

ISLINGTON COUNCIL PENSION FUND

Draft Breaches of the law - Policy Guidelines and Procedure for Islington Council Local Pension Board

1. Introduction

This document sets out the procedures and guidelines on identifying and managing and where necessary reporting breaches of the law to The Pensions Regulator in relation to the management and administration of the Fund. These guidelines apply to local pension board members, council officers and councillors.

- 1.2 Breaches can occur in relation to a wide variety of the tasks normally associated with the administrative function of a scheme such as keeping records, internal controls, calculating benefits and making investment or investment-related decisions.
- 1.3 The Council's Chief Finance Officer appointed under s151 Local Government Act 1972 (the Corporate Director of Finance and Resources) will be responsible for the management and execution of these guidelines in accordance with paragraph [5].

2. Aim

This documents outlines:

- 2.1 The principles and procedures that all councillors, council officers and board members are expected to follow in order to comply with the Terms of Reference of the Board, relevant legislation, codes of practice and government guidance, to ensure that all individuals are aware of their duty to report relevant breaches of the law to The Pensions Regulator.
- 2.2. Procedures for identifying, assessing, recording and reporting relevant breaches within appropriate timescales (including processes for clarifying the facts and applicable law where needed, referral to council staff of appropriate seniority, dealing with difficult cases and identifying promptly any breaches that are so serious that they must always be reported to the Pensions Regulator).
- 2.3 That a breaches log is kept and regularly reviewed

3. Relevant Legislation

This section clarifies the full extent of the legal requirements and to whom they apply.

3.1 Section 70 of the Pensions Act 2004 ('the Act') imposes a requirement on the following persons ('reporters') to report breaches of the law as it applies to the management and administration of the pension fund:

- a trustee or manager of an occupational or personal pension scheme;
- a member of the pension board of a public service pension scheme;
- a person who is otherwise involved in the administration of such a scheme an occupational or personal pension scheme;
- the employer in relation to an occupational pension scheme;
- a professional adviser in relation to such a scheme; and
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

3.2 The duty is to report the matter to The Pensions Regulator in writing as soon as is reasonably practicable where that person has reasonable cause to believe that:

- (a) a legal duty relating to the administration of the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance to The Pensions Regulator.

3.2 Under the Act a person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse. The duty to report breaches under the Act overrides any other duties the individuals listed above may have. However, the duty to report does not override 'legal privilege'. This means that, generally, communications between a professional legal adviser and their client, or a person representing their client, in connection with legal advice being given to the client, do not have to be disclosed.

4. The Pensions Regulator's Code: Reporting breaches of the Law

The Pensions Regulator has responsibility for regulatory oversight of the governance and administration of public service pension schemes, including the Local Government Pension Scheme (LGPS). The Pensions Regulator has published guidance in the Code of Practice no 14 (Governance and administration of public service pension scheme ('the Code')). Paragraphs 241 to 275 of the Code deal with reporting breaches of the law and are reflected in these guidelines.

4.1 The Head of Treasury and Pension Fund Management will maintain a log of all breaches of the law as described in paragraph 4.2). Reporters cannot rely on waiting for other reporters to report a breach. Where a breach has occurred and has been identified by the council or Board it should be recorded assessed and where necessary reported, as soon as reasonably practicable.

4.2 What is a breach of the law?

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 this can

encompass many aspects of the management and administration of the LGPS, including failure:

- to do anything required under the Regulations;
- to do anything required under overriding legislation, applicable statutory guidance or codes of practice;
- to maintain accurate records;
- to act on any fraudulent act or omission that is identified;
- to comply with policies and procedures (e.g. the Fund's statement of investment principles, funding strategy, discretionary policies, etc.);
- of an employer to pay over member and employer contributions on time;
- to pay member benefits either accurately or in a timely manner;
- to issue annual benefit statements on time or non-compliance with the Code.

4.3 Requirement to report a breach of the Law

- Breaches of the law which affect the scheme should be considered for reporting to the Pensions Regulator in accordance with the Code. The decision whether to report an identified breach depends on whether:
 - there is reasonable cause to believe there has been a breach of the law;
 - and if so, is the breach likely to be of material significance to the Pensions Regulator?
- It is important to understand that not every breach that is identified needs to be reported to The Pensions Regulator. For example, where it can be demonstrated that appropriate action is being taken to rectify the breach, or the breach has occurred due to teething problems with new or revised systems or processes, it may not be necessary to report the incident to the Pensions Regulator.
- It is still necessary that all incidents of breaches identified are recorded in the Council's breaches log. This log will be reviewed on an on-going basis to determine any trends in the breaches log that might indicate any serious failings or fraudulent behaviour.
- Where such failings or fraudulent behaviour are identified immediate action will be taken to agree and put in place a plan of action to rectify the matter and prevent such an occurrence in the future.

