

LONDON BOROUGH OF BARNET PENSION FUND

POLICY FOR REPORTING BREACHES TO THE PENSIONS REGULATOR

1. PURPOSE OF THIS POLICY

- 1.1 This document sets out the procedures to be followed by certain persons involved with the London Borough of Barnet Pension Fund (LBBPF), the Local Government Pension Scheme managed and administered by the London Borough of Barnet, in relation to reporting breaches of the law to The Pensions Regulator (TPR).
- 1.2 Breaches can occur in relation to a wide variety of the tasks normally associated with the administrative function of a scheme such as keeping records, internal controls, calculating benefits and making investment or investment-related decisions.
- 1.3 This Procedure document applies, in the main, to:
 - all members of the Local Pension Board
 - all officers involved in the management of the LBBPF
 - any professional advisers and third-party suppliers including auditors, actuaries, independent advisers, administrators, legal advisers and fund managers
 - officers of employers participating in the LBBPF who are responsible for pension matters.

2. REGULATORY BACKGROUND

- 2.1 This section clarifies the full extent of the requirements and to whom they apply.

Pensions Act 2004

- 2.2 Section 70 of the Pensions Act 2004 (“the Act”) imposes a requirement on the following persons:
 - a manager of an occupational pension scheme
 - a member of the pension board of a public service pension scheme
 - a person who is otherwise involved in the administration of an occupational pension scheme
 - the employer in relation to an occupational pension scheme
 - a professional adviser in relation to such a scheme
 - a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme,

to report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:

- (a) a legal duty relating to the administration of the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance to The Pensions Regulator.

The Act states that a person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse. The duty to report breaches under the Act overrides any other duties the individuals listed above may have. However, the duty to report does not override 'legal privilege'.

This means that, generally, communications between a professional legal adviser and their client, or a person representing their client, relating to legal advice being given to the client, do not have to be disclosed.

3. THE PENSIONS REGULATOR'S CODE OF PRACTICE

3.1 Practical guidance in relation to this legal requirement is provided in The Pension Regulator's Code of Practice including in the following areas:

- implementing adequate procedures to consider and record breaches
- judging whether a breach must be reported
- submitting a report to The Pensions Regulator
- whistleblowing protection and confidentiality.

Application to the London Borough of Barnet Pension Fund

3.2 The London Borough of Barnet has developed this policy in relation to LBBPF. This policy sets out how the Council will strive to achieve best practice through use of a formal reporting breaches procedure. It reflects the guidance contained in The Pension Regulator's Code of Practice.

3.3 Training on reporting breaches and related statutory duties, and the use of this procedure will be provided to Pension Fund Committee and Local Pension Board members and key officers involved with the management of the London Borough of Barnet Pension Fund on a regular basis.

4. THE LONDON BOROUGH OF BARNET BREACHES POLICY

4.1 The following policy details how individuals responsible for reporting and whistleblowing can identify, assess, record and report (if appropriate) a breach of law relating to the LBBPF.

4.2 It aims to ensure individuals responsible can meet their legal obligations and avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk. There are four key steps to this procedure:

- Understanding the law and what is a breach.
- Determining whether a suspected breach is an actual breach
- Determining whether the breach is likely to be of material significance and so should be reported to The Pensions Regulator
- Recording the breach, even if it is not reported

Clarification of the law

4.3 Individuals may need to refer to regulations and guidance when considering whether or not to report a possible breach. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004:
www.legislation.gov.uk/ukpga/2004/35/contents
- Employment Rights Act 1996:
www.legislation.gov.uk/ukpga/1996/18/contents
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations):
www.legislation.gov.uk/uksi/2013/2734/contents/made
- Public Service Pension Schemes Act 2013:
www.legislation.gov.uk/ukpga/2013/25/contents
- Local Government Pension Scheme Regulations (various):
www.lgpsregs.org/timelineregs/Default.html (pre 2014 schemes)
- www.lgpsregs.org/index.php/regs-legislation (2014 scheme)

4.4 Individuals should refer to the section in The Pensions Regulator's Code of Practice on 'Reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, the section of the code on 'Maintaining contributions'.

