

# 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.

All breaches should be recorded by the scheme 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  |
| <b>Red</b>   | 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 |
| <b>Amber</b> | 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  |
| <b>Green</b> | 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  |
| <b>Red</b>   | 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 |
| <b>Amber</b> | 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                                      |
| <b>Green</b> | 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  |
| <b>Red</b>                       | 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 |
| <b>Amber</b>                     | 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      |
| <b>Green</b>                     | 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   |
| <b>Red</b>                       | 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 | <p>It is highly likely that the administrator is not following agreed service level standards and scheme procedures in other areas.</p> <p>The scheme manager is likely to be in breach of other legal requirements such as the requirement to have adequate internal controls</p> |
| <b>Amber</b>                     | 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   | <p>It is possible that the administrator is not following some of the agreed service level standards and scheme procedures in other areas.</p> <p>It is possible that the scheme manager is in breach of other legal requirements</p>  |
| <b>Green</b>                     | 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   |