

**HERTFORDSHIRE COUNTY COUNCIL**

**PENSIONS BOARD**

**FRIDAY 17 JUNE 2016 AT 10:00AM**

**Agenda Item No:**

**4**

**THE PENSIONS REGULATOR AND LGPS SCHEME ADVISORY BOARD  
BENCHMARKING**

Report of the Director of Resources

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**1. Purpose of the Report**

- 1.1 To provide information about benchmarking exercises carried out by:
  - The Pensions Regulator (TPR) in their survey of governance and administration of public service schemes; and
  - The LGPS Scheme Advisory Board (SAB) on the performance of LGPS funds in England and Wales.
- 1.2 To recommend actions to further improve governance, administration and performance of the Hertfordshire Pension Fund (Pension Fund).
- 1.3 To provide a draft Policy for Reporting Breaches of the Law to The Pensions Regulator for review which will be approved by the Pensions Committee.

**2. Summary**

- 2.1 Benchmarking exercises were carried out by TPR and SAB in September 2015 to baseline governance and administration standards for public service pensions schemes.
- 2.2 TPR published the results of the survey in December 2015 and considers that these have largely been positive. TPR will carry out a further survey in Spring 2016 to gauge progress in improving performance of all public service pension schemes. SAB's benchmarking exercise has not been published yet and is expected to be issued in the Summer 2016.
- 2.3 Through these benchmarking exercises, officers have identified areas for development or improvement. An action plan is provided in section 5 providing details of work to further improve the performance of the Pension Fund. In addition a new policy has been developed in conjunction with Legal Services for "Reporting Breaches of the Law to The Pensions Regulator"

applicable to the Pension Fund and Firefighters' Pension Scheme. See section 5 and Appendix B.

### **3. Recommendations**

- 3.1 That the Pensions Board notes the content of this report and the draft policy for Reporting Breaches of the Law to The Pensions Regulator.
- 3.2 That the Pensions Board considers the actions to further improve governance, management and performance of the Pension Fund in compliance with statutory requirements.

### **4. Background**

- 4.1 Both TPR and SAB have a role in driving statutory compliance and improving standards in the governance, administration and performance of Local Government Pension Schemes (LGPS). TPR is the regulator of work-based pension schemes (including all public service pension schemes) and has legislative power to enforce compliance with regulations. SAB's role is to seek and encourage best practice, increase transparency and to coordinate technical and standards issues for LGPS schemes in England and Wales.
- 4.2 In September 2015, TPR and SAB carried out benchmarking exercises to determine a baseline that will be used in the future to measure pension schemes' progress in improving compliance and standards.
- 4.3 The **TPR survey** covered all public service schemes including:
  - Central Schemes: Centrally administered unfunded schemes including the NHS, Teachers, Armed Forces and Civil Service
  - Local Government Pensions Scheme (LGPS)
  - Firefighters' Pension Scheme
  - Police Pension Scheme

This survey covered the key tools and processes that TPR considers to be benchmarks for good practice. These are set out in TPR's "Code of Practice: Governance and Administration of Public Service Pension Schemes" accessible from the TPR website <http://www.thepensionsregulator.gov.uk/doc-library/codes.aspx>

TPR intends that information collected through the survey will be used for regulatory purposes and to develop individual scheme risk profiles. As a result of this survey, TPR will focus attention on key areas of internal controls, record keeping and provision of accurate and high quality communications to scheme members.

TPR will carry out a further survey in Spring 2016 to check on progress and will implement an annual benchmarking exercise to continually assess the standards of public service schemes.

- 4.4 The **SAB benchmarking exercise** covered all LGPS pension funds in England and Wales and comprised of a self-assessment exercise of 18 key indicators covering governance and performance which was developed by a SAB Scheme Reporting Working Group. SAB consider the key indicators to be a valuable benchmarking tool for administering authorities and Local Pension Boards in accessing governance processes and monitoring continuous improvement. The benchmarking exercise is linked to a mandatory survey which will be undertaken following the 2016 Triennial Valuation. A high level summary will be provided and, in future years, SAB intends to publish individual funds' completed proformas.
- 4.5 The Hertfordshire Pension Fund scored well in these benchmarking exercises and further detail about the exercises and outcomes is provided in Appendix A. The following is a summary of areas for development that were identified through these exercises, some of which have been subsequently addressed:
- Formal policies for Pension Board members to help acquire and retain knowledge. This area has been addressed in the development and adoption of a training plan developed for Pension Board members;
  - Publication of policies for Record-Keeping and for Reporting Breaches of the Law. This area is partially addressed where a draft policy for Reporting Breaches of the Law is provided as Appendix B;
  - Cashflow forecasting for the Pension Fund to determine when it will become a "mature" fund where benefits paid are greater than contributions received from scheme employers. This will be addressed as a post-Valuation action;
  - Compliance with the statutory deadlines for issuing Annual Benefit Statements. This is being addressed within the Annual Benefit Statements project;
  - Participation in benchmarking exercises to test value for money and improvement in the provision of information to scheme members and to provide quality assurance;
  - assessments of data quality to ensure data held is accurate and meetings the Pensions Regulator's quality. This will be assessed as part of the review and evaluation of the Guaranteed Minimum Pensions Project.

