



West Yorkshire
Fire & Rescue Service

Pensions Breaches Policy



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Equality Impact Assessment

Are the recommendations within this report subject to Equality Impact Assessment as outlined in the EIA guidance? No

Contents

Introduction	4
Requirements	4
Pensions Act 2004.....	4
The Pension Regulator's Code of Practice.....	5
Reporting Breaches Procedure	5
Clarification of the law	5
Clarification when a breach is suspected	6
Determining whether the breach is likely to be of material significance	6
Referral to a level of seniority for a decision to be made on whether to report.....	8
Dealing with complex cases.....	8
Timescales for reporting.....	8
Early identification of very serious breaches	8
Recording all breaches even if they are not reported	9
Reporting a breach	9
Confidentiality	10
Reporting to the Local Pension Board	10
Review	10
Appendix A - Determining whether a breach is likely to be of material significance	11
The cause of the breach.....	11
The effect of the breach	11
The reaction to the breach	12
The wider implications of the breach	12
Appendix B - Traffic light framework for deciding whether to report	13
Appendix C - Example Breach Register.....	14
Monitoring and review	15

Introduction

West Yorkshire Fire and Rescue Service's (WYFRS) pension arrangements take account of The Pensions Regulator's Code of Practice.

The Scheme Manager of a public service pension scheme must establish and operate internal controls. These must be adequate for the purpose of securing that the scheme is administered and managed in accordance with the scheme rules and in accordance with the requirements of the law.

Internal controls are systems, arrangements and procedures that are put in place to ensure that pension schemes are being run in accordance with the scheme rules and other law. They should include documented procedures for assessing and managing risk, reviewing breaches of law and managing contributions to the scheme. Internal controls can help protect pension schemes from adverse risks, which could be detrimental to the scheme and members if they are not mitigated. The Scheme Manager will employ a risk-based approach and ensure that sufficient time and attention is spent on identifying, evaluating and managing breaches by developing and monitoring appropriate controls. They will seek advice as necessary.

This document sets out the procedures to be followed by certain persons involved with the WYFRS Local Pension Board - including the Scheme Manager (delegated to the Director of People and Culture) in relation to reporting breaches of the law to The Pensions Regulator.

Breaches can occur in relation to a wide variety of tasks normally associated with the administrative function of a scheme such as keeping records, internal controls, calculating benefits and providing information to scheme members.

This procedure applies, in the main, to:

- members of the Local Pension Board and Scheme Manager;
- all officers involved in the management of the pension schemes;
- those who provide administrative services to occupational and personal pension schemes;
- participating employers, who provide staff to carry out administration tasks in-house (this includes performing payroll and similar functions, as well as carrying out or helping with direct administration of the pension scheme);

However, any person involved with a scheme has a duty to report an identified breach. This does not include scheme members.

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;
- the employer in relation to an occupational pension scheme;
- a professional adviser in relation to such a scheme; and
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme,

to report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:

- a legal duty relating to the administration of the scheme has not been or is not being complied with, and
- the failure to comply is likely to be of material significance to The Pensions Regulator

The Act states that a person can be subject to a civil penalty if they fail 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 guidance in relation to this legal requirement is included in The Pension Regulator's Code of Practice including in the following areas:

- Implementing adequate procedures
- Judging whether a breach must be reported
- Submitting a report to The Pensions Regulator
- Whistleblowing protection and confidentiality

Reporting Breaches Procedure

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Firefighters' Pension Schemes. It aims to ensure individuals responsible can meet their legal obligations, avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk.

Clarification of the law

Individuals may need to refer to regulations and guidance when considering whether to report a possible breach. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the [Pensions Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- [Employment Rights Act 1996 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1996/18)
- [The Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1211)
- [Public Service Pensions Act 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2013/12)
- [Firefighters' Pension Schemes Regulations and Guidance \(fpsregs.org\)](https://www.fpsregs.org/)
- [The Pensions Regulator's Code of Practice](#)

Individuals should refer to the section in the Code of Practice on 'Whistleblowing - reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, the section of the code on 'Monitoring contributions'.

Further guidance and assistance can be provided by the LGA Fire pensions' team, the SAB secretariat or TPR provided that requesting this assistance will not result in alerting those responsible.

Clarification when a breach is suspected

Individuals need to have reasonable cause to believe that a breach 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 Scheme Manager or others 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 Pensions Regulator should be contacted without delay.

