

Isle of Wight Council

Reporting Breaches of the Law to the Pensions Regulator Policy

November 2017

1. Document Information

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3. Introduction

- 3.1 This is the Reporting Breaches of the Law to the Pensions Regulator Policy of the Isle of Wight Council as Administering Authority for the Isle of Wight Pension Fund (“the fund”), and Scheme Manager for the Isle of Wight Firefighters’ Pension Schemes (“the FPS”) (collectively “the pension schemes”).
- 3.2 In April 2015 the Pensions Regulator (“the Regulator”) published its *Code of Practice no 14 Governance and administration of public service pension schemes* (“the code”). 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.
- 3.3 There are many and various laws relating to the both the Local Government Pension Scheme (“LGPS”) and the Firefighters’ Pension Schemes (“FPS”), 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 areas of the pension schemes’ operation.

4. Purpose of Policy

- 4.1 The purpose of this 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 each pension scheme 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.
- 4.2 This policy sets out the responsibility of elected members, officers of the council, any person involved in the administration of the fund and members of both the Local Pension Board and the Fire Pension Board in identifying, managing and where necessary reporting breaches of the law as they apply to the management and administration of each pension scheme.

5. What is a breach of the law?

- 5.1 A breach of the law is “*an act of breaking or failing to observe a law, agreement, or code of conduct.*” In the context of the LGPS and the FPS it can encompass many aspects of the management and administration of the scheme, including, for example:
- failure to do anything required under the LGPS Regulations or the FPS Regulations;
 - failure to do anything required under overriding legislation, applicable statutory guidance or codes of practice;
 - failure to maintain accurate records;
 - failure to act on any fraudulent act or omission that is identified;
 - failure of an employer to pay over member and employer contributions on time;

- failure to pay member benefits either accurately or in a timely manner;
- failure to issue annual benefit statements on time; or
- non-compliance with the Regulator’s Code of Practice No 14.

6. Responsibilities in relation to breaches

- 6.1 Responsibility to report identified breaches of the law in relation to the code falls on the following (known as “reporters”):
- Elected members and officers of the council, as the Scheme Manager;
 - Members of the local pension board;
 - Individuals carrying out administration or management functions on behalf of the pension schemes where such individuals are not officers of the Council;
 - Scheme employers;
 - Professional advisers (including the actuary, benefit consultant, investment advisers, legal advisers); and
 - Third party providers (where so employed).

7. Requirements to report a breach of the law

- 7.1 Once a potential breach has been identified, regardless of whether it needs to be reported to the Regulator, in the first instance the reporter, in consultation with the technical finance manager and/or the monitoring officer, must review the circumstances of the breach in order to understand why it occurred, the consequences of the breach and agree the corrective measures required to prevent re-occurrence, including an action plan where necessary.
- 7.2 All potential breaches must be recorded in the relevant Isle of Wight Council breaches log (see appendix 1). The logs (one for the LGPS and one for the FPS) will be maintained by the technical finance manager, and will be reported to both the pension fund committee and the appropriate pension board at every meeting.
- 7.3 In deciding whether to report an identified breach, reporters should consider:
- Is there reasonable cause to believe there has been a breach of the law?
 - Is the breach likely to be of material significance to the Regulator?
- 7.4 Where a breach is considered to be of material significance it must be reported to the Regulator no later than 30 calendar days after becoming aware of the breach or likely breach.
- 7.5 Where it is considered that a breach is of such significance that the Regulator is required to intervene as a matter of urgency (for example, serious fraud) the matter should be brought to the attention of the Regulator immediately (e.g. by calling them direct). A formal report should then be submitted to the Regulator, marked as “urgent” in order to draw the Regulator’s attention to it.

8. Assessing 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 an individual 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 pension schemes, 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 action particularly if it is a significantly material breach. A delay in reporting may exacerbate or increase the risk of the breach.

9. Determining Material Significance

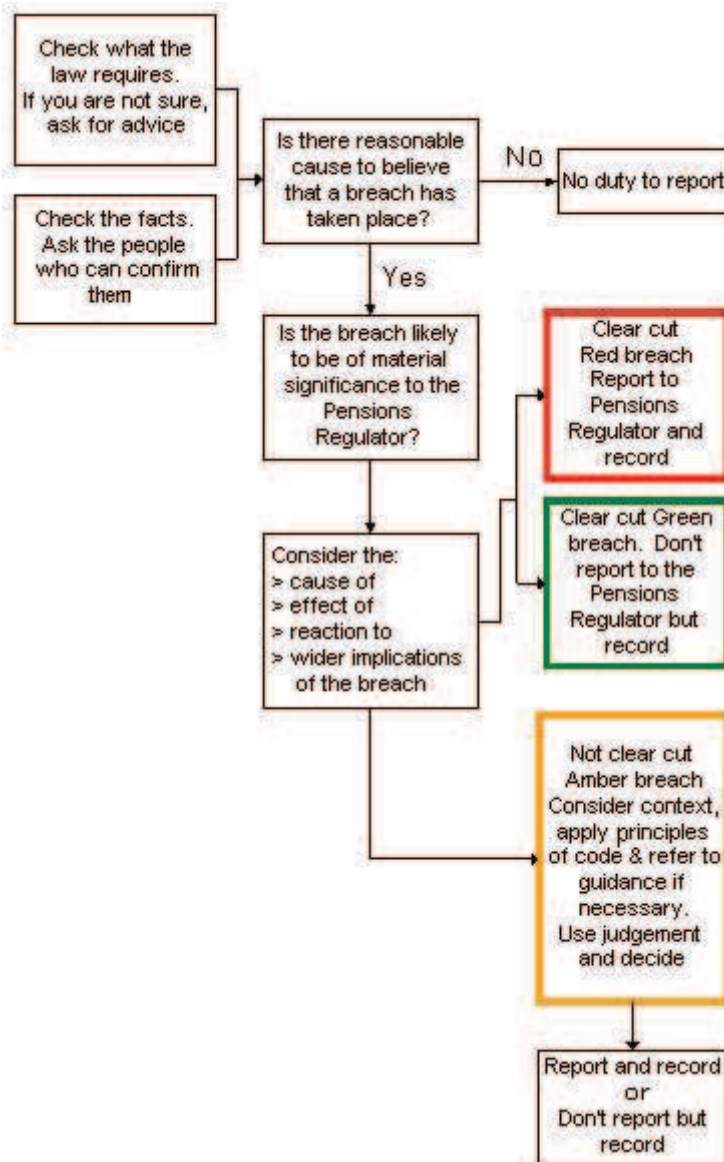
- 9.1 When determining whether a breach is likely to be of material significance to the Regulator, the reporter will in all cases consider the following:
- cause
 - effect
 - reaction
 - wider implications.
- 9.2 **Cause:** A breach is likely to be of material significance to the Regulator where it was 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.
- 9.3 **Effect:** With the Regulator's role in relation to public service pension schemes and its statutory objectives in mind, the following matters in particular are 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 and/or Board not fulfilling its role, or the pension schemes 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, or ineffective governance and administration of the pension schemes;

