A procedure for reporting breaches of the law to The Pensions Regulator

BP2025.1
JUNE 2025

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Introduction

1 In January 2024 the Pensions Regulator (the Regulator) published its General Code of Practice. This is not a statement of law of itself but nonetheless it carries great weight. In some respects, it is like the Highway Code, in that some of its contents refer to statutory items, whilst others are advisory. The Courts may however also rely on the latter. In the same way, if determining whether any pensions related legal requirements have been met, a court or tribunal must consider the Code.

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 the Fund's areas of operation.

3 Some of the text herein is drawn from the Code itself. Where it has been, the Regulator's copyright applies.

4 If you have any questions about this procedure and:

- you are a member of the Staff and Pensions Committee, Investment Sub-committee, Local Pension Board or you are an external adviser, please contact the Solicitor to the Fund; you are an actuary, auditor or other external agent, please contact the Pension Services Manager and Legal;

- you represent an employer, please contact the Pensions Services Manager

- you are an officer of the Fund, and you work in Administration please contact your Team Manager or Pension Services Manager.

Aims and Objectives

5 The purpose of this policy is to make public the procedures that the Warwickshire Pension and its stakeholders must adhere to when reporting breaches of the law to The Pensions Regulator (TPR).

The objective of this policy is to ensure that the process for reporting breaches of the law is well-known among those who have a duty to report such breaches. This policy outlines the definition of a breach, the legal requirements for reporting it, the criteria for determining whether a breach is materially significant to TPR, and the information that must be provided to assist TPR in taking appropriate action.

To achieve this objective, any amendments to the Breaches Policy will be subject to approval by the Staff and Pensions Committee. Additionally, a consultation period with the stakeholders identified in the policy will be conducted prior to the publication of the policy.

Key risks of the Breaches Policy

6 The key risks to the delivery of this policy are outlined below. another suggestion from the AON review

- Non-Compliance with legal requirements Failure to adhere to the legal requirements for reporting breaches can result in penalties and undermine the delivery of this policy

- Stakeholder engagement -Lack of cooperation and engagement from stakeholders may hinder the delivery of the breaches policy as reporting breaches requires coordinated efforts

- Confidentiality concerns – ensuring the confidentiality of reported breaches while maintaining transparency can be challenging and may deter individuals from reporting

- Inadequate training and awareness – If stakeholders with a duty to report a breach are not trained or informed about the policy there is a risk that breaches may go unreported

- Complexity of regulations – the complexity and changes in pension regulations can make it challenging to stay compliant with the Beaches Policy and ensure breaches are reported accurately

- Insufficient resources – Limited resources, including staff can hinder the successful implementation of the breaches policy

Legal Requirements

7 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;

- the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.

  - People who are subject to the reporting requirement ('reporters') for public service pension schemes are:

- scheme managers (meaning, in the case of the Warwickshire Pension Fund, the Staff and Pensions Committee);

- members of the pension board (meaning, in the case of the WPF, the Local Pension Board);

- any person who is otherwise involved in the administration of the Fund (and thus members of the Investment Sub-Committee 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 (and thus the Fund's three external advisers).

Reasonable Cause

8 Having 'reasonable cause' to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

9 Reporters should ensure that where a breach is suspected, they carry out checks to establish whether 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.

Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to consult the appropriate Pension Services Manager, or Head of Corporate Financial Services, 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.

10 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.

11 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

12 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.

13 When deciding whether to report, those responsible should consider these points together. Reporters should consider expert or professional advice, where appropriate, when deciding whether the breach is likely to be of material significance to the Regulator.

14 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.

15 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.

16 A breach will not normally be materially significant if it has arisen from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had and to be aware that persistent isolated breaches could be indicative of wider scheme issues.