Determining whether the breach is likely to be of material significance

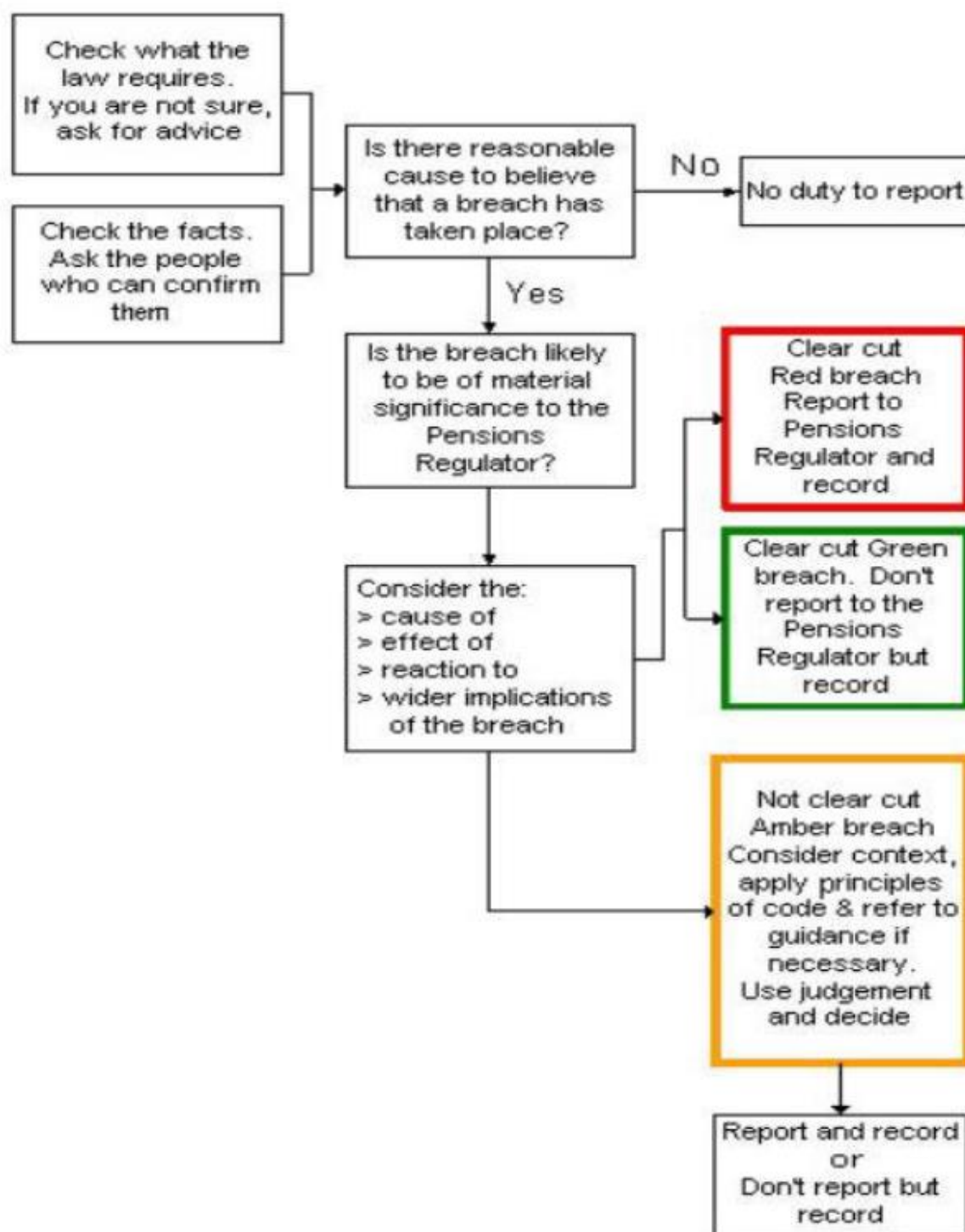
To decide whether a breach is likely to be of material significance an individual should consider the following, both separately and collectively:

- Cause of the breach (what made it happen);
- Effect of the breach (the consequence(s) of the breach);
- Reaction to the breach; and
- Wider implications of the breach.

Further details on the above four considerations are provided in Appendix A to this procedure. Individuals should use the traffic light framework described in Appendix B to help assess the material significance of each breach and to formally support and document their decision.

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 and therefore requires to be reported.

