

Staffordshire Pension Fund

Breaches of the Law Policy

January 2025

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Introduction

This is the Breaches of the Law Policy for the Staffordshire Pension Fund ("the Fund"), part of the Local Government Pension Scheme ("LGPS") managed and administered by Staffordshire County Council ("the Council") who act as the Administering Authority and the Scheme Manager.

This policy sets out the approach of the Fund in identifying, managing and where necessary, reporting breaches of the law.

This policy applies to:

- all Staffordshire Pension Fund Officers;
- all Staffordshire County Council statutory officers (Director of Finance and Section 151 Officer, Monitoring Officer);
- all Staffordshire Pension Fund Pensions Committee and Pensions Board members; and
- all those professionals that advise the Fund.

Background

The Fund has prepared this document to set out its policy and procedures on identifying, managing and where necessary reporting breaches of the law as covered in the Pensions Regulator's General Code of Practice ("the Code").

The Code came into force on 28 March 2024. This consolidates and replaces 10 of The Pensions Regulator's 16 previous codes of practice into a single Code. It is applicable to most public and private occupational pension schemes, including the LGPS.

This policy sets out the responsibility of elected members and officers of the Council and the Pensions Board in identifying, managing and where necessary reporting breaches of the law as they apply to the management and administration of the Fund. This policy does not cover the responsibility of other "reporters" (described later in this policy) in relation to their obligation to report breaches in accordance with the Code where they relate to the management and administration of the Fund. Where a breach of the law is identified both the Council and the Pensions Board will take all necessary steps to consider the breach and report to the Pensions Regulator, rather than having the breach solely reported by any of the other "reporters".

The Assistant Director for Treasury & Pensions will be responsible for the management and execution of this breaches policy.

Overview

The identification, management and reporting of breaches is important. It is a requirement of the Code; failure to report a breach without "reasonable excuse" is a civil offence that can result in civil penalties.

At the same time, 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; and all staff are expected, indeed 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 Council will maintain a log of all breaches of the law as applicable to the management and administration of the Fund.

Staffordshire County Council, as the Administering Authority, and the Pensions 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 by the Council or Pensions Board it should be recorded, assessed and where necessary reported as soon as reasonably practicable.

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 failure:

- to do anything required under the LGPS Regulations;
- to do anything required under overriding legislation, applicable statutory guidance or General Code 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 investment strategy statement, funding strategy statement, discretionary policies, etc.);
- of a Scheme employer to pay over Scheme member and Scheme employer contributions on time;
- to pay Scheme member benefits either accurately or in a timely manner;
- to issue annual benefit statements on time;
- to provide information to Scheme members, or others access to information they are entitled to, in a timely manner.

Responsibilities

Breaches of the Law Officer Group

On behalf of the Council, the Fund has formed a Breaches of the Law Officer Group (‘the group’) as the primary body for discharging their functions under this policy. As Scheme Manager, the Council has a duty to report breaches to the Pensions Regulator.

The Strategic Pensions Manager is responsible for the work of this group, and for:

- Ensuring the group meets at least quarterly to consider breaches of the law and providing exception reports to the Assistant Director for Treasury & Pensions.
- Ensuring all associated procedures are in place and all parties are following them.
- Reviewing these procedures regularly and updating them as required.
- Updating this policy document to reflect any changes made.
- Providing a report and associated information on breaches of the law to the Pensions Board, at least annually.

The membership of the group comprises of the following Fund Officers:

- Strategic Pensions Manager
- Pensions Governance & Communications Manager
- Pensions Administration Manager
- Pensions Systems and Data Manager
- Pensions Employers and Funding Manager
- Other Senior Team Leaders (as required depending on the nature of breach referred to the group).

Responsibilities in relation to breaches

Responsibility to report identified breaches of the law in relation to the Code falls on the following persons (known as “reporters”):

- Elected members and officers of the Council, as the Scheme Manager;
- Members of the Pensions Board;
- Scheme employers;
- Professional advisers (including the Fund actuary, investment advisers, legal advisers); and
- Third party providers (where so employed).

