

Nottinghamshire Local Government Pension Fund Policy for reporting Breaches of the Law

1. Background

The Pensions Regulator published its final General Code of Practice in March 2024, which replaced the existing fifteen codes of practice. It consists of fifty-one modules that relate to five main areas:

- The governing body
- Funding and investments
- Administration
- Communications and disclosure
- Reporting to the Pensions Regulator

There are several modules in the Code that cover monitoring and reporting breaches of the law.

Subject to the legislative and regulatory requirements of the Code of Practice, the Pensions Act 2004, there is a statutory duty to report material breaches of the law to the Pensions Regulator. Nottinghamshire Pension Fund (“the Fund”) has prepared this document setting out its policy and procedures on identifying, managing and, where necessary, reporting breaches of the law.

This policy sets out the responsibilities of the Nottinghamshire Pension Fund Committee, officers of Nottinghamshire County Council (“the council”), and the Nottinghamshire Local Pensions Board. It does not cover the responsibility of other “reporters” (described later in this policy) 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”.

The Nottinghamshire Pension Fund Committee will review and approve this strategy at least once a year as part of its annual review of strategies. This does not prevent any interim review if circumstances change, or it is otherwise considered necessary. The Pension Fund Committee and Pensions Board will monitor all breaches and ensure that adequate resources are allocated to managing and administering this process.

The section 151 and the Monitoring Officer are responsible for managing and implementing this policy and will ensure that all relevant officers and Pension Fund Committee members, as well as members of the local pensions board are trained on breaches of the law and this policy at induction and on an ongoing basis.

2. Overview

Identifying, managing and reporting breaches is important. It is a requirement of the Code of Practice. Failure to report a material breach is a civil offence that can result in civil penalties.

At the same time, in addition to identifying, rectifying and where necessary reporting a particular breach it provides a chance to learn from mistakes and review and improve processes in the areas where the breach occurred.

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

The council, as the scheme manager for the Nottinghamshire Pension Fund, will maintain a log of all breaches of the law as applicable to the management and administration of the Fund.

Where a breach has occurred and been identified, it should be logged as either an area of non-compliance under the Local Government Pension Scheme (LGPS) Regulations, a breach under pensions law as defined within section 13 of the Pensions Act 2004 or the Pension Regulator's General Code of Practice.

The Nottinghamshire Pension Fund Committee, officers and the Local Pensions Board cannot rely on waiting for other reporters to report a breach where it has occurred. Where a breach has occurred and has been identified by the council, officers, or Local Pensions Board it should be recorded, assessed and where necessary reported as soon as reasonably practicable.

3. What is a breach of the law?

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 LGPS it can encompass many aspects of the management and administration of the scheme, including 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
- of an employer to pay over member and employer contributions on time
- to pay member benefits either accurately or in a timely manner
- to issue annual benefit statements on time

4. What is non-compliance under the LGPS Regulations?

Non-compliance with the LGPS Regulations can cover many aspects of the management and administration of the scheme, including failure:

- to do anything required under the LGPS Regulations
- to comply with policies and procedures (e.g. the Fund's statement of investment principles, funding strategy, discretionary policies, etc.)

5. Responsibilities in relation to breaches

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

- Members of the Nottinghamshire Pension Fund Committee members and officers of the council, acting as the Scheme Manager
- Members of the local pensions board
- Scheme employers
- Professional advisers (including the Fund actuary, benefit consultant, investment advisers, legal advisers); and
- Third party providers (where so employed).

This policy applies only to members of the Nottinghamshire Pension Fund Committee, Local Pensions Board, and officers of the council. It is for the other reporters to ensure they put in place adequate procedures and policies to identify, assess and, where necessary, report breaches. Both the council and the Local Pensions 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".

6. Requirement to report a breach in the law

Funds should consider whether breaches of the law need 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, whether the breach is likely to be of material significance to the Regulator

It is important to understand that not every identified breach needs reporting 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 identified breaches are recorded in the council's breaches log. This log will be reviewed on an ongoing basis to identify any trends in the breaches that might indicate any serious failings or fraudulent behaviour.

Where such failings or fraudulent behaviour are identified, immediate action will be taken to agree and put in place a plan of action to rectify the matter and prevent such an occurrence in the future.

