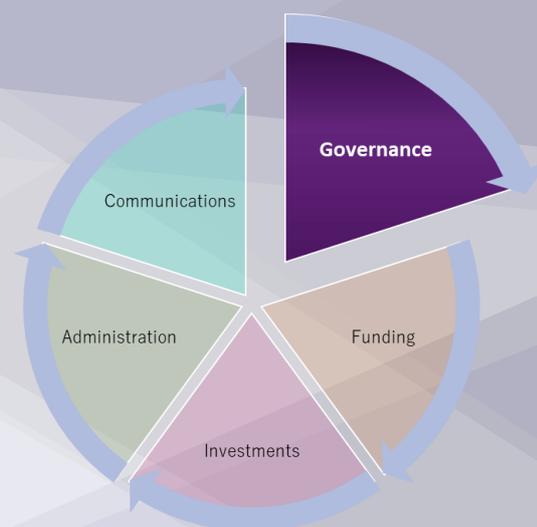


Policy for Recording and Reporting Breaches of the Law

September 2020



Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

Background and Introduction

This Policy sets out the procedure to be followed by certain persons involved with the Essex Pension Fund (the “**Fund**”) in relation to identifying, recording and where necessary reporting breaches of the law to the Pensions Regulator (the “**Regulator**”).

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

The procedure set out in this Policy has been developed to:

- assist the Fund in ensuring it is aware of all breaches of the law in relation to the Fund and that these are appropriately recorded and then dealt with; and
- assist those individuals who have a legal responsibility to report certain breaches to the Regulator in determining whether a breach they have identified should be reported.

Requirements and to whom this Policy applies

The following persons, or any other person who has responsibility to report breaches of the law in relation to the Fund, are strongly encouraged to follow this Policy should they identify such a breach:

- all members of the Essex Pension Fund Strategy Board (PSB), Investment Steering Committee (ISC) and Essex Pension Fund Advisory Board (PAB);
- all Officers involved in the management or administration of the Fund including the Fund’s Management Team, Director for Essex Pension Fund, the Monitoring Officer and the Executive Director Finance and Technology (Section 151 Officer);
- any professional Advisers or Suppliers including, Actuaries, Investment Institutional Consultants, Independent Investment Advisers, Independent Governance and Administration Advisers, Legal Advisers, Fund Custodians, Investment Managers and Administration Software Providers¹;
- Internal and External Auditors;
- Officers of Employers participating in the Fund who are responsible for pension matters.

Throughout this Policy, any person to whom this Policy applies, as a result of them identifying a breach or potential breach, will be referred to as the "individual".

¹ However, these Advisers should note that the application of this Policy relates to the reporting of legal breaches relating to the administration of the Fund, rather than any breaches relating to their role and responsibilities that do not affect the administration of the Fund. For example, if an investment manager has breached the investment association guidelines, then this would not be reportable under this Essex Pension Fund Policy for Reporting Breaches (albeit the Administering Authority would still expect this information to be recorded separately and notified to it).

Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

An individual has a legal responsibility to report a matter to the Regulator as soon as is reasonably practicable if they have reasonable cause to believe that:

- a) a legal duty 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 Regulator.

However, under this Policy, the individual would be expected to report the matter to the Director for Essex Pension Fund or Technical Hub Manager for their assistance in the first instance, provided that requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

A person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse.

The duty to report breaches under the Pensions Act 2004 (the “Act”) overrides any other duties the individuals listed above may have. However, the duty to report does not override ‘legal privilege’².

Practical guidance in relation to this legal requirement is provided in the [Regulator’s Code of Practice](#) including in the following areas:

- implementing adequate procedures to consider and record breaches;
- judging whether a breach must be reported;
- submitting a report to the Regulator;
- whistleblowing protection and confidentiality.

Even where a breach of the law is not required to be reported, it is important that it is notified to the Director for Essex Pension Fund or the Technical Hub Manager so that it can be assessed and recorded.

Essex Pension Fund Breaches Procedure

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess, record and report (if appropriate) a breach of the law relating to the Fund. It reflects the guidance contained in the Regulator’s Code of Practice.

It aims to ensure individuals responsible are able to meet their legal obligations and avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk.

There are four key steps to this procedure:

² Legal privilege 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.

Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

Understanding the law and what is a breach

Individuals may need to refer to regulations and guidance when considering whether or not there has been a breach of the law. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004;
- Employment Rights Act 1996;
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations);
- Public Service Pension Schemes Act 2013;
- Local Government Pension Scheme Regulations pre 2014 schemes and 2014 scheme; and
- The Pensions Regulator's Code of Practice.