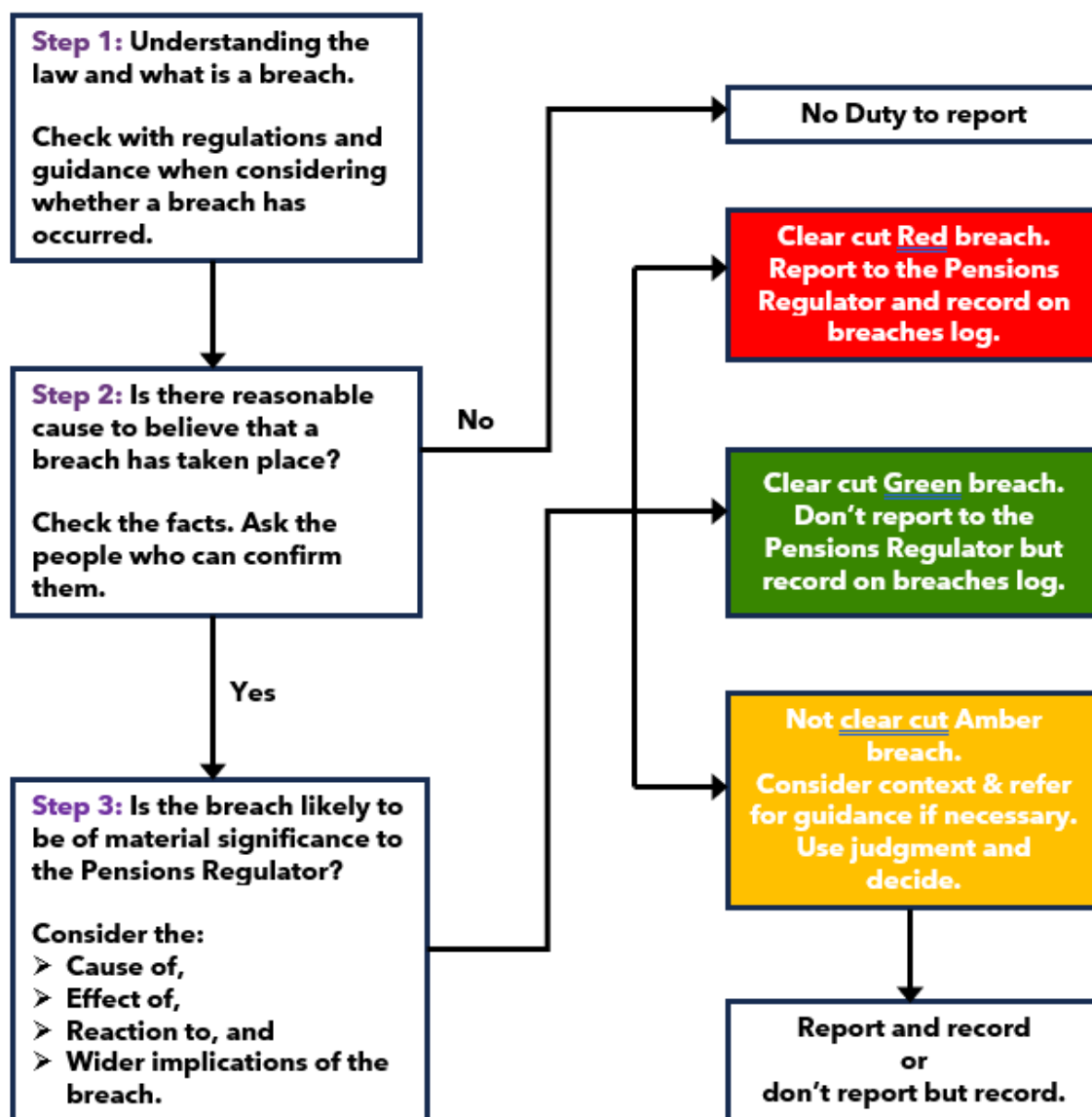
Breaches Procedures

All relevant officers and Elected members of the Council, as well as all members of the Pensions Board have a responsibility to:

