



# North Yorkshire Pension Fund

## Breaches Policy

April 2024<sup>3</sup>



Local Government  
Pension Scheme

If you require this information in an alternative language or another format such as large type, audio cassette or Braille, please contact the Pensions Help & Information Line on 01609 536335

## Contents

Breaches of the law .....	3
Background .....	3
Overview .....	3
What is a breach of the law? .....	4
What is non-compliance under the LGPS Regulations? .....	4
Responsibilities in relation to breaches.....	4
Requirement to report a breach of the law .....	5
When should a breach be reported to the Regulator? .....	5
Assessing “reasonable cause” .....	5
Deciding if a breach is “materially significant” and should be reported to the Regulator.....	<del>76</del>
Process for reporting breaches .....	<del>97</del>
Responsibilities of the Monitoring Officer .....	<del>97</del>
How should a breach be reported to the Regulator?.....	<del>107</del>
How are records of breaches maintained? .....	<del>118</del>
Whistleblowing.....	<del>118</del>
Training .....	<del>118</del>
Appendix A.....	<del>129</del>
Deciding if a breach is “materially significant” and should be reported to the Regulator.....	<del>129</del>
Appendix B.....	<del>134</del>
Examples of breaches .....	<del>144</del>
Example 1 .....	<del>Error! Bookmark not defined.10</del>
Example 2 .....	<del>Error! Bookmark not defined.10</del>
Example 3 .....	<del>Error! Bookmark not defined.10</del>
Example 4 .....	<del>Error! Bookmark not defined.10</del>
Appendix C.....	<del>Error! Bookmark not defined.11</del>
Form to report a breach to the Monitoring Officer .....	<del>Error! Bookmark not defined.11</del>
Appendix D.....	12
Example Record of Breaches.....	12

## Breaches of the law

### Background

The North Yorkshire Pension Fund (“the Fund”) has prepared this document to set out its policy and procedures on identifying, managing and where necessary reporting breaches of the law as covered in the Pensions Regulator’s (“the Regulator”) General Code of Practice (“the Code of Practice”).

This policy sets out the responsibility of [the Pension Fund Committee](#)~~electd Members~~, officers of the Fund and the Local Pension Board in identifying, managing and where necessary reporting breaches of the law as they apply to the management and administration of the Fund.

This policy does not cover the responsibility of other “reporters” (described later in this policy) in relation to their obligation to report breaches in accordance with the Code of Practice where they relate to the management and administration of the Fund. Where a breach of the law is identified both the Fund and the Local Pension Board will take all necessary steps to consider the breach and report it to the Regulator, rather than having the breach reported by any of the other “reporters”.

This policy will be reviewed by the Fund at least annually. The Fund will monitor all breaches and will ensure that adequate resources are allocated to managing and administering this process.

The Administering Authority Monitoring Officer will be responsible for the management and execution of this breaches policy.

### Overview

The identification, management and reporting of breaches is a requirement of the Code of Practice. Failure to report a breach without “reasonable excuse” is a civil offence that can result in civil penalties. [Guidance can be found on the Regulator’s website at https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/communications-and-reporting-detailed-guidance/complying-with-the-duty-to-report-breaches-of-the-law](https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/communications-and-reporting-detailed-guidance/complying-with-the-duty-to-report-breaches-of-the-law).

At the same time, in addition to identifying, rectifying and where necessary reporting a breach it provides an opportunity to learn from mistakes and review and improve processes in the areas where the breach occurred. All staff are required to take a pro-active approach to the identification, management and reporting of all breaches that have occurred, or are likely to occur.

The Fund will maintain a log of all breaches under the LGPS regulations and wider pension law, statutory guidance or codes of practice under the remit of the Regulator in accordance with the 2004 Pension Act.

Where a breach has occurred it should be identified as either an area of non-compliance under the LGPS regulations, a breach under pension law as defined within section 13 of the 2004 Pension Act or the Regulator’s Code of Practice.

The definition of pension law under the jurisdiction of the Regulator is any enactment contained in or made by virtue of:

- The Pension Schemes Act 1993 (c. 48)
- Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act
- (equal treatment)
- Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), or
- This Act
- Section 5(4) (Pension Board: conflicts of interest and representation), 6 (Pension Board: information), 14 (information about benefits) or 16 (records) of the Public Service Pensions Act 2013

- Paragraph 2 of Schedule 18 to the Pensions Act 2014 (c 19)
- The Pension Schemes Act 2015

Therefore, as the LGPS Regulations are made under the Superannuation Act 1972, the Regulator views the provisions as being similar to a private pension scheme's rules which are the preserve of trustees and not of the Regulator.

