

# **A Procedure for Reporting Breaches of the Law to the Pensions Regulator**

## **Leicestershire Pension Fund**

Updated September 2024

## **Introduction**

- 1 In March 2024 the Pensions Regulator (the Regulator) published its new General Code of Practice (the Code). This collated information from previous codes, the main one being the April 2015 Code of Practice no 14. The new Code is not a statement of law of itself, but nonetheless it carries weight.
- 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. The Fund should monitor, record and report breaches.
- 3 This document provides the procedure for the Leicestershire Pension Fund, which relates to the Fund's areas of operation.
- 4 Much of the text herein is drawn from the Code itself. Where it has been, the Regulator's copyright applies.

## **Legal requirements**

- 5 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 and;
  - the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.
- 6 People who are subject to the reporting requirement ('reporters') for public service pension schemes are:
  - scheme managers.
  - members of the local pension board.
  - any person who is otherwise involved in the administration of the Fund (and thus members of the pension board and all 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.

## **Training**

- 7 Officers and Board Members should have sufficient knowledge and training about the Code, the requirements, and reporting breaches.

## Decision to Report

- 8 There are two key judgements required when deciding to report a breach of the law.
- Is there reasonable cause to believe there has been a breach of the law?
  - Is the breach likely to be of material significance?

## Reasonable cause to believe

- 9 Having “reasonable cause to believe” that a breach has occurred means more than merely having a suspicion that cannot be substantiated.
- 10 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 where they have seen in the annual accounts that the scheme’s assets have fallen. However, the real reason for the apparent loss in value of scheme assets may be due to the behaviour of the stock market over the period. This would mean that there is not reasonable cause to believe that a breach has occurred.
- 11 Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to consult the appropriate Officer regarding what has happened. It would not be appropriate to check 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. Under these circumstances the reporter should alert the Regulator without delay.
- 12 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.
- 13 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.

## Material significance

- 14 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, effect, reaction, and wider implications of the breach.**

## Cause

- 15 A breach is likely to be of material significance if it was caused by;
- Dishonesty, negligence, or reckless behaviour

- Poor governance, ineffective controls resulting in deficient administration, or slow or inappropriate decision making practices
- Incomplete or inaccurate advice
- A deliberate act or failure to act

### Effect

16 The Regulator considers a breach to be materially significant where the effects include any of the following;

- A significant proportion of members, or a significant proportion of a particular category of members, are affected by the breach.
  - For example; if annual benefit statements are not provided to a large number of members.
- The breach has a significant effect on the benefits being paid, to be paid, or being notified to members.
  - For example; if annual benefits were incorrectly calculated for a large number of members.
- The breach, or serious or unrelated breaches, have a pattern of recurrence in relation to participating employers, certain members, or groups of members.
  - For example; if one of the scheme employers continually failed to provide accurate and timely year-end data, causing annual failures to provide members with their annual benefit statements.
- Governing bodies that do not have the appropriate degree of knowledge and understanding, preventing them from fulfilling their roles and resulting in the scheme not being properly governed and administered and/or breaching other legal requirements.
- Unmanaged conflicts or interest within the governing body, making it prejudiced in the way it carries out the role, ineffective governance and scheme administration, and/or breaches of legal requirements.
- Systems of governance (where applicable) and/or internal controls are not established or operated. This leads to schemes not being run in line with their governing documents and other legal requirements.
- Risks not being properly identified and managed and/or the right money is not being paid to or by the scheme at the right time.
- Accurate information about benefits and scheme administration is not being provided to scheme members and others meaning members are unable to effectively plan or make decisions about their retirement.
- Records are not being maintained. This results in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Governing bodies or anyone associated with the scheme misappropriate scheme assets or are likely to do so.
- Trustees of defined benefit scheme not complying with requirements of the Pension Protection Fund during an assessment period.

## Reaction

- 17 **The Regulator will not normally consider a breach to be materially significant if prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, all affected members have been notified.**
- 18 A breach is likely to be of concern and material significance to the Regulator, if a breach has been identified that;
- Does not receive prompt and effective action to remedy the breach and identify and tackle its cause to minimise risk or recurrence.
  - Is not being given the right priority by the governing body or relevant service providers.
  - Has not been communicated to affected scheme members where it would have been appropriate to do so.
  - Forms part of a series of breaches indicating poor governance.
  - It was caused by dishonesty, even when action has been taken to resolve the matter quickly and effectively.

## Wider implications

- 19 These should be considered when assessing whether it is 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 (the reason could be that the governing body lacks the appropriate knowledge and understanding to fulfil their responsibilities).
  - Other schemes may be affected, for example schemes administered by the same organisation where a system failure has caused the breach.
- 20 Those reporting a breach should consider general risk factors, such as the level of funding, or how well-run the scheme appears to be. Some breaches that occur in a poorly funded and/or poorly administered scheme will be more significant to the Regulator than if they occurred in a well-funded, well-administered scheme.
- 21 Reporters should consider other reported and unreported breaches that they are aware of. However, reporters should use historical information with care, particularly where changes have been made to address breaches already identified.
- 22 **The Regulator will not usually regard a breach arising from an isolated incident as materially significant. For example, breaches resulting from teething problems with a new system, or from an unpredictable combination of circumstances.** However, in such circumstances reporters

should consider other aspects of the breach, such as the severity of the effect it has had that make it materially significant.

### **Payment Failures**

- 23 Payment failures that are likely to be of material significance include;
- Where governing bodies have reasonable cause to believe that the employer is neither willing nor able to pay contributions.
  - Where there is a payment failure involving dishonesty or a misuse of assets or contributions.
  - Where the information available to the governing body indicates that the employer is knowingly concerned with fraudulently evading their obligation to pay employee contributions.
  - Where the governing body becomes aware that the employer does not have adequate procedures or systems in place to ensure the correct and timely payment of contributions due and the employer does not appear to be taking adequate steps to remedy the situation.
  - Any event where contributions have been outstanding for 90 days from the due date.

### **Remaining Uncertainty**

24 If, after taking into consideration all of the above, uncertainty remains regarding whether an incident is material or not, the prudent approach would be to make a referral to the Regulator.

### **The Leicestershire Pension Fund Process**

- 25 If a breach takes place, the “reporter” should obtain clarification of the facts of the case, and the law (Regulations) around the suspected breach and inform the Pensions Manager.
- 26 Using the information detailed in this document, the Pensions Manager will consider whether the Regulator would regard the breach as being material. (S)he will also clarify any facts, if required. If the case requires input from others, including a Legal view, (s)he will seek advice, as required.
- 27 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).
- 28 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.

- 29 **The Code does not define what does or does not constitute a breach, so each occasion will be considered on a case-by-case basis, using the four specific areas; cause, effect, the reaction to it, and its wider implication, including dialogue with the relevant parties where necessary.**
- 30 The Pensions Manager will **monitor and record** breaches on the Fund's breaches log.
- 31 **If the Pension Manager considers the breach as material, the breach will be reported to the Pension Board and the Regulator.**
- 32 An annual summary of breaches will be provided to the Board annually.
- 33 Whilst it is preferred that breaches are managed using the process above, it's recognised that if a reporter so chooses, they may decide to report directly to the Regulator.

### **Making a Report**

- 34 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
  - role of the reporter in relation to the Fund
  - 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)
- 35 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.
- 36 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.

- 37 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.
- 38 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.
- 39 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.
- 40 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.

### **Consistency**

- 41 The Code is written in such a way; each breach is considered on its own merit. Whilst there will be areas of consistency between Funds, for example, failure to calculate and provide annual benefit statements is consistent across LGPS Funds, others may not be.

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September 2024