

London Borough of Hounslow Pension Fund

Procedure for Reporting Breaches of the Law

1 Introduction

- 1.1 This document sets out the procedures to be followed by certain persons involved with the London Borough of Hounslow Pension Fund, the Local Government Pension Scheme managed and administered by the London Borough of Hounslow, in relation to reporting breaches of the law to the Pensions Regulator.
- 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 This Procedure document applies, in the main, to:
 - all members of the Pensions Fund Panel and the Local Pension Board
 - all officers involved in the management of the Pension Fund
 - any professional advisers and third-party suppliers including auditors, actuaries, independent advisers, administrators, legal advisers and fund managers
 - officers of employers participating in the London Borough of Hounslow Pension Fund who are responsible for pension matters.

2 Requirements

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

2.2 Pensions Act 2004

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

- 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 an occupational or personal pension scheme
- the employer in relation to an occupational pension scheme
- a professional adviser in relation to such a scheme
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme, to report a matter to The Pensions Regulator 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.

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.

2.3 **The Pension Regulator's Code of Practice**

Practical guidance in relation to this legal requirement is provided 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.

2.4 **Application to the London Borough of Hounslow Pension Fund**

The London Borough of Hounslow has developed this procedure which reflects the guidance contained in The Pension Regulator's Code of Practice in relation to the London Borough of Hounslow Pension Fund and this document sets out how the Council will strive to achieve best practice through use of a formal reporting breaches procedure.

3 London Borough of Hounslow Pension Fund Reporting Breaches Procedure

3.1 The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the London Borough of Hounslow Pension Fund.

It aims to ensure individuals responsible are able to meet their legal obligations and avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk.

3.2 **Clarification of the law**

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', and for information about reporting late payments of employee or employer contributions, the section of the Code on 'Maintaining contributions' on the the Pensions Regulator website.

Further guidance and assistance can be provided by the Strategic Pensions Manager, as long as requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

3.3 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, it will usually be appropriate to check with the Strategic Pensions Manager at the London Borough of Hounslow, a member of the Pensions Fund Panel 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.

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

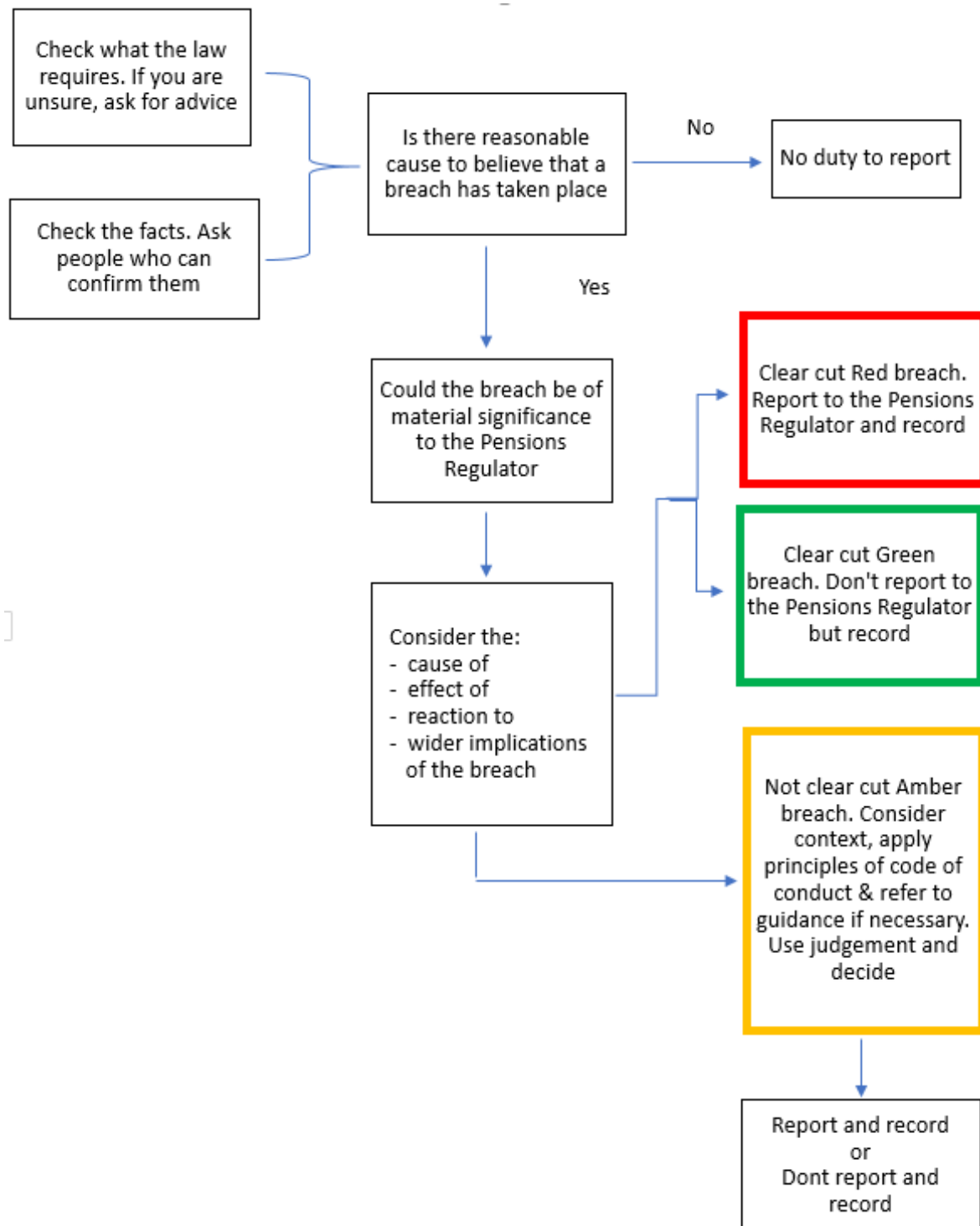
To decide whether a breach is likely to be of material significance an individual should consider the following, both separately and collectively:

