

Policy for reporting breaches of the law

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1. Introduction

- 1.1 This document sets out the policy and procedures for identifying, managing and, where necessary, reporting breaches of the law as covered in the section “Reporting to TPR: Whistleblowing – reporting breaches of the law” of the Pensions Regulator’s General Code of Practice for the governing bodies of pension schemes (“the code of practice”).
- 1.2 The code of practice is not a statement of the law, but provides practical guidelines on the requirements of pensions legislation and sets out the standards of conduct and practice expected of those who must meet these requirements.
- 1.3 Pensions legislation imposes duties on certain individuals to report to the Regulator in specific circumstances, for example changes in registrable information, a failure to pay contributions due and certain failures in relation to the funding of defined benefit schemes.
- 1.4 This policy sets out the responsibility of elected members, officers of Bedfordshire Pension Fund, members of the Local Pension Board, and others, in identifying, recording and, where necessary, reporting breaches of the law as they apply to the management and administration of the Fund.
- 1.5 The Pension Fund Committee will review and approve this policy at least annually; and review a log of any breaches of the law recorded by the Fund on a quarterly basis.
- 1.6 The Local Pension Board will preview the policy ahead of consideration by the Pension Fund Committee and receive the log of breaches on a quarterly basis.
- 1.7 The Fund Administrator will be responsible for the management and execution of this policy, and for allocating adequate resources to manage and administer this process.

2. Overview

- 2.1 The identification, management and reporting of breaches is an important requirement of the code of practice. Failure to report a material breach is a civil offence that can result in civil penalties.
- 2.2 At the same time, such breaches provide an opportunity to learn from experience, to

review and improve processes in the areas where the breach occurred and take on board experiences and guidance from elsewhere. On each occasion where a breach of the law is reported the policy should also be reviewed to ensure that it remains fit for purpose, and if any improvements can be made.

- 2.3 Bedford Borough Council, as the scheme manager for Bedfordshire Pension Fund, maintains a record of all breaches of the law as applicable to the management and administration of the Fund. These recorded breaches may subsequently be reported to the Pension Regulator if considered material.
- 2.4 The Regulator requires certain people called 'Reporters' to report breaches of the law to them 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: this could relate, for example, to record-keeping, internal controls or calculating benefits, and also includes investment governance and administration matters;
 - the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.

3. Reporters and reporting requirements

- 3.1 The following individuals are subject to the reporting requirements for public service pension schemes:
- scheme managers (in the case of the Bedfordshire Pension Fund (BPF), the Pension Fund Committee);
 - members of the Local Pension Board;
 - any person who is otherwise involved in the administration of the Fund (all of the Funds' 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 (e.g. the Investment Consultant and Independent Advisor).

Reporters have a responsibility to:

- identify and assess the severity of any breach or likely breach;
- report all breaches or likely breaches to the Fund Administrator (unless under whistleblowing arrangements);
- in conjunction with relevant colleagues agree a proposed course of action to rectify the breach and put in place measures to ensure the breach does not reoccur, obtaining appropriate legal or other advice where necessary;
- ensure that the appropriate corrective action has been taken to rectify the breach or likely breach and to prevent it from reoccurring; and
- co-operate with, and assist in, the reporting of breaches and likely breaches to the Pension Fund Committee, Pension Board and, where necessary, the Regulator.

4. Reasonable cause

- 4.1 A reporter should have 'reasonable cause' to believe that a breach has occurred before submitting a report to the Pensions Regulator and be satisfied that a breach has occurred beyond having a suspicion that cannot be proved.
- 4.2 As such, reporters should ensure that where a breach is suspected, they carry out robust checks to establish whether or not a breach has in fact occurred. Where the reporter does not have sufficient information or knowledge to substantiate a suspicion, they should take appropriate advice from the Fund Administrator, or if appropriate, from Legal Services, and/or the Fund's other advisors (e.g. internal or external auditor, Fund Actuary or Investment Consultant).
- 4.3 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. A delay in reporting may exacerbate or increase the risk of the breach.
- 4.4 In cases of theft, suspected fraud or other serious offences where discussions might alert those implicated or impede the actions of the police or a regulatory authority, the reporter should alert the Regulator without delay, and report the event in line with the Whistleblowing Policy set out in Section 12.

5. Material significance

5.1 In deciding whether a breach is likely to be of material significance to the Regulator, the reporter should consider the:

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

5.2 When determining materiality of any breach or likely breach the Council, officers and Pension Board should in all cases consider the following:

- cause – e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law;
- effect – e.g. how many people are affected by the breach and whether the nature of the breach could lead to an increased likelihood of further material breaches. For example, has the breach occurred due to ineffective internal controls, lack of knowledge and understanding or inaccurate records, all of which indicate the potential for further breaches to occur;
- reaction – e.g. whether prompt and effective action has been taken to resolve a breach, notifying scheme members where appropriate; and
- wider implications – e.g. is the breach an isolated incident or is it part of a pattern where breaches have occurred due to lack of knowledge or poor systems and processes making it more likely that other breaches will emerge in the future.