4.5 Further guidance and assistance can be provided by the Head of Pensions and the Pensions Manager at the London Borough of Barnet provided that requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

Determining whether a suspected breach is an actual breach

4.6 Individuals then need to have reasonable cause to believe that a breach of the relevant legal provision has occurred, not just a suspicion. Where a breach is suspected the individual should carry out further checks to confirm the breach has occurred.

4.7 Where the individual does not know the facts or events, it will usually be appropriate to check with the Pensions Manager at the London Borough of Barnet or a member of the Local Pension Board or others who can explain what has happened. However, there are some instances where it would not be appropriate to make further checks, for example, if the individual has become aware of theft, suspected fraud or another serious offence and they are also aware that by making further checks there is a risk of either alerting those involved or hampering the actions of the police or a regulatory authority. In these cases, The Pensions Regulator should be contacted without delay.

Determining whether the breach is likely to be of material significance

4.8 Should an individual have reasonable cause to believe that breach of the law has occurred, they must decide whether that breach is likely to be of material significance to The Pensions Regulator, and therefore should be reported.

4.9 To do this, an individual should consider the following, both separately and collectively:

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

4.10 Individuals may also request the most recent breaches report from the Pensions Manager, as there may be details on other breaches which may provide a useful precedent on the appropriate action to take.

4.11 Further details on the above four considerations are provided in **Appendix A** to this policy.

4.12 The individual should use the traffic light framework described in **Appendix B** to help assess the material significance of each breach and to formally support and document their decision.

4.13 It should be noted that The Pensions Regulator's role is in relation to requirements under the Pensions Act 2004. As such, it is possible that some breaches of the law do not fall within the Regulator's remit. However, given the complex nature of the law, including the wide-ranging responsibilities covered by the Pensions Act 2004, London Borough of Barnet encourages reporting of any breach that is considered to be materially significant regardless of the specific area of the law that has been breached.

4.14 The Pensions Regulator can then determine whether it is a matter they have jurisdiction over or not.

- 4.15 The Pensions Manager can assist with determining whether the breach should be reported and can also assist in completing the document to report the breach. However, the individual is ultimately responsible for determining what should be included in the report and for submitting the report to The Pensions Regulator.

Recording the breach, even if it is not reported

- 4.16 The record of past breaches may be relevant in deciding whether to report a breach (for example, it may reveal a systemic issue). The Pensions Manager will maintain a record of all breaches identified.

- 4.17 Therefore, individuals should provide the following information to the Pensions Manager so that all identified breaches can be recorded:

- copies of reports submitted to The Pensions Regulator
- copies of information relating to any other breach the individual has identified.

- 4.18 The information should be provided to the Pensions Manager as soon as reasonably practicable and certainly no later than within 20 working days of the decision made to report or not.

Reporting a breach

- 4.19 Reports must be submitted in writing via The Pensions Regulator's online system at www.tpr.gov.uk/exchange or by post, email or fax, and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Reporters should ensure they receive an acknowledgement for any report they send to The Pensions Regulator.

- 4.20 The Pensions Regulator will acknowledge receipt of all reports within five working days and may contact reporters to request further information. Reporters will not usually be informed of any actions taken by The Pensions Regulator due to restrictions on the disclosure of information.

- 4.21 As a minimum, individuals reporting should provide:

- full scheme name (London Borough of Barnet Pension Fund);
- description of breach(es);
- any relevant dates;
- name, position and contact details;
- role in connection to the scheme; and
- employer name or name of scheme manager (the latter is London Borough of Barnet).

- 4.22 If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to The Pensions Regulator;

- scheme address (provided at the end of this procedures document);
- scheme manager contact details (provided at the end of this procedures document);
- pension scheme registry number; and
- whether the breach has been reported before.

The reporter should also provide further information or reports of further breaches if this may help The Pensions Regulator in the exercise of its functions. The Pensions Regulator may make contact to request further information.

Confidentiality

- 4.23 If requested, The Pensions Regulator will do its best to protect a reporter's identity and will not disclose information except where it is lawfully required to do so. If an individual's employer decides not to report and the individual employed by them disagrees with this and decides to report a breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report in good faith.

