

Reporting Breaches of the Law Policy

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1. Purpose

- 1.1 In April 2015 The Pensions Regulator ('the regulator'), issued a code of practice for public service pension schemes. The code of practice sets out the legal requirements for public service pension schemes and standards of conduct and practice expected of those who exercise functions in relation to those legal requirements.
- 1.2 One of the codes of practice is the requirement for certain people to report breaches of the law to the regulator.
- 1.3 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, for funded pension schemes, making investment or investment-related decisions.
- 1.4 Identifying and assessing a breach of the law is important in reducing risk and providing an early warning of possible malpractice in public service pension schemes.
- 1.5 The aim of this policy is to enable people to raise concerns and facilitate the objective consideration of those matters. This policy allows for reporters to decide within an appropriate timescale whether they must report a breach.

2. Scope

- 2.1 People who are subject to the reporting requirement ('reporters') are:
 - The scheme manager or manager of the scheme
 - A pension board member
 - An employer, (regardless of whether the breach relates to, or affects, members who are its employees or those of other employers)
 - A professional adviser, e.g. auditor, actuary, legal adviser, fund manager
 - A person involved in scheme administration
 - A person who advises the manager of the scheme (in relation to the scheme)
- 2.2 All parties must understand and adopt this policy.

3. Definition

- 3.1 The 'scheme manager' is the administering authority of West Midlands Pension Fund, i.e. Wolverhampton City Council ('Council'), responsible for managing and administering the scheme.
- 3.2 In this policy 'scheme' refers to West Midlands Pension Fund.

4. Policy

4.1 When to consider reporting

The above people are required to report breaches of the law to the regulator where 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
- The failure to comply is likely to be of material significance to 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, for funded pension schemes, making investment or investment-related decisions. Examples of breaches can be found in Appendix 3.

4.2 Judging whether there is ‘reasonable cause’

4.2.1 Having ‘reasonable cause’ to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

4.2.2 Reporters should ensure that where a breach is suspected, they carry out checks to establish whether or not a breach has in fact occurred. For example, a member of a funded pension scheme may allege that there has been a misappropriation of scheme assets where they have seen in the annual accounts that the scheme’s assets have fallen. However, the real reason for the apparent loss in value of scheme assets may be due to the behaviour of the stock market over the period. This would mean that there is not reasonable cause to believe that a breach has occurred.

4.2.3 To facilitate this, reporters should report the breach to the Fund’s Compliance and Risk Team (‘Compliance’) immediately, who will log the breach (or suspected breach) and investigate, clarify the facts and document the findings using form tPR attached (Appendix 1). The form can also be found at www.wmpfonline.com/governance

4.2.4 It may not be appropriate to check in cases of theft, suspected fraud or other serious offences where discussions might alert those implicated or impede the actions of the police or a regulatory authority. Under these circumstances the reporter should alert the regulator without delay.

4.2.5 If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view. For Compliance or for an individual needing to alert the regulator separately, they could consult with the Council’s monitoring officer.

4.2.6 In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter or Compliance to gather all the

evidence which the regulator may require before taking legal action. A delay in reporting may exacerbate or increase the risk of the breach.

4.3 Material significance

- 4.3.1 In deciding whether a breach is likely to be of 'material significance' to the regulator, the cause, effect, reaction to and wider implications of the breach should be considered, using the traffic light framework.
- 4.3.2 Once each factor has been rated, it should be determined which overall reporting traffic light, the breach falls into – red, amber or green.
- 4.3.3 Compliance will use the aforementioned form tPR to document and consider the breach (or suspected breach) and decide whether to report.
- 4.3.4 If necessary expert or professional advice should be taken into account.

4.4 Cause of the breach

- 4.4.1 The breach is likely to be of material significance to the regulator where it was caused by:
 - Dishonesty
 - Poor governance or administration
 - Slow or inappropriate decision making practices
 - Incomplete or inaccurate advice, or
 - Acting (or failing to act) in deliberate contravention of the law
- 4.4.2 When deciding whether a breach is of material significance, reporters should consider other reported and unreported breaches of which they are aware. However, historical information should be considered with care, particularly if changes have been made to address previously identified problems.
- 4.4.3 A breach will not normally be materially significant if it has arisen from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances. But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had and to be aware that persistent isolated breaches could be indicative of wider scheme issues.