Effects of the breach

17 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:

- Local Pension Board members not having the appropriate degree of knowledge and understanding, which may result in the Board not fulfilling its role, the Fund not being properly governed and administered and/or the Investment Sub-Committee breaching other legal requirements;

- Local Pension Board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the scheme and/or the Investment Sub-committee breaching legal requirements;

- 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;

- accurate information about members not being returned to the national pensions dashboard or our member portal, 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 its assets, or being likely to do so, which may result in assets not being safeguarded

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

18 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.

Reaction to the breach

19 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.

20 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.
- fail to notify affected scheme members where it would have been appropriate to do so.

Wider implications of the breach

21 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 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.

What constitutes a breach?

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. The fund agrees to work with employers where situations occur that data cannot be corrected, for example due to loss or age.

Example 1 - Green Breach
An employer is late in paying over employee and employer contributions. It is contacted by officers from the administering authority, it immediately pays the contributions 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 changed its processes regarding future payments.
The breach is therefore not material to the Regulator and need not be reported.

Example 2 - Amber Breach
A pension overpayment is discovered, the administering authority has failed to pay the right amount 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 they were being overpaid. The overpayment is therefore waived.
In this case there is no need to report the breach as it is not material.

Example 3 - Red Breach
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, and because the administering authority has not been able to fulfil its statutory duties also.

Most Common

Cause of Breach	Who	Deadline	Green breach	Means of reporting
Payment of contributions	Employer	23rd month	1 day late	Monthly report from investments team
i-Connect Submission	Employer	19th of month	3 days late	Monthly report from i-Connect
Retirement notifications	Employer	Individual retirement date	4 weeks late	Admin team

Admission Agreements (admitted bodies)	Employer	Employer start date	1 month after start date	Admin Team
Administration Breaches, E.g. Late ABS	Admin team	Variable	Variable	Admin Team/ Pension Committee/Pension Board
Erroneous data leading to incorrect financial transactions	Employer/Admin team	Variable	Variable	Admin Team/ Pension Committee/Pension Board
Not returning data to the national pension dashboard	Admin Team	Variable	Variable	Admin Team/ Pension Committee/Pension Board
Data Breach	Employer/Admin team	Variable	Variable	Admin Team/ Pension Committee/Pension Board

See appendix for table of legal disclosure limits.

Review process and when a breach needs to escalated.

The PAS and investment teams will provide details of breaches to the Employer Relations team so that they can be recorded, and RAG rated.
A monthly review will be held with the Employer Relations Team Leader, Pensions Admin Delivery Lead, Strategy and Commissioning Manager (Treasury, Pensions, Audit, Insurance, and Risk) & Finance Service Manager – Transformation, to assess amber breaches, that may need to be escalated.
An example of an amber breach that may need escalating:
An employer has submitted payment for contributions late each month for 3 months and is not responding to correspondence from the Employer Relations Team Leader.

- The first email from the Employer Relations Team Leader should inform the employer that they are late submitting information and that this has been recorded as a breach but will not at this point be reported to The Pensions Regulator.
- The employer will be asked to submit the required information by a certain date.
- If no response is received within 2 weeks of to this email the Employer Relations Team Leader, will send a 2nd email which will include the following wording:
- ***If there is no response to this email*** Senior management will escalate the issue at Tier 2 level or above within the employing organisation and preferably avoiding escalating to personnel already involved.

Reporting to Staff & Pensions Committee and Pension Board

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

- A summary of all breaches, including those reported to The Pensions Regulator and those unreported,
- Dates of action taken to resolve recorded breaches
- Any actions taken to reduce future breaches

Staff and Pensions Committee and Pension Board are both entitled to have access to detailed information about breaches in relation to individual employers, should they request it (and will be required to maintain confidentiality of information where necessary).