## 5. Development and Improvement Action Plan

- 5.1 The following plan sets out actions that are being undertaken to improve the performance of the Pension Fund and the Firefighters' Pension Scheme alongside target dates for completion.
- 5.2 Updates on progress against the actions will be provided in future quarterly Performance Reports to the Pensions Committee and Board.

Action	Target Date	Current Status
Policies		

Policy for Reporting Breaches of the Law	July 2016	A draft Policy is provided as Appendix B to this report. Following Pension Committee approval this will be published and effective from July 2016
Action	Target Date	Current Status
<b>Annual Benefit Statements</b>		
Policy for Record Keeping	May 2017	A formal policy will be developed as part of the Guaranteed Minimum Pension (GMP) Project to reconcile data with that held by HMRC. This to ensure any lessons learned are incorporated within the Policy.
Annual Benefit Statements statutory deadline	August 2016	A Project Board has been established to oversee improvements to the processes for production and dispatch of Annual Benefit Statement to Scheme Members by the statutory deadline of 31 August. Progress is reported as part of the quarterly LPFA Administration Report.
<b>Cashflow Forecasting</b>		
Cashflow Forecasting	April 2017	Following the 2016 Triennial Valuation a cashflow forecasting exercise will be carried out on the data submitted for valuation. An assessment about frequency of future exercises will also be undertaken.
<b>Data Quality</b>		
Data Quality	May 2017	Data is being improved as part of the Guaranteed Minimum Pensions Project which will continue until April 2017. In addition, the data quality will be tested by the actuary during the 2016 Triennial Valuation. As part of the closure of the project and as a result of feedback from the actuary, an assessment will be carried out to determine whether any additional actions are required.
<b>Benchmarking</b>		
Quality Assurance	June 2017	Undertake a cost/benefit analysis for participating in opportunities to gain external awards or accreditation in relation to pensions and investments and publication of information.
Benchmarking historic investment returns and investment costs	July 2017	Participate in any cost/benefits analysis for benchmarking the success of Pooled Investment arrangements for LGPS pension funds.
Benchmarking administration efficiency and overall value for money fund management	September 2017	Carry out a benchmarking exercise in preparation for the retender of the pensions administration service contract which ceases in 2019.

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## APPENDIX A: TPR Survey and SAB Benchmarking Exercise

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### TPR Survey

This survey covered all public service schemes including:

- Central Schemes: Centrally administered unfunded schemes including the NHS, Teachers, Armed Forces and Civil Service
- Local Government Pensions Scheme (LGPS)
- Firefighters' Pension Scheme
- Police Pension Scheme

Participation in the TPR survey was voluntary with 48% of all public service schemes responding, covering approximately 85% of scheme members. Of this total, 52% of the 101 LGPS funds responded, the Hertfordshire Pension Fund being one of these funds.

