

# Worcestershire Pension Fund



## BREACHES OF LAW POLICY

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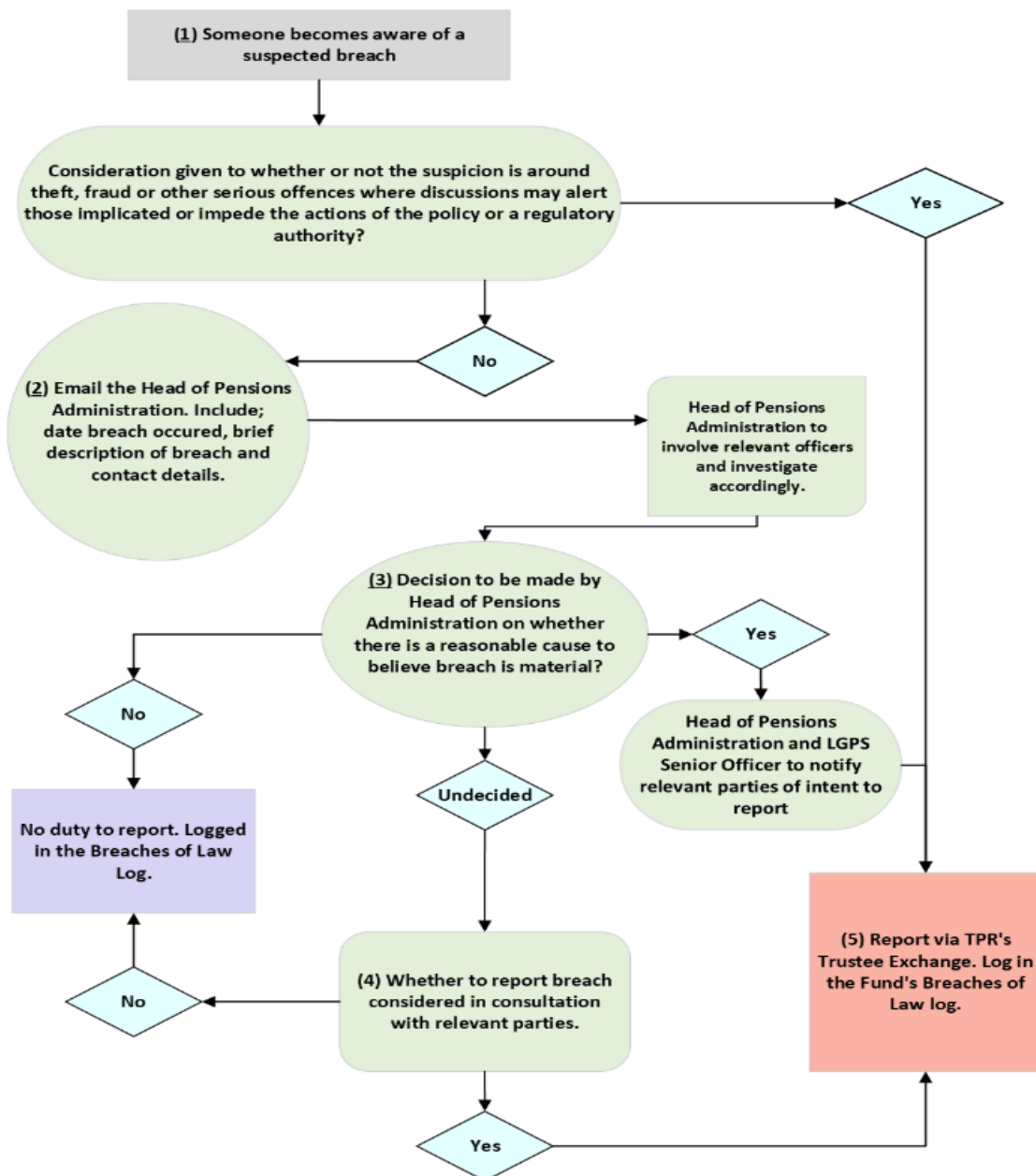
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**Management summary**

We are aware that, despite our best efforts, from time-to-time things can go wrong and that, despite having relevant training in place, we are all open to human error. Whenever something to do with the law is broken, we must ensure that we do everything that is required of us, and we do this by having a breaches of law policy. We make our employers and our internal staff aware of the policy and that, as soon as something does not happen as it should, they have a responsibility to report it.

