Fife Pension Fund

Reporting Breaches of the Law Policy

January 2018

Background

Fife Pension Fund ('the Fund') has prepared this document detailing its policy and procedures on 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'.

This policy sets out the responsibility of the sub-Committee, officers of Fife Council and the Fife Pension Board in identifying, managing and where necessary reporting breaches in relation to the management and administration of the Fund.

This policy will be reviewed at least annually. The Fund will monitor all breaches and will ensure that adequate resources are allocated to managing and administering this process.

The Council's Executive Director, Finance and Corporate Services, will be the Monitoring Officer responsible for the management and execution of this policy.

Overview

Identifying and assessing a breach of law is important in reducing risk and providing an opportunity to review and improve processes in areas where the breach occurred. Furthermore, failure to report a material breach without 'reasonable excuse' is a civil offence that can result in civil penalties.

The Fund will maintain a log of all breaches relating to the management and administration of the Fund.

Where a breach has occurred it should be identified as either an area of non-compliance under the LGPS regulations or a breach under Pension Law as defined within the Pensions Act 2004 and the Pensions Regulator's Code of Practice No.14.

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'. It can cover many aspects of the management and administration of the LGPS, including failure:

- to carry out the requirements of the LGPS regulations, overriding legislation, statutory guidance and codes of practice.
- to maintain accurate records.
- to act on any fraudulent act or omission.
- of an employer to pay contributions to the Fund on time.
- to pay benefits accurately or in a timely manner.
- to issue annual benefit statements or non-compliance with the Regulator's Code of Practice No14.

The definition of Pension Law under the jurisdiction of the Pensions Regulator is any enactment contained in or made by virtue of:

- the Pension Schemes Act 1993.
- the Pensions Act 1995.
- the Welfare Reform and Pensions Act 1999.
- the Pensions Act 2004.
- the Public Service Pensions Act 2013.
- the Pensions Act 2014.
- the Pensions Schemes Act 2015.

What is non-compliance under the LGPS regulations?

Non-compliance can cover many aspects of the management and administration of the LGPS including failure to:

- Carry out the requirements of the LGPS regulations.
- Comply with policies and procedures.

Non-compliance under the LGPS Regulations should be documented in the log outlining corrective action to be undertaken to prevent re-occurrences.

However, if the failure is identified as a breach of Pension Law under the jurisdiction of the Pension Regulator, it should be recorded, assessed and if defined to be of material significance to the Regulator, it must be reported as soon as reasonably practicable.

Responsibilities in relation to breaches

In accordance with the Code of Practice, the following (known as 'reporters') are subject to the reporting requirements:

- Members of the Fund.
- Fife Council officers.
- Pension sub-Committee members.
- Fife Pension Board.
- Scheme employers.

- Professional advisers (including the Fund Actuary, investment advisers, legal advisers).

- Third party providers (where so employed).

This policy applies only to members, Fife Council officers, the sub-Committee and the Fife Pension Board. Other reporters should ensure policies are put in place to identify, assess and where necessary report breaches. Both Fife Council and the Pension Board will take all necessary steps to consider and report a breach rather relying on it being reported by another 'reporter'.

Requirement to report a breach of the law

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 is the breach likely to be of material significance to the Regulator.

It should be noted 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 in place to rectify the breach, it may not be necessary to report to the Regulator. However, all incidences of breaches should be recorded in the breaches log to determine if there any trends that might indicate procedural failings or mismanagement. Action must then be taken to rectify the situation and prevent re-occurrences.

When is a breach required to be reported to the Regulator?

The Code of Practice requires that a report must be made in writing as soon as reasonably practicable once there is reasonable cause to believe a breach has occurred and that it is of material significance to the Regulator. It must be reported no later than one month after becoming aware of the breach or likely breach.

Where it is considered to be a matter of urgency (for example the breach is a result of fraud) the matter should be brought to the Regulator's attention immediately. A reporter should mark urgent reports as such and draw attention to matters considered particularly serious. If necessary, the written report can be preceded by a telephone call.

