



**PenCom**

# WHISTLE BLOWING GUIDELINES FOR PENSIONS

*RR/P&R/08/014*

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**National Pension Commission**

## **About this Guideline**

The Whistle Blowing Guideline for Pensions is divided into six (6) sections.

Section one is the introduction, Sections two and three outline responsibilities for reporting breaches as well as actions and reactions to breaches.

The severities of breaches are categorized in the fourth Section, and the procedures for whistle blowing are spelt out in Section five. Section six addresses enforcement issues.

The requirements of this Code are consistent with the Provisions of the Pension Reform Act, 2004 and are also considered enforceable within the industry.

## **Review and Enquiries**

These Guidelines shall be subject to review by the Commission from time to time as the need arises.

All enquiries regarding these Guidelines shall be directed to the Director General, National Pension

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## WHISTLE BLOWING GUIDELINES FOR PENSIONS

- 1.0 Introduction**
- 1.1 Transparency is one of the core values of the Commission which has been encouraged amongst the operators. As a regulatory philosophy, the Commission has adopted a stakeholder approach in its regulatory activities. This philosophy has often encouraged operators to make meaningful contributions that would add value to regulatory initiatives thus engendering amongst stakeholders, a sense of responsibility towards the industry.
- 1.2 To further entrench the efforts of the Commission in this regards, the Whistle Blowing Guidelines are being issued. The Whistle Blowing Guidelines provide lucid guidance for reporting breaches in PFAs, PFCs and CPFAs and benchmark examples on reporting. The Guidelines also restrict reporting to significant matters.
- 2.0 Reporting Breaches**
- 2.1 Responsibilities for Reporting Breaches**
- 2.1.1 In line with Section 68 of the Pension Reform Act (PRA) 2004, the Compliance Officer of the PFA/PFC has the statutory responsibility to report any breach of the Pension Reform Act 2004, codes, guidelines, rules and regulations issued by the Commission, in the course of the company's business, to the Commission.
- 2.1.2 The directors, management, employees, and any other person(s) that have dealings with the PFA/PFC shall also have the responsibility to report breaches to the Commission.
- 2.1.3 Pursuant to 3.1.2 above, the PFA/PFC shall ensure that its members of staff are aware of their responsibilities with regards to whistle blowing and that they are conversant with reporting procedures.
- 2.1.4 The Commission shall seek to protect the identity of a whistle blower even in the course of an investigation, resulting from the report.
- 2.1.5 The Commission acknowledges the potential impact of a report on the relationship between the whistle blower, if an employee, and his employer. Consequently, the PFA/PFC shall undertake that in the event of its employee blowing the whistle on its unethical or illegal operations or activities, such employee shall not be victimized in any way. The undertaking shall be in writing to the Commission and in the event that such employee is victimized, the Commission shall be obliged to employ appropriate regulatory tools to offer redress to the employee concerned.

2.1.6 A breach shall be reported if it is likely to be of material significance to the Commission in carrying out its functions.

2.1.7 What is of material significance to the Commission shall depend on the cause of the breach, the reaction to the breach and the wider implications of the breach.

### 3.0 Actions and Reactions

#### 3.1 Actions That Causes Breaches

3.1.1 A breach shall be of material significance to the Commission where a contributory cause of the breach is:

- (a) Dishonesty including fraud, bribery and other corrupt practices;
- (b) misuse/misappropriation of assets or contributions;
- (c) poor corporate governance;
- (d) inadequate controls resulting in deficient administration;
- (e) failure to pay contributions correctly or promptly;
- (f) inappropriate decision-making practices; or
- (g) acting or failing to act in the face of a deliberate contravention of the law, regulations, guidelines and

rules issued by the Commission.

3.1.2 In line with the provisions of 3.1.1 above, the Commission shall not regard as materially significant, a breach arising from an isolated incident, for example, those resulting from teething problems with a new system procedure or an unusual combination of circumstances.

3.1.3 A breach shall be of material significance to the Commission if it negatively or adversely impacts on the functions of the Commission.

3.1.4 In line with determining the circumstance in 3.1.3 above, the principal statutory objective of the Commission shall be considered to be to:

- (a) protect the benefits of contributors;
- (b) ensure effective administration of the pension fund;
- (c) reduce the risk of situations arising, which may lead to loss of contributions or inability of a contributor to obtain pension upon retirement; and
- (d) promote good work ethics amongst operators.