5.3 The reporter should also consider other reported and unreported breaches to the Regulator of which they are aware. Historical information should be considered with care, particularly if changes have been made to address previously identified problems.

5.4 A breach will not normally be materially significant if it has arisen from an isolated incident, for example resulting from teething problems with a new system or procedure. However, it is also important to consider other aspects of the breach such as the effect it has had and to be aware that persistent isolated breaches could be indicative of wider systemic issues.

5.5 The Regulator has produced a traffic light framework to assist Funds in identifying

the severity of a breach and whether the breach should then be reported.

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 Breaches Log;

Amber – does not fall easily into either green or red and requires further investigation to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. The Fund 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, negligence, reckless behaviour, poor governance, ineffective controls or a deliberate contravention of the law and having a significant impact with wider implications and inadequate steps are being taken to put matters right. The Council must report all such breaches to the Regulator in all cases.

- 5.6 It should be noted that failure to report a significant breach or likely breach is likely to be a significant breach.
- 5.7 A reporter needs 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.
- 5.8 Some example breaches are included in Appendix A.

6. Effect of the breach

- 6.1 A reporter needs to consider the effects of any breach, but with the Regulator's role in relation to public service pension schemes and its statutory objectives in mind, the following matters in particular should be considered likely to be of material significance to the Regulator:
- Local Board members not having the appropriate degree of knowledge and understanding, which may result in the Board not fulfilling its role, the Fund not being properly governed and administered and/or the Pension Fund Committee breaching other legal requirements;

- Local Board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the scheme and/or the Pension Fund Committee breaching legal requirements;
- adequate internal controls not being established and operated, which may lead to the Fund not being run in accordance with legislative 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.

6.2 A reporter needs 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.

7. Reaction to the breach

7.1 Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, the Regulator will not normally consider this to be materially significant.

7.2 A breach is likely to be of concern and material significance to the 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 reoccurrence;
- the breach is not given the right priority;

- the breach has not been communicated to scheme members where it would have been appropriate to do so;
- the breach forms part of a series of breaches indicating poor governance.;
- the breach was caused by dishonesty, even if action has been taken to resolve the matter.

8. Wider implications of the breach

- 8.1 A reporter should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to the Regulator. For example, a breach is likely to be of material significance where the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future. This may be due to the scheme manager or pension board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities or where other pension schemes may be affected. For instance, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

9. Reporting procedure

- 9.1 Once a potential breach has been identified, regardless of whether it needs to be reported to the regulator, the matter should be raised with an appropriate officer of the Administering Authority:

Contacts for reporting a breach

Reporter	Contact
Pension Fund Committee	Fund Administrator
Local Board Member	Fund Administrator
External Advisors	Chief Officer for Bedfordshire Pension Fund
Employer representative	Chief Officer for Bedfordshire Pension Fund
Officer of the Fund	Chief Officer for Bedfordshire Pension Fund or Chief Officer for Internal Audit

- 9.2 The Fund Administrator may, if requested by an individual, having identified a potential breach, take responsibility for investigating, recording and, if required, reporting a breach to the Regulator.
- 9.3 The Chief Officer for Bedfordshire Pension Fund will investigate the circumstances of the potential breach to understand why and how it occurred, the effect, reaction and wider consequences of the breach, and make recommendations for any immediate corrective action required as a result of the initial breach and corrective measures required to prevent reoccurrence, including an action plan where necessary.

- 9.4 Where it is established that a breach of the law has occurred, the Fund Administrator, having taken into account the report of the Chief Officer for Bedfordshire Pension Fund, the Regulator's traffic light framework, and after consultation with the Chairs of the Pension Fund Committee, and Local Pension Board, will determine whether the breach is materially significant and if required submit a report to the Regulator.
- 9.5 If appropriate, the Fund Administrator will refer to external parties to obtain any necessary legal or other advice before deciding if the breach is considered to be of material significance to the Regulator.
- 9.6 The Council, officers and the Pension Board cannot rely on waiting for other reporters to report a breach where it has occurred. Where a breach has occurred and has been identified by the Council, officers or Pension Board it should be recorded, assessed and where necessary reported as soon as reasonably practicable, and usually within ten working days of the breach being identified. Reporters may decide that a longer reporting time is reasonable and, where this is the case, should document the reasons for this.
- 9.7 A reporter should not wait until the next Pension Fund Committee or Local Pension Board to highlight a breach of the regulations. The matter should either be escalated to the Council Officer highlighted in paragraph 9.1 or the reporter should make a report directly to the Regulator, providing a copy of the report to the Fund Administrator (unless the reporter is following the whistleblowing procedure).
- 9.8 Where an employer or third party is involved in the breach, that organisation/individual will be informed in writing in advance of any report being submitted to the regulator.
- 9.9 All materially significant breaches must be reported to the Regulator in writing. This can be via post or electronically. The Regulator encourages the use of its standard reporting facility via its Exchange on-line service. The report should include:
- full name and address of the Fund and the type of scheme
 - description of the breach or breaches, including any relevant dates; name and address of the employer (where known/appropriate);
 - name, position and contact details of the reporter and their relationship to the Fund
 - the reason the breach is thought to be of material significance to the Regulator;

