



GMPF Breaches of the Law Policy

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1. Introduction

1.1 The purpose of this policy

This policy details GMPF's approach to identifying, recording, monitoring, and reporting breaches of the law. Its purpose is to ensure that all GMPF officers and trustee members understand GMPF's procedures and approach, to ensure GMPF meets the expectations and requirements of the Pensions Regulator. This policy will be reviewed annually.

1.2 To whom it applies

This policy applies to:

- all GMPF officers
- all GMPF statutory officers (Tameside MBC Head of Paid Service, Section 151 Officer, and Monitoring Officer)
- all GMPF trustee members and advisors.

1.3 Aims

The main aims of this policy are to:

- ensure all parties are clear on the procedures they must follow when a breach of the law arises
- assist those individuals who have a legal responsibility to report certain breaches to the Pensions Regulator to do so.

1.4 Why it is required and why it is important

Pensions Act 2004

An individual has a legal responsibility to report a matter to the Pensions Regulator as soon as 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 Pensions Regulator.

Section 70 of the Pensions Act 2004 (the Act) imposes this requirement on the following persons:

- a trustee or scheme manager of an occupational, personal pension scheme or public service pension scheme (for GMPF the relevant scheme manager is Tameside MBC)
- a member of the pension board of a public service pension scheme
- a person who is otherwise involved in the administration of an occupational or personal pension scheme
- the employer in relation to an occupational pension scheme
- a professional adviser in relation to such a scheme

- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

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. 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 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.

The Pensions Regulator's General Code of Practice

The Pensions Regulator provides practical guidance in relation to this legal requirement in its General Code of Practice, which covers the following areas:

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

Tameside MBC Whistleblowing policy

Tameside MBC's policy on whistleblowing applies to everyone covered by this policy. This means a person can raise concerns through this procedure or similar procedures without fear of victimisation, subsequent discrimination, disadvantage, or dismissal. GMPF has created this policy to demonstrate its and Tameside MBC's commitment to transparency and creating an environment and culture of trust where individuals can raise concerns and issues safely.

Considering the Role of Other Regulators

While this policy primarily addresses GMPF's responsibility to report to the Pensions Regulator, it is important to remember that responsibilities to report breaches might be owed to other regulators or entities. For example, if GMPF were the subject of a cyber-attack resulting in a significant data breach, this would need reporting to the Information Commissioners Office and the Pensions Regulator. Those that have a duty to report should view their responsibilities holistically and consider whether there are any other interested parties who should be notified.

1.5 Approach and key principles

GMPF has established an internal 'Breaches of the Law Group' to manage and oversee all work relating to these requirements. Therefore, on a practical basis, GMPF expects individuals to report or refer any matters in the first instance to this group (unless this will cause an issue in the case of a serious offence). The group will then provide support and assistance with following the procedure.

GMPF expects individuals to refer relevant matters to the group even when the matter is not of material significance to the Pensions Regulator. This process will ensure the group can record and monitor all breaches effectively and enable it to spot recurring issues, trends, and learning opportunities.

1.6 The benefits it brings

This policy will help to ensure that:

- GMPF's approach to dealing with breaches of the law is effective and robust
- everyone is aware of their responsibilities
- we can demonstrate our approach to external bodies if needed, including the Pensions Regulator.

2. Responsibilities

2.1 Breaches of the Law Group

The Breaches of the Law Group is the primary body for discharging the functions of the Scheme Manager (Tameside MBC) under this policy. The Scheme Manager has a duty to report breaches to the Pensions Regulator, as outlined in section 1.4.

The Head of Pensions Administration is responsible for the work of this group, and for:

- Ensuring the group meets each month to consider breaches of the law.
- Ensuring all associated procedures are in place and all parties are following them.
- Reviewing these procedures regularly and updating them as required.
- Updating this policy document to reflect any changes made.
- Issuing an annual reminder to all colleagues about this policy and their responsibilities.
- Providing a report and associated information on breaches of the law each quarter to the GMPF Local Pensions Board.

All members of the Breaches of the Law Group support the Head of Pensions Administration. The membership of this Group is:

- Director of Pensions
- Assistant Director for Pensions Administration
- Head of Pensions Administration
- Head of Pension Fund Accountancy
- Strategic Lead for Employer Services
- Section Manager for Employer Data
- Section Manager for Employer Support
- Funding and Business Development Manager
- Pension Fund Accountant
- Senior Accountancy Assistant
- Other Administration Section or Team Managers (as required depending on the breaches referred to the group).

2.2 Local Pensions Board

Each member of the Local Pension Board has a duty to report breaches to the Pensions Regulator, as outlined in section 1.4.

The Pensions Regulator expects the Local Pension Board to be satisfied that those officers reporting to it and to the Regulator are aware of their responsibilities and the legal requirements. The Local Board should also consider if it is satisfied that it and GMPF officers have received sufficient training to do this successfully.

2.3 Management Panel and Advisory Panel

While the Management Panel and Advisory Panel do not have a statutory obligation to report, GMPF expects Panel members to be conversant with this policy and to be able to report a breach to the Pensions Regulator.

2.4 All parties

In all cases, the Pensions Regulator expects all parties to act consciously and honestly and to take account of expert or professional advice where appropriate. The Breaches of the Law Group will ensure all parties covered by this policy are aware of its contents and their responsibilities. GMPF stores a copy of this policy in the Policies and Procedures channel of the All in GMPF team. All parties will receive an annual reminder to re-read the policy and refresh their understanding of their role and responsibilities.

3. Breach procedures

3.1 A four-step procedure

There are four main steps to follow when dealing with breaches of the law. This four-stage procedure reflects the requirements set out by the Pensions Regulator.

