstone

Service Manager – Transformation

**Email:** [lizfirmstone@warwickshire.gov.uk](mailto:lizfirmstone@warwickshire.gov.uk)

**Telephone:** 01926 412458

Neil Buxton

Pension Services Manager

**Email:** [neilbuxton@warwickshire.gov.uk](mailto:neilbuxton@warwickshire.gov.uk)

**Telephone:** 01926 412195

Warwickshire Pension Fund, Shire Hall, Warwick, CV34 4RL

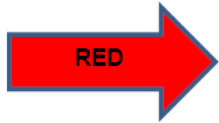
Email: [pensions@warwickshire.gov.uk](mailto:pensions@warwickshire.gov.uk)

Website: [www.warwickshirepensionfund.org.uk](http://www.warwickshirepensionfund.org.uk)



## Breaches Log Appendix A

It is recommended that those responsible for reporting use the traffic light framework when deciding whether to report to The Pensions Regulator. This is illustrated below:



Where the cause, effect, reaction and wider implications of a breach, when considered together, are likely to be of material significance.

These must be reported to The Pensions Regulator.

**Example:** 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 also late in paying AVCs to Standard Life. It is contacted by officers from the administering authority, and it eventually pays the moneys that are overdue, including AVCs to the Standard Life. This has happened before, with there being no evidence that the employer is putting its house in order. In this instance there has been a breach that is relevant to the Regulator, in part because of the employer's repeated failures, and also because those members paying AVCs will typically be adversely affected by the delay in the investing of their AVCs.



Where the cause, effect, reaction and wider implications of a breach, when considered together, may be of material significance. They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right. You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported.

**Example:** An 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.



GREEN

Where the cause, effect, reaction and wider implications of a breach, when considered together, are not likely to be of material significance. These should be recorded but do not need to be reported.

**Example:** 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.

All breaches should be recorded even if the decision is not to report. *Appendix B* shows an example record of recording breaches. A log of breaches recorded are available on our website - <https://www.warwickshirepensionfund.org.uk/employers>

When using the traffic light framework individuals should consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach, before you consider the four together. Some useful examples of this is framework is provided by The Pensions Regulator at the following link:

<https://www.thepensionsregulator.gov.uk/en/document-library/code-related-guidance/the-notifiable-events-framework>