Reporting to the Local Pension Board

- 4.24 A report will be presented to the Local Pension Board setting out:
- all breaches, including those reported to The Pensions Regulator and those unreported, with the associated dates;
 - in relation to each breach, details of what action was taken and the result of any action (where not confidential);
 - any future actions for the prevention of the breach in question being repeated; and highlighting new breaches which have arisen in the last year/since the previous meeting.

An example of the information to be included to the Local Pensions Board is provided in **Appendix C** to this policy.

Review

- 4.25 This Reporting Breaches Policy will be kept under review and updated as appropriate. It may be changed because of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

FURTHER INFORMATION

- 5.1 If further information is required about reporting breaches or this policy or if there is a need to discuss reporting a breach, please contact either:

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E-mail – george.bruce@barnet.gov.uk
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Reviewed:

APPENDIX A - Determining whether a breach is likely to be of material significance

To decide whether a breach is likely to be of material significance individuals should consider the following elements, both separately and collectively:

The cause of the breach

Examples of causes which are likely to be of concern to The Pensions Regulator are provided below:

- acting, or failing to act, in deliberate contravention of the law;
- dishonesty;
- incomplete or inaccurate advice;
- poor administration, i.e. failure to implement adequate administration procedures;
- poor governance; or
- slow or inappropriate decision-making practices.

When deciding whether a cause is likely to be of material significance individuals should also consider:

- whether the breach has been caused by an isolated incident such as a power outage, fire, flood or a genuine one-off mistake.
- whether there have been any other breaches (reported to The Pensions Regulator or not) which when taken together may become materially significant.

The effect of the breach

Examples of the possible effects (with possible causes) of breaches which are considered likely to be of material significance to The Pensions Regulator in the context of the LGPS are given below:

- Local Pension Board members not having enough knowledge and understanding, resulting in pension boards not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements.
- Conflicts of interest of Local Pension Board members, resulting in them being prejudiced in the way in which they carry out their role and/or the ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements.
- Poor internal controls, leading to schemes not being run in accordance with their scheme 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.
- Inaccurate or incomplete information about benefits and scheme information provided to members, resulting in members not being able to effectively plan or make decisions about their retirement.

- Poor member records held, resulting in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Misappropriation of assets, resulting in scheme assets not being safeguarded.
- Other breaches which result in the scheme being poorly governed, managed or administered.

The reaction to the breach

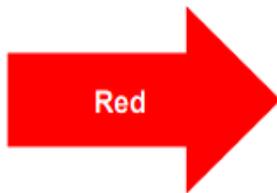
A breach is likely to be of concern and material significance to The Pensions Regulator where a breach has been identified and those involved:

- 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.

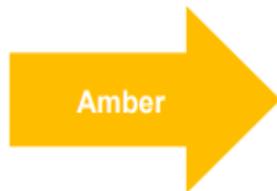
The wider implications of the breach

Reporters should also consider the wider implications when deciding whether a breach must be reported. The breach is likely to be of material significance to The Pensions Regulator where the fact that a breach has occurred makes it more likely that further breaches will occur within the Fund or, if due to maladministration by a third party, further breaches will occur in other pension schemes.

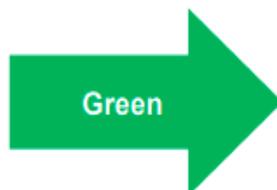
London Borough of Barnet recommends those responsible for reporting to use the traffic light framework when deciding whether to report to The Pensions Regulator. This is illustrated below:



Where the cause, effect, reaction and wider implications of a breach, when considered together, are likely to be of material significance. These must be reported to the Pensions Regulator.
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.



Where the cause, effect, reaction and wider implications of a breach, when considered together, may be of material significance. 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. You will need to exercise your 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.



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

All breaches should be recorded even if the decision is not to report.

When using the traffic light framework individuals should consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach, before you consider the four together.

Some useful examples of this framework is provided by The Pensions Regulator at the following link:

[http:// www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx](http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx)