- identify and assess the severity of any breach or likely breach;
- in conjunction with relevant colleagues agree a proposed course of action to rectify the breach and put in place measures to ensure the breach does not re-occur, obtaining appropriate legal or other advice where necessary;
- ensure that the appropriate corrective action has been taken to rectify the breach or likely breach and to prevent it from recurring; and
- co-operate with, and assist in, the reporting of breaches and likely breaches to the Council’s Monitoring Officer, Pensions Committee, Pensions Board and, where necessary, the Regulator.

The decision process to follow when dealing with a breach of the law is set out in the following diagram:

Breaches of the Law decision Process



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 Council or Pensions Board must report all such breaches to the Regulator in all cases.

Amber - does not fall easily into either green or red and requires further investigation to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. The Breaches of the Law Officer Group together with the Assistant Director for Treasury & Pensions will need to decide whether to informally alert the Regulator of the breach or likely breach, formally reporting the breach if it is subsequently decided to categorise the breach as red.

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.

Step 1 - Understanding the law and what is a breach.

You may need to refer to regulations and guidance when considering whether there has been a breach of the law. Some of the key provisions are:

- Section 70 and 70(A) of the Pensions Act 2004
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations)
- Public Service Pension Schemes Act 2013
- Local Government Pension Scheme Regulations
- The Pensions Regulator's General Code of Practice.

Step 2 - Is there reasonable cause to believe that a breach has taken place?

You must have reasonable cause to believe that a breach of the relevant legal provision has occurred, not just a suspicion. Therefore, you should undertake further checks to confirm that a breach has occurred.

If you do not know the facts or events, you should refer the matter to the Breaches of the Law Officer Group or check with the Assistant Director for Treasury & Pensions or other Senior Team members who you believe can help.

Step 3 - Is the breach likely to be of material significance to the Pensions Regulator?

If you have reasonable cause to believe there has been a breach of the law, you must decide whether that breach is likely to be of material significance to the Pensions Regulator. To help you do this, consider both separately and collectively:

- The cause of the breach (what made it happen?).
- The effect of the breach (the consequence(s) of the breach).
- The reaction to the breach.
- The wider implications of the breach.

Recording the Breach

The Breaches of the Law Officer Group will maintain a log of all breaches identified, even if they are not reported to the Pensions Regulator. The breaches log may be relevant when deciding whether to report a breach to the Pensions Regulator (for example, it may reveal a systemic cause).

Reporting

The Breaches of the Law Officer Group will use a RAG (Red-Amber-Green) rating system of categorising an identified breach to determine whether to report a breach to the Pensions Regulator.

If it is unclear as to whether the breach or likely breach is significant, in the first instance full details should always be reported to the Breaches of the Law Officers Group who will

review with the Assistant Director for Treasury & Pensions to determine the appropriate course of action.

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

Any failure of a Scheme employer to pass over employee contributions that are considered to be of material significance must be reported to the Pensions Regulator immediately.

In order to determine whether failure to pay over employee contributions is materially significant or not the Fund will seek from the Scheme employer:

- the cause and circumstances of the payment failure,
- what action the Scheme employer has taken as a result of the payment failure, and
- the wider implications or impact of the payment failure.

Where a payment plan is agreed with the Scheme employer to recover outstanding contributions, and it is being adhered to or there are circumstances of infrequent one-off late payments or administrative failures the late payment will not be considered to be of material significance.

All incidences resulting from the unwillingness or inability of the Scheme employer to pay over the employee contributions, dishonesty, fraudulent behaviour or misuse of employee contributions, poor administrative procedures or the failure to pay over employee contributions within 90 days from the due date will be considered to be of material significance and reported to the Pensions Regulator.