- adequate internal controls not being established and operated, which may lead to the pension schemes not being run in accordance with their scheme regulations and other legal requirements, risks not being properly identified and managed and/or the right money not being paid to or by the pension schemes 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 pension schemes 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 pension schemes being poorly governed, managed or administered.
- 9.4 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.
- 9.5 **Reaction:** 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.
- 9.6 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.
- 9.7 **Wider Implications:** 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.

10. Decision to report a breach of the law to the Regulator

10.1 The Regulator has produced a decision tree to assist schemes in identifying the severity of a breach and whether it should then be reported. This is reproduced as Chart 1 below.

Chart 1



- 10.2 The decision tree provides a “traffic light” system of categorising an identified breach:
- **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 relevant Council’s breaches log;
 - **Amber** – does not fall easily into either green or red and requires further investigation in order to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. The Council, administrators or appropriate pension board 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, poor governance or a deliberate contravention of the law and having a significant impact, even where a plan is in place to rectify the situation. The Council, administrators or appropriate pension board must report all such breaches to the Regulator in all cases;
- 10.3 It should be noted that failure to report a significant breach or likely breach is likely, in itself, to be a significant breach.
- 10.4 The council and its administrators will use the Regulator’s decision tree as a means of identifying whether any breach is to be considered as materially significant and so reported to the Regulator.

11. Guidance on reporting a breach to the Regulator

- 11.1 Having determined that a breach should be reported to the Regulator, the following process should be followed.
- 11.2 Reports must be submitted in writing and can be sent by post or electronically, including by email or by fax. Wherever possible reporters should use the standard format available via the Exchange online service on the Regulator’s website.
<https://login.thepensionsregulator.gov.uk/whatsavailable>
- 11.3 The report should be dated and include as a minimum:
- full name of the scheme
 - 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 scheme.

- 11.4 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 scheme
 - the contact details of the scheme manager (if different to the scheme address)
 - the pension scheme's registry number (if available), and
 - whether the concern has been reported before.
- 11.5 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.
- 11.6 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.
- 11.7 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.
- 11.8 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.
- 11.9 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.
- 11.10 In cases of immediate risk to the pension schemes, 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.

12. Process for recording and reporting breaches within Isle of Wight Council

12.1 The following table details the process for recording and reporting all breaches.

Table 1

Type of Breach	Timescale for reporting	Internal actions	Further actions
RED	Reporter informs the Monitoring Officer, the breach is reported immediately to the Pensions Regulator.	Technical Finance Manager to record breach on relevant breaches log and investigate options to prevent further occurrence.	Report urgent and material breaches to Section 151 officer, Chairman and Vice Chairman of Committee and appropriate Pension Board, full report to be submitted at the next available meeting.
AMBER	Reporter informs the Monitoring Officer, the breach is reported within 30 calendar days to the Pensions Regulator.	Technical Finance Manager to record breach on relevant breaches log and investigate options to prevent further occurrence.	Report non urgent and material breach at next Pensions Committee/Pension Board meeting.
GREEN	Reporter informs the Monitoring Officer within 30 calendar days.	Technical Finance Manager to record breach on relevant breaches log and investigate options to prevent further occurrence.	Report immaterial breach at next Pensions Committee/Pension Board meeting.

13. Whistleblowing

13.1 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.

13.2 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.

- 13.3 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.
- 13.4 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.

14. Useful links

- 14.1 The Pensions Regulator's Code of Practice No. 14 *Governance and administration of public service pension schemes*
<http://www.thepensionsregulator.gov.uk/public-service-schemes/code-of-practice.aspx>
- 14.2 The Pensions Regulator public service pensions schemes website
<http://www.thepensionsregulator.gov.uk/public-service-schemes.aspx>
- 14.3 The Pensions Regulator Exchange online reporting website
<https://login.thepensionsregulator.gov.uk/whatsavailable>
- 14.4 **The Pensions Regulator's address:**
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW
- Phone:** 0345 600 5666 (option 3)

Appendix 1: Isle of Wight Council Breaches Log
Local Government Pension Scheme / Firefighters' Pension Scheme *

IWPF Ref	Date identified	Description	Relevant dates	Red Amber Green	Actions taken	Long term effects	Open/ Closed with date	Reported to C'ttee and/or Board Y/N (date)	Reported to Regulator Y/N (date)

* delete as appropriate