

Procedure for Recording and Reporting Breaches of the Law

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Policy for Reporting Breaches of the Law

Background and Introduction

This policy sets out the procedure to be followed by certain persons involved with the East Sussex Pension Fund (the Fund) in relation to identifying, recording and where necessary reporting breaches of the law to the Pensions Regulator.

As Administering Authority, East Sussex County Council is the designated statutory body responsible for administering the East Sussex Pension Fund of behalf of the constituent Scheduled and Admitted Bodies in the relevant area. The Pension Committee has delegated authority to exercise the powers of the County Council in respect of all powers and duties in relation to its functions as the Scheme Manager and Administering Authority for the East Sussex Pension Fund.

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.

This policy has been developed to assist those individuals who have a legal responsibility to report certain breaches to the Pensions Regulator in determining whether a breach they have identified should be reported. It has also been developed to assist East Sussex County Council, in its role as Administering Authority, in ensuring it is aware of all breaches of the law in relation to the East Sussex Pension Fund and that these are appropriately recorded and then dealt with.

The Head of Pensions has responsibility for the implementation, review, and monitoring of this policy and the procedures, and can seek such advice as they consider necessary including from the Council's legal team or external advisors.

The following persons are strongly encouraged to follow this procedure should they identify a breach:

- all members of the Pension Committee and the Pension Board
- all officers involved in the management or administration of the Pension Fund including staff members in the Pension Fund Team, the Monitoring Officer, and the Chief Finance Office (Section 151 Officer).
- any professional advisers including external auditors, consultants, actuaries, legal advisers, and fund managers.¹
- officers of scheme employers participating in the Pension Fund who are responsible for pension matters.
- any other person otherwise involved in advising or supporting the managers of the Fund, including staff members of the Internal Audit function.
- any other person who has responsibility to report breaches of the law in relation to the East Sussex Pension Fund

¹ However, these advisers should note that the application of this Procedure relates to the reporting of legal breaches relating to the administration of the Pension Fund, rather than any breaches relating to their role and responsibilities that do not affect the administration of the Fund. For example, if a fund manager has breached the investment association guidelines, then this would not be reportable under this East Sussex Pension Fund Procedure for Reporting Breaches (albeit the Administering Authority would still expect this information to be recorded separately and notified to East Sussex County Council).

Throughout this procedure, any person to whom this procedure applies, because of them identifying a breach or potential breach, will be referred to as the "individual".

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 requirement to report breaches of the law on the following persons:

- a trustee or manager of an occupational or personal 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 or personal 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,

The matter must be reported 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, 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 provided in the Pension Regulator's Code of Practice, Code 14: Governance and administration of public service pension schemes, section on Reporting breaches of the law, 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 East Sussex Pension Fund

This document sets out how the Fund 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.

Other Administering Authority or Organisational Requirements

In addition to the requirements of this Procedure, there may be other policies and procedures which may be in place relating to areas such as fraud or whistleblowing that apply to the individuals covered by this Procedure for reporting and recording breaches in relation to East Sussex Pension Fund matters. For example, East Sussex County Council has in place the following:

- Anti-fraud and Corruption Policy – setting out the Council's strategy for preventing, deterring and investigating fraud, corruption and other wrong doing.
- Anti-Money Laundering Policy - procedures that must be followed to enable the County Council to comply with its legal obligation to prevent criminal activity through the use of Money Laundering, as well as providing contact details for the Money Laundering Reporting Officer
- Whistleblowing Policy – setting out how someone working with or within East Sussex County Council can raise an issue in confidence, as well as what sort of concerns should be reported.

This Procedure should be followed in addition to any existing procedures or policies that may be in place, such as those listed above. In particular, individuals are reminded that there is a legal requirement to report breaches of the law in relation to the East Sussex Pension Fund that could be considered significant to the Pensions Regulator. The Head of Pensions (contact details at the end of this procedure document) can assist if an individual is uncertain how to deal with the interaction between this Procedure and any other organisation's policy or procedure that may be in place.

East Sussex Pension Fund Breaches Procedure

Overview

The following procedure details how individuals responsible for reporting and whistleblowing can identify, access, record, and report (if appropriate) a breach of the law relating to the Fund.