3.1.5 Breaches that are likely to impact on the functions of the Commission shall include substantial failures in any of the following:

- (a) remittance of the right amount of contribution into a Retirement Savings Account (RSA), and at the right time by the employer;
  - (b) legitimate and timely payments out of the pension fund by the PFA;
  - (c) investment of pension funds in line with the provisions of the Investment Guidelines, issued by the Commission;
  - (d) proper administration of the pension fund and maintenance of appropriate records; and
  - (e) issuance of accurate, clear and timely information to RSA holders.
- (c) fail to notify the RSA holder whose benefits have been affected by the breach.
- 3.2.3 The action to be taken by the Commission shall depend on the nature of the concern. The matters raised may:
- (a) be investigated internally;
  - (b) be referred to the Police;
  - (c) be referred to the Economic and Financial Crimes Commission (EFCC); or
  - (d) form the subject of an independent inquiry.

### 3.2 Reaction to Breaches

- 3.2.1 The Commission shall not regard a breach as materially significant where the PFA/PFC takes prompt and effective action to investigate and correct the breach and its causes, and where appropriate, to notify any RSA holder whose benefits have been affected.
- 3.2.2 However, the breach shall be considered to be material where, after a breach is identified, the PFA/PFC or the service providers involved:
- (a) do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimize risk of occurrence;
  - (b) are not pursuing this correction to a proper conclusion; or
- 3.2.4 In order to protect individuals and the Commission, initial enquiries shall be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations, which fall within the scope of specific procedures, shall be referred for consideration under those procedures.
- 3.2.5 Some concerns may be resolved by agreed action without the need for investigation.
- 3.2.6 The Commission shall take steps to minimize any difficulties, which a whistle blower may experience as a result of raising a concern. For instance, if required to give evidence in criminal or disciplinary proceedings, the Commission will advise about the procedure.

- 3.2.7 Where the whistle blower is an employee of the PFA/PFC the following shall apply to protect the whistle blower:
- (a) No PFA/PFC shall dismiss, suspend or terminate the appointment of a whistle blower without the prior consent of the Commission.
  - (b) No PFA/PFC shall demote or redeploy a whistle blower without the consent of the Commission.
  - (c) In case of the 3.2.7(a) and 3.2.7(b), the PFA/PFC shall provide the Commission with solid reasons for its proposed actions.
  - (d) The PFA/PFC shall not in any way deny a whistle blower his/her entitlements in terms of promotions, salary increases, trainings and opportunities.
  - (e) Any salary review or incentive that will affect the whistle blower negatively shall be referred to the Commission for approval, before implementation.
  - (f) The whistle blower shall have the right to make to the Commission, any complaint, in writing against his/her employer, as he/she may deem necessary.
  - (g) Where the Commission finds violations against the whistle blower, by the PFA/PFC it shall issue a letter of caution and direct the PFA/PFC to retract whatever actions taken.
- 4.0 **Severity of Breaches**
- 4.1 **Categories of Breaches**
- 4.1.1 A breach shall be considered to be materially significant if it poses a risk to the scheme such that there is likelihood that the scheme will not be able to deliver the benefits promised, in the long run.
- 4.1.2 A situation where other breaches are likely in the future, because the board and management of a PFA/PFC lack the appropriate knowledge and understanding to fulfill their responsibilities, is likely to give rise to a materially significant breach.
- 4.1.3 As a form of guidance, the following “traffic light” guidance provide a benchmark against which whistle blowers can judge breaches they come across in the categories of Red, Green and Amber:
- (a) **Red Scenarios** involve breaches which are materially significant because they could immediately or potentially pose significant risk to contributors’ interests and must be reported.
  - (b) **Green Scenarios** involve breaches which are not materially significant and do not have to be reported but should be recorded. Such breaches do not normally, on their own, imply or pose a significant immediate or

potential risk to contributors' interests.

Guidelines issued by the Commission.

- (c) *Amber Scenarios* involve breaches which are less clear cut and the context of the breach must be taken into account in order to decide whether it is materially significant and should be reported.
- 4.1.4 *Red breach situations* shall include but not limited to the following:
- (a) Matters including possible fraud/defalcation or misappropriation of assets or contributions such as:
- (i) authorization of loans from the pension fund managed by the PFA or held in custody by the PFC to an associate a related company or employee or any other person;
  - (ii) a PFA or PFC receives an instruction to transfer part of the fund, documents of title or sale proceeds respectively to a destination that does not appear to be another PFC; and is not an authorized sale; or
  - (iii) a persistent or significant departure of the investments carried out by a PFA from the provisions of the Investment
- (b) Breaches carrying criminal penalty such as trading on the assets of the fund in the name of the PFA, its shareholders or directors.
- (c) Persistent failure by the employer to pay contributions in accordance with the schedule of contributions and where they remain unpaid for 7 days after the due date or where the employer appears to be using the contributions instead of remitting them to the PFC.
- (d) Breaches involving widespread and/or persistent administrative failures stemming from poor record keeping or inadequate controls, for example:
- (i) widespread and persistent misallocation of contributions and/or voluntary contributions to RSAs;
  - (ii) persistent failure to carry out reconciliation of contributions received resulting in persistent discrepancies; and
  - (iii) persistent failure to update the records of a contributor, whose personal details have changed.

