

Public Service Pensions

Reporting Breaches of Law - City of London Policy & Procedure

Introduction

This document sets out the policy and procedure within the City of London for recording and reporting breaches of the law connected to the Public Service Pension Schemes for whom it is Scheme Manager.

It describes who has a legal requirement to report breaches, to whom and how they should report and provides processes to follow to assess and consider suspected breaches to ensure that they are reported appropriately.

This policy and procedure was approved by the Local Government Pensions Board and the Police Pensions Board on 17 April 2018. It will be kept under review and reissued should personnel, the law, statutory or other guidance or best practice change. As a minimum, it will be formally reviewed every three years.

This document is published on the City of London website at www.cityoflondon.gov.uk and the City of London Pensions Website at www.yourpension.or.uk/cityoflondon. It takes account of guidance and information issued by the Pension Regulator (tPR) in Code of Practice 14 and their Public Service Toolkit and includes text from them. Where text has been used, the tPR's copyright applies. The content does not override the requirements of prevailing legislation and statutory guidance, which should be followed at all times.

Any questions about the policy or procedure should be raised with the Corporate Treasurer in the first instance. The contact details are provided on the attached sheet.

All those with a legal duty to report breaches of the law should ensure that they are familiar with this Policy and its operation.

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1. The Legal Responsibility to Report Breaches of the Law and to whom it Applies

Legislation requires that where certain people have reasonable cause to believe that:

- a legal duty which is relevant to the administration of the scheme has not been, or is not being, complied with
- the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions

they must report breaches of the law to the Pensions Regulator (tPR).

The people who are subject to the reporting requirement ('reporters') for public service pension schemes are:

- scheme managers
 - For the Local Government Pension Scheme this is the Corporation of London
 - For the Police Pension Scheme this is the Commissioner of Police for the City of London for the members of City of London Police Force and the Common Council for the Commissioner of Police for the City of London
- members of pension boards
 - For the Local Government Pension Scheme this is the members of the Local Government Pensions Board. Details of the members can be found here: <http://democracy.cityoflondon.gov.uk/mgCommitteeDetails.aspx?ID=1187>
 - For the Police Pension Scheme this is the members of the Police Pensions Board. Details of the members can be found here: <http://democracy.cityoflondon.gov.uk/mgCommitteeDetails.aspx?ID=1206>
- any person who is otherwise involved in the administration of a public service pension scheme
 - For example, the committees, other boards, and officers dealing with the pension schemes
- participating employers whether a breach relates to, or affects, members who are its employees or those of other employers in the scheme
- professional advisers including auditors, actuaries, legal advisers and fund managers, whether required or not to be appointed by the scheme
- any person who is otherwise involved in advising the managers of the scheme in relation to the scheme

Reporters should not rely on waiting for others to report. They should follow the processes and procedures set out in this document.

Reports must be made in writing as soon as reasonably practicable. Failure to comply, without reasonable excuse, with the law on reporting breaches of the law is a civil offence and can attract a fine. tPR can also issue improvement notices.

Applicable laws and Code of Practice

Relevant law includes the Pensions Acts 2004 (section 70) and 1995, and the Public Service Pensions Act 2013.

In addition, tPR's Code of Practice 14, entitled Governance and administration of public service pension schemes, sets out the legal requirements and explains the expectations of tPR.

The Code of Practice is not a statement of law. However, when determining whether the legal requirements have been met, a court or tribunal must take any relevant provisions of a code of practice into account. Following the Code will help to ensure compliance with requirements and expectations.

2. To whom Breaches of the Law are Reported

Material breaches of the law must be reported to tPR, ie the Pensions Regulator or 'the Regulator'.

All breaches, and suspected breaches under consideration must be reported immediately to the Comptroller and City Solicitor, the Deputy Chamberlain, or the Corporate Treasurer, who will take a decision as to whether the breach or suspected breach is so serious that it requires immediate reporting to tPR.

The contacts sheet attached gives details of the Corporate Treasurer, Deputy Chamberlain and the Comptroller and City Solicitor, and also includes details of the persons who will act in their absence.

Unless the breach is so serious that it should be reported to tPR immediately, this document provides a process for investigating concerns that the law may have been breached and for facilitating objective consideration of breaches to enable reporters to decide within a reasonable timeframe whether they must report the breach. As noted above, reporters should not rely on waiting for others to report.

The Corporate Treasurer is the person who is responsible for the day to day running of the policy and maintaining the Register. They will alert the Deputy Chamberlain that a potential or actual breach is being investigated. They will also keep Members of the appropriate Pensions Board informed.

The Deputy Chamberlain is the person who is responsible for this Policy and for making the decision on whether to report a breach to tPR in consultation with the Comptroller and City Solicitor acting as Monitoring Officer.

