



Brent

London Borough of Brent

Breaches Policy

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1. Breaches Policy

The London Borough of Brent Pension Fund (“the Fund”) Breaches Policy sets out policy and procedures on identifying, managing, and reporting breaches of the law as covered in paragraphs 241 to 275 of The Pensions Regulator’s Code of Practice no 14, Governance and administration of public service pension schemes.

This policy sets out the responsibility of elected members, officers of The London Borough of Brent (“the Council”), and the Brent Pension 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 in relation to their obligation to report breaches in accordance with the Code of Practice where they relate to the management and administration of the Fund.

Where a breach of the law is identified all parties will take the necessary steps to consider the breach and report it to the Regulator, rather than having the breach solely reported by any of the other reporters.

This policy will be reviewed and approved by the Council annually. The Council will monitor all breaches and will ensure that adequate resources are allocated to managing and administering this process.

The Council’s Section 151 Officer is responsible for the management and execution of this breaches policy.

The Chair of the Pension Board will ensure that training on breaches of the law and this policy is conducted for all relevant officers and elected members.

2. Overview

The identification, management and reporting of breaches is a required by the Code of Practice.

In addition to identifying, rectifying and where necessary reporting a particular breach, such breaches will be used to review and improve processes in the areas where the breach occurred.

All staff involved in the administration and management of the Fund will take a proactive approach to the identification, management and reporting of all breaches that have occurred, or are likely to occur.

The Council, as the scheme manager for the Brent Pension Fund, will maintain a log of all breaches of the law (Breaches Log) as applicable to the management and administration of the Fund.

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 14.

Where a breach has occurred and has been identified by the Council, officers or members of the Pension Board, or our third party administrators, it will be recorded, assessed and where necessary reported as soon as reasonably practicable.

3. Responsibility Breach Reporting

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

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

This policy applies only to elected members and officers of the Council, and members of the Pension Board. 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. Both the Council and the Pension Board will take all necessary steps to consider the breach and report to the Regulator, rather than having the breach solely reported by any of the other reporters.

4. Reporting Requirements

Breaches of the law which affect pension schemes will be considered for reporting to the Pensions Regulator.

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.

All incidents of breaches identified are recorded in the Council’s Breaches Log. This log is reviewed on an on-going basis to determine if there are any occurrences that indicate any serious failings or fraudulent behaviour. Where such failings or fraudulent behaviour are identified immediate action will be taken to put in place a plan of action to rectify the matter and prevent such an occurrence in the future.

5. Breaches required to be reported

A breach will 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. Where a breach is considered to be of material significance it will be reported to the Regulator no later than one month after becoming aware of the breach or likely breach.

Where it is considered that a breach is of such significance that the Regulator is required to intervene as a matter of urgency, the matter will be brought to the attention of the Regulator immediately. A formal report will then be submitted to the Regulator marked as urgent.

6. Assessing reasonable cause

The Council and the Pension Board must be satisfied that a breach has actually occurred rather than acting on a suspicion of such an event.

Robust checks will be made by officers and elected members when acting on any suspicion of a breach having occurred drawing on legal advice from Brent's legal services and specialist external legal advice if necessary, as well as other advisers such as internal or external audit, the Fund actuary or investment advisers.

7. Determining if a breach is materially significant

When determining the materiality of any breach or likely breach, Council officers and the Pensions Board will 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;
- reaction – e.g. taking prompt and effective action to resolve a breach, notifying scheme members 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 occur in the future.

The Council uses The Pensions Regulator's decision tree as a means of identifying whether any breach is to be considered as materially significant and will need to be reported to the Regulator.

Green breach situations are not of material significance and do not have to be reported but should be recorded.

- **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 will be recorded in the Council's Breaches Log.

Amber breach situations are less clear cut; a reporter must take into account the context of the breach in order to decide whether it is of material significance and should be reported.

- **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. The Council will make a decision on whether to informally inform the Regulator of the breach or likely breach, formally reporting the breach if it is subsequently decided to categorise the breach as red.

Red breach situations are always of material significance to the Pensions Regulator and should be reported.

- **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 will report all such breaches to the Regulator.

Once a breach or likely breach has been identified the relevant officer, in consultation with the Section 151 Officer, will review the circumstances of the breach in order to understand why it has occurred, the consequences of the breach and agree the corrective measures required to prevent re-occurrence, including an action plan where necessary.

All breaches will be recorded in the Council's Breaches Log.

