

Gloucestershire Pension Fund

Reporting and Recording Breaches of the Law Policy

Approved: December 2021

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Background and Introduction

This Policy sets out the procedure to be followed by certain persons involved with the Gloucestershire Pension Fund (the "**Fund**"), which is managed and administered by Gloucestershire County Council (the "**Administering Authority**"), 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 or investment-related decisions.

This Policy has been developed to 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. It has also been developed to assist the Administering Authority, 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.

The Administering Authority has delegated responsibility for the implementation of this Policy to the Head of Pensions. A breaches log for the Fund is maintained by the Head of Pensions.

The following persons, or any other person who has a 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 Pension Committee and Pension Board
- all officers involved in the management and administration of the Fund, including staff members of the Administering Authority, and the Section 151 Officer
- any professional advisers including external auditors, actuaries, legal advisers, and investment managers¹ and external suppliers
- officers of employers participating in the Fund who are responsible for pension matters
- any other person otherwise involved in advising the managers of the Fund, including the Monitoring Officer, and staff members of the internal audit function.

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".

Requirements

This section clarifies the full extent of the legal requirements and to whom they apply.

Pensions Act 2004

Section 70 of the Pensions Act 2004 (the "**Act**") imposes a requirement on the following persons:

- a trustee or manager of an occupational or personal pension scheme
- a member of the pension board of a public service pension scheme
- a person who is otherwise involved in the administration of such a scheme an occupational or personal pension scheme
- the employer in relation to an occupational pension scheme

¹ However, these advisors 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 Policy (albeit the Administering Authority would still expect this information to be recorded separately and notified to it).

- 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.

to report a matter to the Regulator as soon as is reasonably practicable where that person has 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.

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, 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.

The Pension Regulator's Code of Practice

Practical code in relation to this legal requirement is included in The Pension 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.

Application to the Gloucestershire Pension Fund

The Administering Authority has developed this Policy in relation to the Fund. This document sets out how the Administering Authority will strive to achieve best practice through use of a formal reporting breaches procedure. It reflects the guidance contained in the Regulator's Code of Practice.

Other Administering Authority or Organisational Requirements

In addition to the requirements of this Policy, there may be other policies which may be in place relating to areas such as fraud or whistleblowing that apply to the individuals covered by this Policy for reporting and recording breaches in relation to Fund matters. For example, Gloucestershire County Council has in place the following:

- Counter-fraud and Corruption Strategy – setting out the Council's strategy for preventing, deterring, and investigating fraud and corruption,
- Whistleblowing Policy – setting out how someone working with or within the Council can raise an issue in confidence, as well as what sort of concerns should be reported.

This Policy should be followed in addition to any existing procedures or policies that may be in place, such as those listed above. Individuals are reminded that there is a legal requirement to report breaches of the law in relation to the Fund that could be considered significant to the Regulator. The Head of Pensions supported by the Council's Monitoring Officer (contact details at the end of this procedure) can assist if an individual is uncertain how to deal with the interaction between this Policy and any other organisation's policy or procedure that may be in place.

Gloucestershire Pension Fund Reporting Breaches Procedure

Overview

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess, record, and report a breach of the law relating to the Fund.

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:

1. Understanding the law and what is a breach
2. Determining whether a suspected breach is an actual breach
3. Determining whether the breach is likely to be of material significance and so should be reported to the Regulator
4. Recording the breach, even if it is not reported.

These steps are explained below:

1. Understanding the law and what is a breach

Individuals 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 shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004:
www.legislation.gov.uk/ukpga/2004/35/contents
- Employment Rights Act 1996:
www.legislation.gov.uk/ukpga/1996/18/contents
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations):
www.legislation.gov.uk/uksi/2013/2734/contents/made
- Public Service Pension Schemes Act 2013
www.legislation.gov.uk/ukpga/2013/25/contents
- Local Government Pension Scheme Regulations (various):
<http://www.lgpsregs.org/timelineregs/Default.html> (pre 2014 schemes)
<http://www.lgpsregs.org/index.php/regs-legislation> (2014 scheme)
- The Pensions Regulator's Code of Practice
<https://www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/code-14-public-service-pension-code-of-practice>

Individuals should refer to the section on 'Reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, the section of the code on 'Maintaining contributions'.

Further guidance and assistance can be provided by the Head of Pensions 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 breach of the law is "an act of breaking or failing to observe a law, agreement, or code of conduct.". In the context of LGPS it can encompass many aspects of the management and administration of the scheme. Some examples of breaches are included in Appendix A.