All actual breaches will be recorded in the Breaches of the Law Register (the Register), along with the decision made as to whether or not to report to tPR and the relevant considerations taken. The Register is presented to each Pension Board meeting for review.

Further details are provided below on these aspects.

3. Procedure for Assessing and Considering Suspected Breaches

This section sets out the procedure and processes for assessing and considering suspected breaches of the law and determining whether they should be reported to tPR.

To ensure breaches are reported in a timely manner, each action should be completed within five working days of receipt or notification, including responding to questions raised. Dates of actions and decisions should be recorded on the Register. A final decision to report the breach to the tPR should be taken and the report made by no later than 21 days (3 weeks) after the initial identification of the breach; EXCEPT:

- Where a breach is identified that is so serious that it must always be reported, each stage should be dealt with immediately and the Deputy Chamberlain and Comptroller and City Solicitor notified.
- If there is an immediate risk to the scheme, such as if there is an indication of dishonesty, only necessary immediate checks should be made and those that may alert the people implicated, avoided. Reporters should use the quickest possible means to alert tPR.

All breaches must be recorded on the Register along with the details and considerations taken as detailed below whether or not they are reported to tPR.

3.1 Establishing the facts

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

Reporters should ensure that where a breach is suspected, they carry out checks to establish whether or not a breach has in fact occurred. This will involve establishing the facts and also whether there is another explanation.

For example, a member of a funded pension scheme may allege that there has been a misappropriation of scheme assets where they have seen in the annual accounts that the scheme's assets have fallen. However, the real reason for the apparent loss in value of scheme assets may be due to the behaviour of the stock market over the period. This would mean that there is not reasonable cause to believe that a breach has occurred.

Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with those in a position to know such as the Director of Finance, or the Pensions Manager to check what has happened.

However, as noted earlier, it would not be appropriate to check in cases of theft, 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 tPR without delay.

In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for the reporter to gather all the evidence which tPR may require before taking legal action. A delay in reporting may exacerbate or increase the risk of the breach.

Should you have difficulty establishing the facts, please report this to the Corporate Treasurer – *see note on page one*] who will provide further guidance.

3.2 Clarification of the law

In determining if a breach has occurred, if the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.

If assistance is required in order to do so, once you have established the facts, you may contact the director of finance, or the pensions manager, or the Corporation of London's legal team for further advice.

Should you encounter any difficulties establishing the law, please report this to the Corporate Treasurer who will provide further guidance.

3.3 Considering the material significance

Having clarified the facts and the law and established that a breach has occurred, the next step is to consider whether it is of material significance and should therefore be reported to tPR.

In order to do so, reporters should consider the cause of the breach, the effect of the breach, the reaction to it and its wider implications. These aspects should be considered together and take account of expert or professional advice, where appropriate.

Consideration of previously recorded breaches on the Register, whether reported to tPR or not, can assist with this process. A copy should be obtained from the Corporate Treasurer.

Dialogue may also take place with the Scheme Manager or Pension Board. Reporters may approach the Scheme Manager or members of the Pension Board at any time to discuss matters. In addition, the Register is presented to each meeting of the Pension Board for consideration and discussion with the Scheme Manager's officers.

Code of Practice 14 provides guidance on each of the four aspects and this is included below.

A. Cause of the breach

The breach is likely to be of material significance to tPR where it was caused by:

- 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.

When deciding whether a breach is of material significance, those responsible should consider other reported and unreported breaches of which they are aware. However, historical information should be considered with care, particularly if changes have been made to address previously identified problems.

Where changes are made, City of London officers should inform the Corporate Treasurer who should record the changes on the Register to assist with future determinations.

tPR notes that a breach will not normally be materially significant if it has arisen from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances, but that in such a situation, it is also important to consider other aspects of the

breach, such as the effect it has had and to be aware that persistent isolated breaches could be indicative of wider scheme issues.

Action should be taken to put the breach right whether it is of material significance or not.

Reporters should summarise the cause of the breach.

B. Effect of the breach

Reporters need to consider the effects of any breach, but with tPR's role in relation to public service pension schemes and its statutory objectives in mind, Code of Practice 14 notes that the following matters in particular should be considered likely to be of material significance to tPR:

- pension board members not having the appropriate degree of knowledge and understanding, which may result in the Board not fulfilling its role, the scheme not being properly governed and administered and/or the scheme manager 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 the scheme manager breaching legal requirements
- adequate internal controls not being established and operated, which may lead to the scheme not being run in accordance with the scheme's 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
- 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, and
- any other breach which may result in the Fund being poorly governed, managed or administered.

Reporters need to take care to consider the effects of the breach, including any other breaches occurring as a result of the initial breach and the effects of those resulting breaches.

Reporters should summarise the effect of the breach.