4.5 Effect of the breach

- 4.5.1 Reporters need to consider the effects of any breach, but with the regulator's role in relation to public service pension schemes and its statutory objectives in mind, the following matters in particular should be considered likely to be of material significance to the regulator:
 - Pension board members not having the appropriate degree of knowledge and understanding, which may result in the pension board not fulfilling its

role, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements

- Pension board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements
- Adequate internal controls not being established and operated, which may lead to the scheme not being run in accordance with the scheme's regulations and other legal requirements, risks not being properly identified and managed and/or the right money not being paid to or by the scheme at the right time
- Accurate information about benefits and scheme administration not being provided to scheme members and others, which may result in members not being able to effectively plan or make decisions about their retirement
- Appropriate records not being maintained, which may result in member benefits being calculated incorrectly and / or not being paid to the right person at the right time
- Pension board members misappropriating any assets of the scheme or being likely to do so, which may result in scheme assets not being safeguarded, and
- Any other breach which may result in the scheme being poorly governed, managed or administered.

4.5.2 Reporters need to take care to consider the effects of the breach, including any other breaches occurring as a result of the initial breach and the effects of those resulting breaches.

4.6 Reaction to the breach

4.6.1 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.

4.6.2 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, or
- Fail to notify affected scheme members where it would have been appropriate to do so.

4.7 Wider implications of the breach

- 4.7.1 Reporters should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to the regulator.
- 4.7.2 For example, a breach is likely to be of material significance where the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future.
- 4.7.3 This may be due to the scheme manager or pension board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities or where other pension schemes may be affected. For instance, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

4.8 Decision to report

- 4.8.1 If having considered 4.4 to 4.7, it is deemed that overall the breach falls into a red reporting traffic light, the breach should be reported.
- 4.8.2 For amber breaches, the reporter or Compliance should use their judgement to decide whether to report. Green breaches do not need to be reported.
- 4.8.3 The decision on whether to report should be made within 20 working days of the breach being initially reported to Compliance and should be documented on form tPR.
- 4.8.4 The record of past breaches may be relevant in deciding whether to report future breaches, for example it may reveal a systemic issue.
- 4.8.5 If required, Compliance should report the breach to the regulator within 5 days of a decision being made to report.

4.9 Reports to the regulator

- 4.9.1 Reports must be submitted in writing and can be sent by post or electronically, including by email or by fax. Wherever possible, reporters should use the standard format available via the Exchange online service on the regulator's website.
- 4.9.2 The report should be dated and include as a minimum:
- Full name of the scheme
 - Description of the breach or breaches
 - Any relevant dates
 - Name of the employer or scheme manager (where known)
 - Name, position and contact details of the reporter, and
 - Role of the reporter in relation to the scheme

Additional information that would help the regulator includes:

- The reason the breach is thought to be of material significance to the regulator
- The address of the scheme
- The contact details of the scheme manager (if different to the scheme address)
- The pension scheme's registry number (if available), and
- Whether the concern has been reported before.

4.9.3 Reporters should mark urgent reports as such and draw attention to matters they consider particularly serious. They can precede a written report with a telephone call, if appropriate.

4.9.4 Reporters should ensure they receive an acknowledgement for any report they send to the regulator. Only when they receive an acknowledgement can the reporter be confident that the regulator has received their report. This date should be recorded by Compliance to complete form tPR.

4.9.5 The regulator will acknowledge all reports within five working days of receipt, however it will not generally keep a reporter informed of the steps taken in response to a report of a breach as there are restrictions on the information it can disclose.

4.9.6 The reporter should provide further information or reports of further breaches if this may help the regulator to exercise its functions. The regulator may make contact to request further information.

4.9.7 Breaches should be reported as soon as reasonably practicable, which will depend on the circumstances. In particular, the time taken should reflect the seriousness of the suspected breach.

4.9.8 In cases of immediate risk to the scheme, 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.

4.10 Whistleblowing protection and confidentiality

4.10.1 The Pensions Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report. The regulator understands the potential impact of a report on relationships, for example, between an employee and their employer.

4.10.2 The statutory duty to report does not, however, override 'legal privilege'. This means that oral and written communications between a professional legal

adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

4.10.3 The regulator will do its best to protect a reporter's identity (if desired) and will not disclose the information except where lawfully required to do so. It will take all reasonable steps to maintain confidentiality, but it cannot give any categorical assurances as the circumstances may mean that disclosure of the reporter's identity becomes unavoidable in law. This includes circumstances where the regulator is ordered by a court to disclose it.

4.10.4 The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the regulator. Consequently, where individuals employed by firms or another organisation having a statutory duty to report, disagree with a decision not to report to the regulator, they may have protection under the ERA if they make an individual report in good faith. The regulator expects such individual reports to be rare and confined to the most serious cases.