2. Determining whether a suspected breach is an actual breach

Individuals then 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 Head of Pensions, a member of the Pension Committee or Pension Board. Where necessary this may involve taking appropriate legal advice or input from other specialist advisors 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.

3. Determining whether the breach is likely to be of material significance

Should an individual have reasonable cause to believe that breach of the law has occurred, they must 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
- wider implications of the breach.

Individuals may also request the most recent breaches log from the Head of Pensions, as there may be details on other breaches which may provide a useful precedent on the appropriate action to take.

Further details on the above four considerations are provided in Appendix B to this Policy.

The individual should use the traffic light framework described in Appendix C to help assess the material significance of each breach and to formally support and document their decision.

It should be noted that the Regulator's role is in relation to requirements under the Pensions Act 2004. As such, it is possible that some breaches of the law do not fall within the Regulator's remit. However, given the complex nature of the law relating to pension schemes, including the wide-ranging responsibilities covered by the Pensions Act 2004, the Administering Authority encourages reporting of any breach that is materially significant regardless of the specific area of the law that has been breached. The Regulator can then determine whether it is a matter they have jurisdiction over or not.

The Head of Pensions 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.

4. Recording the breach, even if it is not reported

The record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). The Head of Pensions will maintain a record of all breaches identified. Therefore, individuals should provide the following information to the Head of Pensions so that all identified breaches can be recorded:

- copies of reports submitted to the Regulator

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

The information should be provided to the Head of Pensions as soon as reasonably practicable and certainly no later than within 20 working days of the decision made to report or not. The record of all breaches (reported or otherwise) will be included at each Pension Committee meeting, and this will also be shared with the Pension Board.

Supplier and advisor responsibilities

Where a breach has been identified relating to the Fund by a Fund supplier or advisor, the supplier or adviser must alert the Head of Pensions 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
- a preliminary assessment, based on the Regulator's traffic light flowchart, of the materiality of the breach.

For the avoidance of doubt all breaches of the law (regardless of whether they are deemed material) must be reported to the Head of Pensions in this way.

Assistance for individuals in following this Policy

The following information is provided to assist individuals in following this Policy.

Referral to a level of seniority for a decision to be made on whether to report

The Administering Authority has designated the Head of Pensions to ensure the Council acts and operates within the law. They are considered to have appropriate experience to help investigate whether there is reasonable cause to believe a breach has occurred, to check the law and facts of the case, to maintain records of all breaches and to assist in any reporting to the Regulator, where appropriate.

Individuals must bear in mind, however, that the involvement of the Head of Pensions is to help clarify the individual's thought process and to ensure this Policy is followed. The individual remains responsible for the final decision as to whether a matter should be reported to the Regulator and for completing the reporting procedure.

The matter should **not** be referred to the Head of Pensions if doing so will alert any person responsible for a possible serious offence to the investigation (as highlighted in step 2 above). If that is the case, the individual may instead refer the matter to the Council's Monitoring Officer. Otherwise, the individual should report the matter to the Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to the Regulator before the submission may be appropriate, particularly in the case of a more serious breach.

Dealing with complex cases

The Head of Pensions may be able to provide guidance on particularly complex cases. Guidance may also be obtained by reference to previous cases, information on which will be retained by the Administering Authority, or via discussions with those responsible for maintaining the records.

Information may also be available from national resources such as the LGPS Scheme Advisory Board (www.lgpsboard.org) or the Local Government Association (www.lgpsregs.org).

If timescales allow, legal advice or other professional advice can be sought, and the case can be discussed at the next Pension Committee and Pension Board meeting.

Timescales for reporting

The Pensions Act and 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. Individuals should not rely on waiting for others to report and nor is it necessary for a reporter to gather all the evidence which the Regulator may require before taking action. A delay in reporting may exacerbate or increase the risk 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 taken should reflect the seriousness of the suspected breach.