4.4 When a breach is required to be reported to The Pensions Regulator

- The Code requires that a breach should be notified to the Pensions Regulator as soon as is reasonably practicable once there is reasonable cause to believe that a breach has occurred and that it is of material significance to The Pensions Regulator. The time taken to notify should reflect the seriousness of the breach. In any event, where a breach is considered to be of material significance it must be reported to the

Pensions Regulator no later than one month after becoming aware of the breach or likely breach.

4.5 Where it is considered that a breach is of such significance that The Pensions Regulator is required to intervene as a matter of urgency (for example, serious fraud) the matter should be brought to the attention of the Pensions Regulator immediately (e.g. by calling them direct). A formal report should then be submitted to the Pensions Regulator, marked as “urgent” in order to draw the Pensions Regulator’s attention to it.4.5 Clarification when a breach is suspected

Individuals need to have reasonable cause to believe that a breach has occurred, not just a suspicion. Where a breach is suspected the individual should carry out further checks to confirm the breach has occurred. Where the individual does not know the facts or events, or is unclear as to the relevant law, it will usually be appropriate to check with, the Corporate Director of Finance and Resources, a member of the Pensions Sub Committee or Pension Board or others who are able to explain what has happened. However there are some instances where it would not be appropriate to make further checks, for example, if the individual has become aware of theft, suspected fraud or another serious offence and they are also aware that by making further checks there is a risk of either alerting those involved or hampering the actions of the police or a regulatory authority. In these cases The Pensions Regulator should be contacted without delay.

4.6 Determining whether the breach is likely to be of material significance

To decide whether a breach is likely to be of material significance to The Pension Regulator individuals should consider the following elements, both separately and collectively, and take into account expert or professional advice where appropriate:

- cause of the breach (what made it happen);
- effect of the breach (the consequence(s) of the breach);
- reaction to the breach; and
- wider implications of the breach.

4.6.1 The **cause** of the breach

Examples of causes which are likely to be of concern to the Pensions Regulator are provided below:

- acting, or failing to act, in deliberate contravention of the law;
- dishonesty;
- incomplete or inaccurate advice;
- poor administration, i.e. failure to implement adequate administration procedures;
- poor governance; or
- slow or inappropriate decision-making practices.

When deciding whether a cause is likely to be of material significance individuals should also consider:

- whether the breach has been caused by an isolated incident such as a power outage, fire, flood or a genuine one-off mistake.
- whether there have been any other breaches (reported to The Pensions Regulator or not) which when taken together with the current breach may become materially significant.

4.6.2 The **effect** of the breach

Examples of the possible effects (with possible causes) of breaches which are considered likely to be of material significance to The Pensions Regulator in the context of the LGPS are given below:

- Committee/Board members not having enough knowledge and understanding, resulting in pension boards not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements.
- Conflicts of interest of Committee or Board members, resulting in them being prejudiced in the way in which they carry out their role and/or the ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements.
- Poor internal controls, leading to 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 scheme at the right time.
- Inaccurate or incomplete information about benefits and scheme information provided to members, resulting in members not being able to effectively plan or make decisions about their retirement.
- Poor member records held, resulting in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Misappropriation of assets, resulting in scheme assets not being safeguarded.
- Other breaches which result in the scheme being poorly governed managed or administered.

4.6.3 The **reaction** to the breach

A breach is likely to be of concern and material significance to the Pensions 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; or
- fail to notify affected scheme members where it would have been appropriate to do so.

4.6.4 The **wider implications** of the breach

Reporters should also consider the wider implications when deciding whether a breach must be reported. The breach is likely to be of material significance to The Pensions Regulator where the fact that a breach has occurred makes it more likely that further breaches will occur within the Fund or, if due to maladministration by a third party, further breaches will occur in other pension schemes.

