

**Dorset County  
Pension Fund**

administered by **Dorset Council**



# **Policy for Reporting Breaches of the Law**

**10 December 2020**

# Policy for Reporting Breaches of the Law

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## 1. Introduction

This policy document sets out Dorset County Pension Fund's procedures to be followed in identifying, managing and where necessary reporting breaches of the law as covered in paragraphs 241 to 275 of the Pensions Regulator’s Code of Practice no 14: Governance and administration of public service pension schemes (“the Code of Practice”).

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.

This policy applies to officers and members of:

- Dorset County Pension Fund ("the Fund"),
- Dorset Council (“the Council”),
- the Pension Fund Committee
- the Local Pension Board

It sets out their responsibility in identifying, managing and where necessary reporting breaches of the law as they apply to the management and administration of the Fund.

Where a breach of the law is identified all parties will take the necessary steps to consider the breach and report to the Pensions Regulator.

This policy will be reviewed and approved by the Pension Fund Committee at least every two years. The Fund will monitor all breaches and will ensure that adequate resources are allocated to managing and administering this process.

The Pensions Manager for the Dorset County Pension Fund (“Pensions Manager”) will be responsible for the management and execution of this breaches policy.

The Pensions Manager will ensure that training on breaches of the law and this policy is conducted for all relevant officers, as well as members of the Pension Fund Committee and Local Pension Board at induction and on an ongoing basis.

## **2. Overview**

The identification, management and reporting of breaches is important. It is a requirement of the Code of Practice; failure to report a material breach is a civil offence that can result in civil penalties.

In addition to identifying, rectifying and where necessary reporting a particular breach it provides an opportunity to learn from mistakes and review and improve processes in the areas where the breach occurred.

All parties involved in the administration and management of the Fund are required to take a pro-active approach to the identification, management and reporting of all breaches that have occurred, or are likely to occur.

The Fund, the Council, Pension Fund Committee and the Local Pension Board cannot rely on waiting for other reporters to report a breach where it has occurred. Where a breach has occurred and has been identified it should be recorded, assessed and where necessary reported as soon as reasonably practicable.

The Pensions Manager 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?**

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, for example, 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.

#### **4. Requirement to report a breach of the law**

Breaches of the law which affect pension schemes should be considered for reporting to the Pensions Regulator.

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 Regulator?

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 teething problems with 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 Fund's breaches log. The log will be reviewed on an on-going basis to determine any trends 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. Responsibilities in relation to breaches**

Responsibility to report identified breaches of the law in relation to the Code of Practice falls on the following (known as "Reporters"):

- Officers of Dorset Council, as the Scheme Manager;
- Officers of Dorset County Pension Fund
- Members of the Pension Fund Committee
- Members of the Local Pension Board;
- Scheme employers;
- Professional advisers (including the Fund actuary, benefit consultant, investment advisers, legal advisers); and
- Third party providers (where so employed).

This policy applies only to the Fund, the Council, and members of the Pension Fund Committee and 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.

The Fund, the Council, Pension Fund 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 of the other Reporters.

The Pensions Manager will be responsible for:

- the management and execution of this breaches policy
- recording all identified breaches and likely breaches in the Fund's breaches log;
- investigating the circumstances of all reported breaches and likely breaches;

- determining whether any breach or likely breach is materially significant, having regard to the guidance set out in the Code of Practice and after consultation with parties they deem appropriate;
- ensuring, where necessary, that an action plan is put in place and acted on to correct the identified breach and ensure further breaches of a similar nature do not reoccur;
- reporting all identified breaches to the Pension Fund Committee and Local Pension Board:
- reporting all materially significant breaches or likely breaches to the Regulator as soon as practicable, but no later than one month after becoming aware of the breach or likely breach.

## **6. Process for reporting breaches**

All relevant officers of the Council, the Fund, as well as all members of the Pension Fund Committee and Local Pension Board have a responsibility to report all breaches or likely breaches to the Pensions Manager and/or Section 151 Officer.