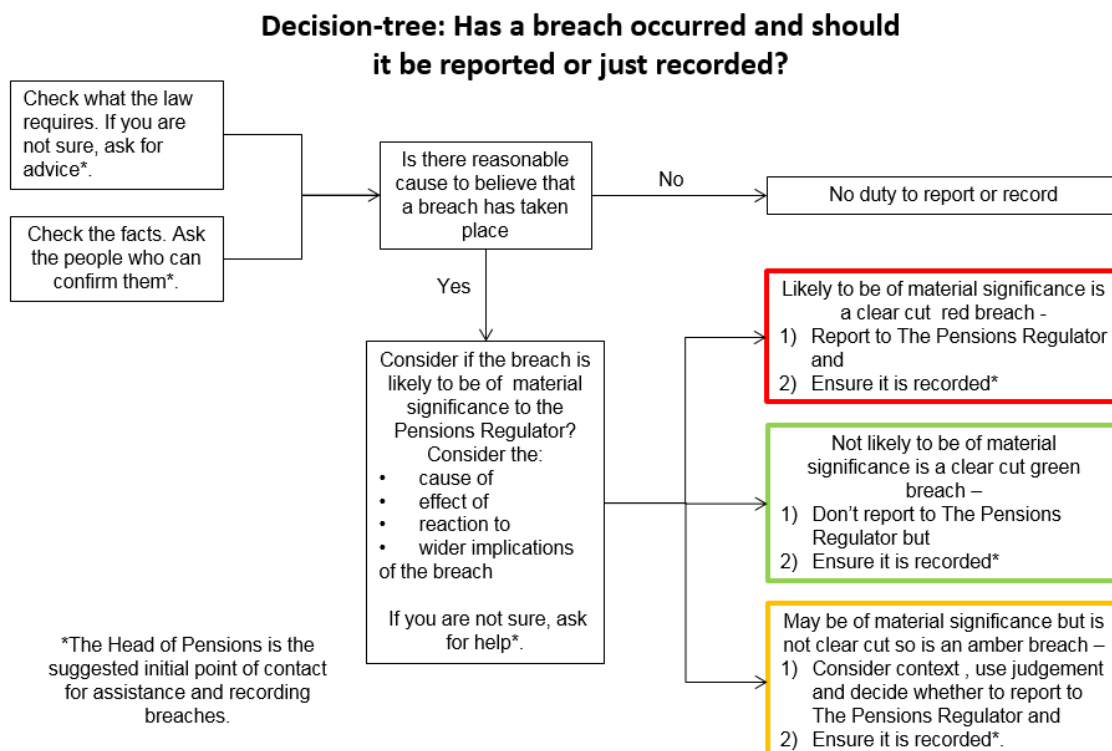
Early identification of very serious breaches

In cases of immediate risk to the Fund, for instance, where there is any indication of dishonesty, the Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies. They should only make such immediate checks as are necessary.

The more serious the potential breach and its consequences, the more urgently reporters should make these necessary checks. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should use the quickest means possible to alert the Regulator to the breach.

Decision tree

A decision tree is provided below to show the process for deciding whether or not a breach has taken place and whether it is materially significant to the Regulator and therefore, needs to be reported, and then ensuring it is recorded.



Reporting a breach to the Pensions Regulator

Reports must be submitted 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.

The individual should ensure they receive an acknowledgement for any report they send to the Regulator. The Regulator will acknowledge receipt of all reports within five working days and may contact reporters to request further information. Reporters will not usually be informed of any actions taken by the Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name (Gloucestershire Pension Fund)
- description of the breach/breaches
- any relevant dates
- name, position, and contact details
- role in connection to the scheme
- employer name or name of Gloucestershire County Council as the Administering Authority/Scheme Manager.

If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to the Regulator
- scheme address (provided at the end of this Policy)
- scheme manager's contact details (provided at the end of this document)
- pension scheme registry number (10079170)
- whether the breach has been reported before.

The individual should provide further information or reports of further breaches if this may help the Regulator in the exercise of its functions. The Regulator may make contact to request further information.

Confidentiality

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

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

Reporting to Pension Committee and Pensions Board

A report will be presented to the Pension Committee and the Pensions Board on a quarterly basis setting out:

- all breaches, including those reported to the Regulator and those unreported, with the associated dates
- in relation to each breach, details of what action was taken and the result of any action (where not confidential)
- any future actions for the prevention of the breach in question being repeated
- highlighting new breaches which have arisen in the last year/since the previous meeting.

This information will also be provided upon request by any other individual or organisation (excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings). An example of the information to be included in the quarterly reports is provided in Appendix D to this Policy which sets out the template breaches log.

Training

The Head of Pensions will ensure that all relevant officers and all Pension Committee and Pension Board members receive appropriate training on this Policy at the commencement of their employment or appointment to the Pension Committee or Pension Board 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 Head of Pensions if they do not feel they are able to carry out that training, and training will be arranged for them by the Head of Pensions.

