



Powys

**CRONFA BENSIWN
POWYS
PENSION FUND**

Reporting Breaches Policy

Published March 2019

1. Introduction

- 1.1 This document sets out the procedures to be followed in relation to reporting breaches of the law to The Pensions Regulator, by individuals involved with the administration service of the Powys Pension Fund, which is the Local Government Pension Scheme managed and administered by Powys County Council.
- 1.2 This policy has been written in order to provide compliance with The Pension Regulator's Code of Practice and ensures that the Powys Pension Fund follows best practices in the recording and reporting of breaches.
- 1.3 Breaches of the Law can occur in relation to a wide variety of tasks associated with the administration of the scheme such as:
 - Record Keeping
 - Internal procedures and controls
 - Calculation and payment of benefits
 - Payment of contributions
 - Member Communications
 - Making investments or investment related decisions
- 1.4 This policy and procedure document applies, in the main, to:
 - All members of the Powys Pension Board;
 - All Officers involved in the management of the Powys Pension Fund, including members of the Pensions Administration and Finance teams, the Head of Finance and the Section 151 Officer to the Council;
 - Any professional advisers to the Fund including; the Fund Actuary, auditors, legal advisers and fund managers and;
 - Officers of Employers participating within the Powys Pension Fund who are responsible for matters relating to the Local Government Pension Scheme
- 1.5 The document must be reviewed and published following any material change relevant to the policy.

2. Requirements

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

2.2 Not all breaches need to be reported to the Pensions Regulator, only those where there is likely to be a material significance, but all breaches should be recorded and retained for future reference.

2.3 The Pensions Act 2004

Section 70 of the Pensions Act 2004 (the Act) imposes a requirement on the following persons:

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

Where the person has reasonable cause to believe that;

- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and
 - (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.
- 2.4 The Act states that 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.

2.5 The Pension Regulator's Code of Practice

Practical guidance in relation to this legal requirement is included in The Pension Regulator's Code of Practice, including in the following areas:

- implementing adequate procedures
- judging whether a breach must be reported
- submitting a report to The Pensions Regulator
- whistleblowing protection and confidentiality

2.6 Procedural Application for the Powys Pension Fund

2.7 This procedure has been developed to reflect the guidance contained within The Pension Regulator's Code of Practice and this document sets out how the Powys Pension Board will strive to achieve best practice through use of a formal recording and reporting breaches procedure.

3. Reporting of Breaches Procedure

3.1 Anyone who has a responsibility to report breaches of the law during the course of their association with the Scheme, should be alert to the potential for breaches to occur and to have properly established procedures in place to enable them to evaluate any potential breaches and the need to report them.

The scheme manager keeps a 'register of breaches of the law' in which all breaches must be recorded, regardless of whether or not they are or ever have been reported to the Pensions Regulator. This register is available to all responsible persons and is a standing item on the agenda for meetings of the Pension Board.

3.2 Individuals may need to refer to regulations and guidance when considering whether or not to report a possible breach. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004:
www.legislation.gov.uk/ukpga/2004/35/contents
- Employment Rights Act 1996:
www.legislation.gov.uk/ukpga/1996/18/contents
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations):
www.legislation.gov.uk/uksi/2013/2734/contents/made
- Public Service Pension Schemes Act 2013:
www.legislation.gov.uk/ukpga/2013/25/contents
- Local Government Pension Scheme Regulations (various):
<http://www.lgpsregs.org/timelineregs/Default.html> (pre 2014 schemes)
<http://www.lgpsregs.org/index.php/regs-legislation> (2014 scheme)
- The Pensions Regulator's Code of Practice:
<http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>

- In particular, individuals should refer to the section on ‘Reporting breaches of the law’.