Where prompt and effective action is taken to investigate and correct a breach and its causes and, where appropriate, notify affected members, the Regulator will not normally consider this to be materially significant.

However, a breach is likely to be of material significance if 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 the risk or recurrence.

- Are not pursuing corrective action to a proper conclusion , or

- Fail to notify affected members where it would have been appropriate to do so.

Judging whether there is 'reasonable cause'

As stated in the Code of Practice, having reasonable cause means more than merely having a suspicion that cannot be substantiated.

Therefore, it will be necessary for robust checks to be carried out to establish whether or not a breach has actually occurred. Where necessary this will necessitate taking legal advice from Legal Services as well as other advisers (e.g. auditors, the Fund Actuary or investment advisers).

It would not be appropriate to carry out checks in cases of fraud, 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.

Judging what is of 'material significance' to the Regulator

The Regulator has produced a decision tree to assist schemes in assessing the severity of a breach and whether it should then be reported. When determining materiality of the breach, members, officers, the sub-Committee and Pension Board will consider in all cases the:

- cause of the breach – e.g. dishonesty, poor governance or administration, slow or inappropriate decision making processes, incomplete or inaccurate information, acting or failing to act in contravention of the law.

- effect of the breach – what are the consequence (s) of the breach e.g. ineffective internal controls leading to risks not being properly identified and managed, lack of knowledge and understanding meaning the Fund not being properly governed and administered, inaccurate records which may result in member benefits not being calculated correctly, assets not being safeguarded due to misappropriation.

- reaction to the breach – e.g. if 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.

- wider implications of the breach – e.g. where a breach has occurred due to lack of knowledge or poor systems and processes, making it more likely that other breaches will occur.

The Regulator's decision tree provides a 'traffic light' system of categorising an identified breach:

- Green – not caused by dishonesty, poor governance or a deliberate contravention of the law. 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.

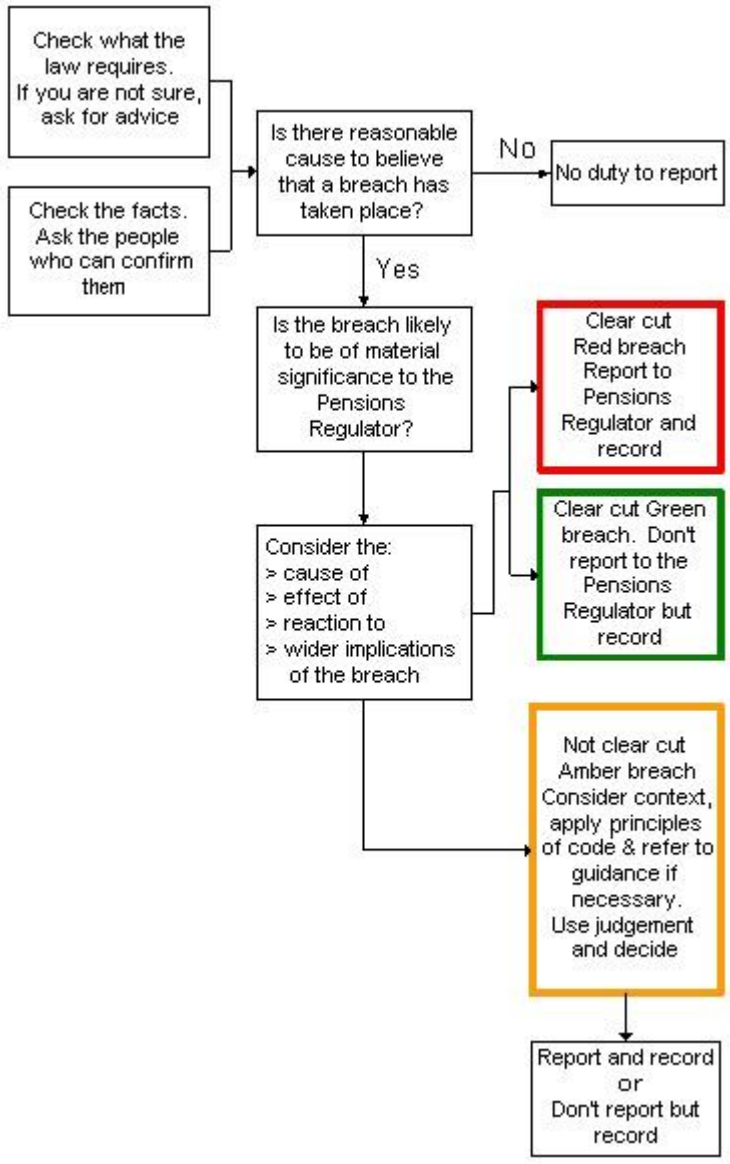
- Amber - does not easily fit into either red or green and requires further investigation in order to determine the course of action. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action.