Decision-tree: deciding whether to report



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

The Scheme Manager is responsible for ensuring procedure is appropriately followed, the Scheme Manager will be able to identify a person or persons who has 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 Pensions Regulator, where appropriate.

If the breach relates to a reported error by payroll to deduct the correct pension contributions or the pensions administrator to calculate and pay pension benefits, the matter should be highlighted to the Scheme Manager at the earliest opportunity to ensure the matter is resolved as a matter of urgency. Individuals must bear in mind, however, that the involvement of the Scheme Manager is to help clarify the potential reporter's thought process and to ensure this procedure is followed. The reporter remains responsible for the final decision as to whether a matter should be reported to The Pensions Regulator.

The matter should not be referred to any officer if doing so will alert any person responsible for a possible serious offence to the investigation (as highlighted in section 2). If that is the case, the individual should report the matter to The Pensions Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to the Regulator before the submission may be appropriate, particularly in more serious breaches.

Dealing with complex cases

Guidance and information on particularly complex cases may be available from LGA, TPR, the administrator or national resources such as the Scheme Advisory Board www.fpsboard.org or the LGA Bluelight team www.fpsregs.org. If timescales allow, legal advice or other professional advice can be sought, and the case can be discussed at the next Local Pension Board meeting.

Timescales for reporting

The Pensions Act and The Pension Regulator's Code of Practice 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, nor is it necessary for a reporter to gather all the evidence which The Pensions 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 scheme, for instance, where there is any indication of dishonesty, The Pensions 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 Pensions Regulator to the breach.

Recording all breaches even if they are 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). West Yorkshire Fire and Rescue Authority will maintain a record of all breaches identified by individuals and reporters should therefore provide copies of reports to the Scheme Manager.

Records of unreported breaches should also be provided as soon as reasonably practicable and certainly no later than within 20 working days of the decision made not to report. These will be recorded alongside all reported breaches. The record of all breaches (reported or otherwise) will be included every Local Pension Board agenda.

Reporting a breach

Reports must be submitted in writing via The Pensions Regulator's online system at www.tpr.gov.uk/exchange, or by email or post, and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Reporters should ensure they receive an acknowledgement for any report they send to The Pensions Regulator. The Pensions 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 Pensions Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name;
- description of breach(es);
- any relevant dates;
- name, position and contact details;
- role in connection to the scheme; and
- employer name or name of Scheme Manager

If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to The Pensions Regulator;
- scheme address (provided at the end of this procedures document);
- Scheme Manager contact details
- pension scheme registry number; and
- whether the breach has been reported before.

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

Confidentiality

If requested, The Pensions Regulator will do its best to protect a reporter's identity and will not disclose information except where it is lawfully required to do so. If an individual's employer decides not to report and the individual employed by them disagrees with this and decides to report a breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report in good faith.

Reporting to the Local Pension Board

A report will be presented by the Scheme Manager (or representative) to the Local Pension Board setting out:

- all breaches, including those reported to The Pensions 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; and
- 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 LPB papers is provided in Appendix C.

Review

This Reporting Breaches Procedure was originally developed in June 2019. It will be kept under review and updated as considered appropriate. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

Appendix A - 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; and
- wider implications of the breach

The cause of the breach

Examples of causes which are likely to be of concern to The Pensions 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; or
- 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 Pensions 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 Pensions Regulator in the context of the FPS are given below:

- Scheme Manager or Local Pension Board members not having enough knowledge and understanding, resulting in the Pension Board not fulfilling its role, the scheme not being properly governed and administered and/or the Scheme Manager breaching other legal requirements.
- Conflicts of interest of the Scheme Manager or Local 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 scheme and/or the Scheme Manager breaching legal requirements.

- Poor internal controls, leading to schemes not being run in accordance with the 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 scheme 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 scheme being poorly governed, managed or administered.

