

Reporting Breaches of the Law Policy

Background and Introduction

This Policy sets out the procedure to be followed by certain persons involved with the Croydon Pension Fund (the "Fund"), which is managed and administered by Croydon Council (the "Administering Authority"), in relation to identifying, recording and, where necessary, reporting breaches of the law to The Pensions Regulator ("The Regulator").

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, as well as in relation to lack of relevant knowledge or skills to effectively manage The Scheme.

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

The Administering Authority has delegated responsibility for the implementation of this Policy to the Head of Pensions and Treasury. A breaches log for the Fund is maintained by the Head of Pensions and Treasury.

This Policy was agreed by the Pension Committee on XXXXX and is effective from that date.

The Policy will be reviewed in October 2025, or sooner as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure set out in this Policy.

Legal requirements

Certain people are required to report breaches of the law in writing to the Pensions Regulator 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 Local Government Pension Scheme (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 which in the LGPS means the Administering Authority and in context means anyone acting on behalf of the London Borough of Croydon in managing the Pension Fund, including the Pension Committee, Fund Officers and the Section 151 Officer.
- All members of the Pension Committee and Pension Board
- 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 and external suppliers (noting that legal privilege may apply)
- Any person who is otherwise involved in advising The Scheme Manager in relation to The Scheme including the Monitoring Officer, and staff members of the internal audit function.

Requirements

This section clarifies these legal requirements and to whom they apply.

Pensions Act 2004

Section 70 (1) of the Pensions Act 2004 (the "Act") imposes a requirement on the following persons to report a matter to The Regulator as soon as is reasonably practicable where, under Section 70 (2) of the Act, 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 Regulator in the exercise of any of its functions:

- 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 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.

Section 70(4) of the Act states that under Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) 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 Pensions Regulator's Code of Practice 14

The current version of the Code of Practice was issued in April 2015.

Practical guidance in relation to this legal requirement is included in The Pensions Regulator's Code of Practice 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 Regulator
- whistleblowing protection and confidentiality.

A draft new code of practice was issued in March 2021 but is yet to come into force. This consolidates a number of the Regulator's previous codes (including Code 14) into a single document. The sections in relation to breaches are collated under 3 headings and are drawn from the following sections of the previous codes:

Who must report

Code 1 paragraphs 3-6, 9-17, 19-24, 29

Code 13 paragraphs 165-166

Code 14 paragraphs 241-244, 272-275

Decision to report

Code 1 paragraphs 30-38, 40-42, 44-45, 50

Code 5 paragraph 46

Code 6 paragraph 47

Code 13 paragraphs 165-166

Code 14 paragraphs 173-186, 247-262

How to report

Code 1 paragraphs 18, 46-47, 49, 51-67

Code 5 paragraph 48-49, 52-53

Code 6 paragraph 49-50, 53-54

Code 13 paragraphs 78, 165-166

Code 14 paragraphs 245-246, 263-271

Status of codes of practice

Codes of practice are issued by The Pensions Regulator under the powers given to them in section 90 and section 90A of the Pensions Act 2004.

The expectations set for administering authorities within the code have been developed in light of The Regulator's statutory objectives, which were introduced by the Pensions Act 2004.

Codes of practice are not statements of the law but they do set out the expectations of how governing bodies should comply with their legal duties. When determining whether legal requirements have been met, a court or tribunal must take any relevant provisions of a code of practice into account.

The draft new code of practice states

This code applies to governing bodies of occupational, personal and public service pension schemes. Some legal obligations do not apply to all types of governing bodies or schemes.

Governing bodies are defined as trustees or managers of occupational pension schemes, managers of personal pension schemes, and scheme managers (The Scheme Manager is the Pension Committee) and/or pension boards of public service schemes that are regulated by The Pensions Regulator.

Governing bodies should be confident that they have a working knowledge of the pensions legislation relevant to them. If they do not then they need to consider whether they are meeting the requirements for knowledge and understanding, as these apply to them, and to undertake training as appropriate. Failure to do so could itself be deemed a breach.

The knowledge requirements for Pension Boards, Committees and Officers are set out in the CIPFA Knowledge and Skills Framework 2021. Further information on these requirements is set out in the Fund's Knowledge and Skills Policy which was agreed by the Pension Committee on 14 June 2022.

The SAB Good Governance Review is expected to extend the knowledge requirement to cover committees. It may then be something that the Regulator would take an interest in.

