



# **Buckinghamshire County Council Pension Fund Procedure for Reporting Breaches of the Law**

**September 2018**



# Reporting Breaches Procedure

## Introduction

This document sets out the procedures to be followed by certain persons involved with the Buckinghamshire County Council Pension Fund (the Local Government Pension Scheme Fund managed and administered by Buckinghamshire County Council), in relation to reporting breaches of the law to the Pensions Regulator (“the Regulator”).

Buckinghamshire County Council, as Administering Authority, has delegated responsibility for the implementation of these procedures to the Head of Finance - Resources & Pensions.

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.

In the main, this document applies to:

- members of the Pension Fund Committee (“PFC”) and Buckinghamshire Local Pension Board (“the Board”);
- all officers involved in the management of the Pension Fund including members of the Buckinghamshire County Council Pensions and Investments Team, the Head of Finance - Resources & Pensions and the Director of Finance (who is also the Section 151 Officer);
- any professional advisers including auditors, actuaries, legal advisers and fund managers; and
- officers of employers participating in the Buckinghamshire County Council Pension Fund who are responsible for LGPS pension matters.

The next section clarifies the full extent of the legal requirements and to whom they apply.

## Requirements

### Pensions Act 2004

Section 70 of the Pensions Act 2004 (“the Act”) imposes a reporting requirement on the following persons

- a trustee or manager of an occupational or personal pension scheme
- a person who is otherwise involved in the administration of such a 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.

Where the person has reasonable cause to believe that:

- a duty which is relevant to the administration of the scheme, and is imposed by or by virtue of an enactment of law, has not been or is not being complied with, and
- the failure to comply is likely to be of material significance to the Regulator in the exercise of its functions,

they must give a written report of the matter to the Regulator as soon as reasonably practicable.

The Act states that a person can be subject to a civil penalty if he or she fails to comply with this obligation 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 his/her client, or a person representing his/her client, in connection with legal advice being given to the client, do not have to be disclosed.

### **The Pension Regulator's Code of Practice**

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

- implementing adequate procedures;
- judging whether a breach must be reported;
- submitting a report to the Regulator; and
- whistleblowing protection and confidentiality.

### **Application to the Buckinghamshire County Council Pension Fund**

Buckinghamshire County Council has developed this procedure which reflects the guidance contained in The Pension Regulator's Code of Practice in relation to the Buckinghamshire County Council Pension Fund and this document sets out how the Council will strive to achieve best practice through use of a formal reporting procedure.

Training on reporting breaches and related statutory duties, and the use of this procedure is provided to Pension Fund Committee members, Pension Board members and key officers involved with the management of the Buckinghamshire County Council Pension Fund on a regular basis. Further training can be provided on request to the Pensions & Investments Manager.

### **The Buckinghamshire County Council Pension Fund Reporting Breaches Procedure**

The following Procedure details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Buckinghamshire County Council Pension Fund.

It aims to ensure individuals responsible are able to 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.

## **1. Clarification of the law**

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](http://www.legislation.gov.uk/ukpga/2004/35/contents)
- Employment Rights Act 1996:  
[www.legislation.gov.uk/ukpga/1996/18/contents](http://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](http://www.legislation.gov.uk/uksi/2013/2734/contents/made)
- Public Service Pension Schemes Act 2013:  
[www.legislation.gov.uk/ukpga/2013/25/contents](http://www.legislation.gov.uk/ukpga/2013/25/contents)
- Local Government Pension Scheme Regulations (various):  
<http://www.lgpsregs.org/timelineregs/Default.html> (pre 2014 schemes)  
<http://www.lgpsregs.org/index.php/regs-legislation> (2014 scheme)
- The Pensions Regulator's Code of Practice:  
<http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>  
In particular, individuals should refer to the section 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'.

Further guidance and assistance can be provided by the Head of Finance - Resources & Pensions, 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).

## **2. Clarification when a breach is suspected**

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

Where the individual does not know the facts or events, it will usually be appropriate to check with the Head of Finance - Resources & Pensions at Buckinghamshire County Council, a member of the Pension Fund Committee or Pension Board or others who are able to 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 he/she is 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 Regulator should be contacted without delay.

