Kent Pension Fund

Policy for Recording and Reporting Breaches of the Law

December 2022

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Policy for Reporting Breaches of the Law

Background and Introduction

Kent County Council acting as an administering authority of the Local Government Pensions Scheme (referred to from this point forward as the Kent Pension Fund or KPF) seeks to conduct its affairs in a responsible manner, to ensure that all its activities are open and effectively managed, and that KPF's integrity and principles of public interest disclosure are sustained.

This document sets out KPF's policy and procedures for identifying, monitoring and where necessary reporting breaches of the law as required in the Pensions Act 2004 (the Act) and detailed in The Pensions Regulator's (TPR) Code of Practice no 14 - Governance and administration of public service pension schemes (the Code).

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 making investment or investment-related decisions.

The procedure set out in this Policy has been developed to:

- assist those individuals who have a legal responsibility to report certain breaches of the law to the TPR in determining whether a breach they have identified should be reported.
- assist KPF in ensuring it is aware of all breaches of the law in relation to the KPF and that these are appropriately recorded and then dealt with.

The Pensions Regulator's proposed single code of practice

The Pensions Regulator is due to publish a single code of practice replacing the 15 existing codes of practice including code of practice 14, in either late 2022 or early 2023. This policy reflects the requirements of The Pensions Regulator's new code of practice . References to the code will be updated once the final version of the new code is published.

Requirements and to whom this Policy applies

The following have responsibility for reporting breaches (known as "***reporters***"):

- all members of the Pension Fund Committee and the Local Pension Board
- all officers involved in the management or administration of the scheme including officers in the Kent County Council Pension Fund and Treasury Team, the Head of Pensions and Treasury, the General Counsel, and the Corporate Director of Finance (Section 151 Officer).
- professional advisers including investment advisers, auditors, actuaries, legal advisers, fund custodians, fund managers and administration software

providers in relation to the reporting of legal breaches relating to the administration of the Pension Fund.

- all participating employers in the scheme.
- any other person otherwise involved in advising the managers of the scheme.

Reporters are required to report breaches of the law to TPR where there is reasonable cause to believe that:

(a) a legal duty which is relevant to the administration of the scheme has not been or is not being complied with; and

(b) the failure to comply is likely to be of material significance to TPR.

The Head of Pensions and Treasury has responsibility for the implementation, review, and monitoring of these procedures, and can seek such advice as they consider necessary including from the Council's legal team or external advisors.

However, under this Policy, the ***reporter*** would be expected to report the matter to the Head of Pensions and Treasury for their assistance in the first instance, provided that requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

A person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse.

The duty to report breaches under the Pensions Act 2004 overrides any other duties ***reporters*** 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.

Practical guidance in relation to this legal requirement is provided in the pensions regulator code 1-reporting-breaches-of-the-law including in the following areas:

- implementing adequate procedures to consider and record breaches
- judging whether a breach must be reported
- submitting a report to TPR
- whistleblowing protection and confidentiality.

Even where a breach of the law is not required to be reported, it is important that it is notified to the Head of Pensions and Treasury so that it can be assessed and recorded.

Other Administering Authority or Organisational Requirements

This Procedure should be followed in addition to the following procedures and policies that Kent County Council has in place.

- Anti-fraud and corruption strategy – setting out the Council's strategy for preventing, deterring and investigating fraud, corruption and other wrongdoing.

- Anti-Money Laundering Policy - procedures that must be followed to enable the County Council to comply with its legal obligation to prevent criminal activity through the use of Money Laundering, as well as providing contact details for the Money Laundering Reporting Officer

- Whistleblowing Policy – setting out how someone working for Kent County Council or on our behalf, including members can raise an issue in confidence, as well as what sort of concerns should be reported.

The Head of Pensions and Treasury can assist if an individual is uncertain how to deal with the interaction between this Procedure and any other KCC policy or procedure.

Kent Pension Fund Breaches Procedure

This Procedure aims to ensure ***reporters*** are able to meet their legal obligations and avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk. There are four key steps to this procedure:

1. Understanding the law and what is a breach

2. Determining whether there is reasonable cause to believe a breach has occurred

3. Determining whether the breach is likely to be of material significance and so should be reported to TPR

4. Recording the breach, even if it is not reported, so that remedial steps can also be monitored

These steps are explained below:

1. Understanding the law and what is a breach

Reporters may need to refer to regulations and guidance when considering whether or not there has been a breach of the law. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004: www.legislation.gov.uk/ukpga/2004/35/contents
- Employment Rights Act 1996: www.legislation.gov.uk/ukpga/1996/18/contents
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations): www.legislation.gov.uk/uksi/2013/2734/contents/made
- Public Service Pension Schemes Act 2013: www.legislation.gov.uk/ukpga/2013/25/contents