As such in the event of non-compliance under the LGPS Regulations the failings should be documented in an internal log specifying the corrective action to be undertaken to strengthen operational procedures and controls in order to prevent or mitigate the impact of any future recurrences.

Alternatively, where the failure is identified by the Fund or Local Pension Board as a breach of pension law under the jurisdiction of the Regulator, or the Code of Practice, it should be recorded, assessed and where defined to be of material significance to the Regulator, must be reported as soon as reasonably practical.

**The Fund and the Local Pension Board ~~cannot~~ should not rely on waiting for other reporters to report a breach.**

### What is a breach of the law?

A breach of the law is *"an act of breaking or failing to observe a law, agreement, or code of conduct."* It can encompass many aspects of the management and administration of the scheme, including failure:

- to do anything required under overriding legislation, applicable statutory guidance or codes of practice
- to maintain accurate records
- to act on any omission or fraudulent act that is identified
- of an employer to pay over employee and employer contributions on time
- to pay member benefits either accurately or in a timely manner
- to issue annual benefit statements on time
- or non-compliance with the Regulator's Code of Practice.

### What is non-compliance under the LGPS Regulations?

Non-compliance with the LGPS regulations can encompass many aspects of the management and administration of the scheme, including failure:

- to do anything required under the LGPS regulations
- to comply with policies and procedures (e.g. the Fund's Investment Strategy Statement, Funding Strategy Statement, discretionary policies, etc.);

### Responsibilities in relation to breaches

Responsibility to report identified breaches of the law in relation to the Code of Practice falls on the following (known as "reporters"):

- Members of the Pension Fund Committee and officers of the Fund, as the Scheme Manager
- Members of the Local Pension Board
- Scheme employers
- Professional advisers (including the Fund's actuary, investment advisers, legal advisers)
- Third party providers (where employed)
- Any other person involved in advising the Scheme Manager in relation to the scheme

This policy applies only to the Pension Fund Committee~~electd Members and~~, officers of the Fund and members of the Local Pension Board. It is for the other reporters to ensure adequate procedures and policies are put in place in order to identify, assess and where necessary report breaches. Both the Fund and the Local Pension Board will take all necessary steps to consider the breach and report to the Regulator, rather than having the breach reported by any of the other "reporters".

### Requirement to report a breach of the law

Breaches of the law which affect pension schemes should be considered for reporting to the Regulator. The decision whether to report an identified breach depends on whether:

- there is reasonable cause to believe there has been a breach of the law
- and if so, is the breach likely to be of material significance to the Regulator?

It is important to understand that not every breach that is identified needs to be reported to the Regulator. For example, where it can be demonstrated that appropriate action is being taken to rectify the breach, or the breach has occurred due to teething problems with new or revised systems or processes, it may not be necessary to report the incident. to The Regulator. The Regulator will not usually regard a breach arising from an isolated incident as materially significant.

Reporters should consider other reported and unreported breaches that they are aware of. However, they should use historical information with care, particularly where changes have been made to address breaches already identified. Those reporting a breach should consider general risk factors, such as the level of funding or how well the scheme appears to be run. Some breaches that occur in a poorly funded and/or poorly administered scheme will be more significant to the Regulator than if they occurred in a well-funded, well administered scheme.

All incidents of breaches identified should be recorded in the Fund's breaches log. This log will be reviewed on an on-going basis to determine any trends that might indicate any serious failings or fraudulent behaviour. Where such failings or fraudulent behaviour are identified, immediate action will be taken to agree a plan of action to rectify the matter and prevent a recurrence in the future.

Examples of potential breaches, including when they should and should not be reported to the Regulator are included in Appendix A.

### When should a breach be reported to the Regulator?

The Code of Practice requires that a breach should be notified to the Regulator as soon as is reasonably practical once there is reasonable cause to believe that a breach has occurred and that it is of material significance to the Regulator. In any event, where a breach is considered to be of material significance it must be reported to the Regulator no later than one month after becoming aware of the breach or likely breach.