### 3. Determining whether the breach is likely to be of material significance

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

- cause of the breach (what made it happen);
- effect of the breach (the consequences of the breach);
- reaction to the breach; and
- wider implications of the breach.

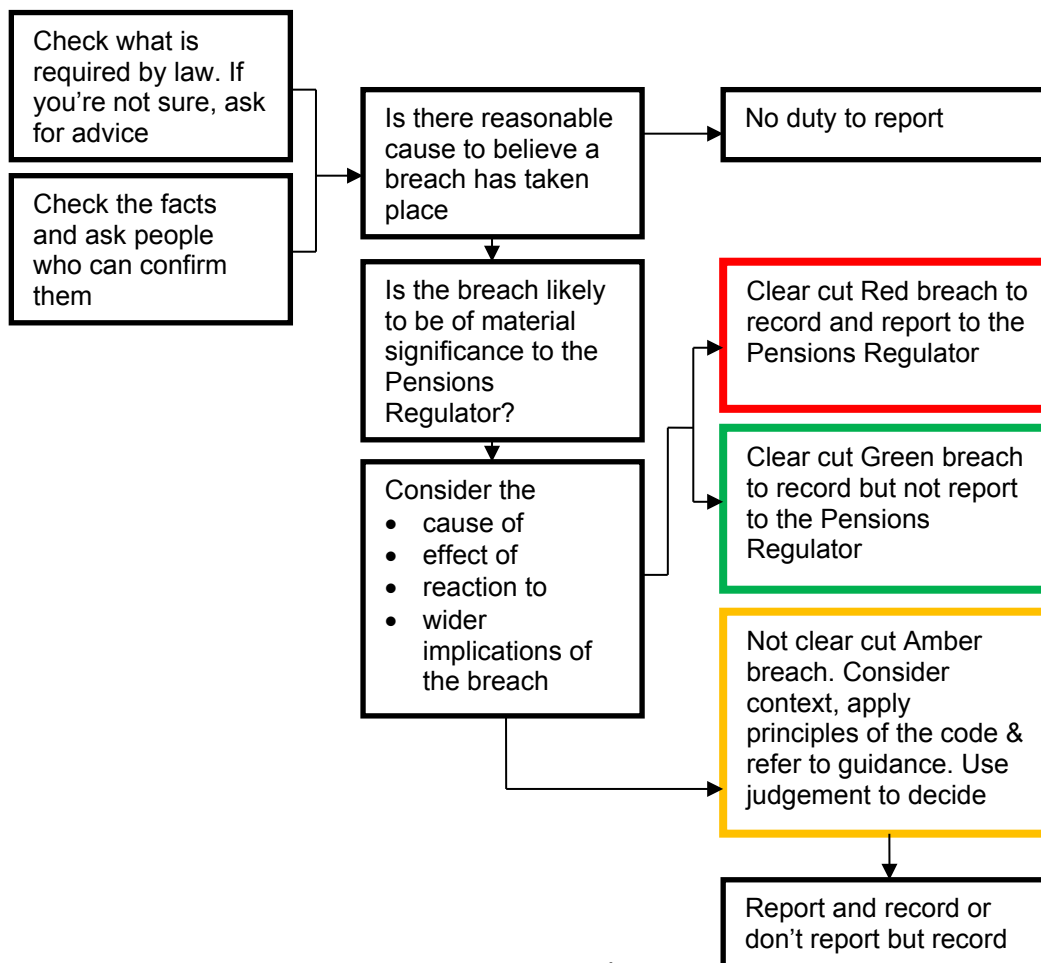
Individuals may also request the most recent breaches report from the Head of Finance - Resources & Pensions, as there may be details on other breaches which may provide a useful precedent on the appropriate action to take.

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

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 his/her decision.

A decision tree is provided below to show the process for deciding whether or not a breach has taken place and whether it is materially significant and therefore needs to be reported.

