



Committee report

Committee	ISLE OF WIGHT PENSION FUND COMMITTEE
Date	6 SEPTEMBER 2023
Title	POLICY FOR RECORDING AND REPORTING BREACHES OF THE LAW
Report of	PENSION FUND MANAGER

EXECUTIVE SUMMARY

1. Following consideration by the Local Pension Board, this report presents the Isle of Wight Pension Fund Policy for Recording and Reporting Breaches of the Law for adoption.
2. The Pension Fund Manager will deliver a short briefing session during the committee meeting to support members' understanding of the topic, and to support their adoption of the policy as presented.
3. Following adoption of the policy, it will be published on the fund's website. The policy will then be shared with all employers in the fund, who will be invited to a virtual briefing session to introduce the requirements of the policy.

RECOMMENDATION

4. Option A: that the committee adopt the Policy for Recording and Reporting Breaches of the Law as presented at Appendix 1 and agree to its publication on the fund's website.
5. Option D: that the committee agrees to the circulation of the adopted policy to those parties identified as having responsibility for reporting breaches, with the offer of a briefing session to introduce and explain the policy.
6. Option E: that the breaches log, containing all identified potential breaches, their assessment, mitigation and reporting status, is presented to each Local Pension Board meeting for monitoring and review.

BACKGROUND

7. Following the enactment of the Public Service Pensions Act 2013, subsequent Local Government Pension Scheme (LGPS) regulations have given the Pensions Regulator (the regulator) greater responsibilities for the oversight of all public service pension schemes, including the LGPS.

8. In April 2015 the regulator published its code of practice no. 14 *Governance and administration of public service pension schemes* (“the code”). The code refers both to a statutory duty as well as advisory duties in responding to potential unlawful activity. Those involved with the pension scheme have a duty to have regard to the code in reporting breaches of the law.
9. The Isle of Wight Pension Fund adopted its current Reporting Breaches of the Law to the Pensions Regulator policy in November 2017, in line with the requirements of code of practice no.14. Due to capacity issues and other work priorities, the annual review of this policy was never actioned, so the current policy is significantly overdue for review.
10. In March 2021, the regulator issued a consultation on a new single code of practice, to combine 10 of its existing 15 codes of practice (including no. 14) into a single, modular code – to be called the General Code. The General Code is scheduled to be laid before Parliament in Spring 2023, with the launch date expected in July 2023.
11. The opportunity has been taken to update the current policy in line with the expected requirements of the General Code, which were published as part of the consultation process. An extract from the consultation document in respect of reporting breaches of the law is presented at Appendix 2 to this report.
12. The policy has been renamed to include the process for recording potential breaches, as well as steps for assessing whether those breaches could be of material significance to the regulator and hence should be reported.
13. The proposed policy, included as Appendix 1 to this report, has been completely refreshed in comparison to the current version, so no schedule of changes has been presented.
14. Should the final requirements of the General Code differ significantly from the version consulted upon, the fund’s policy will be updated for those changes.
15. Other than any changes required as a result of the publication of the General Code, and any future significant changes to regulatory requirements or best practice, the policy will be reviewed and updated every three years from the date of adoption.

KNOWLEDGE AND UNDERSTANDING

16. At the committee meeting on 8 February 2023, members expressed a preference for concise, face-to-face training sessions delivered on the same day as formal committee meetings to encourage participation. It was also suggested that reference to learning material be included in the meeting papers, to support the understanding of the items under consideration.
17. In order to support the members of the Pension Fund Committee in considering this new policy, the Pension Fund Manager will deliver a brief development session during the meeting, based on the Pension Regulator’s public sector tool kit module, the link for which can be found in the background papers section of this report.

18. Committee members are encouraged to have reviewed this module, and the supporting material, in advance of the meeting to support their understanding of this topic and the proposed policy.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

Corporate Aims

19. There is nothing contained in this report which directly contributes to the priorities contained in the [Corporate Plan 2021 - 2025](#). Publication of this report supports the Corporate Plan key value of “being fair and transparent”.

