

Breaches of Law February 2022



Contents

General Comments

- TPR – Resolving issues
- What is a breach?
- Who is responsible?
- Steps to following



The Process

- Identifying a breach
- Reasonable cause
- Materially significant
- Reporting
- Record keeping

Code 14 content - Resolving Issues

Governing your scheme

- Knowledge and understanding
- Conflicts of interest
- Publishing information about schemes

Administration

- Record-keeping
- Maintaining contributions
- Providing information to members

Risk

- Internal Controls

Resolving Issues

- Internal dispute resolution
- Reporting breaches of the law

What is a breach?

“an act of breaking or failing to observe a law, agreement or code of conduct”

- In terms of the LGPS, it is a failure to:
 - Do anything required by the scheme or overriding legislation;
 - Maintain accurate records;
 - Act on any fraudulent act or omission identified;
 - Comply with policies and procedures;
 - Of an employer to pay over contributions;
 - Pay benefits accurately, or on time.



Who is responsible?

- The legal duty to report a materially significant breach falls upon:
 - Elected Members
 - Scheme Manager (Officers)
 - Pension Board
 - Scheme Employers
 - Professional Advisers
 - Third parties and others (where used)
 - Reporters must determine if a breach has occurred based on reasonable cause and not a mere suspicion
 - WPF Policy was approved in December 2015 & should be reviewed annually
 - TPR provides example scenarios and a RAG system for assessing materiality by way of:
 - cause
 - effect
 - reaction
 - wider implications
- www.tpr.gov.uk/docs/PS-reporting-breaches-examples-traffic-light-framework.pdf

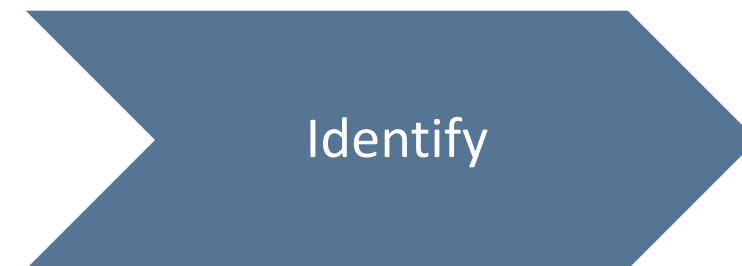


The steps to follow



1 – Identifying a breach

- Procedures – appropriate and effective
 - Legal clarification
 - Facts around the case
 - Clear process for referral, particularly severe cases
 - Process for dealing with difficult cases
 - Timeframe for dealing with each referral
 - Freedom to raise concerns



2 – “Reasonable cause”

- Ensuring breach has actually happened
- Not acting on a suspicion or hearsay
- Robust checks
 - Officers
 - Elected members
 - Pension board
- Legal advice



“Reasonable
cause”

3 – “Materially significant”