- Red- caused by dishonesty, poor governance or a deliberate contravention of the law and has a significant impact, even where a plan is in place to rectify the situation. Officers, members of the sub-Committee or the Pension Board must report all such breaches to the Regulator.

Failure to report a significant breach or likely breach is likely in itself to be a significant breach.

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

Decision-tree: deciding whether to report



The Monitoring Officer will be responsible for the management and execution of this policy. Responsibilities cover:

- recording and reporting breaches and likely breaches they are aware of in the Fund's breaches log.
- investigating the circumstances of all reported breaches and likely breaches.
- ensuring, where necessary that an action plan is in place and acted on to correct the identified breach and ensure there are no further similar re-occurrences.

Submitting a report to the Regulator

Reports must be submitted in writing and can be sent by post or electronically, including by email or by fax. The Regulator encourages reporters to use its standard reporting facility via its on-line Exchange service.

A report should be dated and include as a minimum:

- full name of the scheme.
- description of the breach or breaches.
- any relevant dates.
- name of the employer .
- name, position and contact details of the reporter.
- role of the reporter in relation to the scheme.

Additional information that would help the Regulator includes:

- the reason why the breach is considered to be of material significance.
- scheme address.
- scheme manager contact details.
- description of actions taken to rectify the breach.
- whether the breach has been reported before.

The Monitoring Officer will be responsible for ensuring the effective management of the breach identified including submission of any report to the Regulator. Any documentation supporting the breach will also be retained.

Whistleblowing protection and confidentiality

It is a statutory duty to report breaches of the law. The Regulator will do its best to protect a reporter's identity and will not disclose the information except where lawfully required to do so. Given the statutory duty that exists in exercising this breaches policy, the Council will ensure that it adheres to the Employment Rights Act 1996, amended by the Public Interest Disclosure Act 1998, which provides protection for employees 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 Pension Board and a professional legal adviser do not have to be disclosed.

Reporting to the Pensions sub-Committee and Pension Board

When a breach is identified, it will be reported immediately to the Chairs of the Sub-Committee and the Pension Board.

Appendix A

Examples of Breaches

Example 1

An employer is late in paying over employee and employer contributions and so late it is in breach of the statutory period for making such payments. The Pension Team contacts the employer. The employer 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 put its house in order regarding future payments. The breach is therefore not material to the Regulator and need not be reported.

Example 2

An employer is late in paying over employer and employee contributions, and so late it is in breach of the statutory period for making such payments. It is also late in paying AVCs to the AVC provider. It is contacted by the Pensions Team and it eventually pays the monies that are overdue, including AVCs to the AVC provider. This has happened before, with there being no evidence that the employer is putting its house in order. In this instance there has been a breach relevant to the Regulator in part because of the employer's repeated failures, and also because those members paying AVCs will typically be adversely affected by the delay in the investing of their AVCs.

Example 3

A member of the sub-Committee owns a property. A report is made to the Fund about a possible investment in the same area in which the member's property is situated. The member supports the investment but does not declare an interest and is later found to have materially benefited when the Fund's investment proceeds. In this case a material breach has arisen, not because of the conflict of interest, but rather because the conflict was not reported.

Example 4

A pension overpayment is discovered and thus the Pensions Team has failed to pay the right amounts 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 (s)he was being overpaid. The overpayment is therefore waived. In this case there is no need to report the breach.