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 to the Fund.

There are four key steps to this procedure:

1. Understanding the law and what is a breach
2. Determining whether there is reasonable cause to believe a breach has occurred
3. Determining whether the breach is likely to be of material significance and so should be reported to the Pensions Regulator
4. Recording the breach, even if it is not reported

Steps

1. Understanding the law and what is a breach?

Individuals 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 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):
<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 14:
[Code of practice](#) . In particular, individuals should refer to the sections on 'Reporting breaches of the law', and 'Maintaining contributions'.

Further guidance and assistance can be provided by the Head of 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). Some examples of potential breaches are also included in Appendix A.

2. Determining whether there is reasonable cause to believe a breach has occurred

Individuals then need to have reasonable cause to believe that a breach of the relevant legal provision has occurred. Having reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

Where a breach is suspected the individual should inform the Head of Pensions or Pensions Manager – Governance and Compliance as soon as practicable, and no later than 5 days from when they suspect there has been a breach. The Head of Pensions, or relevant Pensions Manager, will then carry out further checks, to establish whether a breach has in fact occurred, and keep the individual informed. This does not preclude the individual who first raised the issue undertaking further checks themselves should they consider it appropriate to do so.

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.

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

Should an individual have reasonable cause to believe that a 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 to the Pensions Regulator. 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.

Further details on the above four considerations are provided later in this procedure”. The individual should use the traffic light framework to formally support and document their decision.

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, the Fund encourages reporting of any breach that is considered to be materially significant regardless of the specific area of the law that has been breached. The Pensions Regulator can then determine whether it is a matter they have jurisdiction over or not.

The Head of Pensions can assist with determining whether the breach should be reported. In the first instance the Head of Pensions should be given opportunity to report the breach and will keep the individual raising the concern apprised of their decision as to whether or not 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.

The requirement to report applies to all those subject to the reporting duty who become aware of a breach that is likely to be of material significance to the Pensions Regulator; it is not automatically discharged by another party reporting the breach.

This gives rise to the possibility of duplicate reporting by those involved in a scheme. Duplicate reports do not benefit the Pensions Regulator. Once aware of a particular breach, the Pensions Regulator does not regard that breach as being of material significance for the purpose of making further reports under the requirement to report breaches of the law. An exception is where another reporter has additional or different information about that breach or the circumstances relating to it.

4. Recording the breach, even if it is 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). The Pensions Manager – Governance and Compliance will maintain a record of all breaches identified.

Therefore, individuals should provide the following information to the Head of Pensions or Pensions Manager – Governance and Compliance 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.

The information should be provided as soon as reasonably practicable and certainly no later than within 20 working days of the decision made to report or not. The record of all breaches (reported or otherwise) will be included at each Pension Committee and Pension Board meeting.

Supplier and advisor responsibilities

Where a breach has been identified relating to the Fund by a supplier or advisor, the supplier or adviser must alert the Head of Pensions immediately. They must produce a preliminary report setting out an assessment of the breach. The preliminary assessment must contain:

- the circumstances leading to the breach;
- the impact and scale of the breach, both financial and with regard to the impact of service on members or other affected persons/organisations;
- the steps that have been taken to rectify the breach; and
- a preliminary assessment, based on the Regulator's traffic light flowchart, of the materiality of the breach.

For the avoidance of doubt all breaches of the law (regardless of whether they are deemed material) must be reported to the Head of Pensions in this way, except where this would result in a tip off of an incidence of fraud or money laundering.

Breaches by employers or suppliers

There may be situations where the Fund becomes aware of breaches of law which are not its responsibility. For example, an employer may be in breach of its duties under automatic enrolment duty if it does not sign an admission agreement by the time its employees would be eligible to become members of the Fund. In such circumstances, the Fund will log the breach of law in its internal documentation but would not seek to make a wider report unless the breach was deemed material.

In the case of the late signing of Admission Agreements, it is acknowledged that the commercial realities may mean a contract commences whilst the negotiation of an Admission Agreement is ongoing, so it would only be treated as a breach if the Admission Agreement is not in place within 3 months.

Assistance for individuals in following this procedure

The following information is provided to assist individuals in following this procedure.

