

Reporting Breaches of the Law to the Pensions Regulator Policy 2015

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1. Introduction

- 1.1 This is the Reporting Breaches of the Law to the Pension Regulator Policy of Cambridgeshire Pension Fund and Northamptonshire Pension Fund managed by Cambridgeshire County Council and Northamptonshire County Council respectively (the Administering Authorities).
- 1.2 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.
- 1.3 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.

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; and

Ensure the Fund and its stakeholders have the appropriate skills and receive training to ensure those skills are maintained in a changing environment.

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 Funds' 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 approved by the Pensions Committee on XX and effective from XX.

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 annually to ensure it remains accurate and relevant.

6. Scope

- 6.1 The policy applies to:

- officers of the Funds’;
- members of the Pension Committees’;
- members of the Pension Boards’;
- employers of the Funds’; 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 a reporter 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. 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;
 - effect of the breach;
 - reaction to the breach; and
 - the wider implications of the breach.
- 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 breach is likely to be of material significance to the Regulator where it was caused by:
- dishonesty;
 - poor governance or administration;
 - slow or inappropriate decision making practices;
 - incomplete or inaccurate advice; or
 - acting (or failing to act) in deliberate contravention of the law.

9.5 Reporters need 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:

- 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; and
- any other breach which may result in the Fund being poorly governed, managed or administered.

9.6 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.

9.7 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.

9.8 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 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.

9.9 Reporters 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 Committee/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.

10. Guidance on Reporting a breach to the Regulator

10.1 The guidance from the Pension Regulator on reporting breaches is as detailed below –

- 10.1.1 Before submitting a report responsible officers should obtain clarification of the law around the suspected breach via an appropriate method. A judgement needs to be made on whether the Regulator would regard the breach as being material
- 10.1.2 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.
- 10.1.3 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.

10.1.4 Any report that is made (which must be in writing and made as soon as reasonable 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 Regulator would include, 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; and whether the concern has been reported before.

10.1.5 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.

10.1.6 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.

10.1.7 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.

10.1.8 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.

10.1.9 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.

10.1.10 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.

11. Process for reporting and recording material and non material breaches within Cambridgeshire and Northamptonshire Pension Funds

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.	Report urgent and material breaches to Section 151 officer, Chairman and Vice Chairman of Committee and Local Pension Board, full report to be submitted at the next available meeting.
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 Pensions 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 Pensions Committee/Pension Board meeting.

12. Whistle blowing protection and confidentiality

- 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 on this.
- 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 whistle blowing 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.

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

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 the Prudential. It is contacted by officers from the administering authority, and it eventually pays the moneys that are overdue, including AVCs to the Prudential. 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.

Example 3

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.

Example 4

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 5

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 6

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.

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