

London Borough of Sutton Pension Fund Policy for Reporting Breaches of Law

1. Introduction

- 1.1. This document sets out the policy and procedures to be followed in relation to identifying managing and where necessary reporting breaches of the law to the Pensions Regulator.
- 1.2. The policy reflects guidance in the Pension Regulator's Code of Practice and sets out the responsibility of Pension Committee and Local Pension Board members and officers at London Borough of Sutton.
- 1.3. The Strategic Director, Resources will be responsible for the management and execution of this breaches policy.

2. Duty to Report breaches of the law

- 2.1. Under Section 70 of the Pensions Act 2004 breaches of the law which affect pension schemes should be considered for reporting to the Pension Regulator.
- 2.2. Certain persons are required to report such breaches to the Pension Regulator. These persons known as 'reporters' are as follows:
 - The Scheme manager (London Borough of Sutton as the Administering Authority)
 - All members of the Pension Committee
 - All members of the Local Pension Board
 - All officers involved in the administration of the Fund
 - Professional advisors including auditors, actuaries, legal advisers and investment managers
 - Any person who is otherwise involved in advising managers of the Sutton Fund in relation to the LGPS
- 2.3. This policy only applies to elected members and officers of the Council and members of the Local Pension Board. It is for the other 'reporters' to ensure adequate procedures and policies are put in place in order to identify, assess and where necessary report breaches. Both the Committee and the Local Pension Board will take all necessary steps to consider the breach and report to the Regulator rather than having the breach solely reported by any other 'reporters'

- 2.4. All staff are expected to take a proactive approach to the identification, management and reporting of all breaches that have occurred or likely to occur.
- 2.5. The Council will maintain a log of all breaches of the law as applicable to the management and administration of the Fund.

3. What is a breach of the law?

- 3.1. 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 Local Government Pension Scheme (LGPS) it can encompass many aspects of the management and administration of the scheme, including failure:
 - to do anything required under the LGPS 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;
 - 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.
- 3.2. LGPS Regulations and guidance will be referred to when considering whether or not a breach has occurred. Some of the key provisions are shown at Appendix A.

4. Reporting Breaches

- 4.1. The decision whether to report requires two key judgements:
 - Is there reasonable cause to believe there has been a breach of the law
 - If so is the breach likely to be of material significance to the Pension Regulator?
- 4.2. It is important to understand that not every breach that is identified needs to be reported to the 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 problems with a new or revised systems or processes, it may not be necessary to report the incident to the 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.

5. Deciding whether the breach is likely to be of material significance

- 5.1. To decide whether a breach is likely to be of material significance the following factors should be considered:
- Cause of the breach (what made it happen e.g. dishonesty, poor governance, incomplete or inaccurate advice or acting (or failing to act) in deliberate contravention of the law)
 - Effect of the breach (the consequences of the breach)
 - Reaction to the breach (e.g. taking prompt and effective action to investigate and correct the breach and its causes and where appropriate to notify any members whose benefits have been affected)
 - Wider implications of the breach (e.g. is it likely to happen again due to a lack of knowledge and understanding or inadequate systems)
- 5.2. A decision tree has been provided by the Regulator to assist schemes in identifying the significance of the breach and whether it should be reported. This is shown at Appendix B. The decision tree provides a 'traffic light' framework of categorising an identified breach and should be used to guide a decision.
- 5.3. A breach is in the green category because all of the following apply:
- It was not caused by dishonesty, poor scheme governance, poor advice or by a 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
- 5.4. A breach is categorised as red because one or more of the following applies:

- It was caused by dishonesty, poor scheme governance, poor advice or by deliberate contravention of the law
- Its effect is significant
- It has wider implications

5.5. A breach is categorised as amber if it does not fall obviously into the red or green classification. The decision whether or not to report will require a balanced judgement based on the breach's cause, its effect, the reaction of the trustees and others to it and any wider implications it may have. In this context, other previously reported or unreported breaches will be relevant in determining the most appropriate course of action.

6. Process for reporting breaches

6.1. All relevant officers and elected members of the Council, as well as all members of the local pension board have a responsibility to:

- identify and assess the severity of any breach or likely breach;
- 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 recurring;
- co-operate with, and assist in, the reporting of breaches and likely breaches to the Pension Committee, local pension board and where necessary the Regulator.

7. Responsibilities of the responsible officer

7.1. The Council will appoint one of its senior officers to be responsible for the management and execution of this breaches policy. That officer will be the Strategic Director, Resources. The Strategic Director, Resources will be responsible for recording and reporting breaches and likely breaches as follows:

- record all identified breaches and likely breaches of which they are aware in the Council's breaches log;
- investigate 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;
- Notify by email the Pension Committee and Local Pension Board of all materially significant breaches or likely breaches that will require reporting to the Regulator as soon as practicable, but no later than one month after becoming aware of the breach or likely breach. Report all other breaches at least quarterly as part of the Committee cycle.
- report all materially significant breaches to the Regulator as soon as practicable but not later than one month after becoming aware of the breach.

7.2. The Strategic Director, Resources will determine whether any breach or likely breach is materially significant, having regard to the guidance set out in the Code of Practice and where considered appropriate the Pension Committee and Local Pension Board. Where uncertainty exists as to the materiality of any identified breach the Council or Local Pension Board will be required to informally notify the Regulator of the issue and the steps being taken to resolve the issue.