- Local Government Pension Scheme Regulations (various):
  http://www.lgpsregs.org/timelineregs/Default.html (pre 2014 schemes)
  http://www.lgpsregs.org/index.php/regs-legislation (2014 scheme)
- TPR Code of Practice:
  http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx
  In particular, reference should be made to the section on 'Reporting breaches of the law,' and for information about reporting late payments of employee or employer contributions, to the section of the Code on 'Maintaining contributions'

The Head of Pensions and Treasury can provide further guidance and assistance, provided that requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence). Some examples of potential breaches are included in appendix A.

2. Determining whether there is reasonable cause to believe a breach has occurred

Reporters need to have reasonable cause to believe that a breach of the relevant legal provision has occurred, not just a suspicion.

Where a breach is suspected the Head of Pensions and Treasury should be informed as soon as practicable, and no later than 5 days from when they suspect there has been a breach. The Head of Pensions and Treasury will then carry out further checks, to establish whether or not a breach has in fact occurred and keep the individual informed. This does not preclude the individual who first raised the issue undertaking further checks themselves should they consider it appropriate to do so.

However, there are some instances where it would not be appropriate to make further checks, for example, if the ***reporter*** 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, TPR should be contacted without delay.

3. Determining whether the breach is likely to be of material significance and so should be reported to the Regulator

Should a ***reporter*** have reasonable cause to believe that a breach of the law has occurred, they must decide whether that breach is likely to be of material significance to TPR, and therefore should be reported to the Regulator. To do this, 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
- wider implications of the breach.

The Head of Pensions and Treasury can assist with determining whether the breach should be reported and can assist with completing the document to report the breach. However, the ***reporter*** is ultimately responsible for determining what should be included in the report and for submitting the report to TPR.

Further details of the approach to determining whether the breach is material are at appendix B and a copy of the Traffic light framework for deciding whether or not to report the breach to the Pensions Regulator is at appendix C

4. Recording the breach, even if it is not reported, so that remedial steps can also be monitored

The Head of Pensions and Treasury will maintain a log of all breaches identified and the breaches log may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). Therefore, ***reporters*** should provide the following information to the Head of Pensions and Treasury so that all identified breaches can be recorded:

- copies of reports submitted to TPR
- copies of information relating to any other breach the individual has identified.

The information should be provided to the Head of Pensions and Treasury as soon as reasonably practicable and certainly no later than within 10 working days of the decision made to report or not.

The key purpose of the breaches log is to ensure there is a clear record of what action has been taken to resolve that breach but also to ensure that the necessary controls have been put in place to ensure that the breach does not reoccur.

The breaches log will be included at each Pension Committee meeting and shared with the Pension Board. An example of the report is at appendix D.

Supplier and advisor responsibilities

Where a breach has been identified relating to the Fund including a breach notified by supplier or advisor, the supplier or adviser must alert the Head of Pensions and Treasury immediately. They must produce a preliminary report setting out an assessment of the breach. The preliminary assessment must contain:

- the circumstances leading to the breach
- the impact and scale of the breach, both financial and with regard to the impact of service on members or other affected persons / organisations
- the steps that have been taken to rectify the breach; and
- a preliminary assessment, based on the Regulator's traffic light flowchart, of the materiality of the breach.

The Head of Pensions and Treasury can assist with the production of this report.

For the avoidance of doubt all breaches of the law (regardless of whether they are deemed material) must be reported to the Head of Pensions and Treasury in this way.

Referral to a level of seniority for assistance

Kent County Council has designated the Head of Pensions and Treasury to assist any individual with following this procedure. The Head of Pensions and Treasury is considered to have 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.

Reporters must bear in mind, however, that the involvement of the Head of Pensions and Treasury is to help clarify their thought process and to ensure this procedure is followed. They remain responsible for the final decision as to whether a matter should be reported to TPR and for completing the reporting procedure.

The matter should not be referred to the Head of Pensions and Treasury if doing so would alert any person responsible for a possible serious offence to the investigation (as highlighted in step 2 above). If that is the case, the ***reporter*** may instead refer the matter to the Council's Monitoring Officer. Otherwise, they should report the matter to TPR setting out the reasons for reporting, including any uncertainty – a telephone call to TPR before the submission may be appropriate, particularly in the case of a more serious breach.