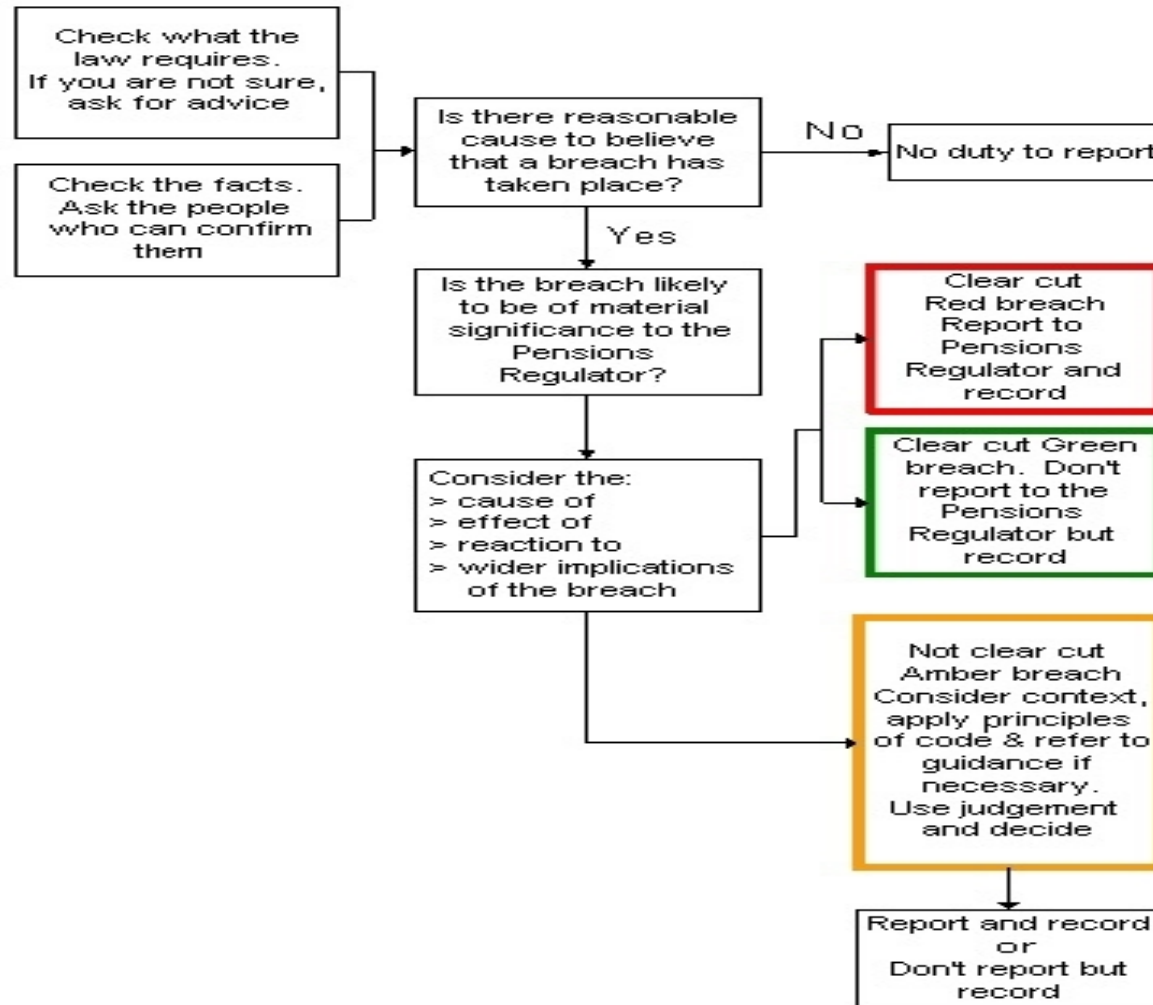
- Need to consider:
 - **Cause** – dishonesty, poor governance, incomplete/inaccurate information.
 - **Effect** – ineffective internal controls, lack of knowledge/understanding, potential for further breaches
 - **Reaction** – action taken, notification to interested parties
 - **Wider implications** – issues that make it likely breach will reoccur in future



TPR Breach Assessment Scorecard					
Nature of breach					
State the legislation which has been breached?					
Description	"Cause of" scoring				Score
Rating	1	2	3	4	Must be at least "1"
Dishonesty	No intent	No intent, but recurring	Possible intent	Intent	0
Poor Governance	No intent	No intent, but recurring	Possible intent	Intent	0
Deliberate contravention (breach of law)	No intent	No intent, but recurring	Possible intent	Intent	0
				Sub Total	0
Description	"Effect of" scoring				Score
Rating	1	2	3	4	Must be at least "1"
Ineffective controls	Little effect	Moderate effect	Significant effect	Major effect	0
Lack of K&U	Little effect	Moderate effect	Significant effect	Major effect	0
Recurrence or potential for recurrence	Little effect	Moderate effect	Significant effect	Major effect	0
				Sub Total	0
Description	"Reaction to" scoring				Score
Rating	1	2	3	4	Must be at least "1"
Effective action to resolve the breach	Prompt & full action	Fairly prompt & full action	Action taken, but slow	Little action	0
Notification to members	Prompt & full action	Fairly prompt & full action	Action taken, but slow	Little action	0
				Sub Total	0
Description	"Wider implications" scoring				Score
Rating	1	2	3	4	Must be at least "1"
Number of members affected	Little implication	Moderate implication	Significant implication	Major implication	0
Recurrence due to poor systems & controls	Little implication	Moderate implication	Significant implication	Major implication	0
A conflict of interest exist or is there a lack of K&U?	Little implication	Moderate implication	Significant implication	Major implication	0
				Sub Total	0
				Grand Total	0
Add the scored sections together to establish an initial rating					Less than 125 Between 126 & 245 246 & over