Approval and review

This Breaches Policy was approved by the Gloucestershire Pension Committee at the meeting of 3 December. It will be formally reviewed and updated by the Pension Committee at least every three years, or sooner as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure set out in this Policy.

Further information

If further information about anything in or related to this Breaches Policy is required, please contact:

Head of Pensions
E-mail – matthew.trebilcock@gloucestershire.gov.uk
Telephone – (01452) 328920

Gloucestershire Pension Fund, Gloucestershire County Council, Shire Hall, Westgate Street,
Gloucester, GL1 2TG

Appendix A - Example breaches of the law

This appendix provides some examples of breaches of the law. This is not an exhaustive list given there are many sets of legislation that must be followed and some of these are extremely lengthy and complex. It should, however, provide a useful indication of the range of potential breaches that may arise.

Funding strategy not having regard to CIPFA guidance

Regulation 58 of the LGPS Regulations 2013, as amended, requires the administering authority to prepare, maintain and publish a statement setting out its funding strategy and, in doing so, to consult with such persons as it considers appropriate. In doing this, the administering authority must also have regard to CIPFA guidance on preparing and maintaining a Funding Strategy Statement which clearly states employers should be consulted. The funding strategy impacts on the employers of the Fund and therefore a breach of the law by the administering authority is likely to have arisen if a statement was prepared which impacts on employers without first consulting with those employers.

Late notification of benefits

Various regulations dictate timescales for notifying scheme benefits, some of which are summarised below. Most of these requirements are included in more general pensions legislation, i.e. not the LGPS Regulations 2013. A breach would arise every time one of these timescales was not met. All breaches would relate to the administering authority apart from the last one which would be a breach by an employer. However, the first five listed could have been a result of delayed or incorrect information from an employer, which could be a separate and additional breach of the law by that employer.

Process	Legal requirement
To provide new starters with information about the scheme.	Two months from date of joining (provide information about the scheme in this timeframe, or within one month of receiving jobholder information where the individual is being automatically enrolled or re-enrolled).
To inform members who leave the scheme of their leaver rights and options.	As soon as is practicable, and no more than two months from date of initial notification (from employer or scheme member).
To notify the amount of retirement benefits.	One month from date of retirement if on or after normal pension age, or two months from date of retirement if before normal pension age.
To notify dependant(s) the amount of death benefits.	As soon as possible, but in any event no more than two months from date of becoming aware of the death, or from date of request.
Provide annual benefit statements to active members.	By 31st August in the same calendar year.
Receipt of employee contributions from employers.	By 19th of the month following their deduction, or 22nd if paid electronically.

Errors in benefit calculations

The LGPS Regulations 2013, as amended, and previous LGPS legislation relating to historical service or leavers, dictate how benefits should be calculated. This includes elements such as what fraction of pay is used to calculate a pension and what counts as pay for LGPS purposes. A breach of the law by the administering authority would arise in the situation that any calculation was carried out that was not in accordance with those provisions.

Errors in deducting contributions

Regulation 20 of the LGPS Regulations 2013, as amended, states which elements of pay should be treated as pensionable and therefore should have pension contributions deducted from them and should be used for calculating benefits from 1 April 2014. Regulation 4 of the LGPS (Benefits, Membership and Contributions) Regulations 2007, as amended, is the equivalent provision for pre-1 April 2014 scheme membership and therefore it details how pensionable pay should be calculated by an employer for benefits accruing prior to 1 April 2014. Under these provisions, non-contractual overtime is pensionable from 1 April 2014 but not classed as pensionable for benefits accruing before 1 April 2014. A breach of the law by an employer would arise if any of the following happened:

- an employer **did not** deduct pension contributions from non-contractual overtime since 1 April 2014
- an employer **did not** include non-contractual overtime in the amount of any pensionable pay notified to the administering authority for membership from 1 April 2014
- an employer **did** include non-contractual overtime in the amount of final pay notified to the administering authority to be used to calculate benefits accrued prior to 1 April 2014.

Late notifications from year-end information by an employer

Regulation 80 of the LGPS Regulations 2013 requires each employer to provide to the administering authority a list of specific information for each scheme member, such as pensionable pay, by 30 June each year. A breach of the law by an employer would arise if they failed to provide this year end list to the administering authority by 30 June or if the information was incomplete or inaccurate.