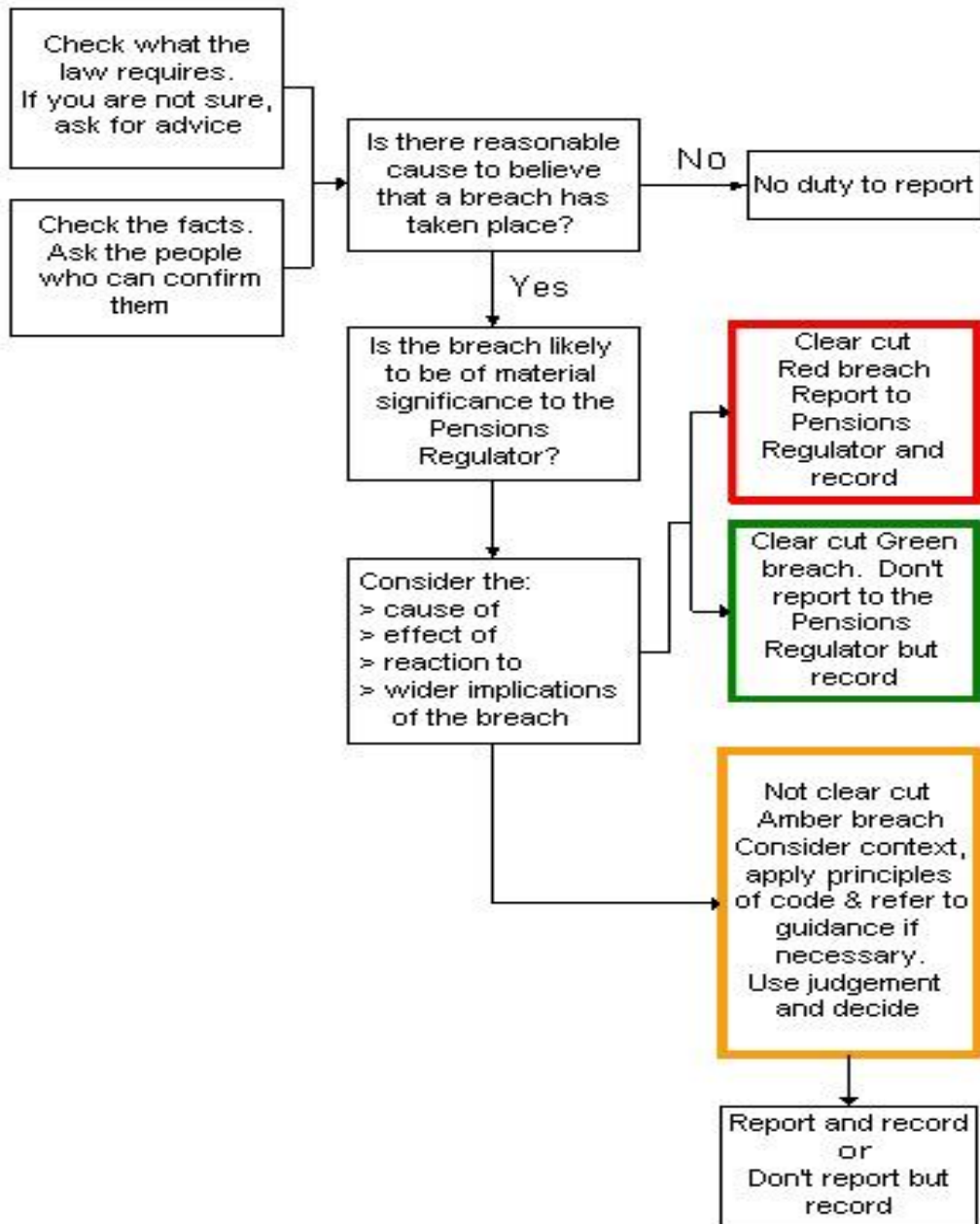
The Pensions Regulator Decision Tree

Deciding whether to report:

1. Reasonable cause to believe that a breach has taken place
 - No No duty to report
 - Yes Go to 2.

2. Is the breach likely to be of material significance, consider the:
 - Cause of
 - Effect of
 - Reaction to
 - Wider implications of the breach

The Pensions Regulator Decision Tree



8. Process for reporting breaches

All relevant officers and members of the Pension Board have a responsibility to:

- identify and assess the severity of any breach or likely breach
- report all breaches or likely breaches to the section 151 officer
- 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, and 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 re-occurring
- co-operate with and assist in the reporting of breaches and likely breaches to the Pensions Board, and where necessary, the Regulator.

9. Responsible officer

The Section 151 Officer 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 Councils 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 ensure further breaches of a similar nature do not re-occur.

Report to the Pension Fund Sub Committee and Pension Board:

- all materially significant breaches or likely breaches that will require reporting to the Regulator as soon as practicable, but no later than one month after becoming aware of the breach or likely breach
- all other breaches at least quarterly as part of the Committee cycle

The Section 151 Officer will determine whether any breach or likely breach is materially significant having regard to the guidance set out in the Code of Practice and after consultation with parties they deem appropriate.

If appropriate, the matter will be referred to specialist advisors, such as Legal, the Fund actuary, audit or other advice before deciding if the breach is considered to be of material significance to the Regulator.

10. Maintaining breaches record

All breaches and likely breaches identified will be reported to the Section 151 Officer as soon as they are identified. All breaches will be recorded on the Council's breaches log, including the following information:

- date the breach or likely breach was identified
- name of the scheme
- name of the 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 descriptions of any longer term implications and actions required to prevent similar types of breaches recurring in the future.

The Section 151 Officer is 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 retained.

11. Whistleblowing

The Council will ensure it adheres to the requirements of the Employment Rights Act 1996 in protecting an employee making a whistleblowing disclosure to the Regulator.

12. Training

The Section 151 officer will ensure that all relevant officers and members of the Pension Board receive appropriate training on this policy at the commencement of their employment or appointment to the local pension board as appropriate and on an ongoing basis.

End.