

Wales Pension Partnership

Breaches and Errors Policy

Introduction

1. The Wales Pension Partnership (“WPP”) has prepared this document setting out its policy and procedures on identifying, managing and where necessary reporting breaches of the law in accordance with section 70 of the Pensions Act 2004.
2. This policy applies to elected members and officers who carry out duties in respect of the WPP as well as local pension board members of the Constituent Authorities with whom WPP engages. It sets out the responsibilities of these groups in identifying, managing and where necessary reporting breaches of the law as they apply to the governance, management and administration of the WPP. This policy does not cover the responsibility of other “reporters” (described later in this policy) in relation to their obligation to report breaches of the law.
3. In drafting this policy and in its application WPP will have regard to paragraphs 241 to 275 of the Pensions Regulator’s Code of Practice no 14: Governance and administration of public service pension schemes (“the Code of Practice”), which deal with breaches of the law.
4. This policy will be formally reviewed by the OWG on a triennial basis and substantive changes to the policy will be taken to the JGC for approval.

Overview

5. The identification, management and reporting of breaches is a statutory requirement; failure to report a material breach can result in The Pensions Regulator imposing civil penalties.
6. 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.
7. All those involved in the administration and management of WPP are required to take a pro-active approach to the identification, management and reporting of breaches that have occurred, or are likely to occur.
8. The Host Authority (“HA”) will maintain a log of all breaches of the law applicable to the running of the WPP.
9. Where a breach has occurred, it will be identified and logged as either an area of non-compliance under the LGPS Regulation, a breach under Pension Law as defined within section 13 of the 2004 Pension Act or the Pension Regulator’s Code of Practice or other regulatory regime.
10. Those with reporting responsibilities cannot rely on waiting for other reporters to report a breach where it has occurred. Where a breach has occurred and has been identified it should be recorded, assessed and where necessary reported as soon as reasonably practicable.

What is a breach of the law?

11. 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, for example, failure:
 - to do anything required under the LGPS 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.

Responsibilities in relation to breaches

12. Responsibility to report identified breaches of the law falls on the following (known as “reporters”):
 - Elected members serving on the Joint Governance Committee (“JGC”);
 - Any co-opted members of the JGC;
 - Any officers performing functions related to the WPP;
 - Members of local pension boards attending Pension Board Chairs’ Engagement Sessions;
 - Professional advisers; and
 - Third party providers (where so employed).
13. Nothing in this policy overrides any individual's responsibilities to report a breach of the law and any individual who believes a breach has occurred remains free to report that breach independently of this policy.
14. This policy exists in order to support reporters, facilitate the reporting of breaches and collate information on breaches of the law so that lessons may be learned and preventative action taken.
15. This policy applies only to elected members, officers and pension board members of WPP’s Constituent Authorities. It is for the other reporters to ensure adequate procedures and policies are put in place in order to identify, assess and where necessary report breaches. The Monitoring Officer or the Section 151 of the HA will take all necessary steps to consider the breach and report to the Regulator, rather than having the breach reported by any of the other “reporters”.

Requirement to report a breach of the Law

16. The decision whether to report an identified breach depends on whether:
 - there is reasonable cause to believe there has been a breach of the law;
 - and if so, is the breach likely to be of material significance to the Regulator?
17. Not every breach that is identified needs to be reported to the Regulator. For example, where it can be demonstrated that appropriate action is being taken to rectify the breach, or the breach has occurred due to teething problems with new or revised systems or processes, it may not be necessary to report the incident to the Regulator. It is still necessary that all incidents of breaches identified are recorded in the WPP’s breaches log and will be maintained by the HA . This log will be reviewed by the HA on an on-going basis to determine any trends in the breaches log that might indicate any systemic failures.

When is a breach required to be reported to the Regulator?

18. A breach should be notified to the Regulator as soon as is reasonably practicable once there is reasonable cause to believe that a breach has occurred and that it is of material significance to the

Regulator. In any event, where a breach is considered to be of material significance it must be reported to the Regulator no later than one month after becoming aware of the breach or likely breach.

