



## **Avon Pension Fund – Breaches Policy**

### **Procedure for the review and reporting of regulatory breaches**

Since the introduction of the Pensions Act 2013, The Pensions Regulator (TPR) has overseen public sector schemes. TPR's General Code of Practice, which came into force on 27th March 2025, sets out the requirements for identifying and reporting regulatory breaches. The General Code of Practice replaces the previous Code of Practice 14.

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

### **Who must report**

Designated individuals with a legal duty to report (reporters) are required to notify TPR of breaches of the law when they have a reasonable cause to believe that:

- A legal duty relevant to the administration of a scheme, has not been, or is not being, complied with; or
- The failure to comply is likely to be of material significance to TPR in exercising any of its functions;

### **The people with a legal duty to report are:**

- The scheme manager or manager of the scheme
- Pension Board members
- Any other person involved in the administration of the scheme (including Committee members)
- Employers
- Professional advisers including auditors, actuaries, legal advisers, investment managers and custodians of scheme assets
- Any other person involved in advising the scheme manager in relation to the scheme

The Fund should be satisfied that those responsible for reporting breaches are aware of the legal requirements and those set out in TPR's General Code of Practice, with training provided where required.

A person's responsibility to report breaches is not limited to those that relate to their specific role. Material breaches should be reported as they are identified.

## **Whistleblowing protection and confidentiality**

The Pensions Act 2004 makes it clear that the duty to report overrides certain other duties a reporter may have (such as confidentiality), and that any such duty is not breached by making a report.

The duty to report does not override legal privilege. Communications (oral and written) between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed.

In all cases, reporters should act conscientiously and honestly, and to take account of expert or professional advice where appropriate.

## **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) this can encompass many aspects of the management and administration of the LGPS, including failures such as:

- Not fulfilling requirements set out in the LGPS Regulations.
- Failing to comply with overriding legislation, applicable statutory guidance, or codes of practice.
- Inadequate maintenance of accurate records.
- Not acting upon identified fraudulent acts or omissions.
- Breaching internal policies and procedures (e.g. the Fund's statement of investment principles, funding strategy or discretionary policies).
- Employers failing to pay member and employer contributions on time.
- Inaccurate or delayed payment of member benefits.
- Late issuance of annual benefit statements or non-compliance with the Code.

## **Decision to report**

There are two key judgements required when deciding to report a breach of the law:

### **1. Reasonable Cause**

Is there reasonable cause to believe that there has been a breach of the law?

## **2. Material Significance**

Is the breach likely to be of material significance to TPR?

### **‘Reasonable cause to believe’**

Having a reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be proved.

Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with others who are able to confirm what happened. However, it would not be appropriate to alert those implicated in potential serious offences involving dishonesty, such as theft or fraud. In such cases, due to the immediate risk to scheme assets, reporters should bypass the usual checks, making only those they deem necessary and not cause undue delay in reporting to TPR.

### **Likely to be of ‘material significance’**

By law, any breaches must be reported to TPR if they are likely to be of ‘material significance’. Whether a breach is of ‘material significance’ depends on several factors.

### **The cause of the breach**

A breach is likely to be considered materially significant when it arises from any of the following:

- Dishonesty, negligence, or reckless behaviour
- Poor governance, ineffective controls resulting in deficient administration, or slow or inappropriate decision-making practices
- Incomplete or inaccurate advice
- A deliberate act or failure to act

### **The effect of the breach**

TPR considers a breach to be materially significant in the following instances:

- A significant proportion of members, or a significant proportion of members of a particular category of membership, are affected by the breach.
- The breach has a significant effect on the benefits being paid, to be paid, or being notified to members.
- The breach, or series of unrelated breaches, have a pattern of recurrence in relation to participating employers, certain members, or groups of members.

- Committee and Pension Board members do not have the appropriate degree of knowledge and understanding, preventing them from fulfilling their roles and resulting in the scheme not being properly governed and administered and/or breaching other legal requirements.
- Unmanaged conflicts of interest within the committee and pension board, making it prejudiced in the way it carries out the role, ineffective governance and scheme administration, and/or breaches of legal requirements.
- Systems of governance and/or internal controls are not established or operated, meaning the scheme is not run in line with their governing documents and other legal requirements.
- Risks are not properly identified and managed and/or the right money is not being paid to or by the scheme at the right time.
- Accurate information about benefits and scheme administration is not being provided to scheme members and others meaning members are unable to effectively plan or make decisions about their retirement.
- Records are not being maintained, resulting in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Committee and Pension Board members or anyone associated with the scheme misappropriate scheme assets or are likely to do so.

## **Reaction to the breach**

TPR will not normally consider a breach to be materially significant if prompt and effective action is taken to investigate and correct the breach and its underlying causes; and where appropriate, all affected scheme members have been notified.

A breach is likely to be of concern and material significance to TPR if it:

- Does not receive prompt and effective action to remedy, identify and tackle its cause to minimise risk of recurrence
- Is not being given the right priority
- Has not been communicated to affected scheme members where it would have been appropriate to do so
- Forms part of a series of breaches indicating poor governance
- It was caused by dishonesty, even when action has been taken to resolve the matter quickly and effectively

## **The wider implications of the breach**

The broader context of a breach should be considered. A breach may be considered materially significant in situations such as:

- The occurrence of the breach suggests a higher likelihood of further breaches emerging in the future.
- Reporters are aware of other related breaches – whether reported or unreported – that may indicate a pattern or systemic issue.

TPR will not usually regard a breach arising from an isolated incident as materially significant. Examples include:

- Teething problems associated with the implementation of a new system
- Breaches resulting from an unpredictable combination of circumstances.

However, even in such circumstances, reporters should consider other aspects of the breach, such as the severity of the effect it has had that may make it materially significant.

## **Recording of breaches**

The Governance & Risk Advisor is responsible for maintaining a record of all breaches including those which are not reported to TPR.

Given the scope of potential breaches and the complexity of LGPS administration for employers and the Fund, 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.

## **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 a persistent breach and if that fails then consideration will be given to formally reporting the failing to TPR.

## Material breaches by employers

Where it is considered that there is a material breach by an employer, the Pensions Operations 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 Committee and the Pension 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 reported to TPR as soon as practicable and appropriate notification given to auditors and/or the Police for investigation. Arrangements will be made with TPR to support the determination of any action once the investigations have concluded.

## Non-material breaches by the Fund

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

## Material breaches by the Fund

These breaches or suspected breaches will be reported to the Director of Financial Services, Assurance and One West for formal investigation and the S151 officer will be notified. The investigation will be carried out by internal audit section or referred to the Police as required, and TPR notified as soon as practicable.

## Reporting of breaches

In addition to the requirement to report Material breaches to TPR, the **Governance and Risk Advisor** will formally report all breaches to the Committee and Pension Board on an annual basis, notifying the chairs of both of any significant issues as appropriate.

If at any time the Committee or Board disagree with the actions taken by the Head of Pensions, then escalation will be to the **Director of Financial Services, Assurance and One West** and/or the S151 officer.

Full details of the legal responsibilities and duties in respect of breaches of the law can be found in the [General Code of Practice](#).