

**REPORTING BREACHES OF THE LAW POLICY**

**NORTHERN IRELAND POLICE PENSION BOARD**

**JULY 2018**

**HPE 355548**

## **INTRODUCTION**

This is the Reporting Breaches of the Law to the Pensions Regulator Procedure of the Northern Ireland Police Pension Board.

The Pensions Regulator Code of Practice 14: Governance and Administration of Public Service Pension Schemes. states that a procedure should be established to ensure that those with a responsibility to make reports are able to meet their legal obligations.

This procedure sets out the steps to be taken by relevant parties to raise concerns in relation to the administration and governance of the NI Police Pension Schemes and facilitates the objective consideration of those matters within a timely manner.

## **PURPOSE**

To ensure individuals have the correct understanding and necessary skills to be able to identify and report breaches as they arise and adequate procedures are in place to fully comply with the Code of Practice.

## **EFFECTIVE DATE**

This procedure was approved by the NI Police Pension Board on 18<sup>th</sup> June 2018 and is effective from 1<sup>st</sup> July 2018 and will be reviewed annually to ensure it remains accurate and relevant.

## **SCOPE**

This procedure applies to:

- officials of the NI Policing Board;
- officials of the PSNI Pensions Branch;
- officials of the Department of Justice NI;
- members of the NI Police Pension Board;
- relevant stakeholders; and
- professional advisers.

It is each individual's responsibility to ensure they have a sufficient level of knowledge and understanding of their duty to report breaches.

## **LEGAL REQUIREMENTS**

Individuals (as set out above) are required to report breaches of the law to the Pensions Regulator where they have reasonable cause to believe that –

- a legal duty which is relevant to the administration of the Police Pension Schemes has not been, or is not being, complied with; and
- the failure to comply is likely to be of material significance to the Pensions Regulator in the exercise of any of its functions.

## **REASONABLE CAUSE**

Checks need to be made in order to ensure a breach has occurred and that the report is not made on suspicion alone. If an individual remains uncertain of a breach it is advised that the case should be discussed with the Director of Policy or Pension Scheme Advisor. However if the suspicion is around theft, fraud or other serious offences where discussions may alert those implicated or impede the actions of the police or a regulatory authority, the reporter should go directly to the Pensions Regulator and at the earliest opportunity.

Clarification of the relevant legal provision or understanding of the law may be sought via the NI Policing Board's legal advisor.

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 Pensions Regulator may require before taking action particularly if it is a significantly material breach. A delay in reporting may exacerbate or increase the risk of the breach.

## **MATERIAL SIGNIFICANCE**

You should consider the cause, effect and reaction to the potential breach and any wider implications.

### *Cause of the Breach*

Causes likely to be of material insignificance include-

- dishonesty;
- poor governance or administration;
- slow or inappropriate decision making practices;
- incomplete or inaccurate advice; or
- acting (or failing to act) in deliberate contravention of the law

A breach will not normally be materially significant if it has arisen from an isolated incident or from an unusual or unpredictable combination of circumstances. However this should be taken together with the effect of the breach and any pattern of recurrent breaches which may indicate wider scheme issues.

### *Effect of the Breach*

Reporters need to consider the effects of any breach in line with the Regulator's Code of Practice 14. The following matters in particular should be considered likely to be of material significance to the Pensions Regulator:

- Police Pension Board members not having the appropriate degree of knowledge and understanding, which may result in the Police Pension Board not fulfilling its role, or the Police Pension Schemes not being properly governed and administered;
- Police Pension Board member having a conflict of interest, which may result in them being prejudiced in the way that they carry out their roles;
- Adequate internal controls not being established and operated, which may lead to the Police Pension Schemes not being run in accordance with the Regulations and other legal requirements and risks not being properly identified and managed;
- Accurate information about benefits and scheme administration not being provided to scheme members and others, which may result in member not being able to effectively plan or make decisions about their retirement;
- Appropriate records not being maintained, which may result in member benefits being calculated incorrectly and/or not being paid to the right person at the right time;
- Anyone involved in the administration or management of the Police Pension Schemes misappropriating any of its assets, or being likely to do so, which may result in assets not being safeguarded; and
- Any other breach which may result in the Police Pension Schemes being poorly governed, managed or administered.

#### 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 consider this 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; and
- fail to notify affected scheme members where it would have been appropriate to do so.

### Wider implications of the Breach

Reporters should consider the wider implications of the breach when they assess which breaches are likely to be materially significant to the Pensions Regulator.

For example, a breach is likely to be of material significance where the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future. This may be due to the Scheme Manager or Pension Board Members having a lack of appropriate knowledge and understanding to fulfil their responsibilities.