- the pension scheme's registry number (if available); and
- 9.10 The Regulator will acknowledge the 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.
- 9.11 Members of the Pension Fund Committee and Local Pensions Board will be informed in writing by the Fund Administrator of a reported breach of the law within seven days of the report having been made.
- 9.12 Breaches of the law not considered by the Fund to be materially significant (i.e. in the Regulator's amber or green category), will be recorded in the breaches log and reported to the next scheduled meeting of the Pension Fund Committee and Local Pension Board.

10. Late payment of contributions

- 10.1 Any failure of a scheme employer to pay employee contributions that is considered to be of material significance must be reported to the Regulator immediately. To determine whether failure to pay over employee contributions is materially significant or not the Council will ask the employer for an explanation of:
- the cause and circumstances of the payment failure
 - what action the employer has taken as a result of the payment failure, and
 - the wider implications or impact of the payment failure.
- 10.2 Where a payment plan is agreed with the employer to recover outstanding contributions and it is being adhered to or there are circumstances of infrequent one-off late payments or administrative failures the late payment will not be considered to be of material significance.
- 10.3 After three consecutive instances of late payments from a single employer the Fund will notify the Chief Executive/Board of Trustees or equivalent of the breach and the consequences of further late payments.
- 10.4 All incidences resulting from dishonesty, fraudulent behaviour or misuse of employee contributions, poor administrative procedures will be considered to be of material significance and reported to the Regulator.

11. Breaches log

- 11.1 The Governance Officer for Bedfordshire Pension Fund will record all breaches, including those not reported to the Regulator, on the Fund's breaches log.
- 11.2 The log will be reported to the Local Pensions Board and the Pension Fund Committee at each meeting in the committee cycle.
- 11.3 The breaches log will include:
- date the breach or likely breach was identified;
 - name of the employer (where appropriate);
 - any relevant dates;
 - a description of the breach,
 - whether the breach is considered to be red, amber or green.
 - a description of the actions taken to rectify the breach; and actions required to prevent similar types of breaches recurring in the future.

12. Whistleblowing policy

- 12.1 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.
- 12.2 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.
- 12.3 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.

- 12.4 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.
- 12.5 The Council has its own whistleblowing policy. [The Confidential Reporting Policy](#) provides contact information and the details of the circumstances under which the Policy applies and contact details.

Examples of breaches

1. Failure to enter employee into the scheme

It is discovered that a scheme employer has not entered an eligible employee into the LGPS on joining.

Steps that might be taken

On the face of it a breach will have occurred, as the scheme employer has failed to do something they are required to do under the rules of the LGPS. Before deciding to report to the Pensions Regulator it is necessary to consider why this has happened and the steps that are being taken to either rectify the situation and/or ensure it is not repeated. This will include:

- Assessing whether failure relates to a specific employee or is it something more widespread
- Remedying this particular situation immediately
- Understanding if there have been personnel changes at the employer; has this resulted in teething problems during any hand-over?
- If necessary, the Fund could provide training to the employer on its responsibilities to ensure there is no repeated failure

Materiality

When considering if the delay/failure is likely to be of “material significance”, issues to consider include:

- Has the member been denied access to the scheme completely?
- Has the employer failed to respond to the Fund’s enquiries?
- Has the member not been given the opportunity to backdate entry to the scheme and pay arrears?
- Has the employer failed to put in place an immediate plan to remedy any further failures?
- Are more members affected, or is this a one-off?

If the answer to any of the above is “yes” this may imply materiality and may warrant reporting to the Pensions Regulator. In any event the issue should be added to the Council’s breaches log.

2. Late payment of contributions

A scheme employer is late in paying over employee and employer contributions

Steps that might be taken

There could be many reasons for the delayed payment, so while a breach has clearly occurred it is important to understand the reasons behind the delay. To do this:

- Contact the employer to assess the reason for the delay
- Investigate what went wrong
- Ensure steps are put in place to avoid a repeat in future months
- Record the outcome of your investigation
- Make sure processes are assessed to ensure they pick up any potential fraud

Materiality

While the reason for the delay in paying over contributions might be entirely innocent, it is also possible something more sinister is at play and could be "materially significant".