Dealing with complex cases

The Head of Pensions and Treasury may be able to provide guidance on particularly complex cases. Guidance may also be obtained by reference to previous cases, information on which will be retained by Kent County Council, or via discussions with those responsible for maintaining the records. Information may also be available from national resources such as the Scheme Advisory Board or the Local Government Association - http://www.lgpsregs.org . If timescales allow, legal advice or other professional advice can be sought, and the case can be discussed at the next Pension Fund Committee or Local Pension Board meeting.

Reporting a breach to the KPF and Pensions Regulator

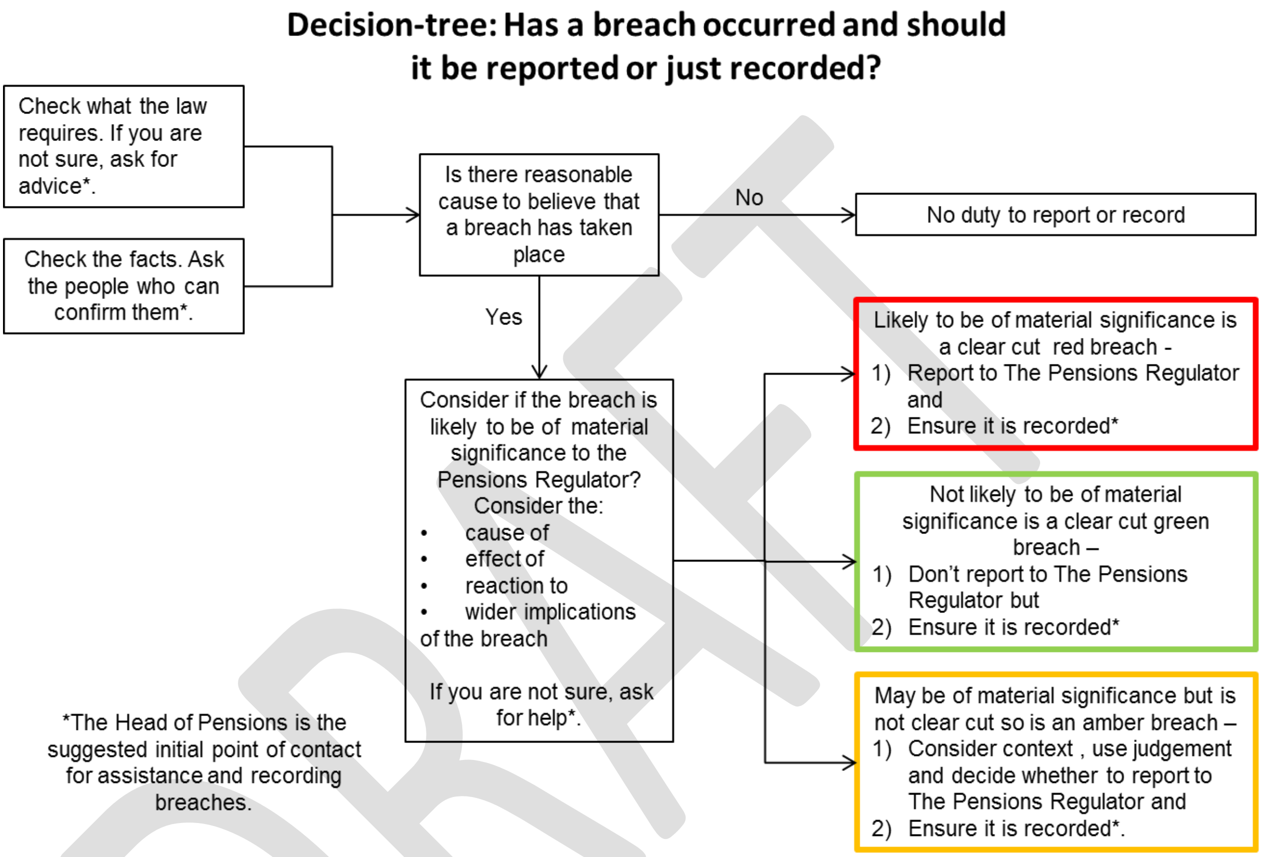
Reports must be submitted to the Head of Pensions and Treasury, Nick.buckland@kent.gov.uk

If the individual decides the breach is of material significance to TPR, reports must be submitted in writing via the Regulator's online system at https://login.thepensionsregulator.gov.uk or by post, or email and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Further details on how to report can be found on TPR website https://thepensionsregulator.gov.uk.

The Pensions Act and the Pension Regulator's Code require that, if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable and if possible, within 10 working days from having reasonable cause to believe that there is a material significance.

Decision tree

A decision tree is provided below which summarises the process for deciding whether or not a breach has taken place, whether it is materially significant to TPR and therefore needs to be reported, and then ensuring it is recorded.



Confidentiality

If requested, TPR will do its best to protect the identity of an individual who has reported a breach and will not disclose information except where it is lawfully required to do so.

An employee may also have protection under the Employment Rights Act 1996 if they make a report in good faith in relation to their employer.

Reporting to the Pension Fund Committee and Local Pension Board

Material breaches which have been reported to the Regulator will be reported to the Pension Fund Committee on a quarterly basis. This information will also be shared with the Pension Board.

Training

The Head of Pensions and Treasury will ensure that all relevant officers and members of the Pension Fund Committee, as well as members of the local pension board receive appropriate training on this policy at the commencement of their employment or appointment to the Pension Fund Committee or Pension Board as appropriate and on an ongoing basis.

Suppliers and advisers must ensure that all staff with responsibilities in relation to the Fund receive appropriate training with regard to this policy and their obligations under it. They must advise the Head of Pensions and Treasury immediately if they do not feel they have the appropriate training to discharge their responsibility and training will be arranged for them by the Head of Pensions and Treasury.

Approval and Review

This Reporting Breaches Policy was approved on *8 December* by the Kent Pension Fund Committee. It will be formally reviewed and updated by the Committee at least every three years or sooner if breaches arrangements or other matters included within it merit reconsideration, including if there are any changes to the LGPS or other relevant Regulations or Guidance which need to be taken into account.

Further Information

If you require further information about reporting breaches or this policy or wish to discuss reporting a breach, please contact:

Nick Buckland
Head of Pensions and Treasury, Kent County Council
E-mail – nick.buckland@kent.gov.uk
Telephone – 03000 418934

Zena Cooke
Corporate Director of Finance and s151 Officer, Kent County Council
E-mail – zena.cooke@kent.gov.uk
Telephone – 03000 419205

Ben Watts
General Counsel, Kent County Council
E-mail – Benjamin.watts@kent.gov.uk
Telephone – 03000 416814

Appendix A – Example breaches of the law

In this appendix we provide some examples of breaches of the law. This is not an exhaustive list given there are many sets of legislation that must be followed and some of these are extremely lengthy and complex. It should, however, provide a useful indication of the range of potential breaches that may arise.

Funding strategy not having regard to CIPFA guidance

Regulation 58 of the Local Government Pension Scheme Regulations 2013, as amended, requires the administering authority to prepare, maintain and publish a statement setting out its funding strategy and, in doing so, to consult with such persons as it considers appropriate. In doing this, the Administering Authority must also have regard to CIPFA guidance on preparing and maintaining a Funding Strategy Statement which clearly states employers should be consulted. The Funding Strategy impacts on the employers of the Fund and therefore a breach of the law by the Administering Authority is likely to have arisen if a statement was prepared which impacts on employers without first consulting with those employers.

Late notification of benefits

Various regulations dictate timescales for notifying scheme benefits, some of which are summarised below. Most of these requirements are included in more general pensions legislation i.e., not the Local Government Pension Scheme Regulations. A breach would arise every time one of these timescales was not met. All of the breaches would relate to the Administering Authority apart from the last one which would be a breach by an employer in the Fund. However, the first five listed could have been a result of delayed or incorrect information from an employer, which could be a separate and additional breach of the law by that employer.

Process	Legal Requirement
To provide new starters with information about the scheme	2 months from date of joining (provide information about the scheme in this timeframe, or within 1 month of receiving jobholder information where the individual is being automatically enrolled / re-enrolled)
To inform members who leave the scheme of their leaver rights and options	As soon as is practicable, and no more than 2 months from date of initial notification (from employer or scheme member)
To notify the amount of retirement benefits	1 month from date of retirement if on or after Normal Pension Age 2 months from date of retirement if before Normal Pension Age
To notify dependant(s) the amount of death benefits	As soon as possible but in any event no more than 2 months from date of becoming aware of the death, or from date of request
Provide annual benefit statements to active members	31st August in the same calendar year
Receipt of employee contributions from employers	19th of the month following their deduction

Errors in benefit calculations

The Local Government Pension Scheme Regulations 2013, as amended, and previous LGPS legislation relating to historical service or leaves, dictate how benefits should be calculated. This includes elements such as what fraction of pay is used to calculation a pension and what counts as pay for LGPS purposes. A breach of the law by the Administering Authority would arise in the situation that any calculation was carried out that was not in accordance with those provisions.

