

REPORTING BREACHES OF THE LAW

TRAFFIC LIGHT FRAMEWORK

BREACHES OF THE LAW – TRAFFIC LIGHT FRAMEWORK

Under Section 70 of the Pensions Act 2004 certain people are required to report breaches of the law to the Pensions Regulator where they consider that they have a reasonable cause to believe that a legal duty which is relevant to the administration of the pension scheme has not been, or is not being, complied with and that failure to comply is likely to have a material significance to the Pensions Regulator in the exercise of its functions.

Responsible people include scheme managers, members of local pension boards, scheme employers, professional advisers and anyone involved in the administration of the scheme.

This traffic light framework should be used when considering whether to report breaches of the law to the Pensions Regulator. Breaches can be broken down onto 3 categories:

1. Red breaches – must be reported
2. Amber breaches – are less clear cut and responsible people should use their judgement to decide whether the breach should be reported or not
3. Green breaches – do not need to be reported but should be recorded.

When using the traffic light framework it is important to 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 all four together.

As each breach will have a unique set of circumstances, there may be elements which apply from one or more of the red, amber or green sections. It is important to judge and determine which overall reporting traffic light the breach falls into.

As new breaches arise it is important to continually update and refer to this framework as it will grow into a useful tool to be assist in the decision making process.

This framework should also used in conjunction with the guide 'Reporting breaches of the law' and the register of breaches of the law.

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EXAMPLES OF BREACHES

POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	KNOWLEDGE AND UNDERSTANDING REQUIRED BY PENSION BOARD MEMBERS - The scheme manager has breached a legal requirement because pension board members failed to help secure compliance with scheme rules and pensions law.			
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 fails to take appropriate action to address the failing in relation to conflicts.</p>	Is it 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 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.

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POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	SCHEME RECORD KEEPING – An evaluation of member data has identified incomplete and inaccurate records.			
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.
POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	MULTIPLE BREACHES REPORTED – Several ‘green’ breaches within a short period			
RED	Breaches caused by lack of internal controls at either scheme manager level or within a service provider or if there are several underlying causes.	Significant delays are expected before the problems can be fixed or the effects on members remedied.	Little attempt to alleviate or remedy problems or initial appropriate action not carried through to a proper conclusion.	Implications for future breaches because scheme manager does not have necessary skills and knowledge and are not taking their responsibilities seriously.
AMBER	Breaches caused by a failure to have proper documented processes in place below scheme manager level or due to	Affects a small number of scheme members.	Efforts being taken to resolve the issue and effected scheme members being kept informed with a suitable work-around being	It is possible that the scheme manager could be in breach of other legal requirements if action to remedy cause is slow.

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	service provider.		applied.	
GREEN	Breaches effectively stemming from a single cause, largely beyond the scheme manager's control such as a system failure or the short term absence of a critical member of staff.	Effects of the breach likely to be short-lived.	Those responsible are taking effective and speedy action to alleviate and remedy the problem.	It is unlikely there are wider scheme issues or that the scheme manager will be in breach of other legal requirements.
POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	CALCULATION OF SCHEME BENEFITS – The scheme auditor discovers that benefits for some scheme members are incorrect.			
RED	The administrator's inadequate systems or checking procedures.	A high proportion of members affected. The extent of the problem is not known but potentially widespread. The problem extends back in time over several years. The problem needs extensive investigation and there is little prospect of an immediate solution.	The scheme manager is either taking no action or the action they are taking is neither effective nor commensurate with the problem. Scheme members are not being kept informed.	It is likely that the reported funding level of the scheme could be significantly misleading.
AMBER	Multiple employers are misreporting pay for pension purposes to scheme manager.	A significant number of members are affected although the matter does not cover an extensive historical period.	The scheme manager, their advisers and service providers have identified the issue and are taking steps to remedy the situation whilst keeping scheme member informed.	It is possible that the scheme manager could be in breach of other legal requirements if action to remedy cause is slow.
GREEN	Long standing administrative practice not in line with scheme rules. Inadvertent misreporting to scheme manager by an employer of pay for pension purposes.	Only a few members affected. The problem is only likely to have been present for a short historic period.	The scheme manager, their advisers and service providers are taking robust action to identify the extent of the problem and take corrective action. Affected members are being kept informed.	It is unlikely there are wider scheme issues or that the scheme manager will be in breach of other legal requirements.