C. Reaction to the breach

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

A breach is likely to be of concern and material significance to tPR 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
- fail to notify affected scheme members where it would have been appropriate to do so.

All reporters should keep records of the actions taken and submit these to the Corporate Treasurer who will record these on the Register.

Reporters should summarise the reaction to the breach.

D. Wider implications of the breach

Reporters should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to tPR.

For example, a breach is likely to be of material significance where the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future. This may be due to the Scheme Manager or Pension Board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities or where other pension schemes may be affected. For instance, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

For this reason, and to enable prompt actions to be taken to prevent or reduce the risk of further breaches, the City of London's policy is to maintain one Breaches of the Law Register covering all the schemes and Scheme Managers detailed on page 3, recording in which scheme the breach occurred.

Reporters should summarise the wider implications of the breach.

3.4 Deciding whether to report to the Pensions Regulator

The reporter should assess their view on whether the breach is of material significance and should be reported to tPR. Once assessed, they should submit their summaries of the breach and their categorisations and reasons for them, to the Corporate Treasurer who will update the Register and submit it all to the Deputy Chamberlain and to the Comptroller and City Solicitor as Monitoring Officer. The Deputy Chamberlain will make the decision whether to report the breach to tPR after liaising with the Comptroller and City Solicitor. They will review the categorisation and may discuss it or raise questions with the reporter in the first instance, and they will, in turn request the Corporate Treasurer to update the Register with their decision and reason for it.

tPR's traffic light framework should be used to assist in these assessments and decisions.

The Pension Regulator's Traffic Light Framework

tPR provide a traffic light framework which should be used to assist with deciding whether a breach of the law is likely to be of material significance to them and should therefore be reported.

Example breaches of the law and assessment of the cause, effect, reaction and wider implications against the traffic lights are available on tPR's website at <http://www.thepensionsregulator.gov.uk/docs/PS-reporting-breaches-examples-traffic-light-framework.pdf>

The reporter should consider their summaries of the cause of the breach, the effect of the breach, the reaction to it and its wider implications against the traffic lights and assess a colour category for each.

They should then determine an overall colour category considering all four together and include details of why they have assigned a category such as their considerations and actions in regard to each of the four areas and overall. These should be submitted to the Corporate Treasurer as noted above.

The copy of the current Register should be reviewed in considering the assessments.

The tPR's framework for overall consideration of the breach is summarised below together with an example.

Red breaches

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

These must be reported to tPR.

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.

Amber breaches

Where the cause, effect, reaction and wider implications of a breach, when considered together, may be of material significance, the breach is 'amber'. 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.

Reporters will need to exercise their 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.

Green breaches

Where the cause, effect, reaction and wider implications of a breach, when considered together, are not likely to be of material significance, the breach is 'green'.

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.

In addition, pages 41 to 44 of the Regulator's Code of Practice 14 provides further information about reporting contribution payment failures which are likely to be of material significance to the Regulator. The Code can be found here: <https://www.thepensionsregulator.gov.uk/public-service-schemes/code-of-practice.aspx>

3.5 Determining difficult cases

Where there is a difficult case to determine, reporters should contact the Deputy Chamberlain who will discuss the case with them, and if necessary refer the case on to the Corporation of London's legal team, the Pension Board, Members of the Committee, tPR or other officers or advisors for further assistance, before making their determination.

4. Reporting to the Pensions Regulator

A final decision to report the breach to the tPR should be taken and the report made by no later than 21 days (3 weeks) after the initial identification of the breach. However, where a case is so urgent that it must immediately be reported to tPR or where it is decided after following the procedure above that a breach should be reported, it should be reported without delay.

The Members of the relevant Pensions Board will be notified of the circumstances of the breach before the report is made to tPR when practicable, or will be notified simultaneously where the breach is so serious that it must be reported immediately. A Special Meeting of the Board may be called subsequently to consider the breach.

Breaches will normally be reported by the Deputy Chamberlain.

Reports should be made in writing via tPR online Exchange system which is available via their website at <https://login.thepensionsregulator.gov.uk/whatsavailable>

It contains a standard format for reporting. The following information should be gathered:

- details of the reporter
- name of the scheme, and scheme manager/employer
- a high-level summary of the breach and relevant dates
- why it has occurred, including whether a third party, such as an employer, has caused the breach of the legal requirement
- how many members and what categories of members are affected, eg. active or deferred, and the total number of scheme members in each category
- the reason the breach is thought to be of material significance and whether it has been reported before
- what action is being taken to address the issue and, if possible, a robust improvement plan outlining what is being done to resolve it, who is responsible and when the breach will be rectified by
- how future breaches of this nature will be prevented and effects on members minimised

Urgent reports should be clearly marked urgent and attention drawn to matters considered by the reporter to be particularly serious. If is appropriate, the reporter should call tPR before submitting the written report.