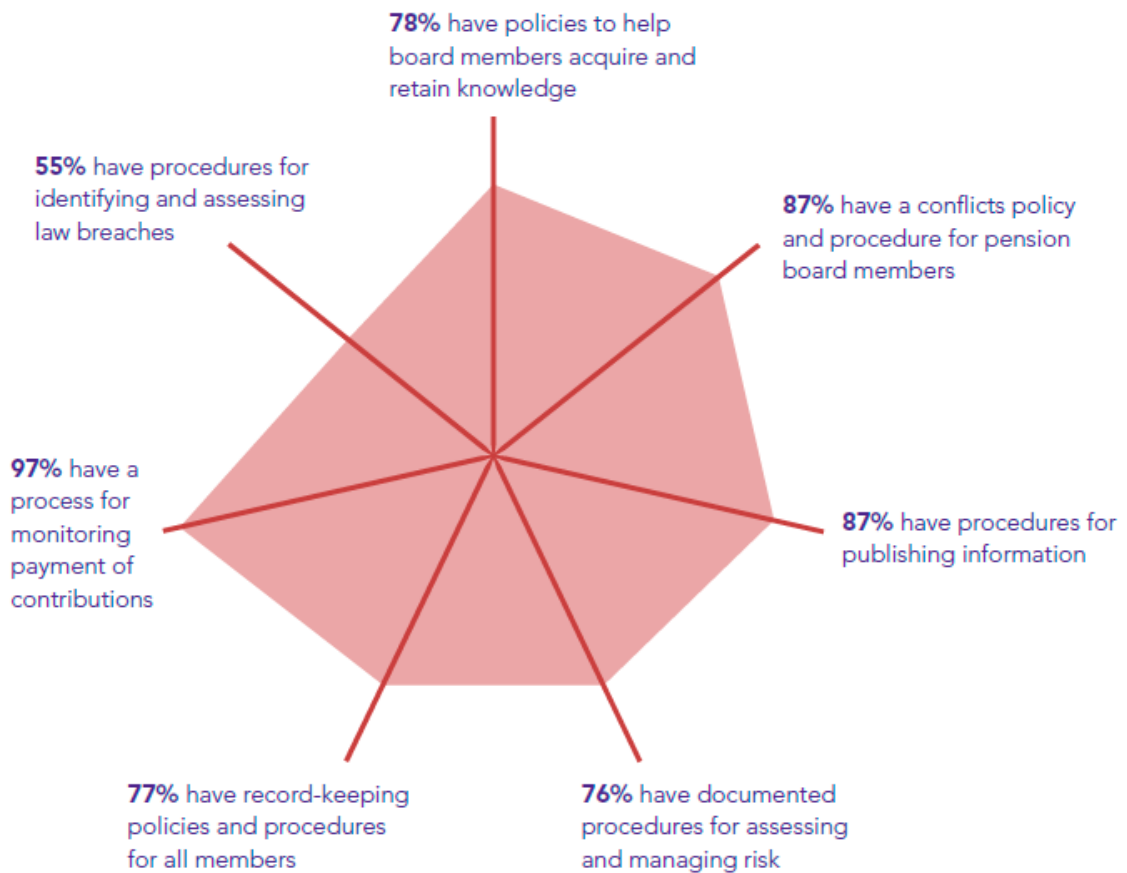
The following table shows the response rates across the four scheme groups.

<b>Scheme Group</b>	<b>Total no. Schemes</b>	<b>Respondents</b>	<b>Response Rate</b>
Central *	12	12	100%
LGPS	101	53	52%
Firefighters	51	14	37%
Police	45	22	49%
<b>Total</b>	<b>209</b>	<b>101</b>	<b>48%</b>

\* Centrally administered unfunded schemes including the NHS, Teachers, Armed Forces and Civil Service

The following radar chart provides a summary of the results for all public service schemes which were published in December 2015 in "Public Service Governance and Administration Survey: Summary of Results and Commentary". This is accessible from the TPR website <http://www.thepensionsregulator.gov.uk/docs/public-service-research-summary-2015.pdf>

**Excerpt from the Public Service Governance and Administration Survey:  
Summary of Results and Commentary  
The Pensions Regulator December 2015**



Overall, TPR consider that the results provide a good overview of stewardship of all public service pension schemes. On the whole, TPR consider that respondents to the survey reported high levels of awareness and understanding of governance and administration requirements set out in regulations and TPR Code of Practice.

The Hertfordshire Pension Fund scored well in this benchmarking exercise. Through this exercise an area for improvement has been identified relating to the publication of policies for Record-Keeping and Reporting Breaches of the Law.

**SAB Benchmarking Exercise**

This benchmarking exercise covered all LGPS funds in England and Wales the results of which will be published in Summer 2016.

The self-assessment exercise covered 18 key indicators, 4 core and 14 supplementary of which 10 related to governance and 8 to performance. These indicators were developed by a SAB Scheme Reporting Working Group, including administering authorities and other LGPS experts. The Pension Fund participated in this collaboration and the pilot that was carried out in May 2015.

At the point that the survey was undertaken, the Pension Fund scored 33 out of a potential 55 marks (60%). Subsequently with the formal implementation of arrangements for the Pensions Board and development of a Breaches of Law Policy (appended to this report as Appendix B), the score has improved to 37 marks (67%).