Referral to a level of seniority for assistance

The Fund has designated an officer (Head of Pensions) to assist any individual with following this procedure. The Head of Pensions is 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 in any reporting to the Pensions Regulator, where appropriate.

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

The matter should **not** be referred to the Head of Pensions if doing so would alert any person responsible for a possible serious offence to the investigation (as highlighted in step 2 above).

If that is the case, the individual may instead refer the matter to the Council's Monitoring Officer. Otherwise, the individual should report the matter to The Pensions Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to the Pensions Regulator before the submission may be appropriate, particularly in the case of a more serious breach.

Dealing with complex cases

The Head of Pensions may be able to provide guidance on particularly complex cases. Guidance may also be obtained by reference to previous cases. Information may also be available from national resources such as the Scheme Advisory Board or the Local Government Association - <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 Committee or Pension Board meeting.

Timescales for reporting

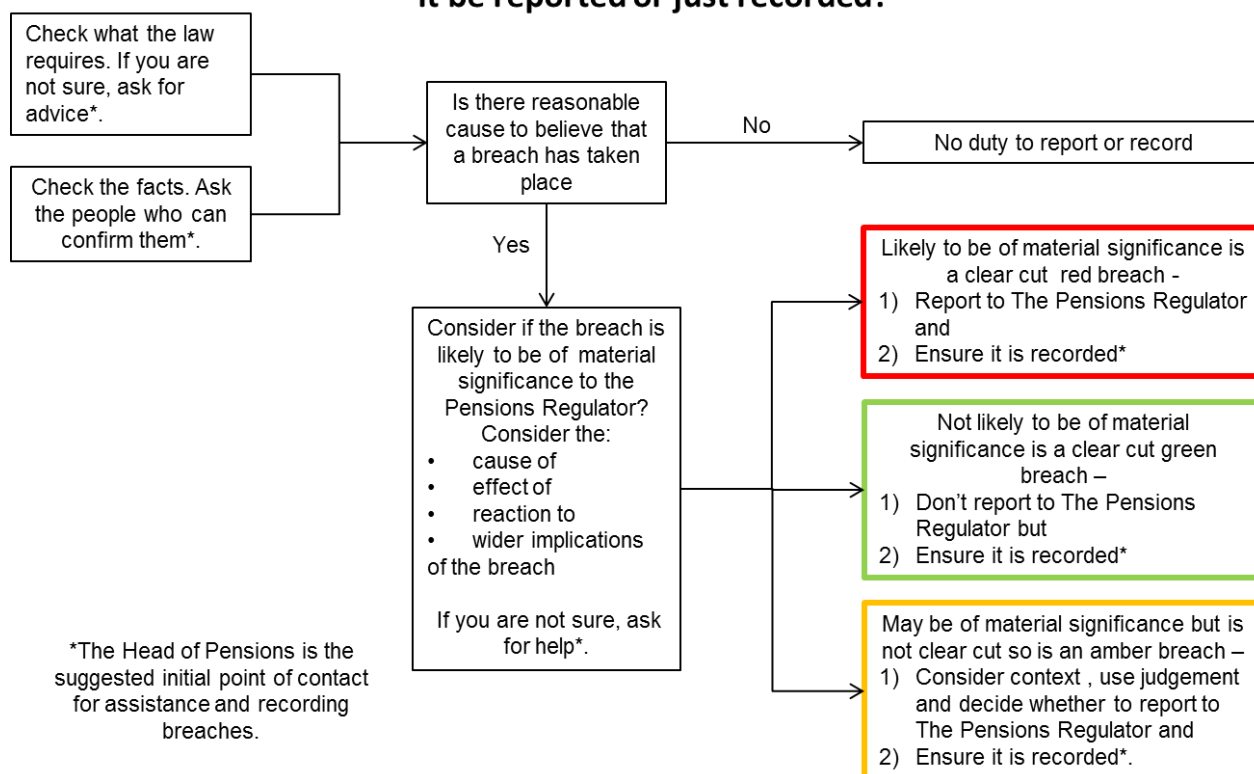
The Pensions Act and the Pension Regulator's Code require that, if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable. A failure to do so is itself a breach of law.

Individuals should not wait for others to report and nor is it necessary for an individual to gather all the evidence which the Pensions Regulator may require before acting. 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.