Where it is considered that a breach is of such significance that the Regulator is required to intervene as a matter of urgency (for example, serious fraud), the matter should be brought to the attention of the Regulator immediately (e.g. by calling them direct). A formal report should then be submitted to the Regulator, marked as "urgent" in order to draw the Regulator's attention to it.

~~Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, the Regulator will not normally consider this to be materially significant.~~

~~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 in order to minimise risk of recurrence~~
- ~~• are not pursuing corrective action to a proper conclusion~~
- ~~• fail to notify affected scheme members where it would have been appropriate to do so~~

### Assessing "reasonable cause"

It is important that the Fund and the Local Pension Board are satisfied that a breach has actually occurred, rather than acting on a suspicion of such an event.

It will be necessary, therefore, for robust checks to be made ~~by elected Members and officers~~ when acting on any suspicion of a breach having occurred. Where necessary this may involve taking legal advice or contacting other advisers (e.g. auditors, the Fund's actuary or investment advisers).

Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with others who are able to confirm what happened. However, it would not be appropriate to alert those implicated in potential serious offences involving dishonesty, such as theft or fraud. In such cases, due to the immediate risk to scheme assets, reporters should bypass the usual checks making only those they deem necessary and not cause undue delay to the report being made.

### Deciding if a breach is “materially significant” and should be reported to the Regulator

The ~~Regulator-Fund~~ has ~~produced-created~~ a decision tree to assist ~~schemes-reporters~~ in identifying the severity of a breach and whether it should be reported. When determining materiality of any breach or likely breach the Fund and Local Pension Board will in all cases consider the following:

- **cause** - e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law
- **effect** - e.g. a significant proportion of members are affected, scheme benefits are significantly affected, there is a pattern of recurrence, lack of knowledge and understanding, unmanaged conflicts of interest, systems of governance or internal controls are not established or operated. Risks are not properly identified and managed or the right money is not being paid to or by the scheme at the right time, inaccurate information is being provided, records are not being maintained, scheme assets are misappropriated.
- ~~effect - e.g. ineffective internal controls, lack of knowledge and understanding, inaccurate records, potential for further breaches occurring~~
- **reaction** - e.g. taking prompt and effective action to investigate and resolve a breach and notifying scheme members where appropriate will usually mean the Regulator does not consider the breach to be materially significant. However, a breach is likely to be of concern if it does not receive prompt and effective remedial action, is not being given the right priority, has not been communicated to affected scheme members, forms part of a series of breaches indicating poor governance or it was caused by dishonesty, even when action has been taken to resolve the matter quickly and effectively.
- ~~reaction - e.g. taking prompt and effective action to resolve a breach, notifying scheme members where appropriate; and~~
- **wider implications** - e.g. where a breach has occurred due to lack of knowledge or poor systems and processes making it more likely that other breaches will emerge in the future

The decision tree provides a “traffic light” system of categorising an identified breach and is shown at Appendix A:

- **Green** - not caused by dishonesty, poor governance or a deliberate contravention of the law and its effect is not significant and a plan is in place to rectify the situation. In such cases the breach may not be reported to the Regulator, but should be recorded in the Fund’s breaches log
- **Amber** - does not fall easily into either green or red and requires further investigation in order to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action
- **Red** - caused by dishonesty, poor governance or a deliberate contravention of the law and having a significant impact, even where a plan is in place to rectify the situation. The Fund or Local Pension Board must report all such breaches to the Regulator in all cases

If it is unclear as to whether the breach or likely breach is significant, in the first instance full details should always be reported to the Local Pension Board to determine the appropriate course of action. It should be noted that failure to report a significant breach or likely breach is likely, in itself, to be a significant breach.

The Fund will use the ~~Regulator’s~~ decision tree as a means of identifying whether any breach is to be considered as materially significant and should be reported to the Regulator.

Any failure of a scheme employer to pay over employee contributions that are considered to be of material significance to the Regulator must be reported ~~to the Regulator~~ immediately.

In order to determine whether failure to pay over employee contributions is materially significant or not the Fund will seek from the employer:

- the cause and circumstances of the payment failure
- what action the employer has taken as a result of the payment failure, and
- the wider implications or impact of the payment failure

Where a payment plan is agreed with the employer to recover outstanding contributions and it is being adhered to or there are circumstances of infrequent one-off late payments or administrative failures the late payment will not be considered to be of material significance.