TPR Breach Implication - Impact on membership					
Number of Members	Likelihood of recurrence	Poor Governance	Poor Communication	Poor Controls	Total
Scoring	1 - 4	1 - 4	1 - 4	1 - 4	
over 5000	4	4	4	4	16
between 3000 & 5000	4	3	4	3	14
between 251 & 1000	3	3	3	3	12
between 101 & 250	3	2	3	2	10
between 50 & 100	2	2	2	2	8
up to 50	2	1	2	1	6
1	1	1	1	1	4

3 – “Materially significant” - chart



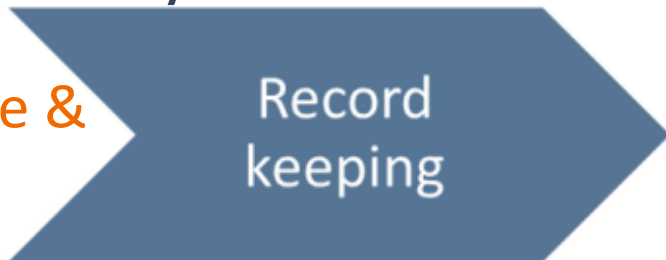
4 – Reporting

- Internally
 - Report all breaches to **Head of Pensions & Chairman of the Board**
 - Agree proposed cause of action
 - **Cooperate** with, and assist in, reporting of breaches
- Regulator
 - Materially significant only
 - In writing via **Exchange**
 - Still worth informal reporting if not sure



5 – Record keeping

- Officer responsible for recording breaches
 - **Andy Brown – Section 151 Officer**
- Officer responsible for day to day monitoring
 - **Richard Bullen – Governance & Performance Manager**
- Breaches log
 - Date, description, cause, effect, wider implications, severity, dates reported to officers/elected members/ Regulator, mitigating actions, target dates, responsible officer



WILTSHIRE PENSION FUND tPR Breach Severity Assessment Template (To be completed only where a red breach is suspected)	
Description of the breach or like breach	
Date of initial assessment	
Initial Assessor	
Initial Assessment Details (Based on tPR's decision tree and to recommend any corrective actions)	
Identify the law under which the breach has occurred	
Based on the description and stated law is reasonable present that a breach has taken place?	Yes
Is the breach likely to be materially significant to tPR?	Yes (If yes, support this view by completing the Cause of, Effect of, Reaction to & Wider implication sections below)
"Cause of" breach	
"Effect of" breach	
"Reaction to" breach	
"Wider implication of the breach"	
Head(s) of Service determination (To include the name of the officer, the date comment submitted and any corrective actions)	
Head of Wiltshire Pension Fund Comment	
Head of Section Comment	
Comments from other key contributors	
Decision to escalate to Chair of the LPB	
Initial Categorisation of breach	Not a Breach/A Breach
Potential red breach established – Consider reporting to tPR (To include the name of the officer, the date comment submitted and any corrective actions)	
Chair of the Board's comments, including Board members comments	
Details of any additional investigations	
Details of any professional advice taken	
Committee's decision and recommendation to s151 Officer (reapplying tPR decision tree)	