Once a breach or likely breach has been identified, regardless of whether it needs to be reported to the Regulator, the Strategic Pensions Manager, in consultation with the Assistant Director for Treasury & Pensions, must review the circumstances of the breach in order to understand why it occurred, the consequences of the breach and agree the corrective measures required to prevent re-occurrence, including an action plan where necessary. All breaches must be recorded in the Fund's breaches log.

Timescales for reporting

Breach of law reports must be made to the Pensions Regulator in writing as soon as reasonably practicable. In most cases, this should be within 10 working days of the breach being identified.

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, either by email or via an online web form. The Regulator encourages the use of its standard reporting facility via its Exchange online service. The Fund will report all material breaches to the Regulator via Exchange.

The report should include the:

- a. full name of the scheme
- b. description of the breach or breaches, including any relevant dates
- c. name of the Scheme employer (in the case of an occupational scheme) or Scheme manager (in the case of public service and personal pension schemes)
- d. name, position, and contact details of the reporter
- e. role of the reporter in the scheme
- f. reason the reporter believes the breach is of material significance
- g. address of the scheme
- h. type of scheme – whether occupational (defined benefit, defined contribution, or hybrid), personal or public service
- i. name and contact details of the governing body (if different to the scheme address)
- j. pension scheme registration (PSR) number if known
- k. address of the Scheme employer.

How are records of breaches maintained?

All breaches and likely breaches identified are to be reported to the Assistant Director for Treasury & Pensions as soon as they are identified. The Strategic Pensions Manager will ensure that all breaches are logged on the Fund's breaches log, including the following information:

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

The Assistant Director for Treasury & Pensions 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 be maintained by the Strategic Pensions Manager.

Whistleblowing

Staffordshire Pension Fund's policy on whistleblowing applies to everyone covered by this policy.

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. We understand the potential impact of a report on the relationship between a reporter and their client, or, in the case of an employee, their employer.

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.

The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing report to the Pensions Regulator. If individuals that are employed by firms with a duty to report, disagree with a decision not to report, they may have protection under the ERA if they make an individual report in good faith.

The Council and / or the Regulator will take all reasonable steps to protect a reporter's identity and maintain confidentiality, when a report is made in confidence. They will not disclose any information except where lawfully allowed to do so.

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

Training

The Assistant Director for Treasury & Pensions will ensure that all Fund Officers and Elected members, as well as members of the Pensions Board receive appropriate training on this policy at the commencement of their employment or appointment to the Pensions Board as appropriate and on an ongoing basis.

Further Information

If you require further information about anything in or related to this Policy, please contact:

Melanie Stokes, Assistant Director for Treasury & Pensions, Staffordshire County Council,
2 Staffordshire Place, Tipping Street, Stafford, ST16 2DH

✉ melanie.stokes@staffordshire.gov.uk

☎ 01785 276330

If a copy of this information is needed in large print, Braille, another language or on cassette or disc, please contact Pension Services

Appendix

Examples of breaches

Example 1

A Scheme employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. It is contacted by officers from the administering authority, it immediately pays the moneys 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

A Scheme employer is late in paying over employee and employer contributions, and so late that 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 officers from the administering authority, and it eventually pays the moneys 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 that is 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 Scheme employer is late in submitting its statutory year-end return of pay and contributions in respect of each of its active members and as such it is in breach. Despite repeated reminders it still does not supply its year-end return. Because the Fund does not have the year-end data it is unable to supply, by 31 August, annual benefit statements to the Scheme employer's members. In this instance there has been a breach which is relevant to the Regulator, in part because of the Scheme employer's failures, in part because of the enforced breach by the Council, and also because members are being denied their annual benefits statements.

Example 4

A pension overpayment is discovered and thus the Fund 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 as it is not material.