Lancashire County Pension Fund

Breaches Policy

December 2022

lancashirecountypensionfund.org.uk

Lancashire County Council as administering authority of Lancashire County Pension Fund

Contents

1. Introduction

1.1 This document sets out the policy and procedures to be followed by certain persons involved with the Lancashire County Pension Fund (part of the Local Government Pension Scheme managed and administered by Lancashire County Council), in relation to identifying and reporting breaches of the law to the Pensions Regulator or Information Commissioner's Office (ICO).

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

Definition of a breach – where a legal duty relating to the administration of the scheme has not been or is not being complied with.

1.3 This document applies to the Lancashire County Pension Fund.

2. Purpose of the Breaches Policy & Procedure

This document has been developed to reflect guidance contained in the Pension Regulator's Code of Practice 14 and to reflect the duty on all organisations to report certain personal data breaches in line with the UK General Data Protection Regulations. The document sets out how the Lancashire County Pension Fund will strive to achieve best practice through use of a formal reporting breaches procedure.

2.1 The purpose of the policy is –

- to ensure that those with a responsibility to report breaches understand their legal obligations, and
- to outline how the Fund will strive to achieve best practice through use of a formal reporting breaches procedure.

2.2 The purpose of the procedure is –

- to provide details on how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Lancashire County Pension Fund.
- to ensure individuals responsible can meet their legal obligations, avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk.

3. Legal Requirements

3.1. This section clarifies the full extent of the legal requirements and to whom they apply.

3.2 **Pensions Act 2004**
Section 70 of the Pensions Act 2004 (the Act) imposes a requirement on the following persons:

- A trustee or manager of an occupational or personal pension scheme[1];
- A member of the pension board of a public service pension scheme;

[1] The Pension Regulator generally takes this to be the 'Scheme Manager'. The Pension Fund Committee fulfils the role of Scheme Manager

- A person who is otherwise involved in the administration of such a scheme an occupational or personal pension scheme;
- The employer in relation to an occupational pension scheme;
- A professional adviser in relation to such a scheme; and
- A person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme to report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:
  (a) A legal duty in 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 Pensions Regulator.

The Act states that a person can be subject to a civil penalty, if he or she fails to comply with this requirement without a reasonable excuse. As per the Pensions Regulators Code of Practice 14, 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.

3.3 **The Pension Regulator's Code of Practice 14**

Practical guidance in relation to this legal requirement is included in The Pension Regulator's Code of Practice 14, published on the Pension Regulators website on 1st April 2015 and covers the following areas:

- Implementing adequate procedures.
- Judging whether a breach must be reported.
- Submitting a report to The Pensions Regulator.
- Whistleblowing protection and confidentiality.

3.4 **The UK General Data Protection Regulation (UK GDPR**)

These regulations apply to the processing of personal data. There are a number of data protection principles as follows -

1. Processed lawfully, fairly and in a transparent manner (we must have a legal basis for processing and tell the data subject what we are doing with their data via a privacy notice)
2. Processed for specified, explicit and legitimate purposes (we can't collect it for one reason and use it for another)
3. Adequate, relevant and limited to the purposes for which we collected it (we can't collect more than we need)
4. Accurate and up to data (we have to ensure data quality)
5. Not kept longer than is necessary (we need to set data retention periods)
6. Processed in a manner that ensures security (we need to use technical and organisational controls to ensure the security of personal data)

Art. 4 (12) UK GDPR defines a 'personal data breach' as:

"a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed"

4. Types of breaches

There are two types of breaches outlined below-

4.1 **Data breaches**- where a breach of security leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are

the result of both accidental or deliberate causes. It also means that a breach is more than just about losing personal data.

A personal data breach can be broadly defined as a security incident that has affected the confidentiality, integrity or availability of personal data.

4.2 **TPR's Code of Practice breaches** can occur for a wide variety of tasks normally associated with the administrative function of the scheme including but not limited to: -

Scheme Record keeping

Failure of employers to provide timely and accurate data for the scheme manager to fulfil their legal obligations such as when an employee joins or leaves the scheme, changes their circumstances or transfers employment between scheme employers.

Performance of scheme employers is monitored against the standards set out in the Pension Administration Strategy Statement (PASS).

Maintaining contributions

Contribution breaches occur when an employer fails to make a timely payment or consistently pays an incorrect amount. The latter will usually occur when an employer has failed to submit a remittance advice and an incorrect amount has therefore been collected. Consistently is considered to be on four separate occasions.

Collection of contributions is monitored on a monthly basis and payment failures are categorised and managed as follows -

Incident – an incorrect amount is collected/no remittance provided (first, second or third occasion). These are dealt with in line with stage 2 of the Fund's 'Contribution Escalation Policy'.

Breach – an incorrect amount collected on four or more occasions, **or** any payment is late. These are dealt with in line with stages 3 and 4 of the Fund's 'Contribution Escalation Policy'

Provision of information to members

Failure to disclose information about benefits and scheme administration to relevant parties including provision of annual benefit statements to scheme members or other information as outlined under the Disclosure of Information Regulations 2013.

5. Roles and responsibilities

The table below outlines the key parties involved in reporting and managing of breaches. Individuals can report breaches to the Pensions Regulator or ICO directly. However, there is a process that allows the Fund to actively manage the monitoring and reporting of breaches which is outlined in this document.

Local Pensions Partnership Investment Limited (LPPI) and Local Pensions Partnership	• comply with all obligations under Data Protection Laws, and in the event of any security breach, they are required to report the matter to the Administering Authority immediately upon becoming aware of the breach • must comply with the requirements of the Pension Regulator's Code of Practice and any contractual agreements

Administration Limited (LPPA)[2]	• report any breaches to the LCPF Governance team or LCC's Information Governance Team
LCPF Finance	• ensure employer contributions are collected each month from scheme employers • report any contribution breaches to the LCPF Governance team • manage any contribution incidents
LCC Information Governance Team	• manage information security incidents in line with LCC's Information Security Incident Management Policy[3] • investigate and manage all Fund related data breaches, liaising with the Fund as required. • forward a copy of the eForm notification directly to the Fund mailbox (LCPFBreaches@lancashire.gov.uk) • provide technical advice and support to the Fund as required about their legal obligations and to ensure that any processing of personal data by the council is lawful
LCPF Governance Team	• monitor data breaches and work with the Information Governance team as required to support their investigations. • Investigate all code of practice breaches. All breaches will be reported as necessary to the Head of Fund. • ensure that the reporter is kept updated on the progress of any investigation. If a decision is taken not to report the breach, and the reporter is not satisfied with that outcome, the reporter retains the option to report the breach direct to the Pension Regulator or Information Commissioner.
Head of Fund	• make the final decision regarding reporting of a breach to either the Pension Regulator or Information Commissioner's Office • consult with LCC's Senior Information Risk Owner (SIRO) or Data Protection Officer regarding their decision to report any data breaches.
Pension Fund Committee Members, Local Pension Board Members and Fund Officers	• responsibility to report breaches
Director of Corporate Services	• see section 7.1

A suspected breach should not be referred to any individual if doing so will alert any person responsible for a possible serious offence to the investigation (as highlighted in section 2). If that is the case, the individual should report the matter directly to The Pensions Regulator or Information Commissioner as appropriate, setting out the reasons for reporting, including any uncertainty – a

[2] LPPA and LPPI provide pensions administration services and pooled investment services to the Pension Fund. LPPI also manage all non-pooled investments.
[3] Applies to all Lancashire County Pension Fund Members and employees and all LPP employees working in Local Pensions Partnership.

telephone call to the Regulator or Information Commissioner before the submission may be appropriate, particularly in more serious breaches.

6. Notification of a breach to the Fund

All suspected/actual breaches should be reported to the Fund at the earliest opportunity to ensure the matter is resolved as a matter of urgency.

6.1 Any data breaches should be reported to the Information Governance Team through the completion of an eform on the LCC website – 'Information Security Incident Reporting Form'. These will be investigated by LCC's Information Governance team and reported to the LCPF Governance team for monitoring purposes. In practice, LPPA will mainly report data breaches. However, it is possible that other parties could report.

6.2 Any breaches relating to the TPR's Code of Practice, including contribution breaches should be reported to the LCPF Governance team through completion of 'LCPF Breaches Reporting eForm' on the LCC website and will be received directly for investigation by the LCPF Governance team. In practice, LPPA will mainly report Code of Practice breaches and LCPF Finance will report contribution breaches.

6.3 However, it is possible that other parties could report.

The 'reporter' must provide the date of the incident, a description of the suspected breach, the potential impact on operations or the individual and whether they believe the breach is of material significance.

7. Procedure for reporting breaches

This section outlines the procedure to follow when a breach is reported to the Fund or Information Governance Team including the process for reporting to the Pension Regulator or Information Commissioner (ICO). This is summarised in appendix B.

7.1 **Check there is reasonable cause to report a breach**
Individuals need to have reasonable cause to believe that a breach has occurred, not just a suspicion. Where a breach is suspected, the individual may need to refer to regulations and guidance when considering whether or not to report a possible breach. Some of the key provisions are listed below:

- Section 70(1) and 70(2) of the Pensions Act 2004: www.legislation.gov.uk/ukpga/2004/35/contents
- Employment Rights Act 1996: www.legislation.gov.uk/ukpga/1996/18/contents
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 www.legislation.gov.uk/uksi/2013/2734/contents/made
- Public Service Pensions Act 2013: www.legislation.gov.uk/ukpga/2013/25/contents
- Local Government Pension Scheme Regulations (various): http://www.lgpsregs.org/timelineregs/Default.html (pre 2014 schemes) http://www.lgpsregs.org/index.php/regs-legislation (2014 scheme)
- The Pensions Regulator's Code of Practice 14: Code 14 Public service pension code of practice | The Pensions Regulator
  In particular, individuals should refer to the section on 'Reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, the section of the code on 'Maintaining contributions'.

- The UK General Data Protection Regulations (GDPR):
  Guide to the UK General Data Protection Regulation (UK GDPR) | ICO

Further guidance and assistance can be provided by the Director of Corporate Services in carrying out any immediate or necessary checks, provided that in carrying out such checks those implicated in any potential breach are not alerted. This is highly unlikely given that the Director of Corporate Services, whilst an officer of the County Council, is largely independent from the Fund and its day-to-day operations. Where there is any doubt reporters should contact The Pensions Regulator or Information Commissioner direct. See Paragraph 3.8 below.

The Director of Corporate Services may be able to provide guidance on particularly complex cases. Information may also be available from national resources such as the Scheme Advisory Board or the LGPC Secretariat (part of the LGA Group - http://www.lgpsregs.org/). If timescales allow, legal advice or other professional advice can be sought, and the case can be discussed at the next Local Pension Board meeting.

Where the individual does not know the facts or events, they should raise their concerns as soon as possible with the LCPF Governance Team. 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.

7.2 **Determine whether the breach is of material significance**

As per the Code of Practice 14 guidance, the determination of whether a breach is likely to be of material significance should be considered and 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; and
- Wider implications of the breach.

A decision tree from the Pension Regulators website helps to set out the process for considering whether or not a breach has taken place and whether it is materially significant and therefore requires to be reported. This can be found at 'Appendix A'. More detailed guidance can be accessed from the link below:
Pensions Regulator – Complying with the duty to report breaches of the law

In respect of a data breach, you should consider the likelihood and severity of the risk to people's rights and freedoms, following the breach.

7.3 **Take swift action**

The Pensions Act and Pension Regulators Code of Practice 14 require that if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable. Individuals should not rely on waiting for others to report and nor is it necessary for a reporter to gather all the evidence which The Pensions Regulator may require before taking action. A delay in reporting may exacerbate or increase the risk of the breach. 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 scheme, for instance, where there is any 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.

In respect of personal data breaches these should be reported to the Information Commissioner without undue delay (if it meets the threshold for reporting) and within 72 hours.

7.4 **Report a Code of Practice breach to the Pension Regulator**

Reports must be submitted in writing via The Pensions Regulator's online system at www.tpr.gov.uk/exchange , or by post, email or fax, and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Reporters should ensure they receive an acknowledgement for any report they send to The Pensions Regulator. The Pensions 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 Pensions Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- Full scheme name (Lancashire County Pension Fund);
- Description of breach(es);
- Any relevant dates;
- Name, position and contact details;
- Role in connection to the scheme; and
- Employer name or name of scheme manager (the latter is Lancashire County Council).

If possible, reporters should also indicate:

- The reason why the breach is thought to be of material significance to The Pensions Regulator,
- Scheme address (Lancashire County Pension Fund, PO Box 100, County Hall, Preston, PR1 0LD)
- Scheme manager contact details, i.e. Lancashire County Council
- Pension scheme registry number (10034132); and
- Whether the breach has been reported before.

The reporter should provide further information or reports of further breaches if this may help The Pensions Regulator in the exercise of its functions. The Pensions Regulator may make contact to request further information.

Confidentiality

If requested, The Pensions Regulator will do its best to protect a reporter's identity and will not disclose information except where it is lawfully required to do so. If an individual's employer decides not to report and the individual employed by them disagrees with this and decides to report a breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report in good faith.

7.5 **Report a data breach to the Information Commissioner (ICO)**

You do not need to report every breach to the Information Commissioner and should consider the likelihood and severity of the risk to people's rights and freedoms, following the breach. If a risk is likely, you must notify the Information Commissioner; if a risk is unlikely, you don't have to report it. However, if you decide you don't need to report the breach, you need to be able to justify this decision, and document it.

A personal data breach should be reported to the Information Commissioner without undue delay (if it meets the threshold for reporting) and within 72 hours. Further guidance regarding how to respond to a personal data breach can be found here 72 hours - how to respond to a personal data breach | ICO

Reports can be made by calling the Information Commissioner helpline on 0303 123 1113 or by completing an on-line Form. Further guidance can be found on the following webpage:
UK GDPR data breach reporting (DPA 2018) | ICO

You will be required to provide details of what has happened, when and how you found out about the breach, the people that have or may have been affected, what you're doing in response and contact details in the event the ICO need more information.

8. Recording of breaches

An automated report of all breaches that have been notified via eForms will be provided to the Fund team on a regular basis. In addition, LPPA summarise any breaches occurring via administration activities in their monthly Risk and Compliance report.

A record of the breaches will be retained by the Fund including details of breaches that don't require reporting to the Pension Regulator or Information Commissioner.

The record of past breaches may be relevant in deciding whether to report a future breach (for example it may reveal a systemic issue).

9. Reporting to Local Pension Board and Pension Fund Committee

The LCPF Governance Team will ensure that a report is presented to each meeting of the Local Pension Board setting out:

- All breaches, including those reported to the Pensions Regulator or Information Commissioner and those unreported, with the associated dates.
- In relation to each breach, details of what action was taken and the result of any action (where not confidential).
- Any future actions for the prevention of the breach in question being repeated.

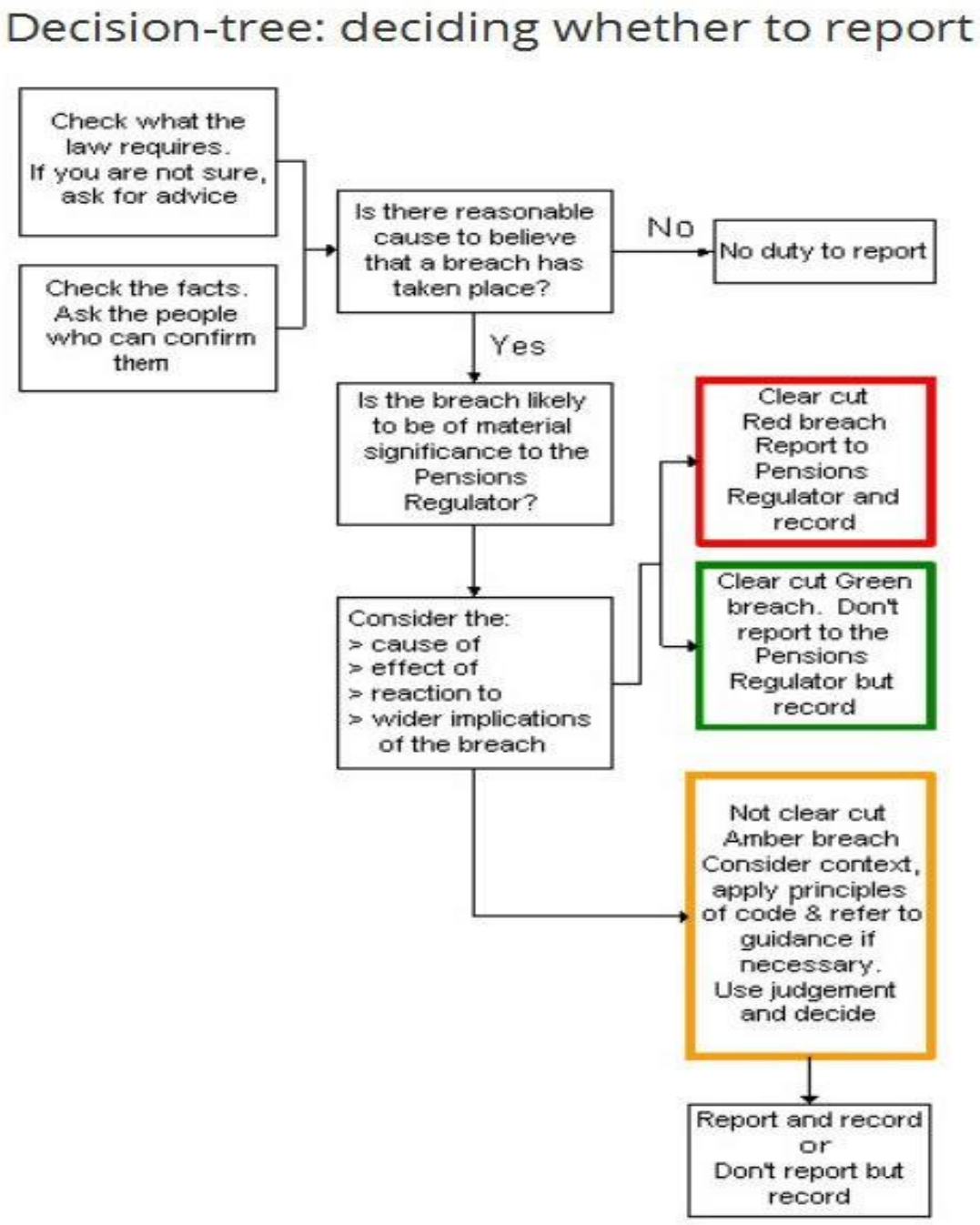
The LCPF Governance Team will ensure that a summary report is presented each year to the Pension Fund Committee on breaches. In addition, if a breach is deemed reportable to the Pensions Regulator or Information Commissioner, the Pension Fund Committee will be informed of this at its nearest quarterly meeting.

This information will also be provided upon request by any other individual or organisation (excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings).

10. Review

This policy and procedure will be kept under review and updated as considered appropriate by the LCPF Governance Team, in consultation with the Head of Fund and Director of Corporate Services. It may be amended as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

Appendix 'A'


Decision-tree: deciding whether to report
Check what the law requires. If you are not sure, ask for advice
Check the facts. Ask the people who can confirm them
Is there reasonable cause to believe that a breach has taken place?
No
No duty to report
Yes
Is the breach likely to be of material significance to the Pensions Regulator?
Clear cut Red breach Report to Pensions Regulator and record
Clear cut Green breach. Don't report to the Pensions Regulator but record
Consider the:
> cause of
> effect of
> reaction to
> wider implications of the breach
Not clear cut Amber breach Consider context, apply principles of code & refer to guidance if necessary. Use judgement and decide
Report and record
or
Don't report but record

Appendix 'B

Lancashire County Pension Fund
Reporting Breaches Procedure Flowchart