It may not be appropriate in all cases to follow the above steps particularly if the potential breach concerns the actions or inaction of the PSNI or NIPB and might alert those implicated or impede the actions of the police or a regulatory authority. In such cases you should go on to make a determination as to whether the breach is of material significance and needs to be reported to the Pension Regulator.

In determining whether a compliance failure is of material significance, you should take account of the example breaches record attached at Appendix 1 and the traffic light framework attached at Appendix 2.

## **GUIDANCE ON REPORTING A BREACH TO THE PENSIONS REGULATOR**

The guidance from the Pensions Regulator on reporting breaches is as set out below:

- Before submitting a report responsible officers should obtain clarification of the law around the suspected breach via an appropriate method. A judgement needs to be made on whether the Pensions Regulator would regard the breach as being material
- Some matters could be urgent, if for example a fraud is imminent, whilst other will be less so. Non-urgent but material breaches should be reported to the Pensions Regulator within 30 working days of them being confirmed, and in the same time breaches that are not material should be recorded
- Some breaches could be so serious that they must always be reported, for example a theft of funds by anyone involved with the administration or management of the Police Pension Scheme. It is difficult to be definitive about what constitutes a breach that must always be reported, as a rule of thumb if a breach may lead to criminal prosecution or a serious loss in public confidence it is deemed that this type of breach must always be reported;
- Any report that is made (which must be in writing and made as soon as reasonably practicable) should be dated and include as a minimum –
  - Full name of the pension scheme;
  - Description of the breach or breaches;
  - Any relevant dates;
  - Name of the employer or scheme manager (where known);
  - Name, position and contact details of the reporter; and

- Role of the reporter in relation to the pension scheme.

Additional information that would assist the Pensions Regulator would include, the reason the breach is thought to be of material significance to the Pensions Regulator; the address of the Police Pension Scheme; the Police Pension Scheme's registry number; and whether the concern has been reported before

- Reporters should mark urgent reports as such and draw attention to matters they consider particularly serious. They can precede a written report with a telephone call, if appropriate.
- Reporters should ensure they receive an acknowledgement for any report they send to the Pensions Regulator. Only when they receive an acknowledgement can the reporter be confident that the Pensions Regulator has received their report
- The Pensions Regulator will acknowledge all reports within five working days of receipt however it will not generally keep a reporter informed of the steps taken in response to a report of a breach as there are restrictions on the information it can disclose. The reporter should provide further information or reports of further breaches if this may help the Pensions Regulator to exercise its functions. The Pensions Regulator may make contact to request further information
- Breaches should be reported as soon as reasonably practicable, which will depend on the circumstances. In particular, the time taken should reflect the seriousness of the suspected breach
- In cases of immediate risk to the Police Pension Scheme, for instance, where there is indication of dishonesty, the Pensions 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 Pensions Regulator to the breach.
- Breaches that are found not to be material to the Pensions Regulator must still be recorded. This is so that if similar breaches continue, then they become material. Recording all breaches also highlights where improvements are required, to try and prevent similar breaches.

## PROCESS FOR REPORTING AND RECORDING MATERIAL AND NON-MATERIAL BREACHES WITHIN THE POLICE PENSION SCHEME

The table below sets out the process to be followed:

Type of Breach	Timescale for reporting	Internal actions	Further actions
Urgent and material	Inform Director of Resources and Police Administration Manager, breach is reported immediately to the Pensions Regulator	Police Administration Manager to keep record of breach and investigate options to prevent further occurrence	Report urgent and material breaches to Police Pension Board Chair and Members, if appropriate. Otherwise full report to be submitted at the next available Police Pension Board meeting.
Non urgent and material	Inform Director of Resources and Police Administration Manager, breach is reported within 30 days to the Pensions Regulator	Police Administration Manager to keep record of breach and investigate options to prevent further occurrence	Report non-urgent and material breach at next Police Pension Board meeting
Non material	Inform Director of Resources, Police Administration Manager and Police Pension Board Chair within 30 days	Police Administration Manager to keep record of breach and investigate options to prevent further occurrence	Report non-material breach at next Police Pension Board meeting

### Decision-Maker

In order to ensure due consideration is given to a potential breach and to avoid multiple reports to the Pensions Regulator, any concerns should be raised in the first instance as set out below:

#### *Type of Issue*

Employer/Employee Contributions

#### *Reporting Arrangements*

PSNI Payroll raise with NIPB Police Administration Manager

Pension Administration

PSNI Pensions raise with NIPB Police Administration Manager

Governance

NIPB Official to NIPB Chief Executive  
PPB Member to PPB Secretary or PPB Chair

An example breaches log is attached at Appendix 3.

## **WHISTLEBLOWING PROTECTION AND CONFIDENTIALITY**

The Pension Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report. The Pensions Regulator understands the potential impact of a report on relationships, for example, between an employee/employer.