Decision tree – Has a breach occurred and should it be reported?

A decision tree is provided below which summarises the process for deciding whether a breach has taken place, whether it is materially significant and if it needs to be reported to the Pension Regulator and then ensuring it is recorded.

Decision-tree: Has a breach occurred and should it be reported or just recorded?



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 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.
- Slow or inappropriate decision-making practices.

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

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 a significant number of members are affected, or whether it is just a small number
- 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:

- Committee/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 Committee or 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.

Traffic light framework for deciding whether to report to the Regulator

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

A red rectangular box with the word 'Red' in black text in the center. Below the box is a red arrow pointing downwards.

Red

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.

A yellow rectangular box with the word 'Amber' in black text in the center. Below the box is a yellow arrow pointing downwards.

Amber

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.

A green rectangular box with the word 'Green' in black text in the center. Below the box is a green arrow pointing downwards.

Green

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 are provided by the Pensions Regulator at the following link:

<https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/communications-and-reporting-detailed-guidance/complying-with-the-duty-to-report-breaches-of-the-law>

How to report a breach to the Pensions Regulator

Reports must be submitted in writing via The Pensions Regulator's online system at <https://login.thepensionsregulator.gov.uk/>, by post, or email and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call.

The individual should ensure they receive an acknowledgement for any report they send. The Pensions Regulator will acknowledge receipt of all reports within five working days and may contact the individual to request further information. The individual will not usually be informed of any actions taken by the Pensions Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name (East Sussex Pension Fund)
- description of breach(es)
- any relevant dates
- name, position and contact details
- role in connection to the scheme
- employer name or name of scheme manager (the latter is East Sussex County Council).

If possible, individuals 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 (PSR – 10079157)
- whether the breach has been reported before.

The individual should 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

If requested, the Pensions Regulator will do its best to protect the identity of an individual who has reported a breach and will not disclose information except where it is lawfully required to do so.

An employee may also have protection under the Employment Rights Act 1996 if they make a report in good faith in relation to their employer.

Reporting to those charged with governance

The Head of Pensions will present a report to the Pension Board and the Pension Committee on a quarterly basis setting out:

- all breaches, including those reported to the Pensions Regulator and those not reported, 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
- new breaches which have arisen since the previous meeting.

This information will also be provided upon request by any other individual or organisation (unless decided otherwise by the Head of Pensions; for example, where the information is excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings).

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

Training

The Head of Pensions will ensure that all relevant officers, elected members, and members of the Local Pension Board receive appropriate training on this policy at the commencement of their employment or appointment to the Pensions Committee or Pension Board as appropriate and on an ongoing basis.

Suppliers and advisers must ensure that all staff with responsibilities in relation to the Fund receive appropriate training about this policy and their obligations under it. They must advise the Head of Pensions if they do not feel they are able to carry out that training, and training will be arranged for them by the Head of Pensions.

Approval, and Review

This Reporting Breaches Procedure was approved on 16 June 2023 by the Pension Committee. It will be formally reviewed and updated by the Committee at least every three years or sooner if breaches arrangements or other matters included within it merit reconsideration, including if there are any changes to the LGPS or other relevant Regulations or Guidance which need to be considered.

Further Information

If you require further information about reporting breaches or this procedure or wish to discuss reporting a breach, please contact:

Sian Kunert
Head of Pensions, East Sussex County Council
E-mail – sian.kunert@eastsussex.gov.uk

Breaches policy

Telephone – 01273 482017

Ian Gutsell

Chief Finance officer and s151 Officer, East Sussex County Council

E-mail – ian.gutsall@eastsussex.gov.uk

Telephone 01273 481399

Philip Baker

Assistant Chief Executive and Monitoring Officer, East Sussex County Council

E-mail – philip.baker@eastsussex.gov.uk

Telephone – 01273 481564

Appendix A – Example breaches of the law

In this appendix we provide some examples of breaches of the law. This is not an exhaustive list given there are many sets of legislation that must be followed and some of these are extremely lengthy and complex. It should, however, provide a useful indication of the range of potential breaches that may arise.