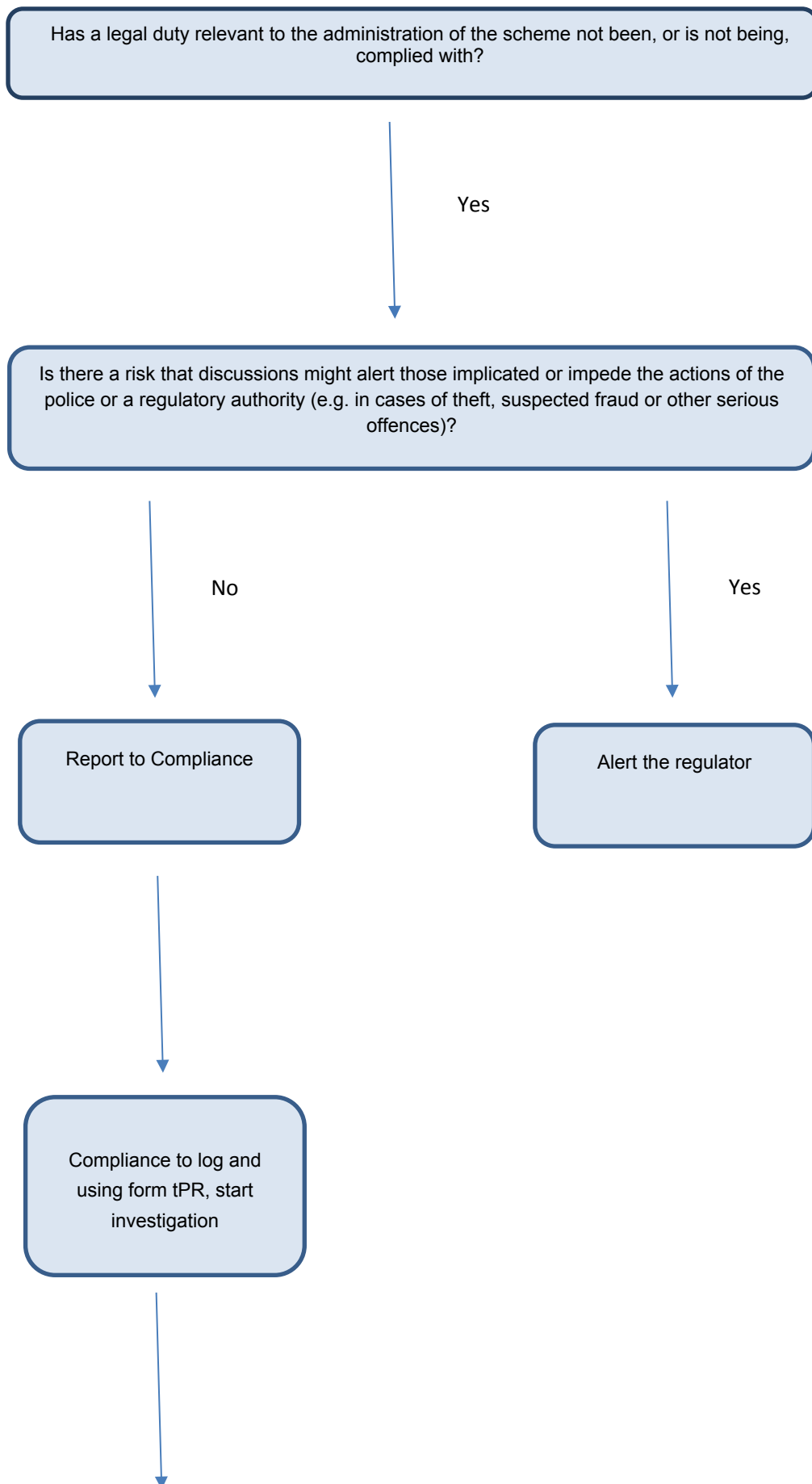
5. Compliance

5.1 Compliance with this policy will be monitored and reviewed by the Compliance and Risk Team and will be subject to review by Pensions Board.