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

The individual should use the traffic light framework described in Appendix B to help assess the material significance of each breach and to formally support and document their decision.

- 3.5 A decision tree is provided below to show the process for deciding whether or not a breach has taken place and whether it is materially significant and therefore needs to be reported.

Decision tree: deciding whether to report



3.6 Referral to a level of seniority for a decision to be made on whether to report

The London Borough of Hounslow has designated an officer (the Strategic Pensions Manager) to ensure this procedure is appropriately followed. They are considered to have appropriate experience to help investigate whether there is reasonable cause to believe a breach has occurred, to check the law and facts of the case, to maintain records of all breaches and to assist in any reporting to The Pensions Regulator, where appropriate.

If breaches relate to late or incorrect payment of contributions or pension benefits, information the matter should be highlighted to the Strategic Pensions Manager at the earliest opportunity to ensure the matter is resolved as a matter of urgency.

Individuals must bear in mind, however, that the involvement of the Strategic Pensions Manager is to help clarify the potential reporter's thought process and to ensure this procedure is followed. The potential reporter remains responsible for the final decision as to whether a matter should be reported to The Pensions Regulator.

The matter should not be referred to the Strategic Pensions Manager if doing so would alert any person responsible for a possible serious offence to the investigation (as highlighted in section 2). If that is the case, the individual should report the matter to The Pensions Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to the Regulator before the submission may be appropriate, particularly in the case of a more serious breach.

3.7 Dealing with complex cases

The Strategic Pensions Manager may be able to provide guidance on particularly complex cases. Guidance may also be obtained by reference to previous cases, information on which will be retained by the London Borough of Hounslow, or via discussions with those responsible for maintaining the records. Information may also be available from national resources such as the Scheme Advisory Board or the LGPC Secretariat (part of the LG Group - <http://www.lgpsregs.org/>).

If timescales allow, legal advice or other professional advice can be sought and the case can be discussed at the next Panel or Board meeting.

3.8. Timescales for reporting

The Pensions Act and The Pension Regulator's Code require that, if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable. Individuals should not wait for others to report and nor is it necessary for a reporter to gather all the evidence which The Pensions Regulator may require before taking action. A delay in reporting may exacerbate or increase the risk of the breach. The time taken to reach the judgements on “reasonable cause to believe” and on “material significance” should be consistent with the speed implied by ‘as soon as reasonably practicable’. In particular, the time taken should reflect the seriousness of the suspected breach.

3.9 Early identification of very serious breaches

In cases of immediate risk to the scheme, for instance, where there is any indication of dishonesty, The Pensions 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 Pensions Regulator to the breach. Internal Audit should also be informed.