All incidences resulting from the unwillingness or inability of the employer to pay over the employee contributions, dishonesty, fraudulent behaviour or misuse of employee contributions, poor administrative procedures or the failure to pay over employee contributions within 90 days from the due date will be considered to be of material significance and reported to the Regulator.

Once a breach or likely breach has been identified, regardless of whether it needs to be reported to the Regulator, the relevant manager<sub>2</sub> in consultation with the Monitoring Officer<sub>2</sub> must review the circumstances of the breach in order to understand why it occurred. The review must also identify the consequences of the breach and agree the corrective measures required to prevent recurrence, including an action plan where necessary. All breaches must be recorded in the Fund's breaches log.

### Process for reporting breaches

All ~~those the Breaches Policy applies to relevant officers and elected Members of the Fund, as well as all members of the Local Pension Board~~ have a responsibility to:

- identify and assess the severity of any breach or likely breach
- report all breaches or likely breaches to the Monitoring Officer
- in conjunction with relevant officers<sub>2</sub> agree a proposed course of action to rectify the breach and put in place measures to ensure the breach does not recur, obtaining appropriate legal or other advice where necessary
- ensure that the appropriate corrective action has been taken to rectify the breach or likely breach and to prevent it from recurring; and
- co-operate with, and assist in, the reporting of breaches and likely breaches to the Pension Fund Committee, Local Pension Board and where necessary the Regulator

### Responsibilities of the Monitoring Officer

The Fund will appoint one of the administering authority's senior officers to be responsible for the management and execution of this breaches policy. That officer will be the Monitoring Officer and will be the Head of Pensions Administration.

The Monitoring Officer will be responsible for recording and reporting breaches and likely breaches as follows:

- record all identified breaches and likely breaches of which they are aware in the Fund's breaches log
- investigate the circumstances of all reported breaches and likely breaches
- ensure, where necessary<sub>2</sub> that an action plan is put in place and acted on to correct the identified breach and also ensure further breaches of a similar nature do not recur
- report to the Pension Fund Committee and Local Pension Board:
  - ~~all~~ materially significant breaches or likely breaches that will require reporting to the Regulator as soon as practical, but no later than one month after becoming aware of the breach or likely breach; and
  - ~~all~~ other breaches at least quarterly as part of the Pension Fund Committee cycle
- report all materially significant breaches to the Regulator as soon as practical but not later than one month after becoming aware of the breach

The Monitoring Officer will determine whether any breach or likely breach is materially significant, having regard to the guidance set out in the Code of Practice and after consultation where considered appropriate with the Pension Fund Committee and Local Pension Board.

Where uncertainty exists as to the materiality of any identified breach, the Fund or Local Pension Board will be required to informally notify the Regulator of the issue and the steps being taken to resolve the issue.

### **How should a breach be reported to the Regulator?**

All materially significant breaches must be reported to the Regulator in writing. The Regulator encourages the use of its standard reporting facility via its online Exchange service. If a reporter discovers an urgent breach which is likely to have an immediate and damaging effect for scheme members, they should notify the Regulator by telephone before submitting their report in writing.

Breach of law reports must be made to the Regulator as soon as reasonably practicable. In most cases, this should be within 10 working days of the breach being identified. However, reporters may use their judgement and apply 'reasonably practicable' to their own circumstances. Consider such factors as the seriousness of the potential breach and its consequences. Where reporters decide a longer reporting time is reasonable, they should record the reasons for this and any evidence in case they need to show this in future.

The report should include the following:

- full name of the scheme
- description of the breach or breaches, including any relevant dates
- name of the scheme manager
- name, position and contact details of the reporter
- role of the reporter in the scheme
- reason the reporter believes the breach is of material significance
- address of the scheme
- type of scheme (public service)
- pension scheme registration (PSR) number if known
- address of the employer

There are also requirements placed on those running pension schemes to report to other bodies. Where the duty to report to another body coincides with the duty to report to the Regulator, the Regulator's report should include details of the other bodies the matter has been reported to.

If reporters have not received an acknowledgement from the Regulator within five days, they should contact them.

If a scheme or an individual is at risk, for example where there has been dishonesty, the reporter should not take any actions that may alert those implicated that a report has been made. Similarly, reporters should not delay their report to the Regulator, to check whether any proposed solutions will be effective.

### **Multiple reporters**

More than one person may be responsible for reporting the same breach. Those who have a duty to report should be aware this is not automatically discharged by another party reporting the breach.

Reporters should avoid making duplicate reports where possible. However, an exception to this is when another reporter has additional or different information about the breach or the circumstances related to it.

Where multiple reporters wish to submit a collective report, the reporting procedure allows for the evaluation of breaches as described in this policy. The report should be made as soon as reasonably practicable.

### **How should a breach be reported to The Regulator?**

All materially significant breaches must be reported to The Regulator in writing. The Regulator encourages the use of its standard reporting facility via its online Exchange service.

The Fund will report all material breaches to The Regulator via the online Exchange function.

### How are records of breaches maintained?

All breaches and likely breaches are to be reported to the Monitoring Officer as soon as they are identified. The Monitoring Officer will log all breaches on the Fund's breaches log, including the following information:

- date the breach or likely breach was identified
- the pension scheme's registry number (if available)
- name of the employer (where appropriate)
- any relevant dates
- a description of the breach, its cause and effect, including the reasons it is, or is not, believed to be of material significance
- whether the breach is considered to be red, amber or green
- a description of the actions taken to rectify the breach
- whether the concern has been reported before, and
- a brief description of any longer term implications and actions required to prevent similar types of breaches recurring in the future.

The Monitoring Officer will be responsible for ensuring the effective management and rectification of any breach identified. The Head of Pensions Administration will be responsible for submission of any report to the Regulator. Any documentation supporting the breach will be maintained by the Head of Pensions Administration.

### Whistleblowing

It is a statutory duty to report breaches of the law. In rare cases this may involve a duty to whistle blow on the part of an employee of the Fund or a member of the Local Pension Board. The duty to report does not override any other duties a "reporter" may have, such as confidentiality. Any such duty is not breached by reporting to the Regulator. Given the statutory duty that exists, in exercising this breaches policy the Fund will ensure it adheres to the requirements of the Employment Rights Act 1996 in protecting an employee making a whistleblowing disclosure to the Regulator.

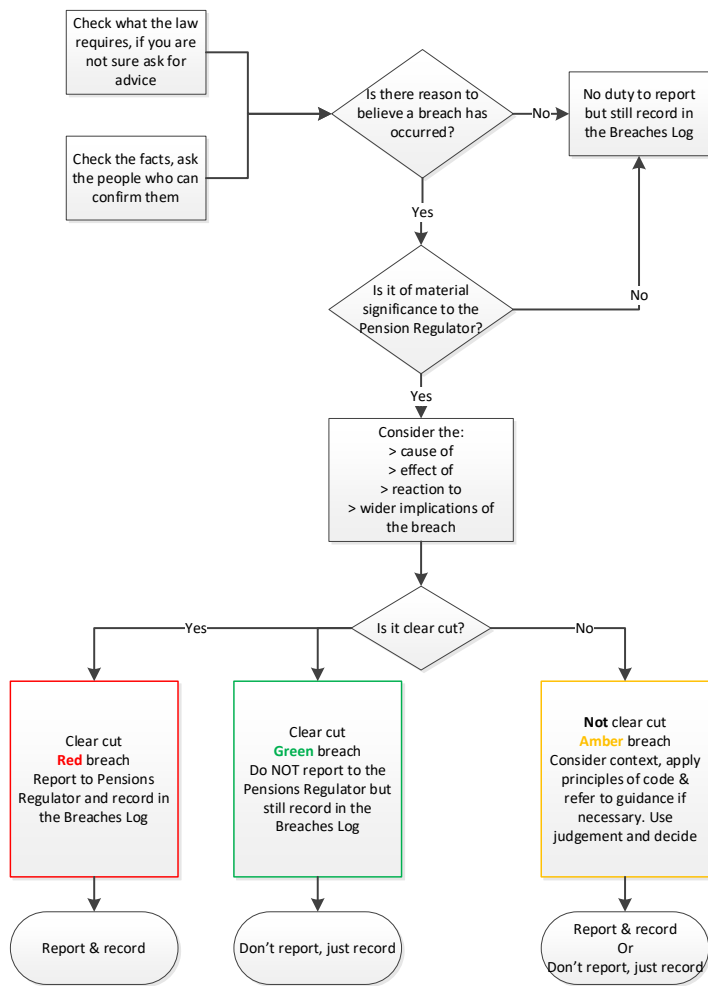
The duty to report, however, does not override 'legal privilege', so oral and written communications between the Fund or Local Pension Board and a professional legal adviser do not have to be disclosed.

### Training

The Head of Pensions Administration will ensure that all [Pension Fund Committee relevant elected Members and, Fund](#) officers, as well as members of the Local Pension Board receive appropriate training on this policy at the commencement of their employment or appointment to the Local Pension Board as appropriate and on an ongoing basis.

Appendix A

Deciding if a breach is “materially significant” and should be reported to the Regulator



**Appendix B**

**Form to report a breach to the Monitoring Officer**

<b>Name of Reporter:</b>	
<b>Position:</b>	
<b>Telephone number</b>	
<b>Email address</b>	
<b>Address</b>	
<b>Description of the breach (please include any relevant dates)</b>	
<b>Do you believe that the breach is of material significance to The Pensions Regulator?</b>	
<b>Please give your reasons</b>	
<b>Have you reported the breach to The Pensions Regulator?</b>	
<b>Please give your reasons</b>	

Please send the completed form by email or post to:

Phillippa Cockerill  
Monitoring Officer  
North Yorkshire Pension Fund  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AL

Telephone: 01609 535879  
Email: [Phillippa.cockerill@northyorks.gov.uk](mailto:Phillippa.cockerill@northyorks.gov.uk)

## Appendix C

### Examples of breaches

#### Knowledge and understanding

**Example scenario:** The scheme manager has breached a legal requirement because pension board members failed to help secure compliance with scheme rules and pensions law.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider Implications
Red	Pension board members have failed to take steps to acquire and retain the appropriate degree of knowledge and understanding about the scheme's administration policies	A pension board member does not have knowledge and understanding of the scheme's administration policy about conflicts of interest. The pension board member fails to disclose a potential conflict, which results in the member acting improperly	Pension board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative/non-compliant entrenched behaviours  The scheme manager does not take appropriate action to address the failing in relation to conflicts	It is highly likely that the scheme will be in breach of other legal requirements. The pension board do not have an appropriate level of knowledge and understanding and in turn are in breach of their legal requirement. Therefore, they are not fulfilling their role to assist the scheme manager and the scheme is not being properly governed
Amber	Pension board members have gaps in their knowledge and understanding about some areas of the scheme's administration policies and have not assisted the scheme manager in securing compliance with internal dispute resolution requirements	Some members who have raised issues have not had their complaints treated in accordance with the scheme's internal dispute resolution procedure (IDRP) and the law	The scheme manager has failed to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding or affect member benefits	It is possible that the scheme will be in breach of other legal requirements. It is possible that the pension board will not be properly fulfilling their role in assisting the scheme manager
Green	Pension board members have isolated gaps in their knowledge and understanding	The scheme manager has failed to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding or affect member benefits	Pension board members take action to review and improve their knowledge and understanding to enable them to properly exercise their functions and they are making quick progress to address gaps in their knowledge and understanding. They assist the scheme manager to take prompt and effective action to remedy the breach	It is unlikely that the scheme will be in breach of other legal requirements. It is unlikely that the pension board is not fulfilling their role in assisting the scheme manager

#### Scheme record-keeping

**Example scenario:** An evaluation of member data has identified incomplete and inaccurate records.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider Implications
Red	Inadequate internal processes that fail to help employers provide timely and accurate data, indicating a systemic problem	All members affected (benefits incorrect/not paid in accordance with the scheme rules, incorrect transactions processed and poor quality information provided in benefit statements)	Action has not been taken to identify and tackle the cause of the breach to minimise the risk of recurrence nor to notify members	It is highly likely that there are wider scheme issues caused by inadequate processes and that the scheme will be in breach of other legal requirements
Amber	A failure by some – but not all – participating employers to act in accordance with scheme procedures, indicating variable standards of implementing those procedures	A small number of members affected	Action has been taken to identify the cause of the breach, but progress to tackle it is slow and there is a risk of recurrence	It is possible that there are wider scheme issues and that the scheme may be in breach of other legal requirements
Green	A failure by one participating employer to act in accordance with scheme procedures, indicating an isolated incident	No members affected at present	Action has been taken to identify and tackle the cause of the breach and minimise the risk of recurrence	It is unlikely that there are wider scheme issues or that the scheme manager will be in breach of other legal requirements