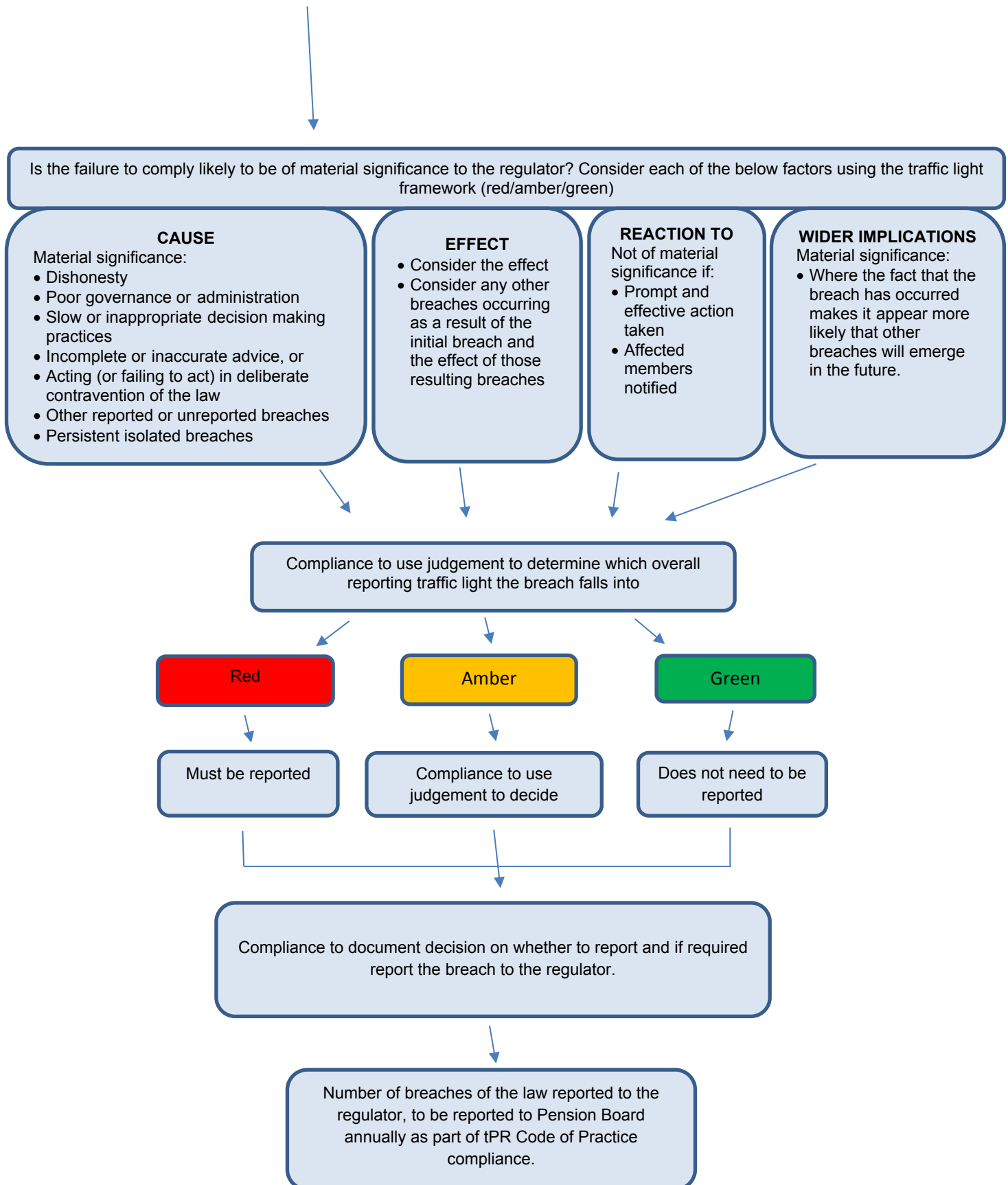
6. Review

6.1 This policy will be reviewed at least annually or more frequently if required.

WEST MIDLANDS PENSION FUND	
Breach of the law	
Breach details	
Date of breach	
What type of disclosure has been breached?	
Please provide details of the breach (to a maximum of 4000 characters)	
Rectifying the breach	
Has this breach been rectified?	
If yes, what steps were taken to rectify the breach?	
If no, what steps are being taken to rectify the breach?	
If the breach has not been rectified, what are the timescales for completion?	
Additional breaches or any other information	
Please provide details of any additional breaches or other information that you think is relevant (to a max of 4000 characters)	
Decision to report	
Name and position of reporter	
Decision on whether to report (Yes or No, with reasons)	
Date reported	
Date acknowledged by The Pensions Regulator	



Procedure flowchart continued



Public Service toolkit downloadable

Example breaches of the law and the traffic light framework

Introduction

Certain people involved with the governance and administration of a public service pension scheme must report certain breaches of the law to The Pensions Regulator. These people include scheme managers, members of pension boards, employers, professional advisers and anyone involved in administration of the scheme or advising managers. You should use the traffic light framework when you decide whether to report to us. This is defined as follows:

- Red breaches must be reported.
- Amber breaches are less clear cut: you should use your judgement to decide whether it needs to be reported.
- Green breaches do not need to be reported.

Red breaches should be recorded by the scheme manager even if the decision is not to report.

When using the traffic light framework you 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 you consider the four together.

As each breach of law will have a unique set of circumstances, there may be elements which apply from one or more of the red, amber and green sections. You should use your own judgement to determine which overall reporting traffic light the breach falls into.

By carrying out this thought process, you can obtain a greater understanding of whether or not a breach of the law is likely to be of material significance and needs to be reported.

You should not take these examples as a substitute for using your own judgement based on the principles set out in the draft public service code of practice as supported by relevant pensions legislation. They are not exhaustive and are illustrative only.

Knowledge and understanding required by pension board members

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	<p>Pension board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative/non-compliant entrenched behaviours</p> <p>The scheme manager does not take appropriate action to address the failing in relation to conflicts</p>	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 a defined benefit (DB) public service 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: A DB public service 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 within 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

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