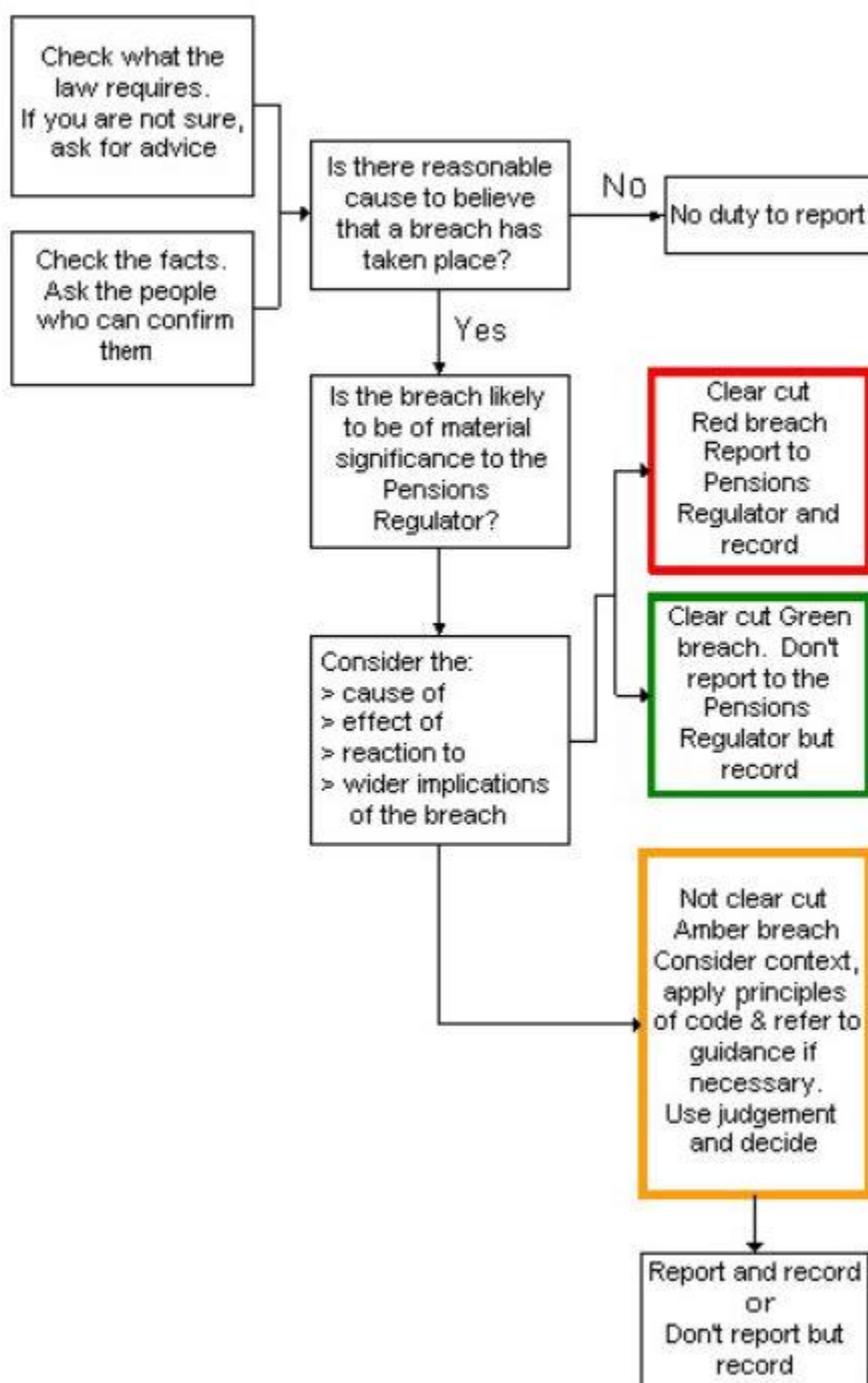
4.7 The individual should use the traffic light framework and decision tree set out below for deciding whether or not a breach has taken place and whether it is materially significant and therefore requires to be reported and to formally support and document their decision.

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 Pensions Regulator, but should be recorded in the 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 or Board will need to decide whether to informally alert the Pensions 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 or Board must report all such breaches to the Pensions Regulator in all cases;

Decision-tree: deciding whether to report



All incidences resulting from the unwillingness or inability of the employer to pay over the employee contributions, dishonesty, fraudulent behaviour or misuse of employee contributions, poor administrative procedures or the failure to pay over employee contributions within 90 days from the due date will be considered to be of material significance and reported to the Pensions Regulator.

4.8 Action where a breach or likely breach has been identified

4.8.1 As soon as a breach or likely breach has been identified regardless of whether it needs to be reported to the Pensions Regulator, the relevant manager, in consultation with the Head of Treasury and Pensions, 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.

