

Surrey Pension Fund

Breaches of Law Policy and Guidance



SURREY

Breaches of Law Policy and Guidance

The Surrey Pension Fund (the Fund) seeks to conduct its affairs in a responsible manner, to ensure that all its activities are open and effectively managed, and that the Fund's integrity and principles of public interest disclosure are sustained.

This document and its appendices sets out the Fund's policy and procedures for identifying, monitoring and, where appropriate, reporting breaches of the law as required in the Pensions Act 2004 (the Act) and detailed in the Pensions Regulator's (tPR) Code of Practice no 14 - Governance and administration of public service pension schemes (the Code).

The following appendices accompany this Breaches policy and guidance:

- Appendix 1:** *The legal requirement to report a breach.*
Appendix 2: *Examples of what may be considered a breach, whether it may be considered material, and how to make a submission to tPR*
Appendix 3: *Example breaches applying tPR Traffic Light System.*
Appendix 4: *Template breaches report document.*

1. Why have a breaches policy?

- It is a crucial tool for the Fund in reducing risk and providing an early warning of possible malpractice.
- It provides an opportunity to learn from mistakes and review and improve processes in the areas where the breach occurred.
- It represents an important addition to the Fund's suite of policies that make up its risk framework.
- The identification, management and reporting of material breaches to tPR is a requirement of the Code.
- Failure to report a breach without a *reasonable excuse* is a civil offence that can result in civil penalties.

2. What is a breach?

A breach of the law is:

- When a legal duty which is relevant to the administration of the scheme has not been, or is not being, complied with.

It can encompass many aspects of the management and administration of the scheme, including failure:

- 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 or non-compliance with the Regulator's Code of Practice No 14.

Non-compliance with the Local Government Pension Scheme (LGPS) regulations can encompass many aspects of the management and administration of the scheme, including failure:

- To abide with the LGPS Regulations.
- To comply with the Funds policies and procedures (e.g. the Funds Statement of Investment Principles, Funding Strategy Statement, Administration Strategy or Communications Policy).

It is important that the *Responsible Officer* is satisfied that a breach has actually occurred, rather than acting on a suspicion of such an event.

3. Who is responsible for reporting breaches?

The following are responsibility to report breaches (known as *Reporters*):

- Members of the Pension Fund Committee.
- Members of the Local Pension Board.
- Any person who is otherwise involved in the administration of the scheme: including officers of the Pension Services Team and Pension Fund Team.
- All participating employers in the scheme.
- Professional advisers: including auditors, actuaries, legal advisers and fund managers
- Any other person otherwise involved in advising the managers of the scheme.

Reporters are required to take a pro-active approach to the identification, management and reporting of all breaches that have occurred, or are likely to occur.

4. When to report a suspected breach

Reporters should refer to Appendix 2 for guidance on whether to report a suspected breach. If *Reporters* are in any doubt they should contact the *Responsible Officer*.

5. Reporting a breach to tPR?

Breaches of the law which affect pension schemes should be considered for reporting to tPR if it is considered that the breach is likely to be of material significance to tPR.

A material breach must be notified to tPR as soon as is reasonably practicable and 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 tPR is required to intervene as a matter of urgency (for example, serious fraud) the matter should be brought to the attention of tPR immediately.

Not all breaches identified will need to be reported to tPR. Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, tPR will not normally consider this to be materially significant.

6. Who to report a suspected breach to

All breaches or suspected breaches should be reported to the Responsible Officer (Senior Adviser (Pension Fund)) in the first instance. **However, if the suspicion is around theft, fraud or other serious offences where discussions may alert those implicated or impede the actions of the policy or a regulatory authority, the Reporter should go to tPR directly and at the earliest opportunity.**

7. Role of the responsible officer

The *Responsible Officer* is responsible for the management and execution of the breaches policy. The Responsible Officer for the Surrey Pension Fund is the *Senior Specialist Advisor (Pension Fund)*.

The *Responsible 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 Fund's breaches log.
- Investigate the circumstances of all reported breaches and likely breaches.
- Ensure, where necessary that an action plan is put in place and acted on to correct the identified breach and also ensure further breaches of a similar nature do not reoccur.
- Report to the Pension Fund Committee and Local Pension Board:
 - All materially significant breaches or likely breaches that will require reporting to tPR as soon as practicable, but no later than within 30 days (if the next scheduled meetings of the Pension Fund Committee and Local Pension Board are in excess of 30 days the Responsible Officer will consult with the Chairman of the Pension Fund Committee and Local Pension Board within the 30 day period and after (verbally if necessary);

and after consultation with the *Strategic Finance Manager (Pension Fund and Treasury)*, the *Director of Legal, Cultural and Democratic Services*

- All other breaches to the next scheduled meetings of the Pension Fund Committee and Local Pension Board .
- Ensure that a record of all material breaches experienced in the reporting period are included in the Pension Fund Annual Report
- Report all materially significant breaches identified to tPR as soon as practicable but not later than 30 days after becoming aware of the breach.

The *Responsible Officer* will determine whether any breach or likely breach is materially significant, having regard to the guidance set out in tPR Codes of Practice and after consultation with the *Strategic Finance Manager (Pension Fund and Treasury)*, the *Director of Legal, Cultural and Democratic Services*, the Pension Fund Committee and Local Pension Board.

Where uncertainty exists as to the materiality of any identified breach the *Responsible Officer* will be required to informally notify tPR of the issue and the steps being taken to resolve the issue.

8. How are records of breaches maintained?

All breaches or suspected breaches will be recorded in the Fund's Breach's Log. *Responsible Officer* will maintain the Fund's Breach's Log. The Fund's Breach's Log will include the following information:

- Date the breach or likely breach was identified.
- Name of the employer (where appropriate).
- A description of the breach:
 - Cause.
 - Effect
 - Reaction.
 - Implications.
- Whether the breach is considered to be red, amber or green with reference to tPR traffic light system (hyperlink and appendix).
- Whether the concern has been reported before.

- Whether the suspected breach is considered materially significant to tPR and reasons for this consideration.
- Date of report to tPR (if applicable).
- Recommended action to rectify the breach.
- Evidence that these recommendations have been implemented.
- Confirmation that *the Strategic Finance Manager (Pension Fund and Treasury)* and/or the *Director of Legal, Cultural and Democratic Services* and/or the Pension Fund Committee and Local Pension Board have been consulted.

Updates to the breaches log will be reported to the Pensions Fund Committee and Local Pension Board at its next meeting.

9. Whistleblowing

It is a statutory duty to report breaches of the law. In rare cases this may involve a duty to whistle blow on the part of an employee of the Fund. The duty to report does not override any other duties a *Reporter* may have, such as confidentiality. Any such duty is not breached by reporting to tPR. Given the statutory duty that exists, in exercising this breaches policy the Fund will ensure it adheres to the requirements of the Employment Rights Act 1996 in protecting an employee making a whistleblowing disclosure to tPR.

The duty to report, however, does not override 'legal privilege', so oral and written communications between the Fund, Pension Fund Committee or Local Pension Board and a professional legal adviser do not have to be disclosed.

10. Training

The *Responsible Officer* will ensure that all *Reporters*, receive appropriate training on this policy as appropriate.