#### Decision tree – deciding whether to report



#### **4. Referral to a level of seniority for a decision to be made on whether to report**

Buckinghamshire County Council has designated an officer (Head of Finance - Resources & Pensions) to ensure this procedure is appropriately followed. They are considered to have appropriate experience to help investigate whether there is reasonable cause to believe a breach has occurred, to check the law and facts of the case, to maintain records of all breaches and to assist, where appropriate, in any reporting to the Regulator.

If breaches relate to late or incorrect payment of contributions or pension benefits, information on the matter should be highlighted to the Head of Finance - Resources & Pensions, at the earliest opportunity to ensure the matter is resolved as a matter of urgency.

Individuals must bear in mind, however, that the involvement of the Head of Finance - Resources & Pensions is to help clarify the potential reporter's thought process and to ensure this procedure is followed. The reporter remains responsible for the final decision as to whether a matter should be reported to the Regulator.

The matter should not be referred to the Head of Finance - Resources & Pensions if doing so would alert any person responsible for a possible serious offence to the investigation (as highlighted in section 2). If that is the case, the individual should report the matter to the Regulator setting out the reasons for reporting, including any uncertainty; a telephone call to the Regulator before the submission may be appropriate, particularly in more serious breaches.

#### **5. Dealing with complex cases**

The Head of Finance - Resources & Pensions may be able to provide guidance on particularly complex cases. Guidance may also be obtained by reference to previous cases, information on which will be retained by Buckinghamshire County Council, or via discussions with those responsible for maintaining the records. Information may also be available from national resources such as the Scheme Advisory Board or the LGPC Secretariat (part of the LGA: <http://www.lgpsregs.org/>).

If timescales allow, legal advice or other professional advice can be sought and the case can be discussed at the next Pension Fund Committee or Board meeting.

#### **6. Timescales for reporting**

The Pensions Act and the Pensions Regulator's Code of Practice requires that, if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable. Individuals should not rely on waiting for others to report and nor is it necessary for a reporter to gather all the evidence which the Regulator may require before taking action. A delay in reporting may exacerbate or increase the risk of the breach. The time taken to reach the judgements on 'reasonable cause to believe' and on 'material significance' should be consistent

with the speed implied by 'as soon as reasonably practicable'. In particular, the time taken should reflect the seriousness of the suspected breach.

## **7. Early identification of very serious breaches**

In cases of immediate risk to the scheme, for instance, where there is any indication of dishonesty, the Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies. Reporters should only make such immediate checks as are necessary.

The more serious the potential breach and its consequences, the more urgently reporters should make these necessary checks. In cases of potential dishonesty the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should use the quickest means possible to alert the Regulator to the breach.

## **8. Recording all breaches even if they are not reported**

The record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). Buckinghamshire County Council will maintain a record of all breaches identified by individuals and reporters should therefore provide copies of reports submitted to the Regulator to the Head of Finance - Resources & Pensions. Records of unreported breaches should also be provided to the Head of Finance - Resources & Pensions as soon as reasonably practicable and certainly no later than within 20 working days of the decision made not to report. These will be recorded alongside all reported breaches. The record of all breaches (reported or otherwise) will be included in a Monitoring Report to Pension Fund Committee meeting, and this will also be shared with the Board.

### **Reporting a breach**

Reports must be submitted in writing via the Regulator's online system at [www.tpr.gov.uk/exchange](http://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 Regulator. The 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 Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name (LGPS: Buckinghamshire County Council Pension Fund);
- description of breach/breaches;
- 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 Buckinghamshire County Council).

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 document);
- scheme manager contact details (provided at the end of this document);
- pension scheme registry number (PSR **10123049**); and
- whether the breach has been reported before.

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

### **Confidentiality**

If requested, the 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 Pension Fund Committee**

The Monitoring Report taken to Pension Fund Committee and the Pension Board will set out:

- all breaches, including those reported to the Regulator and those unreported, and for each breach
  - the associated dates;
  - the action(s) taken, result of any action(s) (where not confidential) and any future actions for the prevention of the breach in question being repeated;
- new breaches which have arisen in the last quarter.