4.8.2 All breaches must be recorded in the Council's breaches log attached in Annex A

4.9 Process for reporting breaches

All councillors, council officers and board members have a responsibility to:

- identify and assess the severity of any breach or likely breach;
- report all breaches or likely breaches to the Head of Treasury and Pensions and Chair of the Board, and in the case of board members, escalate to the Responsible officer where required under the Reporting Policy
- 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 re-occur, 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 re-occurring; and
- co-operate with, and assist in, the reporting of breaches and likely breaches to the Board, Pensions Sub-Committee, Responsible Officer and where necessary The Pensions Regulator.

4.9.1 Reporting a breach to The Pensions Regulator

All materially significant breaches must be reported to the Pensions Regulator in writing. This can be via post or electronically. The Pensions Regulator encourages the use of its standard reporting facility via its Exchange online service at www.tpr.gov.uk/exchange. The Responsible Officer will report all material breaches to the Pensions Regulator via Exchange.

4.9.2 Recording of breaches

All breaches and likely breaches identified are to be reported to the Head of Treasury and Pensions as soon as they are identified. The Head of Treasury and Pension] will log all breaches on the Council's breaches log, (an example of the log is attached as Annex A) including the following information:

- date the breach or likely breach was identified;
- name of the scheme;
- name of the employer (where appropriate);
- any relevant dates;
- a description of the breach, its cause and effect, including the reasons it is, or is not, believed to be of material significance;

- whether the breach is considered to be red, amber or green.
- a description of the actions taken to rectify the breach;
- a brief description of any longer term implications and actions required to prevent similar types of breaches re-occurring in the future.

Any documentation supporting the breach will be maintained by the Responsible Officer

4.10 Reporting to Pensions Sub- Committee and Pension Board

A report will be presented to the Pensions Sub- Committee and the Pension Board on a quarterly basis setting out:

- all breaches, including those reported to The Pensions Regulator and those unreported, with the associated dates;
- in relation to each breach, details of what action was taken and the result of any action (where not confidential);
- any future actions for the prevention of the breach in question being repeated; and
- highlighting new breaches which have arisen in the last year/since the previous meeting.

This information will also be provided upon request by any other individual or organisation (excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings).

4.11 Whistleblowing

It is a statutory duty to report breaches of the law. In rare cases this may involve a duty to whistle blow on the part of an employee of the Council or a member of the Board. The duty to report overrides any other duties a reporter may have, such as confidentiality. Any such duty is not breached by reporting to the Pensions Regulator. Given the statutory duty that exists, in exercising these guidelines the Council will ensure it adheres to the requirements of the Employment Rights Act 1996 in protecting an employee making a whistleblowing disclosure to the Pensions Regulator. The provisions of the Council's whistleblowing policy apply.

The duty to report, however, does not override 'legal professional privilege', so oral and written communications between the Council, Pensions Sub-Committee or Board and a professional legal adviser must not be disclosed.

5. Responsible officer

The Council has appointed the Corporate Director of Finance and Resources (the council's Chief Finance Officer under s151 Local Government Act 1972) to be responsible for the management and execution of these guidelines. This officer will be responsible for ensuring that breaches and likely breaches are recorded and reported as follows:

- ensure that all identified breaches and likely breaches are recorded by the Head of Treasury and Pensions in the Council's breaches log;
- ensure investigation of the circumstances of all reported breaches and likely breaches;
- ensure, where necessary that an action plan is put in place and acted on to correct the identified breach and also ensure further breaches of a similar nature do not re-occur;
- ensure reporting to the Committee and Board of:
 - all materially significant breaches or likely breaches that will require reporting to The Pensions Regulator as soon as practicable, but no later than one month after becoming aware of the breach or likely breach;
 and
 - all other breaches at least quarterly as part of the Pensions Sub-Committee cycle.
- report all materially significant breaches to The Pensions Regulator as soon as practicable but not later than one month after becoming aware of the breach.

6. Training

The Head of Treasury and Pensions will ensure that all Councillors, Council officers and Board members receive appropriate training on reporting breaches of the law and these guidelines at the commencement of their office, employment or appointment to the Board as appropriate and on an ongoing basis.

7. Review

The policy document will be reviewed annually by the Council's monitoring officer. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

Version:

Date:

Annex A

Breaches log

Date	Breach Description	Action	Responsible officer	Review Date