Further guidance and assistance can be provided by the Director for Essex Pension Fund, provided that requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

Determining whether a suspected breach is an actual breach

Individuals need to have reasonable cause to believe that a breach of the relevant legal provision has occurred, not just a suspicion. Where a breach is suspected the individual should carry out further checks to confirm the breach has occurred.

Where the individual does not know the facts or events, it will usually be appropriate to check with the Director for Essex Pension Fund, Technical Hub Manager or other Management Team member who are able to explain what has happened. 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 Regulator should be contacted without delay.

Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

Determining whether the breach is likely to be of material significance and so should be reported to the Regulator

Should an individual have reasonable cause to believe that a breach of the law has occurred, they must then decide whether that breach is likely to be of material significance to the Regulator, and therefore should be reported to the Regulator. To do this, 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.

The Director for Essex Pension Fund can assist with determining whether the breach should be reported and can also assist in completing the document to report the breach. However, the individual is ultimately responsible for determining what should be included in the report and for submitting the report to the Regulator.

Recording the breach, even if it is not reported, so that remedial steps can also be monitored

The Director for Essex Pension Fund will maintain a log of all breaches identified and the breaches log may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). Therefore, individuals should provide the following information to the Director for Essex Pension Fund so that all identified breaches can be recorded:

- copies of reports submitted to the Regulator; and
- copies of information relating to any other breach the individual has identified.

A key purpose of the breaches log is to ensure there is a clear record of what action has been taken to resolve that breach but also to ensure that the necessary controls have been put in place to ensure that the breach does not reoccur.

Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

Further details on the above four considerations in determining the significance of a breach can be accessed [here](#).

In addition, the individual should use the [traffic light framework](#) to help assess the material significance of a breach and to formally support and document their decision.

Where a breach has been identified relating to the Fund, including a breach identified by a Supplier or Adviser, the individual in relation to the identification of the breach must alert the Director for Essex Pension Fund immediately. They must produce a preliminary report setting out an assessment of the breach. The preliminary assessment must contain;

- the circumstances leading to the breach;
- the impact and scale of the breach, both financial and with regard to the impact of service on members or other affected persons/organisations;
- the steps that have been taken to rectify the breach; and
- a preliminary assessment, based on the Regulator's traffic light flowchart, of the materiality of the breach.

The Director for Essex Pension Fund can assist with the production of this report.

For the avoidance of doubt all breaches of the law (regardless of whether they are deemed material) must be reported to the Director for Essex Pension Fund in this way.

Reporting a breach to the Essex Pension Fund and Pensions Regulator

Reports must be submitted to the Director for Essex Pension Fund, Jody.evans@essex.gov.uk and copied to the Fund's Technical Hub Manager David.tucker@essex.gov.uk.

If the individual decides the breach is of material significance to the Regulator, reports must also be submitted in writing via the Regulator's online system at <https://login.thepensionsregulator.gov.uk>, or by post, or email and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Further details on how to report can be found on the Pensions Regulator website <https://thepensionsregulator.gov.uk>.

The Act and the Regulator's Code require that, if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable.

Confidentiality

If requested, the Regulator will do its best to protect the identity of an individual who has reported a breach and will not disclose information except where it is lawfully required to do so.

An employee may also have protection under the Employment Rights Act 1996 if they make a report in good faith in relation to their employer.

Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

Reporting to the Essex Pension Fund Strategy Board

Material breaches which have been reported to the Regulator will be included within the Fund's Scorecard and reported to the PSB on a quarterly basis. This information will also be shared with the PAB.

Training

The Director for Essex Pension Fund will ensure that all relevant Officers and Members of the PSB, ISC and PAB receive appropriate training on this Policy at the commencement of their employment or appointment to the PSB or PAB as appropriate and on an ongoing basis.

Suppliers and Advisers must ensure that all staff with responsibilities in relation to the Fund receive appropriate training with regard to this Policy and their obligations under it. They must advise the Director for Essex Pension Fund immediately if they do not feel they have the appropriate training to discharge their responsibility, and training will be arranged for them by the Director for Essex Pension Fund.

Approval and Review

This Recording and Reporting Breaches Policy was approved on 23 September 2020 by the PSB. It will be formally reviewed and updated by the PSB at least every three years or sooner if breaches arrangements or other matters included within it merit reconsideration, including if there are any changes to the LGPS or other relevant Regulations or Guidance which need to be taken into account.

Further Information

If you require further information about reporting breaches or this Policy or wish to discuss reporting a breach, please contact:

David Tucker, Technical Hub Manager, Essex Pension Fund
Email – David.tucker@essex.gov.uk

Jody Evans, Interim Director for Essex Pension Fund
Email – Jody.evans@essex.gov.uk

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