3.10 **Recording all breaches even if they are not reported**

The record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). The London Borough of Hounslow will maintain a record of all breaches identified by individuals and reporters should therefore provide copies of reports submitted to The Pensions Regulator to the Strategic Pensions Manager. Records of unreported breaches should also be provided to the Strategic Pensions Manager as soon as reasonably practicable and certainly no later than within 20 working days of the decision made not to report. These will be recorded alongside all reported breaches. The record of all breaches (reported or otherwise) will be presented to the Pensions Fund Panel and will also be shared with the Pension Board.

3.11 **Reporting a breach**

Reports must be submitted in writing via The Pensions Regulator's online system at www.tpr.gov.uk/exchange, or by post, email or fax, and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Reporters should ensure they receive an acknowledgement for any report they send to The Pensions Regulator. The Pensions Regulator will acknowledge receipt of all reports within five working days and may contact reporters to request further information. Reporters will not usually be informed of any actions taken by The Pensions Regulator due to restrictions on the disclosure of information.

3.12 As a minimum, individuals reporting should provide:

- full scheme name (London Borough of Hounslow Pension Fund)
- description of breach(es)
- any relevant dates
- name, position and contact details
- role in connection to the scheme
- employer name or name of scheme manager (the latter is the London Borough of Hounslow)

3.13 If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to The Pensions Regulator
- scheme address (provided at the end of this procedures document)
- scheme manager contact details (provided at the end of this procedures document)
- pension scheme registry number (PSR – 10271927)
- whether the breach has been reported before.

3.14 The reporter should provide further information or reports of further breaches if this may help The Pensions Regulator in the exercise of its functions. The Pensions Regulator may make contact to request further information.

3.15 **Confidentiality**

If requested, The Pensions Regulator will do its best to protect a reporter's identity and will not disclose information except where it is lawfully required to do so.

If an individual's employer decides not to report and the individual employed by them disagrees with this and decides to report a breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report in good faith.

3.16 **Reporting to Pension Fund Panel**

A report will be presented to the Pension Fund Panel on quarterly basis setting out:

- all breaches, including those reported to The Pensions Regulator and those not reported, 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
- 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).

If we are ever exposed to material risk, an immediate notification will be made to all Members of the Pension Fund Panel.

An example of the information to be included in the reports is provided in Appendix C to this procedure.

3.17 **Review**

This Reporting Breaches Procedure was written in September 2018. It will be kept under review and updated as considered appropriate by the Strategic Pensions Manager. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

3.18 **Further Information**

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

Hitesh Sharma
Strategic Pensions Manager
London Borough of Hounslow,
Lampton Road
Hounslow

TW3 4DN

E-mail - pensions@hounslow.gov.uk

Telephone – 0208 583 5635

Appendix A – Determining whether a breach is likely to be of material significance

To decide whether a breach is likely to be of material significance individuals should consider the following elements, both separately and collectively:

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

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.
- 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 may become materially significant

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:

- Panel/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 Panel 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

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:

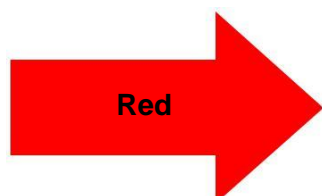
- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence
- are not pursuing corrective action to a proper conclusion, or
- fail to notify affected scheme members where it would have been appropriate to do so.

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.

Appendix B - Traffic light framework for deciding whether or not to report

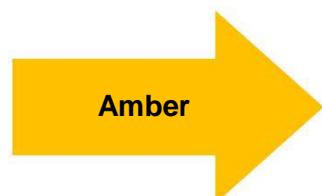
The London Borough of Hounslow recommends those responsible for reporting to use the following traffic light framework when deciding whether to report to The Pensions Regulator.



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

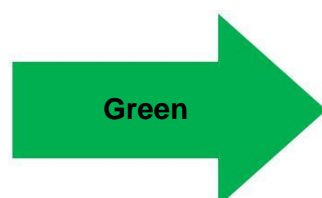
These must be reported to The Pensions Regulator.

Example: Several members' benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.



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.

Example: Several members' benefits have been calculated incorrectly. The errors have been corrected, with no financial detriment to the members. However the breach was caused by a system error which may have wider implications for other public service schemes using the same system.



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.

Example: A member's benefits have been calculated incorrectly. This was an isolated incident, which has been promptly identified and corrected, with no financial detriment to the member. Procedures have been put in place to mitigate against this happening again.

All breaches should be recorded even if the decision is not to report.

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. Some useful examples of this is framework is provided by The Pensions Regulator at the following link

[http:// www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx](http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx)