19. Where it is considered that a breach is of such significance that the Regulator is required to intervene as a matter of urgency (for example, serious fraud) the matter should be brought to the attention of the Regulator immediately (e.g. by calling them direct). A formal report should then be submitted to the Regulator, marked as “urgent” in order to draw the Regulator’s attention to it.

Assessing “reasonable cause”

20. It is important that the reporter is satisfied that a breach has actually occurred, rather than acting on a suspicion of such an event.
21. It will be necessary, therefore, for robust checks to be made by the Monitoring Officer or the Section 151 Officer of the HA and, if appropriate, elected members when acting on any suspicion of a breach having occurred. Where necessary this will involve taking legal advice as well as other advisers (e.g. auditors or investment advisers).

Deciding if a breach is “materially significant” and should be reported to the Regulator

22. The Regulator has produced a decision tree to assist schemes in identifying the severity of a breach and whether it should then be reported. When determining materiality of any breach or likely breach WPP will in all cases consider the following:

- cause – e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law;
- effect – does the nature of the breach lead to an increased likelihood of further material breaches. Is it likely to cause, for example; ineffective internal controls, lack of knowledge and understanding, inaccurate records, potential for further breaches occurring;
- reaction – e.g. taking prompt and effective action to resolve a breach, notifying affected parties where appropriate; and
- wider implications – e.g. where a breach has occurred due to lack of knowledge or poor systems and processes making it more likely that other breaches will emerge in the future.

23. The decision tree provides a “traffic light” system of categorising an identified breach:

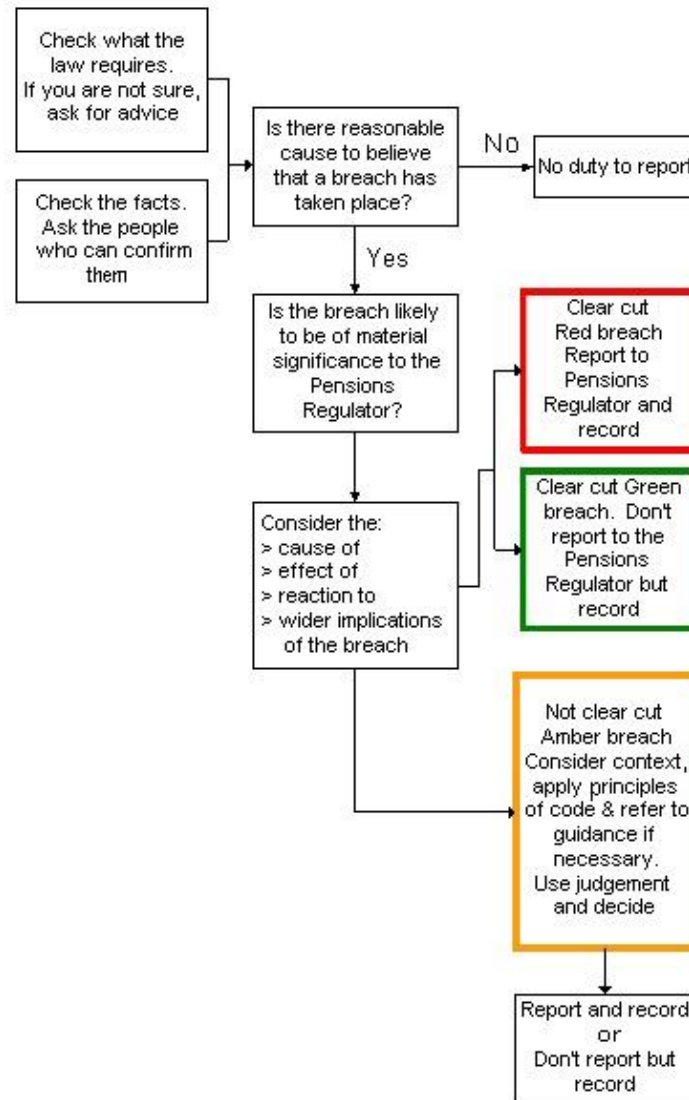
Green – not caused by dishonesty, poor governance or a deliberate contravention of the law and its effect is not significant and a plan is in place to rectify the situation. In such cases the breach will not be reported to the Regulator, but should be recorded in the WPP’s breaches log;