Initially, the Head of Pensions Administration will receive an email of a suspected breach of law from the reporter. The Head of Pensions Administration will involve relevant officers, who may differ dependent on the circumstances, in investigating the suspected breach of law in line with The Pensions Regulator’s (TPR) expectations, using the (see paras 35 to 45) [traffic light framework](#) that TPR have released. Our Pension Board and Pensions Committee will be advised as appropriate.

The flowchart below summaries the process, with more detail provided in the later sections.



## Background

In April 2015 TPR published Code of Practice no 14 (the Code) concerning the governance and administration of public service pension schemes. [Paragraphs 241 to 275](#) cover reporting breaches of the law. These paragraphs supplement the [Pensions Act 2004](#) (the Act) [Section 70\(1\)](#), [Section 70\(2\)](#) and [Section 311](#).

As part of conducting our affairs in a responsible manner and ensuring that our activities are open and effectively managed, this document sets out our policy and procedures for identifying, monitoring and, where appropriate, reporting breaches of law.

This policy will be reviewed by the Fund at least annually.

The Fund will monitor all breaches of law and will ensure that adequate resources are allocated to managing and administering this process.

The Head of Pensions Administration will be responsible for the management and execution of this breaches of law policy.

The introduction of our breaches of law policy will deliver an additional tool for the Fund to reduce risk and provide 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.

## What constitutes a breach of law?

A breach of the law is when a legal duty which is relevant to the administration of the Fund has not been, or is not being, complied with. It can encompass many aspects of the management and administration of the Fund, including failures such as:

- 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 or employer contributions on time.
- To pay member benefits either accurately or in a timely manner.
- To issue annual benefit statements on time.
- Failure to comply with the Fund's policies, for example, Funding Strategy Statement or Pension Administration Strategy.

## Who is responsible for reporting breaches of law?

Everyone involved with the Fund has a responsibility to take a pro-active approach to the identification, management and reporting of all breaches of law that have occurred, or are likely to occur, i.e.:

- Members of the Pensions Committee.
- Members of the Pension Board.
- Officers of the Fund.
- All participating employers in the Fund.
- Professional advisers: including auditors, actuaries, legal advisers, and fund managers.

## How are records of breaches of law maintained?

All breaches or suspected breaches will be recorded in the Fund's breaches of law log which the Head of Pensions Administration will maintain. The log has the following fields:

A	B	C	D	E	F	G	H	I	J
Reporter's Email Address	Breach number	Date Suspected Breach Occurred	Brief description of nature of breach (please explain nature of breach e.g. GDPR, Employer conts post 90 days etc)	Consideration of TPR breach required? Y/N	Date considered (if applicable)	Date reported to TPR (if applicable)	Date WCC form sent	Date WCC acknowledge ment received	Recommended action for rectification

The WCC form referred to in columns H and I is available via MYIT or by emailing [dataprotection@worcestershire.gov.uk](mailto:dataprotection@worcestershire.gov.uk).

### Information Security Incident Report Form

#### Section 1 About You

Name		When was the incident identified?	[Date and Time]
Job Title		When was the incident reported to your line manager?	[Date and Time]
Directorate and Service (delete as appropriate)	ChEx – Finance ChEx - Human Resources, Organisational Development & Engagement ChEx – Public Health COaCH – IT and Digital COaCH – Legal and Governance COaCH – Transformation and Commercial DEI – Economy, Major Projects and Infrastructure DEI – Highways and Transport Operations People – Adult Social Care People – Commissioning People – Communities WCF – Education and Early Help WCF – Resources WCF - Early Help, Children in Need & Family Front Door WCF - Child Protection & Through Care WCF - All Age Disability WCF - Care Proceedings & Permanency WCF - Quality Assurance	When did the incident happen?	[Date and Time]
Email Address		Does the incident involve any <u>personal data</u> ?	Yes / No
Line Manager's Name		If yes, please describe this personal data	
		Is any <u>special category data</u> involved?	Yes / No / Not sure
		Is any financial information involved?	Yes / No / Not sure
		In your view, do the individuals affected need to be informed? *Please contact the Corporate Information Governance Team on 01905 84 5571 or email <a href="mailto:dataprotection@worcestershire.gov.uk">dataprotection@worcestershire.gov.uk</a> before proactively informing individuals about an incident	Yes / No / Not sure
		If yes, please explain why they need to be informed?	
		Has the incident been contained – is the data now secure? For example, has data been retrieved from the wrong recipient? *Please speak with the Corporate Information Governance Team if you require advice on how to contain the incident on 01905 84 5571 or email <a href="mailto:dataprotection@worcestershire.gov.uk">dataprotection@worcestershire.gov.uk</a>	Yes / No
		If no, why has it not been secured?	