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

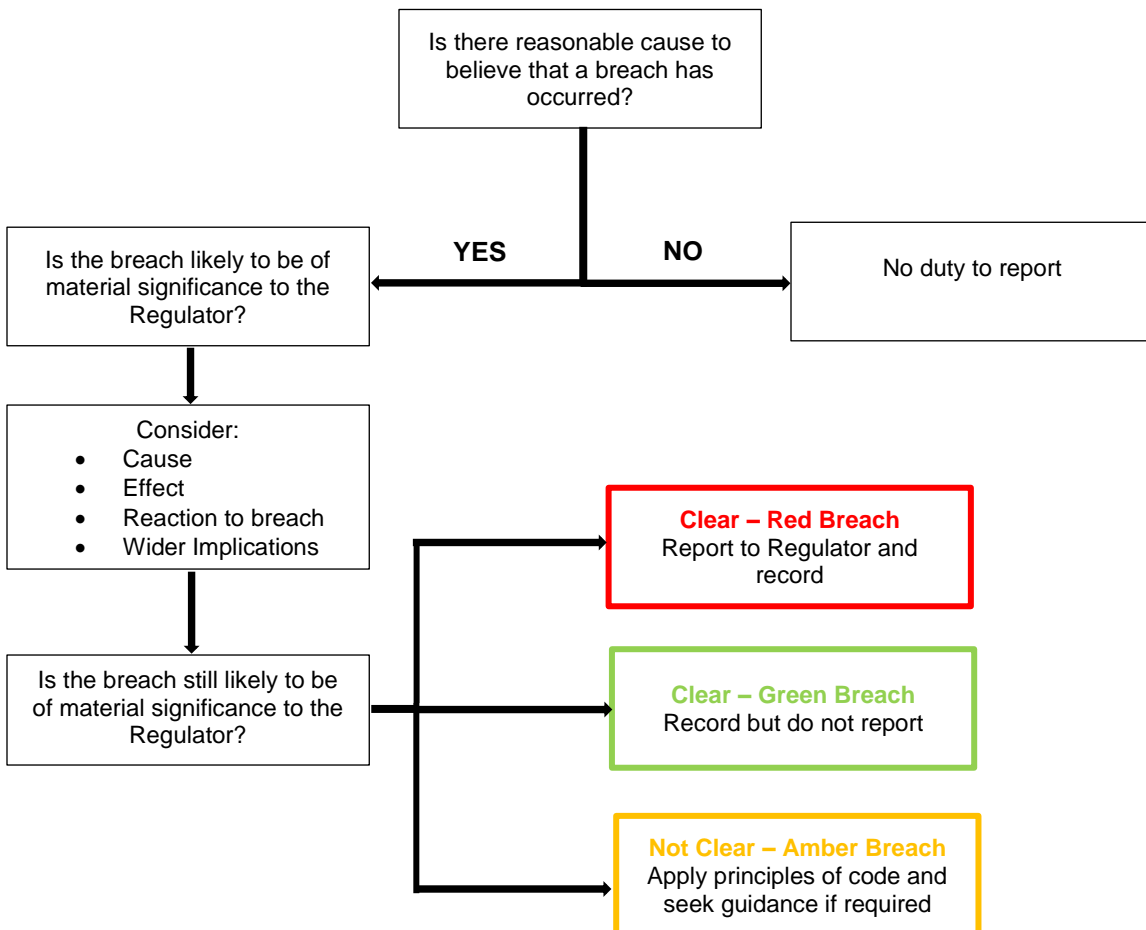
In order to decide whether a breach is likely to be of material significance, the following should be considered:

- 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.

Further guidance can be found in Appendix A.

3.4 In order to help assess the material significance of a breach, the Traffic Light system detailed in Appendix B should be followed and the process appropriately documented to support the case.

3.5 The process for deciding whether a breach has taken place and whether it is materially significant (and reportable), can be demonstrated using the decision tree below:



3.6 Dealing with complex cases

Complex cases should be referred to the Pension Fund Manager for consideration and guidance. Information may also be available from the Scheme Advisory Board or the LGPC Secretariat at <http://www.lgpsregs.org>. If timescales allow, professional advice can be taken and the case will be discussed at the next Pension Board meeting.

3.7 Timescales for reporting

The Pensions Act and the Pension Regulator's Code of Practice require that if breach is to be reported, then the report must be made in writing as soon as is reasonably practical. Any delays in reporting the breach may increase any risks associated with it.

3.8 Reporting very serious breaches

In cases of serious potential breaches which have extreme consequences, the more urgently the reporter should make the necessary checks. In cases of potential dishonesty, the reporter should avoid, where possible, checks which may alert those who are implicated. In very serious cases, reporters should use the quickest means possible to alert the pensions regulator of the breach.

3.9 Recording Breaches

Powys Pension Fund will maintain a log of all breaches, whether they are reportable to the Pensions Regulator or not. This Breaches log will be maintained and discussed at each pension Board meeting. It will also be presented annually to the Pensions and Investment Committee, or more frequently, should it be required.

3.10 Requirements in the reporting of Breaches

All reports of material breaches must be made in writing to the Pensions Regulator as soon as is reasonably practicable. They should be sent, preferably to the Pensions Regulator via its online system, 'Exchange' at www.tpr.gov.uk/exchange, but can be sent by post to The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW, or electronically to customersupport@thepensionsregulator.gov.uk or by fax to 0870 2411144.

The report should be dated and include as a minimum the following details:

- Full name of the scheme;

- Description of the breach or breaches;
- Any relevant dates;
- Name of the Scheme employer and/or Scheme Manager (where known);
- Name, position and contact details of the person reporting the breach;
- The role of the person reporting the breach in relation to the Scheme.

Further information should be supplied wherever possible including for example:

- The reason the breach is thought to be of material significance;
- The address of the Scheme;
- The contact details of the Scheme Manager
- Whether the concern has been reported before.

If the matter of concern is considered to be particularly serious, the Pensions regulator can be contacted by phone on 0870 6063636, prior to the submission of a written report.

3.11 Failure to report a breach of the law

Failure by any person to comply with their obligation to report breaches of the law to the Pension Regulator is a 'civil offence' unless a 'reasonable excuse' can be given.

To decide if a reporter has a reasonable excuse for not reporting a breach, or reporting a breach later than would be expected, The Pensions Regulator may consider the following:

- The legislation, case law and codes of practice issued by the Pensions Regulator;
- The role of the reporter in relation to the Scheme;
- The training provided to the reporter and the level of knowledge that the reporter could reasonably be expected to have;
- The procedures put in place to identify and evaluate breaches and whether those procedures have been followed;
- The seriousness of the breach and whether or not the breach should have been reported immediately;
- Any reasons given for a delay in the report;
- Any other relevant considerations relating to the case in question.

If the Pensions Regulator considers issuing a civil penalty a warning notice will be sent to the affected party or parties identifying the alleged breach. In addition, the Pensions Regulator may consider it appropriate to make a complaint to the reporters professional or other governing body.

4. Contacts

- 4.1 If you require any further information about reporting breaches or this procedure, please contact:

Chris Hurst – Pension Fund Manager
Email: chris.hurst@powys.gov.uk
Telephone: 01597 827640

Megan Price – Pensions Administration Manager
Email: megan.price@powys.gov.uk
Telephone: 01597 827642

Determining whether a breach is likely to be of material significance

What is of material significance can be considered from four aspects:

1. Cause – dishonesty, poor governance or administration, poor advice, acting (or failing to act) in deliberate contravention of the law;
2. Effect – if the matter appears to be the effect of non-compliance with the Public Service Pensions Act 2013, the Local Government Pension Scheme Regulations, poor administration, inaccurate payments or theft;
3. Reaction to the breach – if no prompt and effective action has been taken to deal with the breach and to identify and tackle the causes so as to minimise the risk of recurrence;
4. Wider implications – if the breach suggests wider undetected problems.