As noted earlier, if there is an immediate risk to the scheme, such as if there is an indication of dishonesty, only necessary immediate checks should be made and those that may alert the people implicated, avoided. Reporters should use the quickest possible means to alert tPR.

The reporter should ensure that they receive an acknowledgment from tPR and that this is retained with the other papers and recorded on the Register. Acknowledgements should be received within five working days.

tPR may request further information.

4.1 Whistleblowing protection and confidentiality

Code of Practice 14 notes that:

- the Pensions Act 2004 makes clear that the statutory 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 and that tPR understands the potential impact of a report on relationships, for example, between an employee and their employer.
- the statutory duty to report does not, however, override 'legal privilege'. This means that oral and written communications between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.
- tPR will do its best to protect a reporter's identity, if desired, and will not disclose the information except where lawfully required to do so. It will take all reasonable steps to maintain confidentiality, but it cannot give any categorical assurances as the circumstances may mean that disclosure of the reporter's identity becomes unavoidable in law. This includes circumstances where tPR is ordered by a court to disclose it.
- the Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to tPR. Consequently, where individuals employed by firms or another organisation having a statutory duty to report disagree with a decision not to report to tPR, they may have protection under the ERA if they make an individual report in good faith. tPR expects such individual reports to be rare and confined to the most serious cases.

5. Recording Breaches of the Law

All breaches of the law must be recorded in the Breaches of the Law Register (the Register) whether or not reported to tPR.

This is to ensure that patterns are identified, to help determine systemic issues and material significance, to identify where procedural change or further education may be required, and to help determine whether future breaches should be reported to tPR.

It also provides a record of action and considerations taken should a breach be reported to tPR by another reporter and investigated by tPR.

5.1 Breaches of the law register

The Breaches of the Law Register is maintained by the Corporate Treasurer. All reporters and others involved in dealing with any breach of the law should submit the information and details as described above in order for them to do so.

The Register covers the Police and LGPS Pension Schemes to enable issues common to all to be identified and appropriate action taken to prevent and reduce the risk of further breaches occurring.

Each action and decision taken should have a date recorded against it to enable monitoring that timescales are being adhered to, and breaches promptly dealt with and reported in a timely manner.

Where changes are subsequently made to address previously identified problems, Officers should submit details to the Corporate Treasurer who will update the Register to record the changes made to assist with future determinations of material significance.

Similarly, the progress of and actions taken to put right a breach should be included on the Register.

A sample Register is provided in Appendix 1. This should be reviewed while in use and additional columns added where helpful.

5.2 Reporting to the Pension Board and reviewing the Register

The Breaches of the Law Register should be presented to each meeting of each Pension Board for review and consideration. This may result in dialogue with the Deputy Chamberlain and/or the Scheme Manager over whether items should be considered as materially significant and reported to tPR, or if other actions should be taken to improve compliance or enhance efficiency.

The Pension Board will consider the Register and how they can assist the Scheme Manager, making recommendations as appropriate.

Appendix 1 – Sample Breaches of the Law Register

Where not specifically noted, dates for all actions and decisions should be recorded in each field.

The reference can be used to match background papers and contact details of those involved.

Fields can be expanded on electronic version. Print on A3 paper

Ref	Date reported	Scheme	Employer / Third Party	EG Late Conts/ABS	Type of Breach	Details of breach	Date of breach & ref no. if occurred before	Fill fields with traffic light colour when determined Include summaries and reasons					Reported by /date	tPR ack received	Date breach corrected
								Cause	Effect	Reaction Include actions planned/ taken to correct	Wider implications	Overall category & reporting recommendation			
											Yes/No	Yes/No			
											Yes/No	Yes/No			
											Yes/No	Yes/No			
											Yes/No	Yes/No			
											Yes/No	Yes/No			
											Yes/No	Yes/No			
											Yes/No	Yes/No			
											Yes/No	Yes/No			

Public Service Pensions

Reporting Breaches of Law - City of London Policy & Procedure

Contact details

Officer	Email and Telephone
Corporate Treasurer	Kate.Limna@cityoflondon.gov.uk 020 7332 3592
In the absence of the Corporate Treasurer, The Pensions Manager	graham.newman@cityoflondon.gov.uk 020 4558 2261

The Chamberlain	Caroline.Al-Beyerty@cityoflondon.gov.uk 020 7332 1300
In the absence of the Chamberlain, the Financial Services Director	sonia.virdee@cityoflondon.gov.uk 07511 047554

The Comptroller and City Solicitor	Michael.Cogher@cityoflondon.gov.uk 020 73323699
In the absence of the Comptroller, an Assistant City Solicitor as nominated.	Contact via the Comptroller's PA Alexandra.Reid@cityoflondon.gov.uk 73323699