#### Section 2 About the incident

Who is the most appropriate person to speak to about this incident?	[Name, job title and contact details]
Please describe the incident (what has happened?)	
What do you believe is the severity of this incident on individual(s)?	
Is this a Cyber Incident? (NSCC definition of 'Cyber Incident')	Yes / No
If you have notified IT about this incident please provide the MyIT request reference	Yes / No

If the incident is serious then please contact the Corporate Information Governance Team by phone (01905 84 5571) or the IT Helpdesk (01905 76 6789) if out-of-hours for immediate advice.

The Head of Pensions Administration will be responsible for:

- Investigating the circumstances of all reported breaches and likely breaches.
- Ensuring, 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.
- Reporting to the Pensions Committee and Pension Board: Updates required to the breaches of law log will be reported to the Pensions Committee and Pension Board at its next meeting.

If the next scheduled meetings of the Pensions Committee and Pension Board are more than 30 days away, the Head of Pensions Administration will consult with the Chairs of the Pensions Committee and Pension Board within the 30-day period and after (verbally if necessary) consultation with the CFO, Head of Financial Planning and Pension Investments, and the Assistant Director of Legal and Democratic Services.

A record of all material breaches experienced in the reporting period will also be included in the Fund's annual report.

### When a breach of law may be considered reportable / material

TPR has produced the following general, themed guidance to assist schemes in identifying the severity of a breach and whether it should then be reported:

- Cause – dishonesty, poor governance, or administration, slow or inappropriate decision-making practices, incomplete or inaccurate advice, or acting in deliberate contravention of the law.
- Effect – Pension Board members not having appropriate degree of knowledge, Pension Board / Pensions Committee members having a conflict of interest, inadequate controls, inaccurate information relating to benefits and scheme administration, or misappropriation of assets.
- Reaction – delayed and ineffective action to remedy the breach, failure to pursue corrective action, or failure to notify any scheme members affected appropriately.
- Wider implications – indication that the fact a breach has occurred makes it more likely that other breaches will emerge of similar circumstances in the future.

Not all breaches of law will need to be reported. 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 typically consider this to be of material significance.

In the first instance the Head of Pensions Administration should be informed of all potential breaches. 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.

### Reporting a breach of law to TPR

A material breach of law must be notified to TPR as soon as 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.

Reports must be submitted in writing and can be sent by post or electronically, including by email. Wherever possible reporters should use the standard format available via the Exchange online service on the regulator's website:

<http://www.thepensionsregulator.gov.uk/trustees/exchange.aspx>

The report should be dated and include as a minimum:

- Full name of the Fund.
- Description of the breach or breaches.
- Any relevant dates.
- Name of the employer (where known).
- Name, position and contact details of the reporter, and
- Role of the reporter in relation to the Fund.

Additional information that would help the regulator includes:

- The reason the breach is thought to be of material significance to the regulator.
- The address of the Fund.
- The contact details of the Fund (if different to the Fund address).
- The Fund's registry number (if available), and
- Whether the concern has been reported before.

Reporters should draw attention to matters considered serious by marking them as urgent upon submission.

Reporters should ensure they receive an acknowledgement for any report sent. TPR will acknowledge all reports within 5 working days or receipt. Reporters are not typically updated on progress of the report made unless further information is requested from the reporter to help the regulator exercise its functions. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated.

### Whistleblowing

It is a statutory duty to report breaches of the law. In some instances, this may involve a duty to whistle-blow by an employee of the Fund. The Pensions 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 statutory duty to report does not, however, override 'legal privilege'. Therefore, oral, and written communications between the Fund, Pensions Committee or Pension Board and a professional legal adviser do not have to be disclosed. Given the statutory duty that exists, in exercising this breaches of law policy, the Fund will ensure it adheres to the requirements of the [Employment Rights Act 1996](#) in protecting an employee making a whistle-blowing disclosure to TPR.

FOR OFFICE USE ONLY:

Worcestershire Pension Fund Breaches of Law Policy

Version: Final draft for approval by Pension Board

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Dated: 06 11 23

Signed off at: