

WILTSHIRE COUNCIL

WILTSHIRE PENSION COMMITTEE

10 December 2015

Breaches Procedure Policy Guidelines

Purpose of the Report

1. The purpose of this report is for the Committee to consider the attached draft Breaches Policy Guidelines and adopt these based on the recommendation from the Local Pension Board (LPB).

Background

2. There is a legal requirement on all LPB Members (as well as the Pension Fund committee Members, officers of the Fund, employers, and advisers) to report any significant breaches of the law to the Pensions Regulator (tPR) where they are likely to be of material significance to them.
3. The tPR Code of Practice no 14 (Governance and administration of public service pension schemes) states there should be a procedure in place within each Fund to identify and assess these breaches.
4. The attached Breaches Policy Guidelines set out these responsibilities and provide a framework for the Fund to identify, manage and where necessary report breaches of the law applying to the management and administration of the Fund.
5. Where a breach of the law is identified both the Council (Scheme Manager) and the LPB will need to take all necessary steps to consider the breach and if necessary report to tPR.
6. This Committee under its delegated authority as Scheme Manager will be required to monitor all breaches and ensure that adequate resources are allocated to managing and administering this process.
7. Officers will effectively be responsible for the management and execution of these guidelines and ensuring that training is conducted for all relevant officers, elected members, Members of the LPB and Wiltshire Pension Fund Committee at induction and on an ongoing basis.

Considerations for the Committee

Breaches Policy

8. The identification, management and reporting of breaches is important. It is a requirement of the Pensions Act 2004 and tPR's Code of Practice; failure to report a breach without "reasonable excuse" is a civil offence that can result in civil penalties.
9. At the same time, in addition to identifying, rectifying and where necessary reporting a particular breach it provides an opportunity to learn from mistakes and review and improve processes in the areas where the breach occurred.

10. All staff are required, to take a pro-active approach to the identification, management and reporting of all breaches that have occurred, or are likely to occur. A log will be maintained of all breaches of the law as applicable to the management and administration of the Fund.
11. The Wiltshire Pension Fund and the LPB cannot rely on waiting for other reporters to report a breach where it has occurred. Where a breach has occurred and has been identified it should be recorded, assessed and where necessary reported as soon as reasonably practicable. The Breaches Policy Guidelines provide a framework to achieve this.
12. The Guidelines define what a breach of the law is, the responsibilities on those who should be reporting, the requirements for reporting a breach, and deciding if a breach is “materially significant” to be reported to tPR.
13. This document was produced by officers in conjunction with Wiltshire Council legal services and Hymans Robertson. The LPB have reviewed this document to ensure it adheres to the Regulations, received training on its application and at its meeting on 22 October 2015 agreed the attached version is recommended to this Committee for adoption.

Process

14. Any breach identified should be reported initially to the Head of Pensions who will initially investigate and assess the severity. If a breach has occurred, it will be logged, then reported to the Chairman of the LPB and in conjunction with relevant colleagues agree a proposed course of action to rectify and put in place measures to prevent recurrences.
15. The Breaches Log will be reported quarterly as part of the Committee cycle and monitored by the LPB.
16. If any breach is considered significant or not clear as to whether it is significant then it will be reported to Committee and the LPB to consider. The Section 151 officer will make the final determination as to whether its materially significant having regard to the guidance set out in the Code and after consultation with the Head of Legal Services, if considered appropriate by the Committee and LPB.
17. The LPB recommended that breaches are published in the Annual Report and also on the Fund’s website. The LPB also recommended that any future amendments to the Breaches Policy is reported to them as these guidelines need to be kept under review.
18. The Head of Pensions will provide further training for all Committee members on the Breaches Policy as part of the on-going Members training plans.

Responsible Officer

19. The attached policy appoints the Section 151 officer as the senior officer responsible for the management and execution of this framework. At its meeting on 22 October 2015, the LPB discussed whether the Monitoring Officer should undertake this role and recommended the Committee consider this. The argument surrounded the potential conflict of interest for the Section 151 officer in its role as Treasurer to the Fund. Officers feel that any potential conflict can be managed, as indeed the Section 151 officer already wears the two conflicting “caps” as Associate Director for Finance to Wiltshire Council along with the role of Treasurer to the Pension Fund.

20. Officers view the Section 151 officer is better placed to understand and assess any potential breach while the proposed policy also provides a safeguard should a significant breach not be reported to tPR.

Environmental Impact of the Proposal

21. Not applicable.

Financial Considerations & Risk Assessment

22. There are no significant financial implications from this report.

23. The implementation of these Guidelines will mitigate the risk of the Fund breaching the Regulations and failing to report this or taking appropriate remedial action.

Legal Implications

24. Wiltshire Council Legal Services have been consulted and have assisted with drafting the Guidelines. The Guidelines will ensure compliance with tPR Code of Practice.

Safeguarding Considerations/Public Health Implications/Equalities Impact

25. There are no known implications at this time.

Reasons for Proposals

26. To ensure the Fund has a policy to address breaches of legislation in respect of the administration and governance of the Wiltshire Pension Fund.

Proposals

27. The Committee is asked to:

- a) to consider whether the Section 151 officer or Monitoring Officer should be the senior responsible for reporting breaches;
- b) to review the attached Breaches Policy Guidelines and to recommend its adoption for the Wiltshire Pension Fund.
- c) to agree that a summary of breaches are published in the Fund's Annual Report and on its website; and
- d) to undertake further training on the Breaches Policy as part of Members Training Plan.

MICHAEL HUDSON
Treasurer to the Pension Fund

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Unpublished documents relied upon in the production of this report: NONE