Reporting process

Type of Breach	Timescale for reporting	Internal actions	Further actions
Urgent and Material RED	Employer Relations Team Leader informs Pensions Admin Delivery Lead. Prior to reporting to tPR the Director Finance and Section 151 Officer are informed. The breach is reported immediately to the Pensions Regulator.	Employer Relations Team to keep record of breach and investigate options to prevent further occurrence. The Pensions Admin Delivery Lead will also liaise with the Pension Regulator where applicable to come to a satisfactory resolution.	These breaches must also be reported to: Assistant Section 151 Officer, Strategy and Commissioning Manager (Treasury, Pensions, Audit, Insurance, and Risk) Finance Service Manager - Transformation The Chairs of the Staff and Pensions Committee and Local Pension Board, with a full report to be submitted at the next available meeting for members.
Non urgent and material RED	Employer Relations Team Leader informs the Pensions Admin Delivery Lead Prior to reporting to tPR the AD Finance and Section 151 Officer are informed. The breach is reported within 30 days to the	Employer Relations team to keep record of breach and investigate options to prevent further occurrence	Report non urgent and material breach at next Pension Committee/Pension Board meeting

	Pensions Regulator		
Amber	Employer Relations Team informs Employer Relations Team Leader within 1 week	Employer Relations Team to keep record of breach and Employer Relations Team Leader to investigate options to prevent further occurrence Employers who on more than 3 occasions in a row have amber breaches will be escalated to the Strategy and Commissioning Manager (Treasury, Pensions, Audit, Insurance, and Risk) & Finance Service Manager – Transformation	Report immaterial breach as part of summary at next Pension Committee/Pension Board meeting.
Green	Employer Relations Team informs Employer Relations Team Leader within 30 days	Employer Relations Team to keep record of breach	Report immaterial breach as part of summary at next Pension Committee/Pension Board meeting.

Submitting a report to the Regulator

27 Before you submit a report, you should obtain clarification of the law around the suspected breach. If:

- you are a member of the Staff and Pensions Committee, Investment Sub-committee, Local Pension Board or you are an external adviser, please contact the Solicitor to the Fund;

- you are an actuary, auditor or other external agent, please contact the Head of Investments, Audit and Risk -
- you represent an employer, please contact the Pensions Services Manager

- you are an officer of the Fund and you work in Administration, please contact Pension Services Manager

28 The person you contact will consider whether the Regulator would regard the breach as being material. They will also be clarifying any facts, if required. If the case is a difficult one they will seek advice, as required.

29 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).

30 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, but one test is: might it reasonably lead to a criminal prosecution or a serious loss in public confidence?

31 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; and
- role of the reporter in relation to the Fund.

32 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 Fund;
- the pension scheme's registry number (if available); and
- whether the concern has been reported before.

33 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.

34 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.

35 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.

36 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.

37 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.

38 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.

Recording breaches that have not been reported to the Regulator

39 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.

40 Breaches that are not being reported are recorded internally

Whistleblowing protection and confidentiality

41 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.

42 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.

43 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.

44 The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing 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.

Warwickshire County Council whistleblowing policy

45 The Council has its own whistleblowing policy. The person contacted about the potential breach, e.g., the Solicitor to the Fund, will take this into account when assessing the case.

Review, consultation and approval

46 This policy was approved by the Staff and Pensions committee in June 2025 and will next be reviewed in June 2026. The approved policy was issued to employers, advisors and fund officers in July via email and is published on the Warwickshire [Pension](#) Fund website.

Appendix 1

Disclosure Requirement	Time Limit
Material alterations to basic scheme information	Within 3 months of the change taking effect
Transfer Credits (quote)	Within 2 months
Annual Benefit Statements	By 31 August each year
Annual Benefit Statement (upon request)	Within 2 months of request, if not already provided within previous 12 months
Deferred Benefit Statements	By 31 August each year
Deferred Benefit Statement (upon request)	Within 2 months of request, if not already provided within previous 12 months
Pension Savings Statements	By 6 October each year
Cash Equivalent Transfer Value Out	Within 3 months of request
Accessing Benefits before Normal Pension Age	2 month of benefits becoming payable
Accessing Benefits on or after Normal Pension Age	1 month of benefits becoming payable
Notification of Deferred Benefit entitlement	2 months of being notified of leaver