### Providing information to members

**Example scenario:** An active member of the scheme has reported that their annual benefit statement, which was required to be issued within 17 months of the scheme regulations coming into force, has not been issued. It is now two months overdue. As a consequence, the member has been unable to check:

- personal data is complete and accurate
- correct contributions have been credited
- what their pension may be at retirement

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider Implications
Red	Inadequate internal processes for issuing annual benefit statements, indicating a systemic problem	All members may have been affected	Action has not been taken to correct the breach and/ or identify and tackle its cause to minimise the risk of recurrence and identify other members who may have been affected	It is highly likely that the scheme will be in breach of other legal requirements
Amber	An administrative oversight, indicating variable implementation of internal processes	A small number of members may have been affected	Action has been taken to correct the breach, but not to identify its cause and identify other members who may have been affected	It is possible that the scheme will be in breach of other legal requirements
Green	An isolated incident caused by a one off system error	Only one member appears to have been affected	Action has been taken to correct the breach, identify and tackle its cause to minimise the risk of recurrence and contact the affected member	It is unlikely that the scheme will be in breach of other legal requirements

### Internal Controls

**Example scenario:** The scheme has outsourced all aspects of scheme administration to a third party, including receiving contributions from employers and making payments to the scheme. Some contributions due to the scheme on behalf of employers and members are outstanding.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider Implications
Red	The administrator is failing to monitor that contributions are paid to them in time for them to make the payment to the scheme in accordance with the legislative timeframes and is therefore not taking action	The scheme is not receiving the employer contributions on or before the due date nor employee contributions within the prescribed period	The administrator has not taken steps to establish and operate adequate and effective internal controls and the scheme manager does not accept responsibility for ensuring that the failure is addressed	It is highly likely that the administrator is not following agreed service level standards and scheme procedures in other areas.  The scheme manager is likely to be in breach of other legal requirements such as the requirement to have adequate internal controls
Amber	The administrator has established internal controls to identify late payments of contributions but these are not being operated effectively by all staff at the administrator	The scheme is receiving some but not all of the employer contributions on or before the due date and employee contributions within the prescribed period	The scheme manager has accepted responsibility for ensuring that the failure is addressed, but the progress of the administrator in training their staff is slow	It is possible that the administrator is not following some of the agreed service level standards and scheme procedures in other areas.  It is possible that the scheme manager is in breach of other legal requirements
Green	Legitimate late payments have been agreed by the scheme with a particular employer due to exceptional circumstances	The employer is paying the administrator the outstanding payments within the agreed timescale	The scheme has discussed the issue with the employer and is satisfied that the employer is taking appropriate action to ensure future payments are paid on time	It is unlikely that the employer is failing to adhere to other scheme processes which would cause the scheme manager to be in breach of legal requirements

## Appendix D

### Example Record of Breaches

Date	Category	Description of Breach	Cause of Breach	Effect of Breach & Wider Implications	Response to Breach	Sent to PFC	Sent to PB	Outcome of Referral	Reported to Regulator	Progress Review 1	Progress Review 2
30/9/2015	Contributions	No employer or employee contributions paid by employer for two months (June and July) Queried with employer on 23/8/215	Employer advised Fund on 26/8/2015 that late payment of contribution due to installation of new payroll system and outstanding contribution will be paid without delay	Where contributions remain outstanding for more than 90 days, then likely to be of material significance to the Regulator	No previous breaches by employer. Not reported as outstanding contribution paid within 90 days of the due date and therefore not of material significance.	Y	Y	Position noted. As contributions were received within a reasonable timeframe it was confirmed no requirement to report	N	Contributions for August paid on 19/09/2015	Monitor payments on 19/10/2015 to ensure that late payment was a one off failure
1/12/217	Regulations	Regulation 40 Death Grant payments	Failure to identify beneficiaries of estate of deceased. Correct procedure not followed.	Member died in service without an expression of wish form. Fund did not identify correct dependents, leading to possible 2 <sup>nd</sup> payment of death grant. Dependent, a long term partner of deceased appealed the decision to pay on strength of letters of administration. Recipient Relative identified by probate office refused to repay death grant.	Investigations showed that the Probate office was limited by their regulations which pre-judged against a partner and Fund had failed to recognise this.	Y	Y	Position noted. As staff training is being provided and policy updated no further action taken. Overpaid death grant written off by Fund.	N	Ensure all staff trained and policy updated.	Procedure documented and incorporated into system

OFFICIAL