Errors in deducting contributions

Regulation 20 of the Local Government Pension Scheme Regulations 2013, as amended, states which elements of pay should be treated as pensionable and therefore should have pension contributions deducted from them and should be used for calculating benefits from 1 April 2014. Regulation 4 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, as amended, is the equivalent provision for pre-1 April 2014 scheme membership and therefore it details how pensionable pay should be calculated by an employer for benefits accruing prior to 1 April 2014. Under these provisions, non-contractual overtime is pensionable from 1 April 2014 but not classed as pensionable for benefits accruing before 1 April 2014. A breach of the law by an employer would arise if any of the following happened:

- an employer **did not** deduct pension contributions from non-contractual overtime since 1 April 2014
- an employer **did not** include non-contractual overtime in the amount of any pensionable pay notified to the Administering Authority for membership from 1 April 2014
- an employer **did** include non-contractual overtime in the amount of final pay notified to the Administering Authority to be used to calculate benefits accrued prior to 1 April 2014.

Late notifications from year-end information by an employer

Regulation 80 of the Local Government Pension Scheme Regulations 2013 require each employer to provide to the Administering Authority a list of specific information for each scheme member, such as pensionable pay, by 30 June each year. A breach of the law by an employer would arise if they failed to provide this year end list to the administering authority by 30 June or if the information was incomplete or inaccurate.

Inadequate knowledge of a Pension Board member

Section 248A of the Pensions Act 2004 requires every Pension Board member to be conversant with the LGPS rules and Pension Fund policies as well having knowledge and understanding of pension matters at a degree appropriate for the purpose of them exercising their Pension Board functions. Where a Pension Board member has failed to attend training or demonstrate that they already have the required level of knowledge, it is possible that a breach of the law will have occurred by that Pension Board member.

Appendix B – Determining whether a breach is likely to be of material significance

To decide whether a breach is likely to be of material significance ***reporters*** 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
- wider implications of the breach

The cause of the breach

Examples of causes which are likely to be of concern to TPR 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.
- Slow or inappropriate decision-making practices.

Reporters may also request the most recent breaches report from the Head of Pensions and Treasury, as there may be details on other breaches which may provide a useful precedent on the appropriate action to take.

When deciding whether a cause is likely to be of material significance ***reporters*** 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 TPR or not) which when taken together may become materially significant

The effect of the breach

Examples of the possible effects (with probable causes) of breaches which are considered likely to be of material significance to TPR in the context of the LGPS are given below:

- Committee/Board members not having enough knowledge and understanding, resulting in pension boards not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements
- Conflicts of interest of Committee or 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 scheme managers breaching legal requirements
- Poor internal controls, leading to schemes not being run in accordance with their 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 TPR 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 TPR where the fact that a breach has occurred makes it more likely that further breaches will occur within the Fund or, if due to maladministration by a third party, further breaches will occur in other pension schemes.

Appendix C - Traffic light framework for deciding whether or not to report

Kent County Council recommends those responsible for reporting to use the traffic light framework when deciding whether to report to TPR. This is illustrated below:

Red	Where the cause, effect, reaction and wider implications of a breach, when considered together, are likely to be of material significance. These must be reported to TPR. Example: Several members' benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.
Amber	Where the cause, effect, reaction, and wider implications of a breach, when considered together, may be of material significance. They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right. You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported. Example: Several members' benefits have been calculated incorrectly. The errors have been corrected, with no financial detriment to the members. However, the breach was caused by a system error which may have wider implications for other public service schemes using the same system.
Green	Where the cause, effect, reaction, and wider implications of a breach, when considered together, are not likely to be of material significance. These should be recorded but do not need to be reported. Example: A member's benefits have been calculated incorrectly. This was an isolated incident, which has been promptly identified and corrected, with no financial detriment to the member. Procedures have been put in place to mitigate against this happening again.

All breaches should be recorded even if the decision is not to report.
When using the traffic light framework ***reporters*** 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 framework are provided by TPR at the following link
[http:// www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx](http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx)

Appendix D – Breaches Log

Refer-ence	Date entered in Register	Title of Breach	Owner of Breach	Third Party which caused the breach (if any)	Description and cause	Possible effect and wider implications	Category of Members and Number of Members Affected	Initial (re)action	Assessment of breach (red/amber/ green) Brief summary of rationale	Reported to TPR Yes / No And outcome of report	If reported Name of reporter	Further actions taken to rectify Breach	Outstanding actions (if any) & date breach closed