The intention is to ensure this process allows individuals to meet their legal obligations and avoids placing reliance on others to report. It should function as an early warning sign of possible bad practices and reduce risk.

Appendix 1 contains a decision tree diagram to guide you through the process.

3.2 Step 1 – Understanding the law and what is a breach

You may need to refer to regulations and guidance when considering whether there has been a breach of the law. Some of the key provisions are:

- Section 70 and 70(A) 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
- The Pensions Regulator's General Code of Practice.

The Breaches of the Law Group can provide guidance and help (provided that requesting this help will not result in alerting those responsible for any serious offence where the breach is about such an offence).

3.3 Step 2 – Determining if a suspected breach is an actual breach

You must have reasonable cause to believe that a breach of the relevant legal provision has occurred, not just a suspicion. Therefore, you should undertake further checks to confirm that a breach has occurred.

If you do not know the facts or events, you should refer the matter to the Breaches of the Law Group or check with the Director of Pensions or other Management Team members who you believe can help.

However, there are some instances where it would not be appropriate to make further checks, for example, if you have become aware of theft, suspected fraud, or another serious offence by a senior member of the team. And 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, you should contact the Regulator without delay.

3.4 Step 3 – Determining if the breach is likely to be of material significance

If you have reasonable cause to believe there has been a breach of the law, you must decide whether that breach is likely to be of material significance to the Regulator. To help you do this, GMPF has a Breaches Log Materiality Assessment Criteria document (see **appendix 2**) that will help you to consider, both separately and collectively:

- The cause of the breach (what made it happen).
- The effect of the breach (the consequence(s) of the breach).
- The reaction to the breach.
- The wider implications of the breach.

The Breaches of the Law Group can assist you with determining whether you should report a breach and can help you to complete the breach reporting document. However, you are responsible for deciding what should be included in the report and for submitting the report to the Regulator.

3.5 Step 4 – Recording the breach, even if it is not reported

The Breaches of the Law Group will maintain a log of all breaches identified. The breaches log may be relevant when deciding whether to report a breach to the Regulator (for example, it may reveal a systemic issue). Therefore, you should provide the following information to the Group so that it can record all identified breaches:

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

The core purpose of the breaches log is to record the action you have taken to resolve that breach and to document the controls that have been put in place to ensure the breach does not reoccur.

3.6 Additional considerations for reporting payment failures

Where employers do not pay pension contributions on time and where the payment failure is likely to be of material significance to the Pensions Regulator, there are additional requirements that you should be aware of:

- Members should be notified of the payment failure within 30 days of reporting the breach to the Pensions Regulator.
- When notifying members, governing bodies should provide payment information that will enable members to understand what has been paid to the scheme and by whom. Allowing members to address any payment problems with their employer.

3.7 Seeking assistance or further advice

The Breaches of the Law Group and the Director of Pensions can provide advice and guidance. Where there are particularly complex cases, the Group can seek further professional advice or guidance, such as from a relevant national body or legal partner.

However, the Pensions Regulator expects you only to make immediate checks that are necessary when the breach is a serious offence, and you must avoid carrying out checks that might alert those implicated.

3.8 Timescales for reporting

The Pensions Act and The Pension Regulator require you to submit a report in writing as soon as reasonably practicable. In most cases, this should be within 10 working days of the breach being identified.

Therefore, you should not wait for others to report or wait until you have gathered all the evidence that the Pensions Regulator may require before taking action. A delay in reporting may exacerbate or increase the consequences 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 you take should reflect the seriousness of the suspected breach.

3.9 Reporting a breach to the Pensions Regulator

You must submit a report in writing through the Pensions Regulator's online system at <https://login.thepensionsregulator.gov.uk>, or by post or email, and you should mark it urgent if appropriate.

If necessary, you can call the Regulator first. You should ensure you receive an acknowledgement for any report you send to the Pensions Regulator. The Pensions Regulator will acknowledge receipt of all reports within five working days and may contact you to request further information. The Regulator will not usually inform you of any actions they take due to restrictions on the disclosure of information.

As a minimum, when reporting you should provide:

- full scheme name (Greater Manchester Pension Fund)
- description of breach(es)
- any relevant dates
- your name, position, and contact details
- your role in connection to the scheme
- employer name or name of scheme manager (the latter is Tameside MBC).

If possible, you should also indicate:

- the reason you think the breach is of material significance to The Pensions Regulator
- scheme address
- scheme manager's contact details
- pension scheme registry number (PSR – 10011751)
- whether you or someone else has reported the breach before.

You should provide information or reports of further breaches if this may help the Pensions Regulator to exercise its functions. The Pensions Regulator may contact you to request more information.

3.10 Confidentiality

If requested, the Pensions 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 required by law to do so. An employee may also have protection under the Employment Rights Act 1996 if they submit a report in good faith relating to their employer.

3.11 Breaches log records

The Head of Pensions will present a report to the GMPF Local Pension Board each quarter setting out:

- all breaches, including those reported to the Pensions Regulator and those not reported, with the associated dates
- in relation to each breach, details of the action taken and the result of any action (where not confidential)
- any future actions to prevent the situation from repeating
- new breaches which have arisen since the previous meeting.

The Local Pension Board as a group, or any individual of the Board, can decide to reach a different opinion to that of the Scheme Manager, and can report a breach to the Pensions Regulator where the Scheme Manager has decided not to. The Chair of the Board will highlight this to all members of the Board when considering the report.

4. Final summary

GMPF and all its relevant stakeholders must be aware of their responsibilities regarding breaches of the law. GMPF has a procedure for identifying, recording, monitoring, and reporting breaches of the law, which is outlined in this policy.

GMPF has a Breaches of the Law Group responsible for maintaining these procedures and ensuring all parties comply with the Pensions Act 2004 and the Pension Regulator's Code of Practice.

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