To be able to consider these aspects, all people who have a legal requirement to report breaches of the law, as set out in section 3 of the main document, will need to ensure that they have sufficient knowledge and understanding of the pension law and regulations that govern the LGPS.

In forming a view as to whether or not the breach is of material significance, reporters will need to consider other breaches of which they are aware, but be careful to ensure that any such breaches have not already been addressed and resolved.

The aim of the Pensions Regulator is to protect the benefits of pension scheme members, reduce calls upon the Pension Protection Fund and to promote good administration of work based pension schemes. Therefore, the following are important elements that the Pensions Regulator may consider to be of material significance:

- The right money is paid into the Scheme at the right time;
- Assets are appropriately safeguarded;
- Payments out of the Scheme are legitimate, accurate and paid at the right time to the right person(s);
- The Scheme Manager is complying with the legal requirements of Scheme funding;
- The Scheme Manager is properly considering their investment policies and investing in accordance with them;
- The Scheme is being administered properly in accordance with Scheme regulations;

- Appropriate records are maintained and are accurate;
- Scheme members receive accurate, clear and impartial information without delay.

The Pensions Regulator will not normally regard a breach as material if the Scheme Manager has taken prompt and effective action to investigate and resolve a breach and put in place the necessary procedure to ensure that such a breach will not reoccur.

However, the Pensions Regulator will be concerned where the Scheme Manager has failed to act promptly and effectively to identify, resolve and remedy the causes for the breach. If the proper corrective action has not been taken, the Pensions Regulator is likely to deem the impact as material.

The wider implications of a breach are the concern of the Pensions Regulator where the fact that the breach has occurred in the first place, will make it more likely that future breaches will arise because the Scheme Manager lacks the appropriate skills and knowledge needed to fulfil the requirements of their role.

A traffic light framework, as supplied by the Pensions Regulator, has been set up as a reference tool for reporters considering whether breaches of the law have a material significance and so should be reported to the Pensions Regulator. This framework document should be used by all reporters and continually updated as breaches are identified. It provides possible investigation outcomes and requires the reporter to consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach being considered. This document will be made available to all persons responsible for reporting breaches of the law as part of Pension Board meetings.

A breach will be in the red category and therefore must always be reported to the Pensions Regulator, because one or more of the following apply:

- It was caused by dishonesty, poor scheme governance, poor advice or by deliberate contravention of the law;
- Its effect is considered to be significant;
- Inadequate steps have been taken to put matters right;
- It has wider implications.

A breach will be in the green category, and will not need to be reported to the Pensions Regulator but should be recorded, because one or more of the following apply:

- It was not caused by dishonesty, poor scheme governance, poor advice or by deliberate contravention of the law;
- Its effect is NOT significant;
- Proper steps are being taken to put matters right;
- It does NOT have wider implications.

A breach will be in the amber category when it is not obviously either red or green. The decision whether or not to report will require a balanced judgement based on the cause, effect, reaction and wider implication of the case under consideration. Other previous reported or unreported cases may be relevant when coming to a decision whether to report or not and consideration needs to be given to the adequate oversight and controls adopted by the scheme manager.

Traffic Light framework for deciding on whether to report or not

Clear – Red Breach
Report to Regulator and record

Where the cause, effect, reaction and wider implications of a breach, when considered together, are likely to be of material significance:

These **must** be reported to The Pensions Regulator

Not Clear – Amber Breach
Apply principles of code and seek guidance if required

Where the cause, effect, reaction and wider implications of a breach, when considered together, may be of material significance. They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right. You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported

Clear – Green Breach
Record but do not report

Where the cause, effect, reaction and wider implications of a breach, when considered together, are not likely to be of material significance. These should be recorded but do not need to be reported

All breaches should be **recorded**, even if they are not materially significant and reportable to The Pensions Regulator.

When using the traffic light framework individuals should consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach, before you consider the four together.

The Pensions regulator has provided some useful examples of this framework at the following link:

<http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx>