



## **A Procedure for Reporting Breaches of Law to the Pensions Regulator**

Effective: 1<sup>st</sup> July 2025

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## 1. Introduction

In March 2024 the Pensions Regulator (the Regulator) published its [General Code of Practice](#) (GCoP). This is not a statement of law of itself, but nonetheless it carries great weight. In some respects it is like the Highway Code, in that some of its contents refer to statutory items, whilst others are advisory. The Courts may however also rely on the latter. In the same way, if determining whether any pensions related legal requirements have been met, a court or tribunal must take into account the Code.

There are many and various laws relating to the Local Government Pension Scheme, with many and various people having a statutory duty to report material breaches of the law to the Regulator. To assist, GCoP 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 document is that procedure, which relates to all Strathclyde Pension Fund (SPF) areas of operation.

## 2. Legal requirements

Certain people are required to report breaches of the law to the Regulator 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
- the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.

People who are subject to the reporting requirement ('reporters') for public service pension schemes are:

- scheme managers
- members of the pension board
- any person who is otherwise involved in the administration of the Fund
- employers, and any participating employer who becomes aware of a breach should consider their statutory 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
- any person who is otherwise involved in advising the managers of the scheme in relation to the scheme.

Governing bodies should be satisfied that those responsible for reporting breaches are aware of the legal requirements and this code. Training should be provided for the governing body and any in-house administrators.

A person's responsibility to report breaches is not limited to those that relate to their specific role in a scheme. Regardless of the activities being undertaken, material breaches should be reported as they are identified.

## 3. Decision to report

There are two key judgements required when deciding to report a breach of law.

- a. Is there a reasonable cause to believe that there has been a breach of the law?
- b. Is the breach likely to be of material significance to the Regulator?

#### **4. Reasonable cause**

Having 'reasonable cause' to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

Reporters should ensure that where a breach is suspected, they carry out checks to establish whether or not a breach has in fact occurred. Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to consult senior officers within Strathclyde Pension Fund Office (SPFO) in the first instance regarding what has happened. The procedure set out below will be followed for all suspected breaches of the law identified within or brought to the attention of SPFO.

It may not be appropriate to check with SPFO in cases of theft, suspected fraud or other serious offences where discussions might alert those implicated or impede the actions of the police or a regulatory authority. Under these circumstances the reporter should alert the Regulator without delay.

If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.

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 Regulator may require before taking legal action. A delay in reporting may exacerbate or increase the risk of the breach.

#### **5. SPFO procedure**

The following procedure will be followed for all suspected breaches of the law identified within or brought to the attention of SPFO.

##### **5.1 Clarification of the law**

Any necessary clarification of the law around the suspected breach will be obtained. Resource available to SPFO to clarify the law includes:

- SPFO senior administration staff
- SPF Solicitor
- Glasgow City Council Legal Services Section
- Scottish Public Pensions Agency/Scottish Pensions Liaison Group
- External Counsel.

##### **5.2 Clarification of facts**

Any necessary clarification of the facts around the suspected breach will be obtained. Resource available to SPFO to clarify the facts includes:

- Altair pensions administration system and records of correspondence with members
- Electronic document retention and management system
- Financial and accounting records
- SPFO staff and relevant staff at SPF employers.

##### **5.3 Consideration of significance**

The significance of the breach, and whether or not it is material, will be considered taking into account its cause, effect, the reaction to it, and its wider implications. Further details of how each of these factors will be considered are set out at **Appendix A**.

In the first instance the Pension Scheme Manager will be the appropriate point of referral for a decision as to whether or not to report to the Regulator. More complex

cases may be referred for additional consideration by the Strathclyde Pension Fund Office Leadership Team (SPFOLT).

Some matters could be urgent, if for example a fraud is imminent, whilst others will be less so. Material breaches will wherever possible be reported to the Regulator within 10 working days of them being identified, however, reporters may use their judgment and apply 'reasonably practicable' considering such factors as the seriousness of the potential breach. Breaches that are not material will be recorded within 30 working days.

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 Fund. It is difficult to be definitive about what constitutes a breach that must always be reported, but one test is: might it reasonably lead to a criminal prosecution or a serious loss in public confidence?

#### **5.4 Recording breaches**

All breaches will be recorded, even those that are found not to be material to the Regulator. This is so that if similar breaches continue, then it will be recognised when they become material. Recording all breaches also highlights where improvements are required, to try and prevent similar breaches. All breaches material or not will be recorded on a "Breaches of Law" log devised in conjunction with the Regulator's suggested traffic light framework. The log will be stored centrally on SPFO's electronic document retention and management system (EDRMS).

#### **5.5 Reviewing breaches**

The SPFO Breaches of Law Log will be reviewed regularly by the SPFOLT. Breaches which have been reported to the Regulator will be summarised within the quarterly Administration Performance report considered by the SPF Pension Board and SPF Committee.

#### **6. Submitting a report to the Regulator**

The required form and content for any report to the Regulator are set out in **Appendix B**.

#### **7. Whistleblowing protection and confidentiality**

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. Further details are set out in **Appendix C**.

Glasgow City Council has its own whistleblowing policy. The Council's whistleblowing arrangements are managed by the Head of Audit and Inspection. Any concerns can be reported at [whistleblowline@glasgow.gov.uk](mailto:whistleblowline@glasgow.gov.uk)

### Factors in consideration of material significance

#### 1. Overview

In deciding whether a breach is likely to be of material significance to the Regulator, it would be advisable for the reporter to consider the:

- cause of the breach;
- effect of the breach;
- reaction to the breach; and
- the wider implications of the breach.

When deciding whether to report, those responsible should consider these points together. Reporters should take into account expert or professional advice, where appropriate, when deciding whether the breach is likely to be of material significance to the Regulator.

#### 2. Cause of the breach

The breach is likely to be of material significance to the Regulator where it was caused by:

- dishonesty;
- poor governance or administration;
- slow or inappropriate decision making practices;
- incomplete or inaccurate advice; or
- a deliberate act or failure to act

#### 3. Effect of the breach

The Regulator considers a breach to be materially significant where the effects include any of the following:

- A significant proportion of members, or a significant proportion of members of a particular category of membership, are affected by the breach.
- The breach has a significant effect on the benefits being paid, to be paid, or being notified to members.
- The breach, or series of unrelated breaches, have a pattern of recurrence in relation to participating employers, certain members, or groups of members.
- Governing bodies that do not have the appropriate degree of knowledge and understanding, preventing them from fulfilling their roles and resulting in the scheme not being properly governed and administered and/or breaching other legal requirements.
- Unmanaged conflicts of interests within the governing body, making it prejudiced in the way it carries out the role, ineffective governance and scheme administration, and/or breaches of legal requirements.
- Systems of governance (where applicable) and/or internal controls are not established or operated. This leads to schemes not being run in line with their governing documents and other legal requirements.
- Risks are not properly identified and managed and/or the right money is not being paid to or by the scheme at the right time.
- Accurate information about benefits and scheme administration is not being provided to scheme members and others meaning members are unable to effectively plan or make decisions about their retirement.
- Records are not being maintained. This results in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Governing bodies or anyone associated with the scheme misappropriate scheme assets or are likely to do so.

### Factors in consideration of material significance

#### 4. 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 Regulator will not normally consider this to be materially significant.

A breach is likely to be of concern and material significance to the Regulator where a breach has been identified that:

- does not receive prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence
- is not being given the right priority by the governing body or relevant service provider
- has not been communicated to affected scheme members where it would have been appropriate to do so
- forms part of a series of breaches indicating poor governance
- it was caused by dishonesty, even when action was taken to resolve the matter quickly and effectively.

#### 5. Wider implications of the breach

Reporters should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to the Regulator. For example, a breach is likely to be of material significance where:

- the fact that the breach has occurred makes it appear more like that other breaches will emerge in the future (the reason could be that the governing body lacks the appropriate (knowledge and understanding to fulfil their responsibilities.
- other schemes may be affected, for example schemes administered by the same organisation where a system failure has caused the breach.

Those reporting a breach should consider general risk factors, such as how well-run the scheme appears to be. Some breaches that occur in a poorly administered scheme will be more significant to the Regulator than if they occurred in a well-administered scheme.

Reporters should consider other reported and unreported breaches that they are aware of. However, reporters should use historical information with care, particularly where changes have been made to address breaches already identified.

The Regulator will not usually regard a breach arising from an isolated incident as materially significant. For example, breaches resulting from teething problems, with a new system, or from an unpredictable combination of circumstances. However, in such circumstances reporters should consider other aspects of the breach, such as the severity of the effect it has had that may make it materially significant.

### Requirements for any report to the Regulator

1. Any report that is made to the Regulator can be done by using the online webform, email or by post and made as soon as reasonably practicable but in most cases, this should within 10 working days of the breach being identified. However, reporters may use their judgment and apply 'reasonably practicable' to their own circumstances and should consider such factors as the seriousness of the potential breach. The report should include the:
  - full name of the Fund;
  - 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 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 pension scheme's registry number (if available); and
    - whether the concern has been reported before.
2. 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.
3. Reporters should ensure they receive an acknowledgement for any report they send to the Regulator. Only when they receive an acknowledgement can the reporter be confident that the Regulator has received their report.
4. The 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.
5. The reporter should provide further information or reports of further breaches if this may help the Regulator to exercise its functions. The Regulator may make contact to request further information.
6. 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.



### Requirements for any report to the Regulator

7. 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.
8. More than one person may be responsible for reporting the same breach. Those who have a duty to report should be aware this is not automatically discharged by another party reporting the breach. Reporters should avoid making duplicate reports where possible. Where multiple reporters wish to submit a collective report, the reporting procedure should allow for the evaluation of breaches as described in the code of practice. The report should be made as soon as reasonable practicable.
9. Reporters should consider any other bodies to which there may be a duty to report. Where the duty to report to another body coincides with the duty to report to TPR, the report to TPR should include details of the other bodies the matter has been reported to.

### Reporting payment failures

#### 1. Managing overdue contributions – SPFO Procedure

- contributions should be paid to the Fund by the 19<sup>th</sup> of the month following deduction.
- all employers are monitored on a monthly basis to ensure payment has been received
- should contributions be late/absent SPFO would contact employer promptly to alert them to the payment failure and to seek to resolve the overdue payment. SPFO would identify the reason for payment failure, agree solution and timescale for payment
- a record of all investigations will be maintained and stored centrally on the electronic document retention and management system
- one-off payment failures or administrative errors should be corrected within 90 days of the due date
- all cases of payment failure will be closely monitored to ensure reoccurrence does not apply
- cases that remain outstanding will be escalated to the Director of Strathclyde Pension Fund.

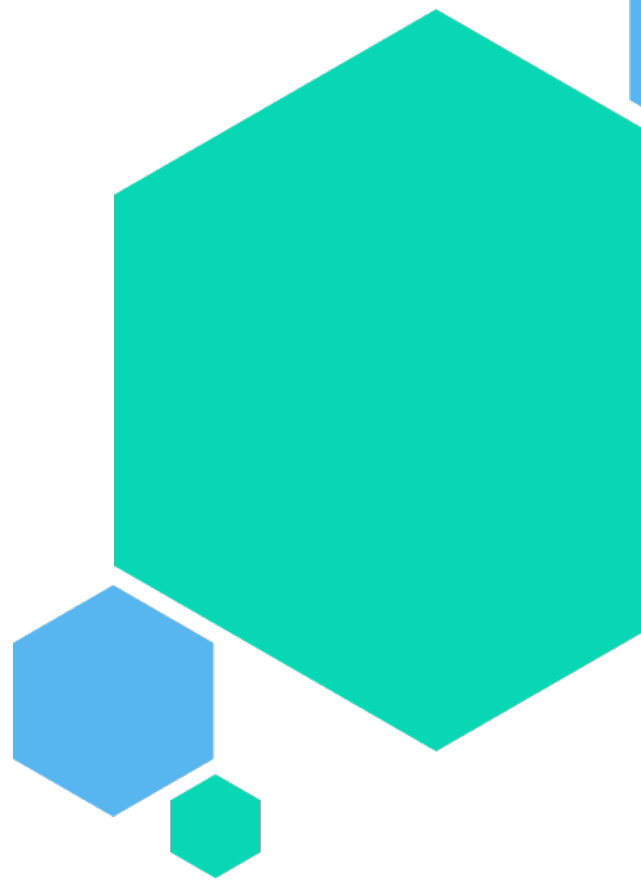
#### 2. Reporting payment failures which are likely to be of material significance to the regulator

SPFO is likely to report instances to TPR:

- where contributions have been outstanding for 90 days from the due date (unless the payment failure was a one-off or infrequent administrative error, which had already been corrected on discovery or is thereafter corrected as soon as possible);
- where SPFO has reasonable cause to believe that the employer is neither willing nor able to pay contributions, for example in the event of a business failure or where an employer becomes insolvent and is unable to make pension payments;
- where there is a payment failure involving possible dishonesty or a misuse of assets or contributions. For example, where schemes have concerns that an employer is retaining and using contributions to manage cash flow difficulties or where SPFO have become aware that the employer has transferred contributions elsewhere other than to the pension scheme, which may be misappropriation;
- where the information available to SPFO may indicate that the employer is knowingly concerned with the fraudulent evasion of the obligation to pay employee contributions;
- where SPFO becomes aware that the employer does not have adequate procedures or systems in place to ensure the correct and timely payment of contributions due and the employer appears not to be taking adequate steps to remedy the situation, for example where there are repetitive and regular payment failures.

**Confidentiality**

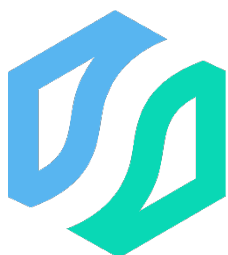
1. The Pensions Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report.
2. The Regulator understands the potential impact of a report on relationships, for example, between an employee and their employer.
3. The 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.
4. The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing report to us. If individuals that are employed by firms with a duty to report, disagree with a decision not to report, they may have protection under the ERA if they make an individual report in good faith.
5. The Regulator will take all responsible steps to protect a reporter's identity and maintain confidentiality, when a report is made in confidence. They will not disclose any information except where lawfully allowed to do so.
6. In all cases, reporters should act conscientiously and honestly, and to take account of expert or professional advice where appropriate.



**Email: [spfo@glasgow.gov.uk](mailto:spfo@glasgow.gov.uk)**

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