8. Making a report to the Regulator

8.1. Once a breach or likely breach has been identified, regardless of whether it needs to be reported to the Regulator, the relevant manager, in consultation with the Strategic Director, Resources must review the circumstances of the breach in order to understand why it has occurred, the consequences of the breach and agree corrective measures required to prevent re-occurrence including an action plan where necessary. All breaches must be recorded in the Council's breaches log.

8.2. Reports to the Regulator will be overseen by the Strategic Director Resources and will include as a minimum:

- The name of the scheme
- Description of the breach or breaches
- Any relevant dates
- Name of the employer or scheme manager
- Name position and contact details of the reporter
- Role of the reporter in relation to the scheme

8.3. The following information will be included within the report:

- Reason the breach is thought to be of material significance to the Pension Regulator
- Scheme address
- Scheme Manager contact details
- Pension scheme registry number (insert number)
- Address of employer

8.4. Failure to comply with the obligation imposed by the requirement to report breaches of law without 'reasonable excuse' is a civil offence that can result in civil penalties.

9. Whistleblowing

9.1. It is a statutory duty to report breaches of the law. In rare cases this may involve a duty to whistleblow on the part of an employee of the Council or a member of the Local Pension Board. The duty to report does not override any other duties a "reporter" may have, such as confidentiality. Any such duty is not breached by reporting to the Regulator. Given the statutory duty that exists, in exercising this breaches policy 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 Regulator. The duty to report, however, does not override 'legal privilege', so oral and written communications between the Council or Local Pension Board and a professional legal adviser do not have to be disclosed.

10. Training

10.1. The Strategic Director, Resources will ensure that all relevant officers and elected members, as well as members of the Local Pension Board receive appropriate training on this policy at the commencement of their employment or appointment to the local pension board as appropriate and on an ongoing basis.

10.2. This policy will be kept under review and updated as considered appropriate by the Strategic Director, Resources. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

10.3. If you require further information about reporting breaches or this procedure, please contact:

Lyndsey Gamble

Head of Financial Strategy and Planning

Email: lyndsey.gamble@sutton.gov.uk

Telephone: 020 8770 5358

Andy Banham

Head of Pensions

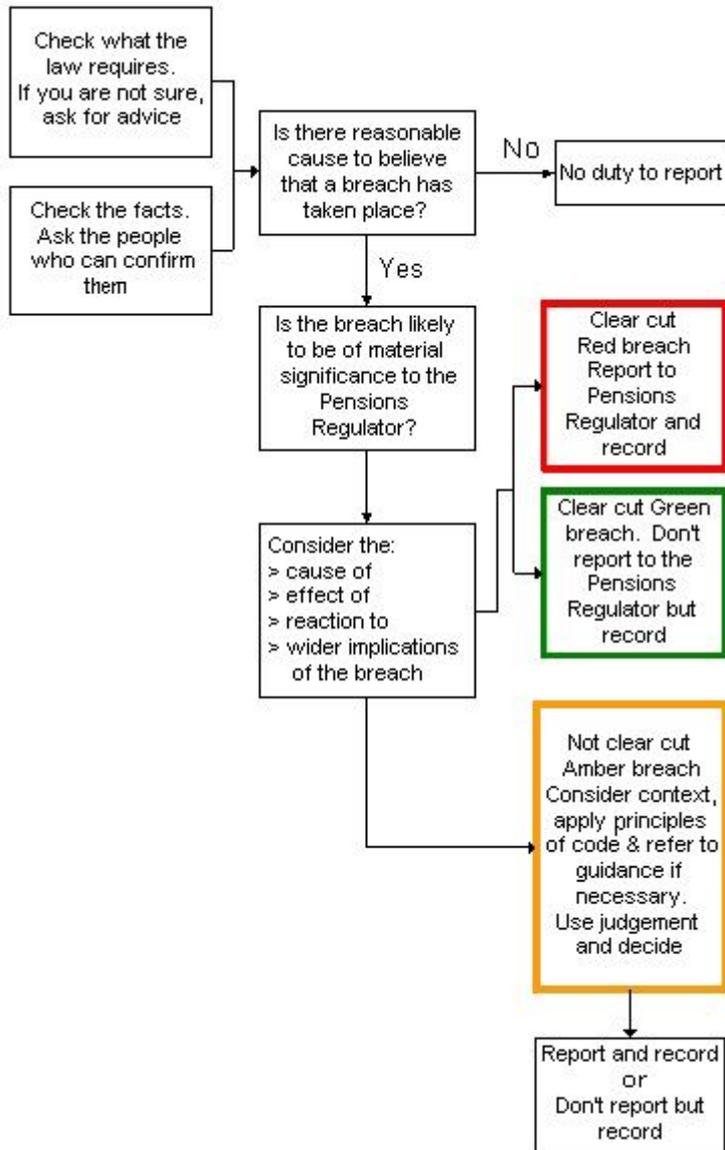
Email: andybanham@sutton.gov.uk

Telephone: 020 8770 5291

Appendix A: LGPS Regulation, legislation & Guidance

LGPS Legislation
Section 70 of the Pensions Act 2004
Section 228(2) of the Pensions Act 2004
Part 3 of the Pensions Act 2004
Section 69 and section 120 of the Pensions Act 2004
Pensions Act 1995
Section 47(4) of the Pensions Act 1995
The Employment Rights Act 1996
Section 311

Appendix B: Pension Regulator Decision Tree



This page is intentionally left blank