

# Avon Pension Fund Breaches Procedure

March 2016

## 1. Procedure for the review and reporting of Regulatory Breaches

The introduction of the Pensions Act 2013 extended the powers of the Pensions Regulator to public sector schemes from 1 April 2014. The Pension Regulator introduced Code of Practice 14 for the administration of public sector schemes in 2015. This, amongst other things, addressed the issue of Regulatory Breaches and reporting requirements.

This document deals with the process of identifying, recording and determining if breaches of pension regulations should be reported to the Pension's Regulator.

## 2. The Duty to report – legal requirement

The duty to report breaches is contained within the Pensions Act 2004 section 70. Within this Act certain people have a legal duty to report breaches to the Pensions Regulator where they believe that:

- a legal duty relevant to the administration of the scheme hasn't been or isn't being complied with: this could relate for instance to keeping records, internal controls, calculating benefits and, for funded schemes, includes investment governance and administration matters
- the failure to comply is likely to be of 'material significance' to the regulator in the exercise of its functions.

The people with a legal duty to report are

- pension board members
- any other person involved in the administration of the scheme (which includes Committee members)
- employers
- professional advisers including auditors, actuaries, legal advisers and fund managers
- any other person involved in advising the scheme manager in relation to the scheme

The duty to report overrides other obligations, such as confidentiality, except where legal professional privilege applies. Failure to report a breach without reasonable excuse, can lead to civil penalties.

## 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 LGPS, including failure:

- to do anything required under the 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;
- to comply with policies and procedures (e.g. the Fund's statement of investment principles, funding strategy, discretionary policies, etc.);
- 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 or non-compliance with the Code.

For breaches to be reported to the Pensions Regulator they need to be of **material** significance and specifically would include;

- dishonesty
- poor governance or administration
- slow or inappropriate decision making practices
- incomplete or inaccurate advice, or
- acting (or failing to act) in deliberate contravention of the law
- pension board members not having the appropriate degree of knowledge and understanding, which may result in pension boards not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements
- pension board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements
- adequate internal controls not being established and operated, which may lead to schemes not being run in accordance with their scheme regulations and other legal requirements, risks not being properly identified and manage and/or the right money not being paid to or by the scheme at the right time
- accurate information about benefits and scheme administration not being provided to scheme members and others, which may result in members not being able to effectively plan or make decisions about their retirement
- appropriate records not being maintained, which may result in member benefits being calculated incorrectly and / or not being paid to the right person at the right time
- pension board members misappropriating any assets of the scheme or being likely to do so, which may result in scheme assets not being safeguarded,
- 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.

Breaches can therefore include failure to adhere to requirements set out by Administering Authority to support the maintenance of records requirements or policy or procedural requirements.

#### **4. Material Significance**

In deciding whether a breach is likely to be of material significance to the Pensions Regulator, the following should be considered:

- cause of the breach;
- effect of the breach;
- reaction to the breach; and
- the wider implications of the breach

When deciding whether to report, those responsible should consider these points together. Reporters should take into account expert or professional advice where appropriate, when deciding whether the breach is likely to be of material significance to the Regulator.

#### **5. Recording of Breaches**

The **Pensions Manager** is responsible for maintaining a record of all breaches including those which are not reported to the Regulator. The templates for recording breaches are attached as follows:

- Appendix 1: Breaches caused by employer
- Appendix 2: Breaches caused by APF as administrator
- Appendix 3: Material Breaches

Given the scope of potential breaches and the complexity of LGPS administration for Employers and the Administering Authority it is necessary to take a pragmatic approach to remediation of non- material breaches based on support, training and guidance together with remedies available to the Fund through its Administration Strategy.

#### **6. Resolution of non- material Employer breaches**

Many non-material breaches may be resolvable through a variety of mechanisms and where necessary the Fund will support employers to ensure they are fully aware of their responsibilities and have appropriate arrangements in place to comply with them. This may be achieved through training, the issue of guidance notes and or process review to ensure that best practice is implemented. All such arrangements will be implemented according to an agreed plan and timescale. The agreed support will be recorded against the breach and will be formally notified to the employer.

If the employer then fails to improve a formal notification will be issued with a fine for persistent breach and if that fails then consideration will be given to formally reporting the failing to the Pensions Regulator

#### **7. Material Breaches by Employers**

Where it is considered that there is a material breach by an employer then the

Pensions Manager will produce a report for the Head of Pensions, who will consider the breach in line with the Code of Practice, investigate as necessary and obtain legal advice where required in determining the necessity to report. The Chairs of the Pensions Committee and the Pensions Board will be provided with a copy of the report and notified of the action taken by the **Head of Pensions** within 10 days of receipt of the report.

Serious breaches identified such as fraud and misappropriation will be notified to the Regulator as soon as practicable and appropriate auditors/police authority for investigation. Arrangements will be made with the Regulator to support the determination of any action once the investigations have concluded.

### **8. Non Material Breaches by the Admin Authority**

Such breaches will be recorded by the **Pensions Manager** and improvement actions agreed with the **Head of Pensions** for inclusion in ongoing Improvement plans, Services plans or Administration Strategy as appropriate.

### **9. Material Breaches by the Admin Authority**

These breaches or suspected breaches will be reported to the **S151 officer and/or the Police** for formal investigation. The investigation will be carried out by internal audit section and/or the police as required and the Pensions Regulator notified as soon as practicable and in accordance with TPR guidance.

### **10. Reporting of Breaches**

In addition to the requirement to report Material breaches to the Pensions Regulator, the Pensions Manager will formally report all breaches to the Avon Pension Fund Committee and the Pension Board on a quarterly basis, notifying the chairs of both of any significant issues as appropriate.

If at any time the Committee or the Board disagree with the actions taken by the Head of Pensions, then escalation will be to the S151 officer and or the Strategic Director for Resources.

Full details of the Legal responsibilities and duties in respect of Breaches of the Law can be found in Code of Practice 14

<http://www.thepensionsregulator.gov.uk/codes/code-governance-administrationpublic-service-pension-schemes>