Consider:

- Is the employer unwilling or unable to pay? e.g. due to insolvency
- Is any dishonesty involved on the part of the employer? e.g. using non-payment to ease cash-flow
- Is the employer seeking to avoid paying contributions?
- Does the employer have inadequate processes in place to recover contributions?
- Have contributions been outstanding for over 90 days since being identified?

If the answer to any of the above is "yes" this may imply materiality and may warrant reporting to the Pensions Regulator. In any event the issue should be added to the Council's breaches log.

3. Late submission of year-end data

A scheme employer is late in submitting year-end pay and contribution return in respect of active scheme members

Steps that might be taken

On the face of it this is a breach, but the employer may not necessarily appreciate the significance. Things you might consider doing include:

- Contacting the employer to assess the reason for the non-submission
- Investigating with the employer what went wrong
- Putting in place steps to ensure no repeat
- Recording your investigations

Materiality

Is the delay/failure likely to be of "material significance"? Consider:

- Is the employer unwilling or unable to provide the required data? e.g. are its systems adequate
- Has the employer failed to respond to the Fund's enquiries?
- Will the delay impact the issue of annual benefit statements?

If the answer to any of the above is "yes" this may imply materiality and may warrant reporting to the Pensions Regulator. In any event the issue should be added to the Council's breaches log.

4. Late issue of annual benefit statements

The Fund is late/fails to issue annual benefit statements to active and/or deferred scheme members within the statutory time limits.

Steps that might be taken

Failure to issue annual benefit statements or delaying their issue is a clear breach. Before reporting to the Pensions Regulator:

- Assess whether failure relates to a specific employer or wider issues
- If there have been system or scheme rule changes, determine whether teething problems have contributed to the delay/failure
- Put in place steps to ensure statements are issued within a reasonable timescale
- Put in place steps to ensure no repeat
- Record the investigations

Materiality

Is the delay/failure likely to be of "material significance"? Consider:

- Is the breach resulting from employer failure to provide year-end data?
- Has the employer failed to respond to the Fund's enquiries?
- Has there been a failure on the part of the Fund to have a proper plan in place for the ABS project?
- Has the Fund failed to put in place an immediate plan to remedy any delay/failure?
- Will the delay impact on the member's actual benefits?

If the answer to any of the above is "yes" this may imply materiality and may warrant reporting to the Pensions Regulator. In any event the issue should be added to the Council's breaches log.

5. Late notification of leaver/retirement details

A scheme employer fails to provide the Fund with the necessary leaver/retirement notifications

Steps that might be taken

On the face of it a breach will have occurred, as the scheme employer has failed to do something they are required to do under the LGPS regulations. Before deciding to report to the Pensions Regulator it is necessary to consider why this has happened and the steps that are being taken to either rectify the situation and/or ensure it is not repeated.

- Assess whether failure relates to a specific employee or is it something more widespread
- Remedy this particular situation immediately
- If there have been personnel changes at the employer, has this resulted in teething problems during any hand-over
- If necessary, the Fund could provide training to the employer on its responsibilities to ensure there is no repeated failure

Materiality

Is the delay/failure likely to be of "material significance"? Consider:

- Has the employer failed to respond to the Fund's enquiries?
- Has the failure delayed the assessment and notification/payment of retirement benefits?
- Has the failure led to financial hardship for the member?
- Has the Fund failed to put in place an immediate plan to remedy any delay/failure?

If the answer to any of the above is "yes" this may imply materiality and may warrant reporting to the Pensions Regulator. In any event the issue should be added to the Council's breaches log.

6. Failure to declare potential conflict

A Pension Committee or Pension Board member fails to declare a potential conflict of interest in relation to an issue for discussion or decision, which has later come to light

Steps that might be taken

It is a requirement to declare conflicts of interest, so a breach will have occurred. Before deciding whether to report to the Pensions Regulator:

- Determine why the conflict of interest was not reported at the outset
- Consider what impact the matter not being declared has had on any discussions or decisions
- Draw attention of all Committee and Board members to the Council's conflicts of interest policy
- Consider revisiting the discussion or decision, excluding the individual concerned
- Remove the individual from the Pension Committee or Pension Board if it's considered that their omission was of such significance as to lead to a loss of confidence in the public office.

Materiality

Is the non-disclosure likely to be of "material significance"? Consider:

- Has the individual used the situation to their advantage?
- Has the individual had their judgement swayed by the apparent conflict of interest?
- Would the removal of the individual from the discussions/decision have altered the eventual outcome?
- Would the non-disclosure in this situation lead to a loss of confidence in the public office?

If the answer to any of the above is "yes" this may imply materiality and may warrant reporting to the Pensions Regulator. In any event the issue should be added to the Council's breaches log.