

# SCOTTISH BORDERS COUNCIL PENSION FUND BREACHES POLICY

Finance  
Pension Fund  
Version 2024 1.0  
Presented: Joint Pension Fund Committee and Pension Board  
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# 1. Introduction

The Breaches Policy for the Scottish Borders Council Pension Fund, Local Government Pension Scheme (LGPS) outlines the procedures for identifying, reporting, and managing breaches of legal or regulatory obligations in the administration and management of the scheme. The policy ensures that the scheme operates in full compliance with relevant legislation and regulatory guidance, and that any breaches are promptly addressed and rectified to minimise risks to members, employers, and the scheme's reputation.

- **Purpose:** This policy sets out the approach for identifying, reporting, and managing breaches of the law in the administration of the Scottish Borders Council Pension Fund (the Fund), Local Government Pension Scheme (LGPS). It ensures that any potential breaches are dealt with appropriately and in a timely manner, in compliance with relevant statutory and regulatory requirements.
- **Scope:** This policy applies to all officers, trustees, administrators, and stakeholders involved in the management of the LGPS.

## 2. Definition of a Breach

- A breach is any failure to comply with legal, regulatory, or governance obligations that apply to the LGPS. This includes, but is not limited to, breaches of:
- The Pensions Act 1995 (including the requirement to act in the best interests of members).
  - The Public Service Pensions Act 2013.
  - The LGPS Regulations.
  - The Financial Services and Markets Act 2000.
  - Other related legislation or regulations.
- **Material Breach:** A breach that could have a significant impact on the scheme's ability to meet its obligations to members or affect the rights of scheme members or beneficiaries.

## 3. Identifying Breaches

- **Types of Breaches:** Examples of potential breaches include, but are not limited to:
  - **Late payment of contributions:** Failure to remit employer or member contributions on time.
  - **Late provision of benefits:** Delays in processing retirement benefits, transfers, or death benefits.
  - **Failure to comply with regulatory filing requirements:** Missing deadlines for regulatory submissions, such as the Annual Benefit Statement.
  - **Investment policy violations:** Breaching the fund's investment policy or limits on specific asset types.
  - **Governance issues:** Failure to comply with governance procedures or conflicts of interest among decision-makers.

- **Reporting failures:** Not meeting regulatory reporting requirements, such as notifying members of their pension rights.

## 4. Reporting Breaches

- **Internal Reporting:** Any officer, trustee, or administrator who identifies a potential breach must report it immediately to the Scheme Manager (or the designated officer), who is responsible for investigating the breach.
- **Record of Breaches:** The Scheme Manager will maintain a register of all reported breaches and document the outcome of investigations.
- **Pensions Regulator:** If a material breach is identified that is likely to have a serious impact on the scheme or members' interests, the Scheme Manager is responsible for reporting the breach to the Pensions Regulator (TPR) in accordance with the statutory requirement set out in the Pensions Act 2004.

## 5. Whistleblowing protection and confidentiality

- It is a statutory duty to report breaches of the law. The Regulator will do its best to protect a reporter's identity and will not disclose the information except where lawfully required to do so. Given the statutory duty that exists in exercising this breaches policy, the Council will ensure that it adheres to the Employment Rights Act 1996, amended by the Public Interest Disclosure Act 1998, which provides protection for employees making a whistleblowing disclosure to the Regulator.
- The duty to report, however, does not override 'legal privilege' so oral and written communications between the Council or Pension Board and a professional legal adviser do not have to be disclosed.

## 6. Investigation of Breaches

- **Initial Review:** The Scheme Manager (or designated officer) will assess whether the breach is material and whether it needs to be reported to external regulators.
- **Assessment Criteria:** The assessment will consider factors such as:
  - The seriousness of the breach.
  - Whether it impacts members' benefits or rights.
  - Whether the breach is likely to cause reputational damage.
  - Whether the breach involves a systemic failure or is an isolated incident.
- **Action Plan:** If a breach is deemed to be material, the Scheme Manager will take corrective actions to address the issue and prevent recurrence. This may include:
  - Correcting the error and compensating members if necessary.
  - Strengthening internal controls and procedures.
  - Providing staff or trustees with additional training.

## 7. Reporting to the Pensions Regulator (TPR)

- **Material Breaches:** A breach is considered material if it could have a significant impact on the administration of the pension scheme or on members' interests. In such cases, the Scheme Manager must report the breach to The Pensions Regulator as soon as it becomes aware of the breach.
- **Reporting Timeline:** The breach should be reported within two months of it being identified as material.
- **Content of the Report:** The report to TPR should include:
  - A description of the breach.
  - The date the breach occurred or was discovered.
  - The actions taken to remedy the breach.
  - The reasons for the breach, if known.
- **Non-Material Breaches:** Non-material breaches may not need to be reported to TPR, but they should still be documented and addressed as part of internal governance.

## 8. Action for Non-Compliance

- **Failure to Report:** Any failure by an individual or officer to report a breach in accordance with this policy may result in disciplinary action or removal from responsibilities.
- **Failure to Take Corrective Action:** If the breach is not addressed appropriately or in a timely manner, the Scheme Manager or responsible individual could face review by the governing body, and disciplinary or remedial actions may be initiated.

## 9. Preventative Measures

- **Governance Framework:** The pension scheme's governance framework will be periodically reviewed to ensure compliance with legal and regulatory requirements.
- **Training and Awareness:** Trustees, administrators, and all responsible officers will receive regular training on regulatory requirements and the importance of identifying and reporting breaches.
- **Internal and External Audits:** Regular audits and compliance reviews will be conducted to identify potential breaches and ensure that internal processes are working as intended.

## 10. Record Keeping and Documentation

- A Breaches Register will be maintained by the Scheme Manager to log all breaches, their status, corrective actions taken, and whether the breach was reported to The Pensions Regulator.
- The register will be regularly reviewed by the governing body to ensure that all breaches are properly managed.

## 11. Conclusion

- Ensuring compliance with legal, regulatory, and governance obligations is crucial to the effective operation of the Local Government Pension Scheme. This Breaches Policy is designed to promote transparency and accountability and to ensure that any breaches are swiftly addressed to minimise potential harm to the scheme and its members.
- The policy will be reviewed periodically and updated as necessary to reflect changes in the regulatory environment or best practice.

## VERSION CONTROL TABLE

Version	Nature of Amendment	Date of Change	Author
2024 1.0	Creation of Pension Fund Breaches Policy	28 November 2024	Jill Murray

You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jill Murray can also give information on other language translations as well as providing additional copies.

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