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

The Code of Practice requires that 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 as soon as practicable 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 (for example, serious fraud) the matter should be brought to the attention of the Regulator immediately (e.g. by calling them directly). A formal report should then be submitted to the Regulator, marked as “urgent” to draw the Regulator’s attention to it.

8. Assessing “reasonable cause”

It is important that the council and the Local Pensions Board are satisfied that a breach has actually occurred, rather than acting on a suspicion of such an event.

It will be necessary, therefore, for officers and members of the Nottinghamshire Pension Fund Committee to make robust checks when acting on any suspicion of a breach having occurred. Where necessary this will involve taking legal advice from Legal Services (who may recommend specialist external legal advice if necessary) as well as other advisers (e.g. auditors or the Fund actuary, benefit consultant or investment advisers).

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

The Regulator has produced a decision tree to assist schemes in identifying the severity of a breach and whether it needs reporting. When determining materiality of any breach or likely breach members of the Nottinghamshire Pension Fund Committee, Local Pensions Board and officers 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 show, for example, ineffective internal controls, lack of knowledge and understanding, inaccurate records
- Reaction – e.g. taking prompt and effective action to resolve a breach, notifying scheme members where appropriate; and

- Wider implications – e.g. a breach that has occurred because of a lack of knowledge or poor systems and processes makes it more likely that other breaches will emerge in the future.

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

9.1 Green

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

9.2 Amber

Where a breach does not fall easily into either green or red and requires further investigation to determine what action to take. To determine the most appropriate course of action it may be relevant to consider the breach in the context of other recorded breaches. The council 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.

9.3 Red

A breach 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 must report all such breaches to the Regulator in all cases.

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

The council will use the Regulator’s decision tree to identify whether any breach is considered as materially significant and so needs reporting to the Regulator.

An immediate report must be made to the Pensions Regulator where a scheme employer fails to pass over employee contributions that are considered to be of material significance

To determine whether failure to pay over employee contributions is materially significant or not the council will seek from the employer:

- The cause and circumstances of the payment failure
- What action the employer has taken because of the payment failure, and
- The wider implications or impact of the payment failure.

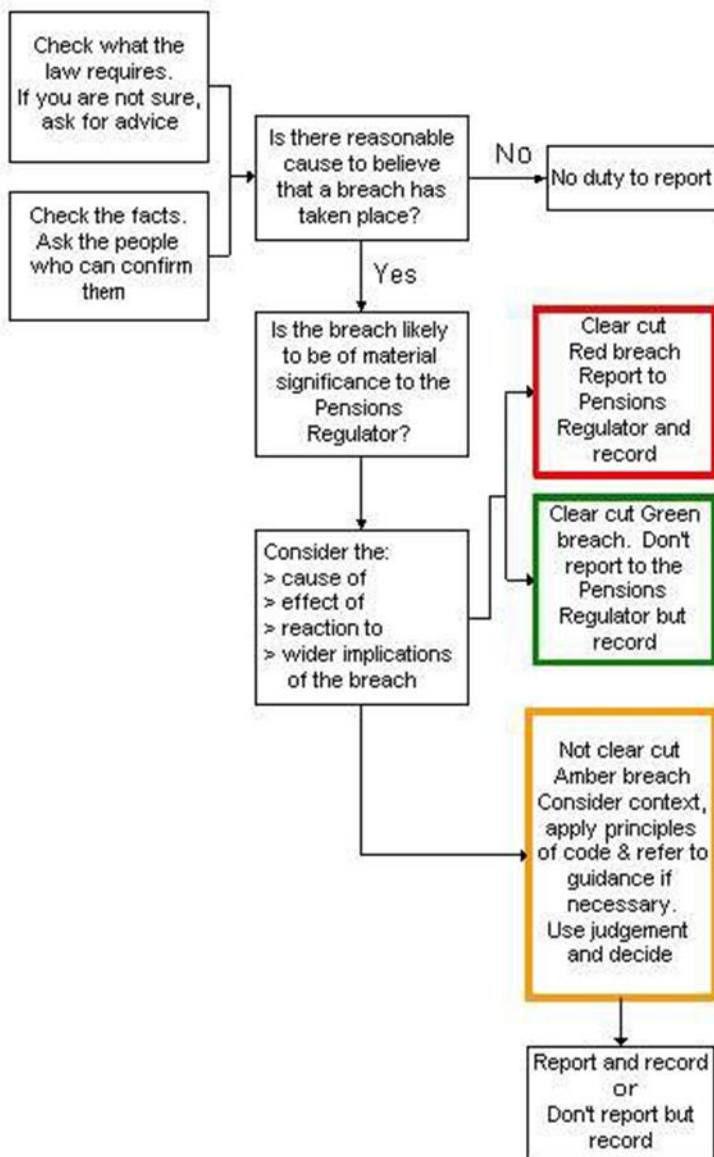
Where a payment plan is agreed with the employer to recover outstanding contributions and it is being adhered to or there are circumstances of infrequent one-off late payments or administrative failures the late payment will not be considered to be of material significance.