Amber – does not fall easily into either green or red and requires further investigation in order to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. WPP 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;

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. WPP must report all such breaches to the Regulator in all cases;

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

25. WPP will use the Regulator’s decision tree as a means of identifying whether any breach is to be considered as materially significant and so reported to the Regulator.



Process for reporting breaches

26. All officers, elected members and local pension board members carrying out WPP related functions have a responsibility to report breaches. However, it is recognised that individuals who suspect a breach may require assistance in order to further investigate the details of the breach and be advised as to the extent and seriousness of the breach. Assistance will be provided by the HA where required.
27. Where an individual covered by the policy believes a material breach has occurred, the following options are available;
- Report the breach directly to the Pensions Regulator and provide any supporting evidence. The individual should also provide details of the breach and the report submitted to the HA for inclusion on the breaches log. The HA will carry out further investigation and instigate any remedial actions but will not submit a further breaches report unless material new information comes to light.
 - Report the breach to the HA who will log the breach and carry out further investigation including legal and professional advice as required. Responsibility for this process will lie with the s151

Officer of the HA. Where the reporter and HA deem the breach to be material, the HA will report the breach to The Regulator and deal with any follow up actions and requests. The HA will be responsible for the management and execution of this breaches policy.

28. Where the reporter believes that reporting the breach to the HA would alert any individual responsible for serious misconduct to the fact that an investigation may be likely, the breach should not be reported through the usual channels. Instead, the reporter should consider reporting the breach directly the monitoring officer of the HA or reporting the breach directly to the Regulator.
29. Examples of serious misconduct would include theft, fraud, anything likely to lead to legal action or involvement by police or regulatory authorities.
30. The HA will be responsible for recording and reporting breaches and likely breaches as follows:
 - record all identified breaches and likely breaches of which they are aware in the WPP's breaches log;
 - investigate the circumstances of all reported breaches and likely breaches;
 - ensure, where necessary that an action plan is put in place and acted on to correct the identified breach and also ensure further breaches of a similar nature do not reoccur;
 - report breaches and remedial actions to the JGC
 - report all materially significant breaches to the Regulator as soon as practicable but not later than one month after becoming aware of the breach, unless the breach is deemed urgent or has been reported by another party.

How should a breach be reported to the Regulator?

31. All materially significant breaches will be reported to the Regulator using the online Exchange portal.

The link to the portal is: [Register and log in to The Pensions Regulator](#)

How are records of breaches maintained?

32. All breaches and likely breaches identified are to be reported to the HA as soon as they are identified. The HA will log all breaches on the WPP's breaches log, including the following information:
 - date the breach or likely breach was identified;
 - name of the scheme (Wales Pension Partnership);
 - 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 descriptions of any longer term implications and actions required to prevent similar types of breaches recurring in the future.

Overall, responsibility for maintenance of the breaches log will rest with the s151 officer for the HA.

Whistleblowing

33. It is a statutory duty to report breaches of the law. In rare cases this may involve a duty to whistleblow on the part of an officer, elected member or a member of the local pension board. The duty to report

does not override any other duties a “reporter” may have, such as confidentiality. Any such duty is not breached by reporting to the Regulator.

34. WPP has a separate Whistleblowing policy which should be followed in these circumstances.
35. The duty to report, however, does not override ‘legal privilege’, so certain oral and written communications between individuals and a professional legal adviser do not have to be disclosed if they meet the principles of legal privilege.

Further Information

36. If you require any further details on the WPP’s Breaches and Errors Policy, please contact walespensionpartnership@cararthenshire.gov.uk

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