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POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	APPLYING REGULATIONS – Actions have been taken that do not meet the requirements of the scheme regulations.			
RED	Acting (or failing to act) in the full knowledge that doing so contravenes the scheme's provisions. Failing to take advice when it would have been reasonable to have done so.	A significant worsening of security for some classes of scheme member.	Scheme manager not taking action to correct even where new advice indicates that such action is needed.	One or more of the scheme managers may not be a fit and proper person to take on the responsibility.
AMBER	Failure to interpret regulations appropriately and to gather proper advice when it would have been reasonable to do so.	A relatively small number, or specific group, of scheme members affected.	Scheme manager has identified problem and is considering what action to take.	One scheme manager may not be a fit and proper person to take on the responsibility as matter is not yet resolved. It is possible that the scheme could be in breach of other legal requirements.
GREEN	An inadvertent error. Acting on advice later proved to be wrong.	No significant effect on members' benefits or security.	Scheme manager taking corrective action.	It is unlikely there are wider scheme issues or that the scheme manager will be in breach of other legal requirements.
POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	PROVIDING INFORMATION TO MEMBERS – Late issue of annual benefits statements			
RED	Inadequate internal controls for issuing annual benefit statements indicating a systemic problem.	All active and deferred 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.	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.	It is possible that the scheme will be in breach of other legal requirements.

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GREEN	An isolated incident has occurred 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 the cause and the member has been informed.	It is unlikely that the scheme will be in breach of other legal requirements.
POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH	PAYMENT OF CONTRIBUTIONS – Employee and employer contributions not paid to the Pension Fund within specified deadlines.			
RED	Inadequate internal controls for monitoring receipt of contributions from scheme employers indicating a systemic problem.	All contributions received after the specified deadline as set out in regulation.	Scheme manager not taking action to correct the breach and to tackle the cause to minimise the risk of future recurrence.	Loss of investment returns resulting in misleading funding levels being reported. The scheme will be in breach of other legal requirements.
AMBER	A number of scheme employers fail to make payment of contributions within specified deadlines	Some contributions received after specified deadline as set out in regulation.	Service provider taking action to correct the breach and to tackle the cause to minimise the future risk of recurrence by issuing notices of poor performance and reporting to scheme manager..	Some loss on investment returns leading to funding levels being wrongly reported. It is likely that the scheme will be in breach of other legal requirements.
GREEN	One scheme employer continually fails to meet payment of contribution deadline	Relatively small amount being received after the specified deadline as set out in regulation.	Service provider taking action to correct the breach and tackle the future risk of recurrence by issuing notices of poor performance and reporting to scheme manager.	Whilst not considered to be materially significant continual failure to make late payment of contributions should be recorded for future reference and possible reporting to the Pensions Regulator.

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REGISTER OF BREACHES

POTENTIAL INVESTIGATION OUTCOMES				
	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH DETAILS				
DATE IDENTIFIED				
RED				
AMBER				
GREEN				
DATE REVIEWED BY RESPONSIBLE PERSON				
OUTCOME AND ACTION TAKEN				
NAME OF REPORTER AND DATE REPORTED TO TPR				
TPR RESPONSE				
ACTION TAKEN				

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	CAUSE	EFFECT	REACTION	WIDER IMPLICATIONS
BREACH DETAILS				
DATE IDENTIFIED				
RED				
AMBER				
GREEN				
DATE REVIEWED BY RESPONSIBLE PERSON				
OUTCOME AND ACTION TAKEN				
NAME OF REPORTER AND DATE REPORTED TO TPR				
TPR RESPONSE				
ACTION TAKEN				