This information will also be provided upon request to any other individual or organisation (excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings).

An example of the information to be included in the reports is provided in **Appendix C** to this procedure.

### **Review**

This procedure for Reporting Breaches of the Law was agreed by the Pension Fund Committee on 24 September 2018. It will be kept under review and updated as considered appropriate by the Head of Finance - Resources & Pensions. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.



## **Further Information**

If you require further information about reporting breaches or this procedure, please contact:

Claire Lewis-Smith, Principal Pensions Officer (Governance & Employer Liaison)  
**or**

Julie Edwards, Pensions & Investments Manager

Buckinghamshire County Council Pension Fund  
County Hall  
Aylesbury  
HP20 1UD

Email - [clewissmith@buckscc.gov.uk](mailto:clewissmith@buckscc.gov.uk)  
Telephone – 01296 383424

Email - [jedwards@buckscc.gov.uk](mailto:jedwards@buckscc.gov.uk)  
Telephone – 01296 383910

### **Designated officer (scheme manager) contact details:**

Head of Finance - Resources & Pensions: Mark Preston

Email: [mpreston@buckscc.gov.uk](mailto:mpreston@buckscc.gov.uk)

Telephone – 01296 383107

Further information on the Buckinghamshire County Council Pension Fund can be found at:

Telephone – 01296 383755

Email - [pensions@buckscc.gov.uk](mailto:pensions@buckscc.gov.uk)

Buckinghamshire County Council website – [www.buckscc.gov.uk/pensions](http://www.buckscc.gov.uk/pensions)

## **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:

- 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.

### **The cause of the breach**

Examples of causes which are likely to be of concern to the 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
- 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 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 Regulator in the context of the LGPS are given below:

- Committee/Board members not having sufficient knowledge and understanding resulting in the Committee/Board failing to fulfil its role, the scheme not being properly governed and administered and/or the scheme manager breaching other legal requirements;
- conflicts of interest of Committee/Board members resulting in the members being prejudiced in the way in which they carry out their roles and/or the ineffective governance and administration of the scheme and/or the scheme manager breaching legal requirements;
- poor internal controls, leading to the scheme not being run in accordance with scheme regulations and other legal requirements, and risks not being properly identified;
- 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 Regulator where a breach has been identified and those involved:

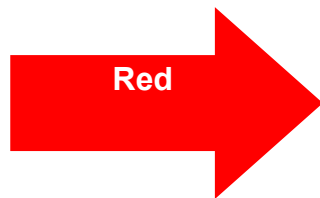
- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence;
- are not pursuing corrective action to a proper conclusion; or
- fail to notify affected scheme members where it would have been appropriate to do so.

### **The wider implications of the breach**

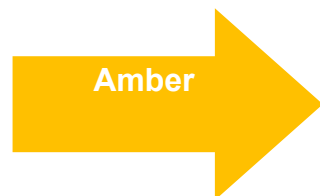
Reporters should also consider the wider implications when deciding whether a breach must be reported. The breach is likely to be of material significance to the Regulator where the fact that a breach has occurred makes it more likely that further breaches will occur within the Fund or, if due to maladministration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

## Appendix B - Traffic light framework for deciding whether or not to report

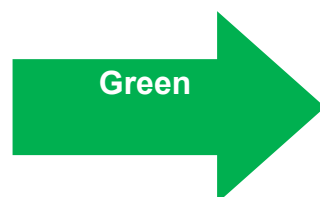
Buckinghamshire County Council recommends those responsible for reporting to use the traffic light framework when deciding whether to report to the Regulator. This is illustrated below:



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 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 considering the four together. Some useful examples of this framework are provided by the 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)

## Appendix C – Example Record of Breaches

Date	Category  (e.g. administration, contributions, funding, investment, criminal activity)	Description and cause of breach	Possible effect of breach and wider implications	Reaction of relevant parties to breach	Reported / Not reported  (with justification if not reported and dates)	Outcome of report and/or investigations	Outstanding actions

\*New breaches since the previous meeting should be highlighted