Pension Fund Strategic Aims

20. The primary objective of the fund is to provide pension and lump sum benefits for members on their retirement and/or benefits on death, before or after retirement, for their dependents, in accordance with the Local Government Pension Scheme (LGPS) regulations and statutory provisions. The committee aims to operate the fund in such a manner that, in normal market conditions, all accrued benefits are fully covered by the value of the fund's assets and that an appropriate level of contributions is agreed by the employer to meet the cost of future benefits accruing.
21. The fund has also agreed the following objectives, which are supported by the review and update of this policy:
 - (a) Ensure compliance with the LGPS Regulations, other relevant legislation and the Pensions Regulator’s Codes of Practice.
 - (b) Act with integrity and be accountable to our stakeholders for our decisions, ensuring they are robust, and evidence based.
 - (c) Clearly establish levels of performance and measure the performance of both the Fund and scheme employers against them.

CONSULTATION

22. The draft policy was considered by the Monitoring Officer, the Strategic Manager – Legal Services, the Director of Finance, and staff from the pension administration team and the council’s finance team. Comments received have been incorporated into the policy recommended for adoption, presented at Appendix 1 to this report.
23. Following adoption of this policy, it will be circulated to all employers in the fund, and a briefing session will be offered to explain both the policy and the employers’ duties included therein.

LOCAL PENSION BOARD VIEW

24. The Local Pension Board considered this matter at their meeting on 6 April 2023. This included a similar development session to that which will be provided for the committee.
25. No comments or questions were raised, and it was confirmed that the policy was fit for purpose, and it was agreed for recommendation to the Pension Fund Committee for adoption.

FINANCIAL / BUDGET IMPLICATIONS

26. There are no direct financial implications in adopting this policy.
27. No additional costs have been incurred in the review and update of this policy. The policy has been adapted from that of another LGPS fund and has been updated by the Pension Fund Manager for matters relevant to the Isle of Wight Pension Fund.
28. Should breaches be identified under the policy, then resources will need to be prioritised to ensure compliance with the policy, and to review systems, control and processes to ensure any identified breach is corrected and prevented from reoccurrence.

LEGAL IMPLICATIONS

29. The Isle of Wight Council is the administering authority for the Isle of Wight Council Pension Fund. An administering authority is defined in the Local Government Pension Scheme Regulations 2013 as “a [local authority] required to maintain a pension fund under the local government pension scheme regulations”.
30. The Public Service Pensions Act 2013 gave greater responsibilities to the Pensions Regulator for the oversight of public service pension schemes, including the Local Government Pension Scheme.
31. The Pensions Regulator’s code of practice no 14 *Governance and administration of public service pension schemes* sets out the legal requirements for public service pension schemes in respect of the governance of those schemes, including the requirement to establish and operate suitable procedures for the reporting of breaches of the law to the Pensions Regulator.
32. The Pensions Regulator’s new General Code requires that certain people (reporters) are required to report breaches of the law to us where they have a reasonable cause to believe that:
 - a legal duty which is relevant to the administration of a 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.
33. The General Code further specifies that those responsible for the governance of pension scheme should:
 - be satisfied that those responsible for reporting breaches are aware of the legal requirements and the code.
 - establish and operate procedures to ensure that reporters are able to meet their legal obligations.

EQUALITY AND DIVERSITY

34. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

35. There are no implications for any of the protected characteristics arising from the adoption of the Policy for Recording and Reporting Breaches of the Law.

OPTIONS

36. Option A: that the committee adopt the Policy for Recording and Reporting Breaches of the Law as presented at Appendix 1 and agree to its publication on the fund's website.
37. Option B: that the committee request changes to the Policy for Recording and Reporting Breaches of the Law prior to its adoption and publication on the fund's website.
38. Option C: that the committee do not adopt the revised Policy for Recording and Reporting Breaches of the Law and continue to operate within the existing out-of-date policy.
39. Option D: that the committee agrees to the circulation of the adopted policy to those parties identified as having responsibility for reporting breaches, with the offer of a briefing session to introduce and explain the policy.
40. Option E: that the breaches log, containing all identified potential breaches, their assessment, mitigation and reporting status, is presented to each Local Pension Board meeting for monitoring and review.