The statutory duty to report does not, however, override legal privilege. This means that oral and written communications between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate the NI Policing Board's legal advisor will be able to provide further information.

The Pensions Regulator will try to protect a reporter's identity (if requested) and will not disclose the information except where lawfully required to do so. It will take all reasonable steps to maintain confidentiality, but it cannot give any categorical assurances as the circumstances may mean that disclosure of the reporter's identity becomes unavoidable in law, including where ordered by a court to disclose.

The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the Pensions Regulator. Consequently, where individuals employed by firms or another organisation having a statutory duty to report disagree with a decision not to report to the Pensions Regulator, they may have protection under the ERA if they make an individual report in good faith. The Pensions Regulator expects such reports to be rare and confined to the most serious cases. It may also be appropriate to use the mechanism of the NIPB Whistleblowing Policy which can be found using the following link :

<https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/Whistleblowing-Policy.pdf>

## **CONTACT DETAILS**

The Pensions Regulator  
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Director of Resources  
NI Policing Board  
Waterside Tower  
31 Clarendon Road  
Clarendon Dock  
Belfast  
BT1 3BG  
Tel: 02890 408517  
Email: [nipbsecretaries@nipolicingboard.org.uk](mailto:nipbsecretaries@nipolicingboard.org.uk)



**EXAMPLES OF BREACHES, NOT LIMITED TO -**

Example 1

An employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. It is contacted by officers from the administering authority, it immediately pays the monies that are overdue, and it improves its procedures so that in future contributions are paid over on time. In this instance there has been a breach but members have not been adversely affected and the employer has put its house in order regarding future payments. The breach is therefore not material to the Pensions Regulator and need not be reported.

Example 2

An employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. It is also late in paying AVCs to the Prudential. It is contacted by officers from the administering authority, and it eventually pays the monies that are overdue, including AVCs to the Prudential. This has happened before, with there being no evidence that the employer is putting its house in order. In this instance there has been a breach that is relevant to the Pensions Regulator, in part because of the employer's repeated failures, and also because those members paying AVCs will typically be adversely affected by the delay in the investing of their AVCs.

Example 3

An employer is late in submitting its statutory year-end return of pay and contributions in respect of each of its active members and as such it is in breach. Despite repeated reminders it still does not supply its year-end return. Because the administering authority does not have the year-end data it is unable to supply, by 31 August, annual benefit statements to the employer's members. In this instance there has been a breach which is relevant to the Pensions Regulator, in part because of the employer's failures, in part because of the enforced breach by the administering authority, and also because members are being denied their annual benefits statements.

Example 4

A pension overpayment is discovered and thus the administering authority has failed to pay the right amounts to the right person at the right time. A breach has therefore occurred. The overpayment is however for a modest amount and the pensioner could not have known that they were being overpaid. The overpayment will therefore be waived. In this case there is no need to report the breach as it is not material.

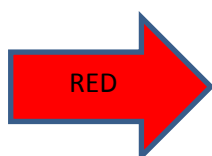
Example 5

Several overpayments are discovered and thus the administering authority has failed to pay the right amounts to the individuals concerned due to a process failure. The

administering authority has failed to put a process in place to avoid reoccurrence and the combined amount is significant. In this instance there has been a breach which is relevant to the Pensions Regulator, in part because of the authority's failure to implement a new/improved process and in part because of the enforced breach by the administering authority.

## TRAFFIC LIGHT FRAMEWORK FOR DECIDING WHETHER OR NOT TO REPORT

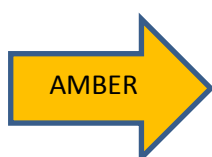
It is recommended that those responsible for reporting use the traffic light framework when deciding whether to report to the Pensions Regulator. This is illustrated below:



Where the cause, effect, reaction and wider implications of the breach, when considered together, are likely to be of material significance.

These must be reported to the Pensions Regulator.

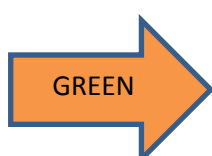
Example: Several members' benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.



Where the cause, effect, reaction and wider implications of the 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.



Where the cause, effect, reaction and wider implications of the 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 members' 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:

<http://www.thepensionsregulator.gov.uk/docs/PS-reporting-breaches-examples-traffic-light-framework.pdf>

EXAMPLE RECORD LOG OF BREACHES

Date	Category (e.g. administration, contributions, criminal activity)	Description and cause of breach	Possible effect of breach and wider implications	Reaction of relevant parties to breach	Overall Rating (Red / Amber / Green)	Reported / Not reported (with justification if not reported and dates)	Outcome of report and/or investigations	Outstanding actions
					Red			