



<u>Committee and Date</u>	<u>Item</u>
Pensions Committee	
27 November 2015	<b>5</b>
10.00am	Public

## **NEW POLICY – BREACHES POLICY**

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### **1. Summary**

- 1.1 The report outlines the requirement for all individuals with a role in the LGPS (including members of the Committee, members of the Local Pension Board and officers) have a duty to report breaches of law when they have reasonable cause to believe that a breach has occurred. There should be no reliance placed on waiting for others to report breaches

The Pensions Regulator's Code of Practice, which became official guidance for the LGPS on 1st April 2015, includes practical guidance and expected standards (i.e. best practice) in relation to reporting breaches. This policy and procedure has been designed to comply with the guidance and ensure that Shropshire County Pension Fund follows best practice in this area.

### **2. Recommendations**

- 2.1 The Committee is asked to approve, with or without comment, the Breaches Policy at Appendix A.

## **REPORT**

### **3. Risk Assessment and Opportunities Appraisal**

- 3.1 Risk management is considered by Committee in making decisions under the governance arrangements outlined.
- 3.2 The recommendations contained in this report are compatible with the provisions of the Human Rights Act 1998.
- 3.3 There are no direct environmental, equalities or climate change consequences of this proposal.

- 3.4 The policy will be issued to employers and published on the Scheme's website.

#### **4. Financial Implications**

- 4.1 There are no direct financial implications arising from this report.
- 4.2 Compliance with The Pension Regulators guidance does reduce the likelihood of being fined for non-compliance or wrong doing.

#### **5. Background**

- 5.1 All individuals with a role in the LGPS have a duty to report breaches of Law when they have reasonable cause to believe that:
- A legal duty relevant to the administration of the scheme has not been, or is not being, complied with; and
  - The failure to comply is likely to be of material significance to the Regulator.
- 5.2 This includes officers of the administering authority (Shropshire Council), the Pensions Committee, Shropshire local pension board (LPB) members, scheme employers, professional advisers (e.g. actuary, fund managers) as well as any other person involved in advising the administering authority in relation to the scheme.
- 5.3 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 overrides any other duties the individuals listed above may have. However the duty to report does not override 'legal privilege'. This 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.
- 5.4 The Pensions Regulator's Code of Practice, which became official guidance for the LGPS on 1st April 2015, includes practical guidance and expected standards (i.e. best practice) in relation to reporting breaches. This policy and procedure has been designed to comply with the guidance and ensure that Shropshire LGPS follows best practice in relation to reporting breaches.
- 5.5 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 or investment-related decisions.
- 5.6 All reporters should have procedures in place to meet their reporting duty and there should be no reliance placed on waiting for others to report. Practical guidance in relation to this legal requirement is included in The Pensions Regulator's Code of Practice and this policy and procedure has been developed to reflect that guidance.

5.7. The policy and procedure set out in Appendix A details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Fund. It aims to ensure individuals responsible are able to meet their legal obligations, avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk.

## 6. Conclusion

6.1 Following approval this policy will be issued to all employers and published on the website.

6.2 All individuals with a role in the LGPS have a duty to report breaches of law when they have reasonable cause to believe that a breach of material significance to the Pensions Regulator has taken place. Where a breach is not deemed material there is a requirement to record the breach.

6.3 In line with guidance issued by the Pensions Regulator, Shropshire LGPS has developed a policy and procedure for ensuring those responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Fund.

<b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b>
<b>Cabinet Member</b> N/A
<b>Local Member</b> N/A
<b>Appendices</b> A – Breaches Policy