If governing bodies are, for any reason, unable to act in line with the standards referred to by the code, they should consider if they have a statutory duty under section 70 of the Pensions Act 2004 to assess and report breaches of the law.

Application to the Croydon Pension Fund

The Administering Authority has developed this Policy in relation to The Fund. This document sets out how the Administering Authority will strive to achieve best practice through use of a formal reporting breaches procedure. It reflects the guidance contained in The Pensions Regulator's Code of Practice.

Implementing adequate procedures

Identifying and assessing a breach of the law is important in reducing risk and providing an early warning of possible malpractice. Those people with a responsibility to report breaches ("reporters"), including Scheme Managers (in particular, Pension Committee Members and Officers) and Pension Board members 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

There are four steps in the Breaches process:

1. Understanding the law and what is a breach
2. Determining whether a suspected breach is an actual breach
3. Determining whether the breach is likely to be of material significance and so should be reported to the Regulator
4. Recording the breach, even if it is not reported

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 breach where they are not known in order to establish whether there has been a breach

- Consideration of the material significance of the breach to the Regulator taking into account its cause, effect, the reaction to it, and its wider implications, including where appropriate, dialogue with the Scheme Head of Pensions and Treasury or the Pension Board
- The breach should 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 Pensions Regulator.
- A timeframe for the procedure to take place that is appropriate to the breach and allows the report to the Regulator (if required) to be made as soon as reasonably practicable.

1. Understanding the law and what is a breach

In order to assist in deciding if a breach of the law has occurred, some of the key provisions are available via the links below:

Section 70(1) and 70(2) of the Pensions Act 2004:
<https://www.legislation.gov.uk/ukpga/2004/35/contents>

Employment Rights Act 1996:
<https://www.legislation.gov.uk/ukpga/1996/18/contents>

Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations):
<https://www.legislation.gov.uk/uksi/2013/2734/contents/made>

Public Service Pension Schemes Act 2013
<https://www.legislation.gov.uk/ukpga/2013/25/contents>

Local Government Pension Scheme Regulations (various):
<https://www.lgpsregs.org/timelineregs/Default.html>
<https://lgpsregs.org/schemeregs/index.php>

The Pensions Regulator's Code of Practice
<https://www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/code-14-public-service-pension-code-of-practice>

. The Draft of the Pensions Regulator's New Code of Practice
[full-draft-new-code-of-practice%20\(13\)](https://www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/full-draft-new-code-of-practice%20(13))

Further guidance and assistance can be provided by the Fund's Governance and Compliance Manager, 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. Determining whether a suspected breach is an actual breach

Individuals need to have reasonable cause to believe that a breach of the relevant legal provision 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 Fund's Governance and Compliance manager, the Head of Pensions and Treasury, a member of the Pension 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 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.

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, as well as in relation to lack of relevant knowledge or skills to effectively manage the scheme.

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, individuals refer the matter to the Governance and Compliance 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 Head of Pensions and Treasury.

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 Pensions Regulator may require before taking further 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.

3. Judging whether a breach must be reported

Should an individual have reasonable cause to believe that 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

The Fund's Governance and Compliance Manager (or another officer if appropriate) will assist with carrying out this assessment.

3.1 The cause of the breach

The breach is likely to be of material significance to the Pensions 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 or where prompt action has been taken to rectify the issue.

3.2 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 Pensions Regulator:

- Pension Board Members, Committee Members or Officers not having the appropriate degree of knowledge and understanding which may result in them not fulfilling their roles, the Fund not being properly governed and administered and/or breaching other legal requirements.
- Pension Board Members, Committee Members or Officers having a conflict of interest which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the Fund and/or breaching legal requirements.
- Adequate internal controls not being established and operated which may lead to the Fund 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 Fund at the right time.

- 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 which may result in members not being able to effectively plan or make decisions about their retirement.
- Information about the Pension Board or Committee not being published.
- The scheme not being administered properly.
- Appropriate records not being maintained.
- 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.

3.3 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 Pensions Regulator will not normally deem it to be materially significant.

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.

3.4 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.

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 Governance and Compliance Manager will maintain a record of all breaches identified. Therefore, individuals should provide information relating to all breaches that have been identified to the Governance and Compliance Manager so they can be recorded.

The record of all breaches (reported or otherwise) will be provided to each Pension Committee meeting and Pension Board meeting.

5. Submitting a report to The Scheme Manager

The Fund's Governance and Compliance Manager can provide further guidance in relation to breaches and will also be responsible for ensuring that a record of all breaches is maintained.