The reaction to the breach

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

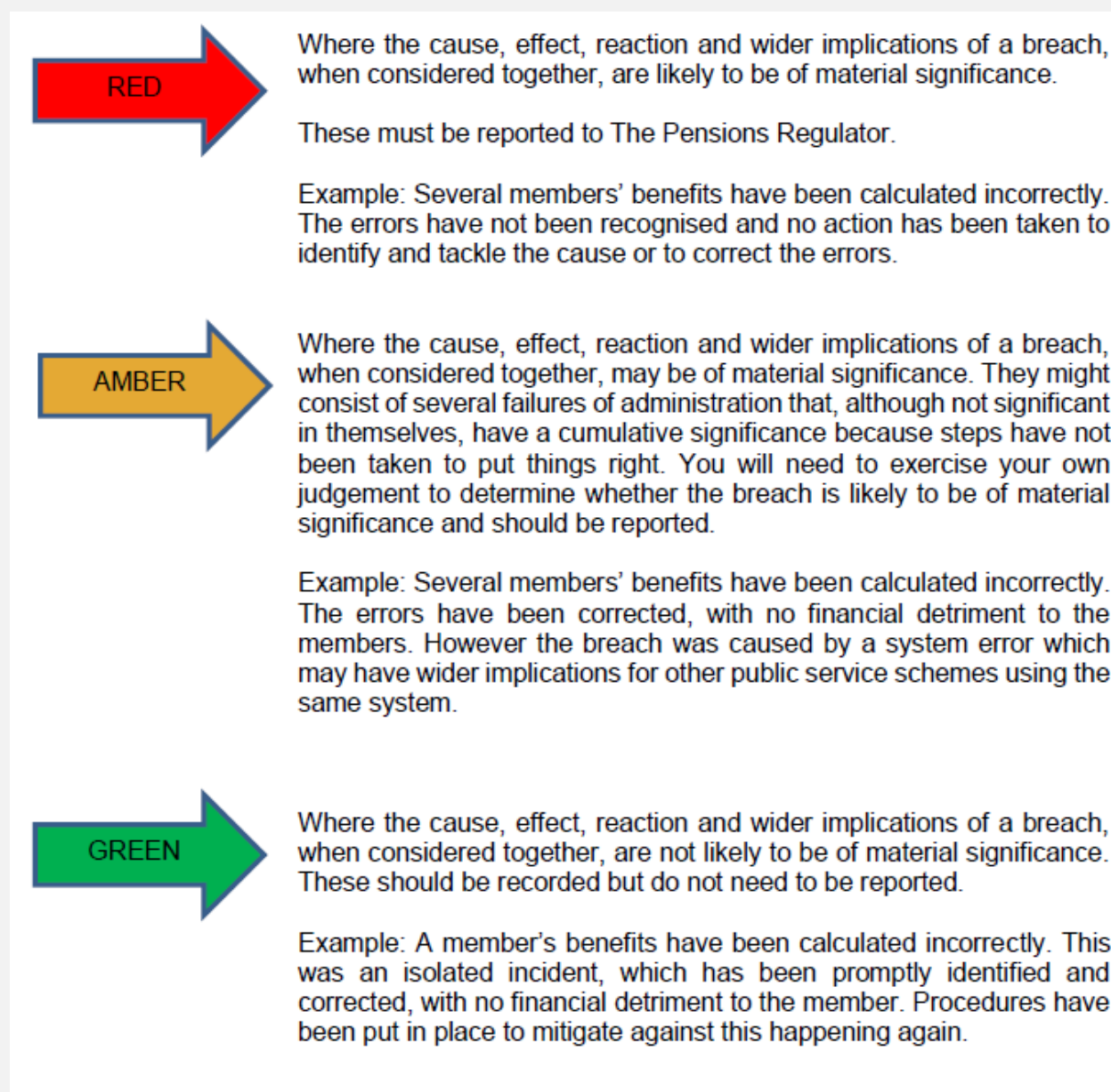
- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence;
- are not pursuing corrective action to a proper conclusion; or
- fail to notify affected scheme members where it would have been appropriate to do so

The wider implications of the breach

Reporters 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 Pensions Regulator where the fact that a breach has occurred makes it more likely that further breaches will occur within the scheme or, if due to maladministration by a third party, further breaches will occur in other pension schemes.

Appendix B - Traffic light framework for deciding whether to report

It is recommended that those responsible for reporting use the traffic light framework when deciding whether to report to The Pensions Regulator. This is illustrated below:



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 you consider the four together. Some useful examples of this is framework is provided by The Pensions Regulator at the following link:

[TPR | Assess whether to report a breach of the law](#)

Appendix C - Example Breach Register

Compliance Breach Register

Breach No.	Breach Advice Date	Breach Details	Reported to	Investigation details, progress, outcome, corrective action, confirmation Breach permanently rectified? Reason not reported to TPR

Monitoring and review

This policy will be reviewed every three years to ensure it is compliant with current legislation and guidance.

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