

Reporting Breaches of the Law Policy

This document should be read in conjunction with the Terms of Reference for the Local Pension Board of Croydon Council Pension Fund dated 2 July 2015. Unless stated otherwise, the defined terms used in this document have the same meaning as attributed to them under the Terms of Reference document.

Legal requirements

Certain people are required to report breaches of the law in writing to the Compliance and Governance Manager as soon as reasonably practicable and where they have reasonable cause to believe that:

- A legal duty which is relevant to the administration of the scheme has not been, or is not being, complied with, e.g. keeping records/internal controls; and
- The failure to comply is likely to be of material significance to the regulator in the exercise of any of its functions.

Those subject to the reporting requirements in the context of public service pension schemes are as follows:

- A Scheme Manager
- Members of Local Pension Boards (“LPB’s”)
- Any person who is otherwise involved in the administration of a public service pension scheme
- Employers. In the case of a multiemployer scheme, any participating employer who becomes aware of a breach should consider their duty to report, regardless of whether the breach relates to, or affects members who are its employees or those of other employers
- Professional advisers including auditors, actuaries, legal advisers and fund managers
- Any person who is otherwise involved in advising the scheme manager in relation to the scheme

Implementing adequate procedures

Identifying and assessing a breach of law is important in reducing risk and providing an early warning of possible malpractice. Those people with a responsibility to report breaches, including Scheme Managers (in particular Pension Committee Members and officers) and LPB members (reporters) should establish and operate appropriate and effective procedures to ensure that they are able to meet their legal obligations. Procedures should enable people to raise concerns and facilitate the objective consideration of those matters

Procedures will include the following features:

- Obtaining clarification of the law where it is not clear to those responsible for reporting
- Clarifying the facts around the suspected where they are not known
- Consideration of the material significance of the breach taking into account its cause, effect, the reaction to it, and its wider implications, including where appropriate, dialogue with the Scheme Manager or LPB
- The breach will be reported to the Governance and Compliance manager in the first instance, who will assess the cause, effect and the wider implications and determine if it is likely to be of material significance to the Pension Regulator and/or the Scheme Manager.
- A timeframe of 14 days for the procedure to take place that is appropriate to the breach and allows the report to be made as soon as reasonably practicable

Judging whether a breach must be reported

Breaches can occur in relation to a wide variety of the tasks normally associated with the administration function of the scheme such as keeping records, internal controls, calculating benefits, making investments, or investments related decisions.

Having 'reasonable cause' to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated. Therefore, it is imperative that where a breach is suspected, reporters still refer the matter to the Compliance and Governance Manager so that investigations can be undertaken to establish whether or not a breach has in fact occurred and if the matter requires escalation to the Scheme Manager.

In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Scheme Manager or the Pension Regulator may require before taking legal action.

It is also important that a reporter is aware that any delay in reporting any potential breach may exacerbate or increase the risk of the breach causing further and more significant issues.

The cause of the breach

The breach is likely to be of material significance to the Scheme Manager or the Pension Regulator where it is for example, caused by (but not limited to):

- Dishonesty
- Poor governance, inadequate controls resulting in deficient administration, or slow or inappropriate decision-making practices
- Incomplete or inaccurate advice
- Acting (or failing to act) in deliberate contravention of the law

A breach will not normally be regarded as materially significant if it has arisen from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances.

The effect of the breach

Evidence in relation to any of the following matters is particularly important and likely to be of material significance to the Scheme Manager and the Pension Regulator:

- Local Pension Board members, Committee Members or officers not having the appropriate degree of knowledge and understanding
- Local Pension Board members, Committee Members or officers having a conflict of interest
- Adequate internal controls not being established and operated
- The right money/contributions not being paid to the scheme at the right time
- Internal Dispute Resolution Procedures not having been made and/or implemented
- Information about benefits and other information about scheme administration not being disclosed to scheme members and others
- Information about the Local Pension Board or Committee not being published
- The scheme not being administered properly
- Appropriate records not being maintained
- Local Pension Board members, Committee members or officers having misappropriated any assets of the scheme or being likely to do so
- Repeated miscalculations or incorrect payment of benefits which have a detrimental impact on scheme members

The reaction to the breach

Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, the Pension Regulator will not normally deem it to be materially significant.

A breach is likely to be of concern and material significance to the Pension 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.

Submitting a report to the Scheme Manager

All reports of possible breaches must be submitted in writing to the Compliance and Governance Manager. However, if the matter is considered particularly serious by the reporter it can be preceded by a telephone call, and brought directly to the Scheme Manager's attention (if appropriate).

Reporting more serious concerns

Where sufficiently serious concerns exist or where a concern has been raised with the Pension Committee and the LPB consider that the Pension Committee have not taken appropriate action to rectify the issue it may be more appropriate for the LPB to report these directly, to the Pensions Regulator. Such concerns could include (but are not limited to) fundamental breaches of the Regulations or a fundamental failure by Croydon Council to ensure the effective governance of the fund.

In such situations reports should be made directly to the Governance and Compliance Manager who will then take the appropriate action and may refer the matter to the Pensions Regulator.

Reporting Procedure

Any member of the Scheme or member of staff is able to report a breach. The individual reporting such a breach will be referred to as the 'reporter'.

The reporter should, in the first instance, bring any concerns that a breach of the law has occurred to the Governance and Compliance Manager within 3 working days. To bring a suspected breach to the attention of the Governance and Compliance Manager, the reporter must submit the details of the suspected breach in writing by hard copy by post or by electric submission to the Governance and Compliance Manager.

Once received, the Governance and Compliance manager will undertake the necessary review of the reporting document and then decide whether this represents a breach in considering the above.

In line with guidance issued by the National Standards Board and any other guidance that may be applicable and introduced from time to time, the Governance and Compliance manager is able to:

1. Obtain clarification of the law if it is not clear;
2. Clarify the facts where they are not known; and
3. Consider the material significance of the breach.

This procedure allows for no more than 14 days to elapse from the time that the suspected breach is raised until the Governance and Compliance manager decides whether the breach must be reported further to the Scheme Manager and/or Pensions Regulator.

Review of Breaches of the Law log

Alternate meetings of the Pension Committee and the Local Pension Board will receive a copy of the updated Breaches of the Law log providing the following information:

- Date
- Category
- Description and cause of breach
- Possible effect of breach and wider implications
- Reaction of relevant parties to the breach
- Reported/not reported (with justification if not reported with dates)
- Traffic light colour
- Outcome of report and/or investigations
- Outstanding actions