All reports of possible breaches must be submitted in writing to the Governance and Compliance Manager. However, if the matter is considered particularly serious by the reporter and if appropriate, it can be preceded by a telephone call and brought directly to The Scheme Manager's attention (which in the LGPS means the Administering Authority and, in this context, means anyone acting on behalf of the London Borough of Croydon in managing the Pension Fund, including the Pension Committee, Fund officers and the Section 151 Officer)

However, you should not contact the Fund's Governance and Compliance Manager if this could result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

Individuals must bear in mind, however, that the involvement of the Governance and Compliance Manager is to help them understand their obligations in relation to the reporting of breaches 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

6. Reporting more serious concerns

Where sufficiently serious concerns exist, it may be more appropriate for the Pension Board to report these directly to the Pensions Regulator. This could also apply where a concern has been raised with the Pension Committee and the Pension Board

consider that the Pension Committee have not taken appropriate action to rectify the issue, in which case the Pension Board may consider reporting directly to the Pensions Regulator.

Such concerns could include (but are not limited to) fundamental breaches of The Regulations

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 as soon as possible preferably within 3 working days at latest. 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 electronic 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. Once the Governance and Compliance Manager has ascertained that it is an actual breach, they will record it in the breaches log.

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.

The Governance and Compliance Manager will follow the Internal Escalation Matrix later in this Policy to ensure appropriate escalation within Croydon Council, subject to this not alerting those responsible for any serious offence (where the breach is in relation to such an offence).

The Pensions Act and 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.

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.

In cases of immediate risk to the Fund, 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. They 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.

Reporting a breach to The Pensions Regulator

Reports must be submitted either to The Regulator's online system at <https://login.thepensionsregulator.gov.uk/> or 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 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 :Croydon Pension Fund
- description of the breach/breaches
- any relevant dates
- name, position, and contact details
- role in connection to the Scheme
- employer name or name of Croydon Council as the Administering Authority/Scheme Manager.

If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to The Regulator
- Scheme address: Bernard Weatherill House, 8 Mint Walk, Croydon CR0 1EA
- Scheme Manager's contact details: Matthew.Hallett@croydon.gov.uk
- Pension Scheme Registry Number: 10165249
- whether the breach has been reported before.

The individual 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.

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

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

The Regulator will acknowledge all reports within five working days of receipt. If reporters have not received an acknowledgement from them within five days, they should contact them.

Review of Breaches of the Law log

The Breaches Log will be presented to quarterly meetings of the Pension Committee and the Pension Board containing 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 to the Regulator (with justification if not reported with dates)
- Traffic light colour
- Outcome of report and/or investigations
- Outstanding actions

Breaches Matrix

Type of Breach	Timescale for reporting	Internal actions	Further actions
Urgent and Material	Responsible officer informs Head of Pensions and Treasury and the governance team, the breach is reported immediately to The Pensions Regulator	Governance team to keep record of the breach and investigate options to prevent further occurrence	Report urgent and material breaches to Section 151 officer, Chair and Vice Chair of Committee and Local Pension Board. Full report to be submitted at the next available meeting
Non urgent: Assess whether Material / Immaterial	Responsible Officer informs Head of Pensions and Treasury and the governance team, the breach is considered and, if deemed necessary, it is reported to the Regulator	Governance team to keep record of the breach and investigate options to prevent further occurrence	Report breach at next Pension Committee and Pension Board meeting
Immaterial	Responsible Officer informs Head of Pensions and Treasury and the governance team	Governance team to keep record of the breach and investigate options to prevent further occurrence	Report immaterial breach at next Pension Committee and Pension Board meeting

Reporting Guide

Rating	Description	Breach occurred	Breach identified	Action taken	Decision
	Cause, effect, reaction and wider implications considered together ARE LIKELY to be of material significance	Error has occurred	PLUS Errors not recognised	PLUS No action taken to rectify and tackle the cause	MUST Report to TPR
	Cause, effect, reaction and wider implications considered together MAY be of material significance	Error has occurred	PLUS Errors rectified	PLUS Systemic causes not addressed so issue may arise again	MAY Report to TPR
					Consider the evidence and make a decision.
	Cause, effect, reaction and wider implications considered together ARE NOT Likely to be of material significance	Error has occurred	PLUS Errors rectified	PLUS Systemic causes addressed to mitigate against issue arising again	DON'T Report to TPR