Steps will then be taken to:

- identify and assess the severity of any breach or likely breach;
- review the circumstances of the breach or likely breach in order to understand why it occurred and the consequences of the breach;
- agree a proposed course of action to rectify the breach or likely breach, obtaining appropriate legal or other advice where necessary;
- put in place corrective measures to prevent re-occurrence, including an action plan where necessary;
- report breaches and likely breaches to the Pension Fund Committee, Local Pension Board and where necessary the Regulator;
- record all breaches and likely breaches in the Fund's breaches log, along with any actions taken.

## **7. When is a breach required to be reported to the Regulator?**

The Code of Practice requires that a breach should be notified to the 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 Regulator.

- A breach of material significance must be reported to the Regulator no later than one month after becoming aware of the breach or likely breach.
- Where a breach is considered of such significance that the Regulator is required to intervene as a matter of urgency (for example, serious fraud) the matter should be brought to the attention of the Regulator immediately. A formal report should then be submitted to the Regulator, marked as "urgent" in order to draw the Regulator's attention to it.

## **8. How should a breach be reported to the Regulator?**

All materially significant breaches must be reported to the Regulator in writing. This can be via post or electronically. The Regulator encourages the use of the reporting facility within its Exchange on-line service.

- The Fund will report all material breaches to the Regulator via Exchange.

## 9. Assessing “reasonable cause”

It is important that Reporters are satisfied that a breach has occurred, rather than acting on a suspicion of such an event.

- It will be necessary for checks to be made when acting on any suspicion of a breach having occurred.
- Where necessary this may involve taking legal advice as well as advice from other sources (e.g. auditors, the Fund actuary, benefit consultant or investment advisers).

## 10. Deciding if a breach is “materially significant”

When determining materiality of any breach or likely breach the Fund, the Council, Pension Fund Committee and Local Pension Board will in all cases consider the following elements, both separately and collectively:

- **Cause of the breach** – Examples of causes which are likely to be of concern to The Pensions Regulator are:
  - acting, or failing to act, in contravention of the law
  - dishonesty
  - poor administration
  - poor governance
  - incomplete or inaccurate information

The following should also be considered:

- whether the breach has been caused by an isolated incident 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.
- **Effect of the Breach** – does the nature of the breach lead to an increased likelihood of further material breaches? Is it likely to cause, for example;
    - ineffective internal controls,
    - lack of knowledge and understanding, resulting in the scheme not being properly governed and administered
    - inaccurate or incomplete records,
    - misappropriation of assets
    - potential for further breaches occurring
  - **Reaction** – A breach is likely to be of concern to the Pensions Regulator where those involved:
    - do not take prompt and effective action to resolve a breach,
    - fail to notify scheme members where appropriate; and
    - are not pursuing corrective action to a proper conclusion
  - **Wider implications** – These should be considered as where a breach has occurred due to lack of knowledge or poor systems and processes, it makes it more likely that other breaches will emerge in the future.

The Pensions Regulator has produced a “traffic light” system of categorising an identified breach:

**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 Regulator, but should be recorded in the Fund’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 Fund will need to decide whether to informally alert the Regulator of the breach or likely breach, or formally report 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 Fund must report all such breaches to the Regulator in all cases;

**It should be noted that failure to report a significant breach or likely breach is possibly a significant breach itself.**

The Regulator has produced a decision tree to assist schemes in identifying the severity of a breach and whether it should then be reported (see Appendix 1).

The Fund will use the Regulator’s decision tree as a means of identifying whether any breach is to be considered as materially significant and so reported to the Regulator.

If appropriate, the matter will be referred to an external party to obtain any necessary legal or other advice before deciding if the breach is considered of material significance to the Regulator. Where uncertainty exists as to the materiality of any identified breach the Fund, the Council, Pension Fund Committee or Local Pension Board will be required to informally notify the Regulator of the issue and the steps being taken to resolve the issue.

## **11. How are records of breaches maintained?**

Once a breach or likely breach has been identified, regardless of whether it needs to be reported to the Regulator, it must be recorded in the Fund’s breaches log, including the following information:

- date the breach or likely breach was identified;
- 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;
- brief descriptions of any longer-term implications and actions required to prevent similar types of breaches recurring in the future.