- (e) Inappropriate actions that manipulate or overstate the Funds unit price i.e. through non-creation of units or the revaluation of assets that cannot be revalued e.g. FGN bonds to market value, or deposit for shares revalued to market value.
- 4.1.5 *Green breach situations* shall include the following:
- (a) Breaches which are isolated or arise from, unintended administrative lapses in an otherwise well-run system which for example arise due to systems failure or change in service provider and which are corrected in a timely manner when identified, provided that any effect on contributors' benefits is negligible. for example:
- (i) failure to invest a month's contributions promptly, in accordance with laid down procedures;
- (ii) failure to pay benefits correctly or in a timely manner; and
- (iii) failure to provide an RSA holder with timely or correct information, within the PFAs reach, after three demands in writing over a period of ten (10) working days.
- (b) Failure to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding, for example:
- (i) inconsequential and corrected omissions from the minutes of board meetings;
- (ii) simple breaches of the Investment Guideline through dealing or implementation errors or movements in the markets, where the breach is remedied within reasonable period of time.
- 4.1.6 *Amber breach situations* shall include the following:
- (a) Several 'green' breaches, which effectively stem from the same cause such as a systems failure, teething problems with new systems or processes or the absence of a critical member of staff. Where the PFA/PFC is taking effective action to alleviate and remedy the problems, the Commission shall not require a report. If on the other hand, inadequate systems or processes are to blame and the PFA/PFC is not taking effective steps to improve or replace them, then the Commission shall expect a report.
- (b) PFAs/PFCs have been hindered in their attempts to comply with regulatory requirements by their service providers for example where, despite the best efforts of the



PFA/PFC, its service provider continuously provides poor service resulting in persistent or widespread non-compliance; the Commission shall expect a report.

- (c) Failure by the PFA/PFC to take all reasonable and proper measure to recover all debts and monies due to the fund within a reasonable amount of time. Such shall constitute a breach of trust and the Commission shall expect a report.
  - (d) Failure of the PFA to monitor and control fees and/or other expenses being charged by service providers shall constitute a breach of trust where they are paid from the fund. The Commission shall expect a report in this circumstance, except where it is in respect of an approved existing scheme, where the employer is paying the balance of cost.
- 4.1.7 The examples of red, green and amber scenarios listed in 5.1.4 to 5.1.6 above, are by no means exhaustive.

**5.0 Procedures for Whistle Blowing**

5.1 Concerns shall be reported in writing. The whistle blower shall set out the background and history of the concern, giving names, dates

and places where possible, and the reason why he/she is particularly concerned about the situation.

- 5.1.1 The provisions of 5.1 notwithstanding, a whistle blower who is unable to put his/her concern in writing, may contact an appropriate officer of the Commission.
- 5.1.2 An intending whistle blower shall be required to report the concern in a timely manner.
- 5.1.3 Although the whistle blower shall be not expected to prove the truth of an allegation, he/she shall need to demonstrate that there are sufficient grounds for the concern.
- 5.1.4 The whistle blower is encouraged to put his/her name to his/her allegations. Concerns expressed anonymously shall be much less powerful, but they shall be considered at the discretion of the Commission.
- 5.1.5 In exercising its discretion, the Commission shall take into account the following considerations:
  - (a) the seriousness of the issues raised;
  - (b) the credibility of the concern; and
  - (c) the likelihood of confirming the allegation from attributable sources.

**6.0 Enforcement and Penalties**

6.1 Enforcement of this Guideline shall be the responsibility of the Commission.

- 6.1.1 Where the Commission concludes that serious matters that should have been reported to it have not been reported in a timely fashion, the Commission shall have a range of penalties at its disposal, including the levying of fines on the company or the individual(s).
- 6.1.2 While there is no guarantee that all material failures to report will become known to the Commission, most failures to report are likely to eventually lead to an event that becomes apparent to the Commission, possible at too late a stage for effective intervention. At this point, the Commission shall consider applying appropriate sanctions.
- 6.1.3 The knowledge that this may happen should act as a deterrent to non-reporting.
- 6.1.4 If an allegation is made in good faith, but it is not confirmed by the investigation, no action shall be taken against the whistle blower. If however, the whistle blower made allegations that were malicious or simply to cause anger, irritation or distress, disciplinary action may be taken against the whistle blower.