RISK MANAGEMENT

41. It is the responsibility of the Isle of Wight Council, as administering authority for the Local Government Pension Scheme (LGPS) to ensure that the Isle of Wight Pension Fund is properly governed and administered in compliance with relevant regulations and other requirements. The council has delegated its functions as Scheme Manager for the fund to the Pension Fund Committee.
42. Adopting and implementing this policy will ensure compliance with the requirements of the Pensions Regulator.
43. Should the council fail to ensure appropriate standards of governance and administration of the pension schemes for which it has responsibility, the Pensions Regulator has the powers to issue an improvement notice under section 13 of the Pensions Act 2004. This would have reputational issues for the council.
44. If the fund does not have appropriate procedures in place to identify, record and monitor all potential breaches of the law, there is a risk that systemic issues are not identified and addressed, which could result in incorrect benefits being paid and/or incorrect information being provided to scheme members.
45. It could also result in incorrect decisions being made by the pension fund committee in their management of the fund, leading to reductions in funding level, inadequate investment returns and increased employer contributions.

46. Adopting the revised policy and ensuring that all potential breaches are recorded, assessed and monitored, including the creation and monitoring of rectification action plans, will reduce the risk of such failures and ensure the good standards of governance and administration of the fund are maintained.
47. Delivering the short briefing sessions to local pension board and pension fund committee members, and offering similar briefings to employers in the fund, will help satisfy the requirement to ensure that those responsible for reporting breaches are aware of the legal requirements and the General Code by the provision of training.

EVALUATION

48. To ensure compliance with regulations and the Regulator's codes of practice, the fund is required to establish and operate procedures to ensure that those responsible for reporting breaches are aware of and are able to meet their legal obligations.
49. The Local Pension Board reviewed the draft policy in conjunction with the requirements of the Pensions Regulator's proposed General Code at their meeting on 6 April 2023. The board did not identify any areas where the proposed policy was not in accordance with the requirements of the General Code. Accordingly option B is not recommended.
50. The proposed policy contains the required information to ensure that all parties are able to identify their roles, their requirements to report and the process by which breaches should be recorded and reported. The previous policy, while fit for purpose at the time it was created in 2017, does not include the most recent requirements. Therefore option C is not recommended.
51. The proposed policy clearly defines those with the responsibility to report breaches and sets out the process by which each identified breach should be recorded and assessed to determine whether it should be reported to the Pensions Regulator, and the process by which such reports should be made if required.
52. Following adoption of the policy, it will be circulated to all employers within the fund, and they will be invited to a virtual briefing session to explain their roles and responsibilities under the policy. This will satisfy the requirements of the General Code.
53. Maintaining a breaches log will assist the fund in identifying trends of non-compliance with regulations and codes of practice, and will assist in improving internal controls, systems and procedures to prevent future recurrence.
54. Delegating the monitoring of the breaches log to the Local Pension Board fits with that body's role in assisting the committee, as scheme manager, in ensuring the effective and efficient governance and administration of the scheme.
55. Accordingly, options A, D and E are recommended.

APPENDICES ATTACHED

56. Appendix 1: Policy for Recording and Reporting Breaches of the Law 2023 v2.0.
57. Appendix 2: Extract from the Pensions Regulator's consultation document for the draft new code of practice: Whistleblowing – Reporting Breaches of the law

BACKGROUND PAPERS

58. Current Isle of Wight Pension Fund Reporting Breaches of the Law to the Pensions Regulator Policy
<https://www.isleofwightpensionfund.org/resources/reporting-breaches-of-the-law-to-the-pensions-regulator-policy/>
59. The Pensions Regulator's Code of Practice No 14: *Governance and administration of public service pension schemes*
<http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>
Specifically the section "Reporting breaches of the law" paragraphs 241 - 275
60. The Pensions Regulator's draft new code of practice
<https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/full-draft-new-code-of-practice.ashx>
Specifically the section "Whistleblowing – Reporting breaches of the law" page 139
61. The Pensions Regulator's public sector toolkit module: Reporting breaches of the law
<https://trusteetoolkit.thepensionsregulator.gov.uk/course/view.php?id=67>
62. The Pensions Regulator's public sector toolkit module: Reporting breaches of the law Extra resource: Example breaches of the law and the traffic light framework
<https://trusteetoolkit.thepensionsregulator.gov.uk/mod/resource/view.php?id=472>

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