

## **Appendix 2:**

### **When a breach may be considered material and how to make a submission to The Pensions Regulator**

The Pensions Regulator (tPR) has produced guidance to assist schemes in identifying the severity of a breach and whether it should then be reported. When determining materiality of any breach or likely breach *Reporters* will in all cases consider the following:

- Cause
- Effect
- Reaction; and
- Wider implications

#### **Cause**

The breach is likely to be of material significance to tPR where it was caused by:

- Dishonesty
- Poor governance or administration
- Slow or inappropriate decision-making practices
- Incomplete or inaccurate advice, or
- Acting (or failing to act) in deliberate contravention of the law

When deciding whether a breach is of material significance, those responsible should consider other reported and unreported breaches of which they are aware. However, historical information should be considered with care, particularly if changes have been made to address previously identified problems.

A breach will not normally be materially significant if it has arisen from an isolated incident, for example, resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances. But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had and to be aware that persistent isolated breaches could be indicative of wider scheme issues.

#### **Effect**

*Reporters* need to consider the effects of any breach, but with the regulator's role in relation to public service pension schemes and its statutory objectives in mind, the following matters, in particular, should be considered likely to be of material significance to tPR:

- Pension Fund Committee, Local Pension Board members or Fund officers not having the appropriate degree of knowledge and understanding, which may result in members/officers not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements.
- Pension Fund Committee, Local Pension Board members or Fund officers having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements.
- Adequate internal controls not being established and operated, which may lead 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.

- Accurate information about benefits and scheme administration not being provided to scheme members and others, which may result in members not being able to effectively plan or make decisions about their retirement.
- Appropriate records not being maintained, which may result in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Any misappropriation of assets of the scheme or being likely to do so, which may result in scheme assets not being safeguarded, and
- Any other breach which may result in the *Hammersmith and Fulham* Pension Fund being poorly governed, managed or administered.

*Reporters* need to take care to consider the effects of the breach, including any other breaches occurring as a result of the initial breach and the effects of those resulting breaches.

### **Reaction**

Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, tPR will not normally consider this to be materially significant. A breach is likely to be of concern and material significance to the 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.

### **Wider implications**

*Reporters* should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to the regulator. For example, a breach is likely to be of material significance where the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future. This may be due to the scheme manager or pension fund committee or local pension board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities, or where other pension schemes may be affected. For instance, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

### **tPR “traffic light” framework**

tPR provides a “traffic light” system of categorising an identified breach:

**Green:** not caused by dishonesty, poor governance or a deliberate contravention of the law and its effect is not significant and a plan is in place to rectify the situation. In such cases the breach may not be reported to tPR, but should be recorded in the Fund’s breaches log.

**Amber:** does not fall easily into either green or red and requires further investigation in order to determine what action to take. Consideration of other recorded breaches may also be relevant in determining the most appropriate course of action. The Fund or pension fund committee or local pension board will need to decide whether to informally alert tPR to the likely breach, formally reporting the breach if it is subsequently decided to categorise the breach as red.

**Red:** caused by dishonesty, poor governance or a deliberate contravention of the law and having a significant impact, even where a plan is in place to rectify the situation. The Pension Fund Committee or local pension board must report all such breaches to tPR in all cases.

If it is unclear as to whether the breach or likely breach is significant, in the first instance full details should always be reported to the *Responsible Officer* to determine the appropriate course of action.

It should be noted that failure to report a significant breach or likely breach is likely, in itself, to be a significant breach (examples of tPR “Traffic Light” framework are included as appendix 3).

The *Responsible Officer* will use tPR “traffic light” framework as a means of identifying whether any breach is to be considered as materially significant and so reported to tPR.

Any failure of a scheme employer to pass over employee contributions that are considered to be of material significance must be reported to tPR immediately.

In order to determine whether failure to pay over employee contributions is materially significant or not the Fund will seek from the employer:

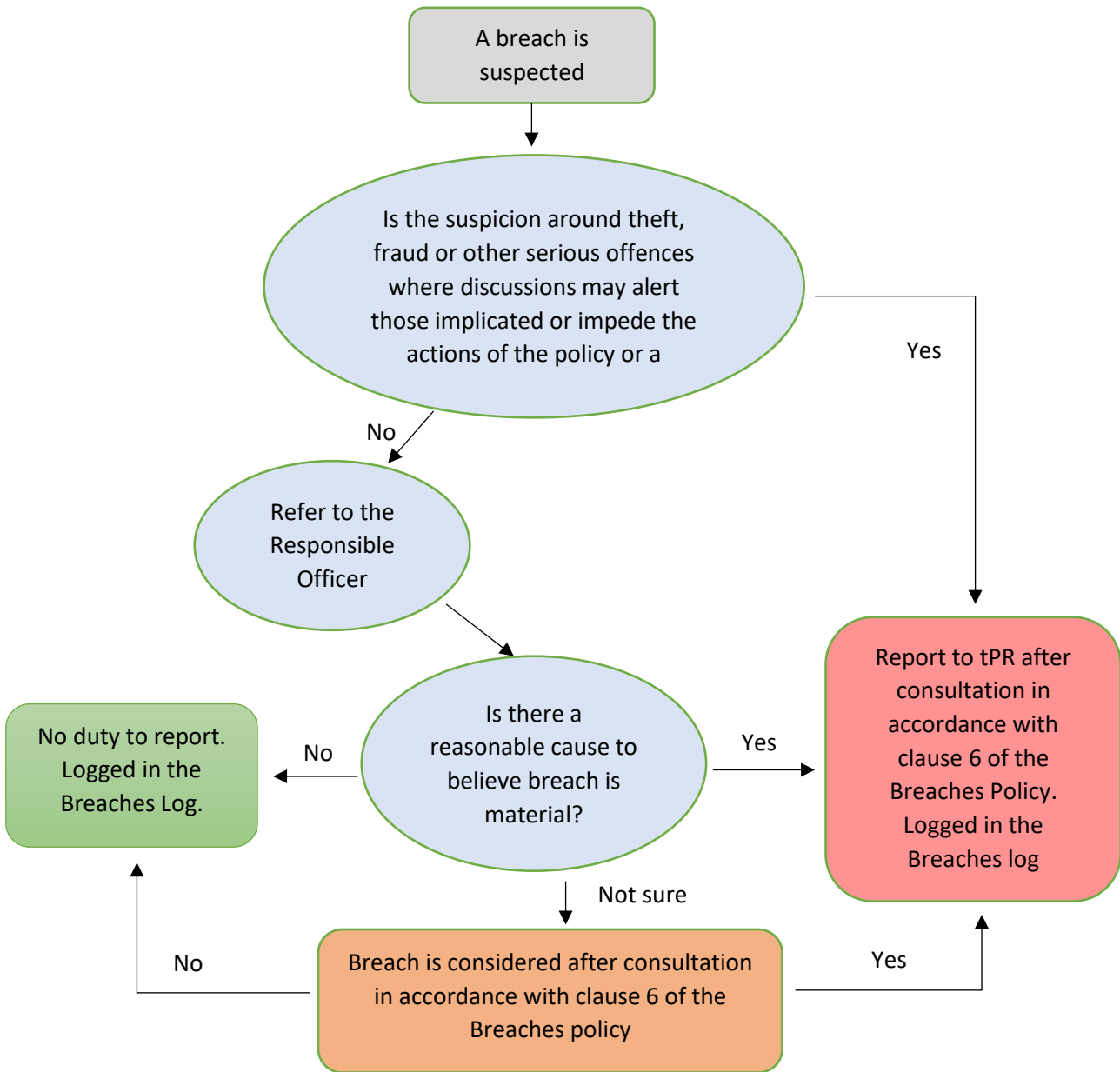
- The cause and circumstances of the payment failure.
- What action the employer has taken as a result of the payment failure, and
- The wider implications or impact of the payment failure.

Where a payment plan is agreed with the employer to recover outstanding contributions and it is being adhered to or there are circumstances of infrequent one off late payments or administrative failures, the late payment will not be considered to be of material significance.

All incidences resulting from the unwillingness or inability of the employer to pay over the employee contributions, dishonesty, fraudulent behaviour or misuse of employee contributions, poor administrative procedures or the failure to pay over employee contributions within 90 days from the due date will be considered to be of material significance and reported to tPR.

Once a breach or likely breach has been identified, regardless of whether it needs to be reported to tPR, the *Responsible Officer* must review the circumstances of the breach in order to understand why it occurred, the consequences of the breach and agree the corrective measures required to prevent reoccurrence, including an action plan where necessary. All breaches must be recorded in the Fund’s breaches log.

# Reporting decision tree



## Submitting a report to tPR

Reports must be submitted in writing and can be sent by post or electronically, including by email or by fax. Wherever possible, *Reporters* should use the standard format available via the Exchange online service on the regulator's website:

<http://www.thepensionsregulator.gov.uk/trustees/exchange.aspx>

The report should be dated and include as a minimum:

- Full name of the scheme.
- Description of the breach or breaches.
- Any relevant dates.
- Name of the employer or scheme manager (where known).
- Name, position and contact details of the *Reporter*, and
- Role of the *Reporter* in relation to the scheme.

Additional information that would help the regulator includes:

- The reason the breach is thought to be of material significance to the regulator.
- The address of the scheme.
- The contact details of the scheme manager (if different to the scheme address).
- The pension scheme's registry number (if available), and
- Whether the concern has been reported before.

*Reporters* should mark urgent reports as such and draw attention to matters they consider particularly serious. They can precede a written report with a telephone call, if appropriate.

*Reporters* should ensure they receive an acknowledgement for any report they send to the regulator. Only when they receive an acknowledgement can the *Reporter* be confident that tPR has received their report.

tPR will acknowledge all reports within five working days of receipt. However, it will not generally keep a *Reporter* informed of the steps taken in response to a report of a breach as there are restrictions on the information it can disclose.

*Reporters* should provide further information or reports of further breaches if this may help the regulator to exercise its functions. tPR may make contact to request further information.

Breaches should be reported as soon as reasonably practicable, which will depend on the circumstances. In particular, the time taken should reflect the seriousness of the suspected breach.

In cases of immediate risk to the scheme, for instance, where there is any indication of dishonesty, the 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 tPR to the breach.