All incidences resulting from the unwillingness or inability of the employer to pay over the employee contributions, dishonesty, fraudulent behaviour or misuse of employee contributions,



poor administrative procedures, or the failure to pay over employee contributions within 90 days from the due date will be considered to be of material significance and reported to the Regulator.

Once a breach or likely breach has been identified, regardless of whether it needs to be reported to the Regulator, the relevant manager, in consultation with the section 151 Officer and the Monitoring Officer, must review the circumstances of the breach to understand why it occurred, the consequences of the breach and agree the corrective measures required to prevent re-occurrence, including an action plan where necessary. All breaches must be recorded in the council's breaches log.



10. Process for reporting breaches

All relevant officers and members of the Nottinghamshire Pension Fund Committee and Local Pensions 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 and the Monitoring Officer
- In conjunction with relevant colleagues, agree a course of action to rectify the breach and put measures in place to ensure the breach does not re-occur, 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 recurring; and
- Co-operate with, and assist in, the reporting of breaches and likely breaches to the Nottinghamshire Pension Fund Committee, Local Pensions Board and, where necessary, the Regulator

11. Responsibilities of the responsible officer

The council's section 151 officer and the Monitoring Officer will be responsible for the management and execution of this breaches policy, and for recording and reporting breaches and likely breaches as follows:

- Record all identified breaches and likely breaches of which they are aware in the council'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 ensure further breaches of a similar nature do not reoccur
- Report to the Nottinghamshire Pension Fund Committee and Local Pensions 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; and
 - All other breaches at least quarterly as part of the committee cycle
- Report all materially significant breaches to the Regulator as soon as practicable but not later than one month after becoming aware of the breach

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. Such parties might include the Group Manager, Legal, Democratic and Information Governance, the Nottinghamshire Pension Fund Committee and Local Pensions Board.

If appropriate, the matter will be referred to an external party to obtain any necessary legal or other advice before deciding if the breach is considered to be of material significance to the Regulator. Where uncertainty exists as to the materiality of any identified breach, members of the

Nottinghamshire Pension Fund Committee, Local Pensions Board and officers will be required to informally notify the Regulator of the issue and the steps being taken to resolve it.

The section 151 officer and the Monitoring Officer will advise the Chair of the Nottinghamshire Pension Fund Committee of potential or retrospective breaches of policy. These will also be reported to the Local Pensions Board.

12. How should a breach be reported to the Regulator?

All materially significant breaches must be reported to the Regulator in writing. This can be via post or electronically. The Regulator encourages the use of its standard reporting facility via its Exchange online service.

13. How are records of breaches maintained?

All breaches and likely breaches are to be reported to the section 151 officer as soon as they are identified. The section 151 officer and the Monitoring Officer will log all breaches 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 classified as red, amber, or green
- A description of the actions taken to rectify the breach
- A brief description of any longer-term implications and actions required to prevent similar types of breaches recurring in the future.

The section 151 officer and the Monitoring Officer will be 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 also be retained.

14. Whistleblowing

It is a statutory duty to report breaches of the law. In rare cases this may involve a whistleblowing duty on the part of officers of the council, or members of the Nottinghamshire Pension Fund Committee or Local Pensions Board.

The Pensions Act 2004 makes it clear that the duty to report overrides certain other duties a "reporter" may have, such as confidentiality. Any such duty is not breached by reporting to the Regulator. In implementing this Breaches Policy, given the statutory duty that exists, 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.

The duty to report, however, does not override 'legal privilege', so certain oral and written communications between the council or local pension board and a professional legal adviser do not have to be disclosed if they meet the principles of legal privilege.