The Pensions Manager will be responsible for ensuring the effective management and rectification of any breach identified, including submission of any report to the Regulator. Any documentation supporting the breach will also be retained.

## **12. Whistleblowing and confidentiality**

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 Fund or Council, a member of the Pension Fund Committee or Local Pension Board.

- The Pensions Act 2004 makes clear that the 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.
- Given the statutory duty that exists, in exercising this breaches policy the Fund 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 certain oral and written communications between the Fund, the Council, the Pension Fund Committee or Local Pension Board and a professional legal adviser do not have to be disclosed if they meet the principles of legal privilege.

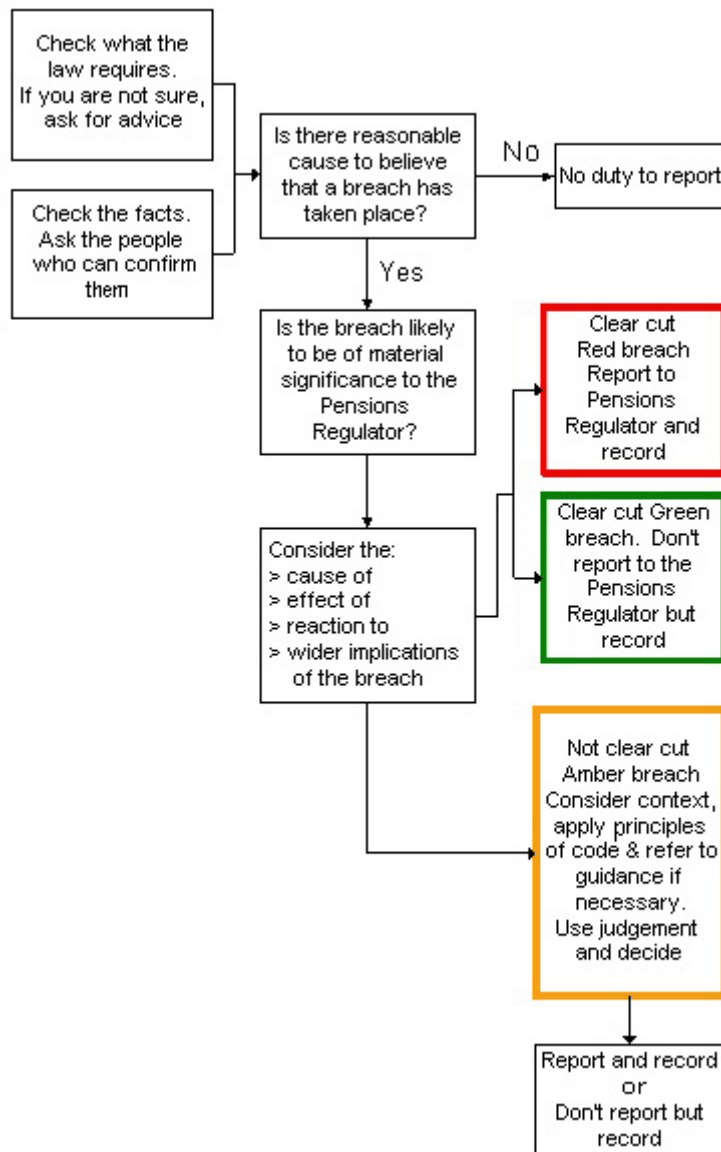
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## Appendix 1

### The Pension Regulator's Decision Tree

The Pensions Regulator has produced a decision tree to assist schemes in identifying the severity of a breach and whether it should then be reported.



The Fund will use the Regulator's decision tree as a means of identifying whether any breach is to be considered as materially significant and so reported to the Regulator.



## **Appendix 3**

### Relevant Links

#### **Dorset County Pension Fund**

- [www.dorsetpensionfund.org](http://www.dorsetpensionfund.org)

#### **The Pensions Regulator:**

- [Code of Practice 01 Reporting Breaches of the Law](#)
- [Code of Practice 14 Governance and administration of public service pension schemes](#)
- [Complying with the duty to report breaches of the law](#)

#### **Legislation.gov.uk**

- [Pensions Act 2004 Section 70 - Duty to report breaches of the law](#)