Inadequate knowledge of a Pension Board member

Section 248A of the Pensions Act 2004 requires every Pension Board member to be conversant with the LGPS rules and Fund policies as well as having knowledge and understanding of pension matters at a degree appropriate for the purpose of them exercising their Pension Board functions. Where a Pension Board member has failed to attend training or demonstrate that they already have the required level of knowledge, it is possible that a breach of the law will have occurred by that Pension Board member.

Appendix B - Determining whether a breach is likely to be of material significance

To decide whether a breach is likely to be of material significance individuals should consider the following elements, 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
- wider implications of the breach.

The cause of the breach

Examples of causes which are likely to be of concern to the Regulator are provided below:

- acting, or failing to act, in deliberate contravention of the law
- dishonesty
- incomplete or inaccurate advice
- poor administration, i.e., failure to implement adequate administration procedures
- poor governance
- slow or inappropriate decision-making practices.

When deciding whether a cause is likely to be of material significance individuals should also consider:

- whether the breach has been caused by an isolated incident such as a power outage, fire, flood, or a genuine one-off mistake.
- whether there have been any other breaches (reported to the Regulator or not) which when taken together may become materially significant.

The effect of the breach

Examples of the possible effects (with possible causes) of breaches which are considered likely to be of material significance to the Regulator in the context of the LGPS are given below:

- Pension Committee or Pension Board members not having enough knowledge and understanding, resulting in the Pension Boards not fulfilling its role, the Fund not being properly governed and administered and/or the Administering Authority breaching other legal requirements.
- Conflicts of interest of Pension Committee or Pension Board members, resulting in them being prejudiced in the way in which they carry out their role and/or the ineffective governance and administration of the Fund and/or the Administering Authority breaching legal requirements.
- Poor internal controls, leading to schemes not being run in accordance with their scheme regulations and other legal requirements, risks not being properly identified and managed, and/or the right money not being paid to or by the Fund at the right time.
- Inaccurate or incomplete information about benefits and scheme information provided to members, resulting in members not being able to effectively plan or make decisions about their retirement.
- Poor member records held, resulting in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Misappropriation of assets, resulting in scheme assets not being safeguarded.
- Other breaches which result in the Fund being poorly governed, managed or administered.

The reaction to the breach

A breach is likely to be of concern and material significance to the Regulator where a breach has been identified and those involved:

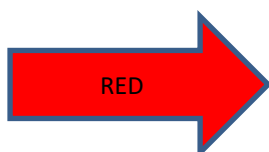
- do not take prompt and effective action to remedy the breach and identify and tackle its cause to minimise risk of recurrence
- are not pursuing corrective action to a proper conclusion, or
- fail to notify affected scheme members where it would have been appropriate to do so.

The wider implications of the breach

Individual's should also consider the wider implications when deciding whether a breach must be reported. The breach is likely to be of material significance to the Regulator where the fact that a breach has occurred makes it more likely that further breaches will occur within the Fund or, if due to maladministration by a third party, further breaches will occur in other pension schemes.

Appendix C – Traffic light framework for deciding whether to report

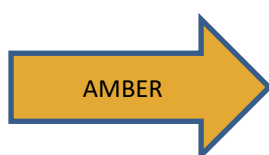
The Administering Authority recommends that those responsible for reporting use the traffic light framework when deciding whether to report to the Regulator. This is illustrated below:



Where the cause, effect, reaction, and wider implications of a breach, when considered together, are likely to be of material significance.

These must be reported to the Pensions Regulator.

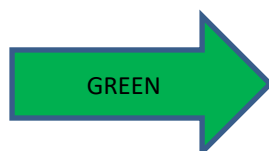
Example: Several members' benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.



Where the cause, effect, reaction, and wider implications of a breach, when considered together, may be of material significance. They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right.

You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported.

Example: Several members' benefits have been calculated incorrectly. The errors have been corrected, with no financial detriment to the members. However, the breach was caused by a system error which may have wider implications for other public service schemes using the same system.



Where the cause, effect, reaction, and wider implications of a breach, when considered together, are not likely to be of material significance.

These should be recorded but do not need to be reported.

Example: A member's benefits have been calculated incorrectly. This was an isolated incident, which has been promptly identified and corrected, with no financial detriment to the member. Procedures have been put in place to mitigate against this happening again.

All breaches should be recorded even if the decision is not to report.

When using the traffic light framework individuals should consider the content of the red, amber, and green sections for each of the cause, effect, reaction, and wider implications of the breach, before considering the four together. Some useful examples of this framework are provided by the Regulator at the following link:

<http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx>