Funding strategy not having regard to CIPFA guidance

Regulation 58 of the Local Government Pension Scheme Regulations 2013, as amended, requires the Administering Authority to prepare, maintain and publish a statement setting out its funding strategy and, in doing so, to consult with such persons as it considers appropriate. In doing this, the Administering Authority must also have regard to CIPFA guidance on preparing and maintaining a Funding Strategy Statement which clearly states employers should be consulted. The Funding Strategy impacts on the employers of the Fund and therefore a breach of the law by the Administering Authority is likely to have arisen if a statement was prepared which impacts on employers without first consulting with those employers.

Late notification of benefits

Various regulations dictate timescales for notifying scheme benefits, some of which are summarised below. Most of these requirements are included in more general pensions legislation, i.e. not the Local Government Pension Scheme Regulations. A breach would arise every time one of these timescales was not met. All of the breaches would relate to the Administering Authority apart from the last one which would be a breach by an employer in the Fund. However, the first five listed could have been a result of delayed or incorrect information from an employer, which could be a separate and additional breach of the law by that employer.

Process	Legal Requirement
To provide new starters with information about the scheme	2 months from date of joining (provide information about the scheme in this timeframe, or within 1 month of receiving jobholder information where the individual is being automatically enrolled / re-enrolled)
To inform members who leave the scheme of their leaver rights and options	As soon as is practicable, and no more than 2 months from date of initial notification (from employer or scheme member)
To notify the amount of retirement benefits	1 month from date of retirement if on or after Normal Pension Age 2 months from date of retirement if before Normal Pension Age
To notify dependant(s) the amount of death benefits	As soon as possible but in any event no more than 2 months from date of becoming aware of the death, or from date of request
Provide annual benefit statements to active members	31st August in the same calendar year
Receipt of employee contributions from employers	19th of the month following their deduction or 22 nd if paid electronically.

Errors in benefit calculations

The Local Government Pension Scheme Regulations 2013, as amended, and previous LGPS legislation relating to historical service or leaves, dictate how benefits should be calculated. This includes elements such as what fraction of pay is used to calculate a pension and what counts as pay for LGPS purposes. A breach of the law by the Administering Authority would arise in the situation that any calculation was carried out that was not in accordance with those provisions.

Errors in deducting contributions

Regulation 20 of the Local Government Pension Scheme Regulations 2013, as amended, states which elements of pay should be treated as pensionable and therefore should have pension contributions deducted from them and should be used for calculating benefits from 1 April 2014. Regulation 4 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, as amended, is the equivalent provision for pre-1 April 2014 scheme membership and therefore it details how pensionable pay should be calculated by an employer for benefits accruing prior to 1 April 2014. Under these provisions, non-contractual overtime is pensionable from 1 April 2014 but not classed as pensionable for benefits accruing before 1 April 2014. A breach of the law by an employer would arise if any of the following happened:

- an employer **did not** deduct pension contributions from non-contractual overtime since 1 April 2014
- an employer **did not** include non-contractual overtime in the amount of any pensionable pay notified to the Administering Authority for membership from 1 April 2014
- an employer **did** include non-contractual overtime in the amount of final pay notified to the Administering Authority to be used to calculate benefits accrued prior to 1 April 2014.

Late notifications from year-end information by an employer

Regulation 80 of the Local Government Pension Scheme Regulations 2013 require each employer to provide to the Administering Authority a list of specific information for each scheme member, such as pensionable pay, by 30 June each year. A breach of the law by an employer would arise if they failed to provide this year end list to the administering authority by 30 June or if the information was incomplete or inaccurate.

Inadequate knowledge of a Pension Board member

Section 248A of the Pensions Act 2004 requires every Pension Board member to be conversant with the LGPS rules and Pension Fund policies as well having knowledge and understanding of pension matters at a degree appropriate for the purpose of them exercising their Pension Board functions. Where a Pension Board member has failed to attend training or demonstrate that they already have the required level of knowledge, it is possible that the Pension Board member will have breached the law.

Appendix B – Example Record of Breaches for Pension Committee Reporting

Date	Breach	What happened?	Owner	3 rd Party	Implications	Member class affected	Reaction	Assessment of breach	Rationale	Reported to TPR?	Reporter	Outcome of report	Further action	O/s actions