15. Training

The section 151 officer and the Monitoring Officer will ensure that all relevant officers and members of the Nottinghamshire Pension Fund Committee and Local Pensions Board receive appropriate training on this policy at the start of their employment or appointment and on an ongoing basis.

Appendix A

Each of the examples in the table below would constitute a breach that would need adding to the council's breaches log. If the answer to any of the questions about materiality is "yes", or there are concerns regarding any possible actions, the breach may warrant report to the Pensions Regulator. The final example relates to conflicts of interest; any decision whether to report the breach to the Pensions Regulator would not negate liability under local authorities' codes of conduct and conflicts of interest arrangements and the legislation that underpins them, nor any action that might be taken under these arrangements.

Example breach	Considerations before reporting	
	Actions	Assess materiality
Failure to enter an employee into the scheme	<ul style="list-style-type: none"> - Assess whether failure is employer-specific or more widespread - Immediate remedy - Understand whether there have been personnel changes - Provide training to the employer if necessary 	<ul style="list-style-type: none"> - Has the member been denied access to the scheme completely? - Has the employer failed to respond to the Fund's enquiries - Has the member not been given the chance to backdate entry to the scheme and pay arrears - Has the employer failed to put a plan in place to prevent further failures - Is this a one-off or are more members affected
Late payment over of employee and employer contributions	<ul style="list-style-type: none"> - Contact the employer and assess the reason for delay - Investigate what went wrong - Put steps in place to prevent a repeat - Record investigation outcome - Ensure processes are assessed to identify potential fraud 	<ul style="list-style-type: none"> - Is the employer unwilling or unable to pay? - Is any dishonesty involved on the part of the employer? - Is the employer seeking to avoid paying contributions? - Does the employer have adequate processes to recover contributions? - Have contributions been outstanding for over 90 days since being identified?

Example breach	Considerations before reporting	
	Actions	Assess materiality
Late submission of year-end data	<ul style="list-style-type: none"> - Contact the employer and assess the reason for non-submission - Investigate what went wrong - Put steps in place to prevent a repeat - Record investigations 	<ul style="list-style-type: none"> - Is the employer unwilling or unable to provide the required data? - Has the employer failed to respond to fund enquiries? - Will it impact the issue of annual benefit statements
Late issue of annual benefit statements (ABS)	<ul style="list-style-type: none"> - Assess whether the failure sits with a single employer or whether issues are wider - If there have been system or rule changes determine whether teething problems may have contributed - Put steps in place to ensure statements issued in a reasonable timescale - Put steps in place to prevent a repeat - Record investigations 	<ul style="list-style-type: none"> - Is it the result of employer failure to provide year-end data? - Has the employer failed to respond to fund enquiries? - Has the fund failed to have a proper plan in place for the ABS project - Has the fund failed to put a plan in place to prevent future failure/delay - Will delay impact members' actual benefits?
Late notification of leaver/retirement details	<ul style="list-style-type: none"> - Assess whether the failure relates to a specific employee or is more widespread - Immediately remedy - Have personnel changes led to teething problems - If necessary, provide the employer with training on its responsibilities to prevent a repeat 	<ul style="list-style-type: none"> - Has the employer failed to respond to the Fund's enquiries? - Has the failure delayed assessment and notification/payment of retirement benefits? - Has the scheme member been denied access to investment opportunities due to the failure? - Has the failure led to financial hardship for the member? - Has the fund failed to put an immediate plan in place to remedy any delay/failure?

Example breach	Considerations before reporting	
	Actions	Assess materiality
A member of the Nottinghamshire Pension Fund Committee or Local Pensions Board member fails to declare a potential conflict of interest which has later become known	<ul style="list-style-type: none"> - Determine why the conflict was not reported at the outset - Consider the impact it had on the discussion/decisions - Draw conflict of interest arrangements to all committee and board members - Consider revisiting the discussion or decision excluding the individual - Remove the individual from the committee or board if their omission was considered to be of such significance as to lead to a loss of confidence 	<ul style="list-style-type: none"> - Has the individual used the situation to their advantage? - Has the individual's judgement been swayed by the apparent conflict of interest? - Would the removal of the individual from the discussion/decision have altered the eventual outcome? - Would the non-disclosure lead to a loss of confidence in the public office?