There is one area of development for the Core Indicators relating to cashflow forecasting for the Pension Fund. Of the Supplementary Indicators, there are four areas of development:

- compliance with the statutory deadlines for issuing Annual Benefit Statements;
- participation in benchmarking exercises to test value for money and improvement in the provision of information to scheme members and to provide quality assurance;
- as with TPR Survey results, publication of policies for Record-Keeping and for Reporting Breaches of the Law; and
- assessments of data quality.

#### **Areas for Improvement**

Section 5 to this report provides details of actions to be undertaken to address areas for development or improvement identified through TPR's Survey and SAB's Benchmarking Exercise.



**APPENDIX B: Policy for Reporting Breaches of the Law to The Pensions Regulator**

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# INTRODUCTION

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The Pensions Act 2004 (“the Act”) requires that certain people must report breaches of the law relating to the administration of pension schemes in writing to The Pensions Regulator (“the Regulator”). Practical guidance on this legal requirement is included in The Regulator’s Code of Practice (“the Code”) “Reporting breaches of the law”. The Code also sets out the duties that apply to those who are subject to the legal requirements to report breaches of the law and how these duties should be exercised.

Those subject to the duty to report breaches of the law are referred to in the Code as “reporters” and this term is used in this Policy. Reporters include those involved in the running of occupational pension schemes. Hertfordshire County Council as the Scheme Manager of the Local Government Pension Scheme (“the LGPS”) in Hertfordshire and the Firefighters’ Pension Schemes 1992, 2006 and 2015 is a reporter. These schemes are collectively defined as “the Pension Schemes” for the purposes of this Policy.

This document sets out the County Council’s Policy for Reporting Breaches of the Law to the Regulator (“the Policy”).

## **Aims**

The County Council is committed to high quality standards in the management and governance of the Pension Schemes.

The aim of the Policy is to describe how the County Council meets its duty to report and will strive to achieve best practice through formal reporting breaches procedures. Additionally, the Policy aims to enable reporters to raise concerns and facilitates the objective consideration of those matters. The Policy will assist reporters of breaches to decide, within an appropriate timescale, whether to report a breach.

## **Scope**

The Policy applies to all reporters in relation to the Pension Schemes, including:

- The County Council as Scheme Manager of the Pension Schemes;
- A Pension Board member;
- A Scheme employer (regardless of whether the breach relates to, or affects, members who are its employees or those of other employers);
- A professional adviser, including auditors, actuaries, investment advisers, Investment Fund Managers, the custodian, legal advisers and any other advisers who advise the Scheme Manager (or the Scheme Manager’s employees) in relation to the Pension Schemes;
- A person involved in the administration of the Pension Schemes, including employees of the London Pensions Fund Authority who provide the pensions administration service to the County Council, and County Council officers who are involved in the administration of the Pension Schemes;

## **Implementation**

This Policy is effective from 1 July 2016. The Policy is kept under review and revised to keep abreast of legislative changes applicable to the Pension Schemes and changes to the Code.

## **Regulatory Basis**

The following are links to the relevant legal provisions and Regulator's guidance relating to the duty to report breaches to the Regulator:

- The Pensions Act 2004 accessible from [www.legislation.gov.uk/ukpga/2004/35/contents](http://www.legislation.gov.uk/ukpga/2004/35/contents)
- The Pensions Regulator's Code of Practice [www.thepensionsregulator.gov.uk/codes/code-governance-administration-publicservice-pension-schemes.aspx](http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-publicservice-pension-schemes.aspx)

# THE POLICY

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## **When to consider reporting**

Breaches can occur in relation to a wide variety of tasks normally associated with the administration of the Pension Schemes such as keeping records, internal controls, calculating benefits and, for funded schemes such as the LGPS, making investment or investment-related decisions.

Under the Act a reporter is required to give a written report to the Regulator as soon as reasonably practicable where the reporter has reasonable cause to believe that:

- a. a duty which is relevant to the administration of any of the Pension Schemes, and is imposed by or by virtue of a statutory provision or rule of law, has not been or is not being complied with; and
- b. the failure to comply is likely to be of material significance to the Regulator.

There are, therefore, two elements of the duty and both are subject to the test of “reasonable cause.”

The first is whether the reporter has reasonable cause to suspect a breach and the second is whether the reporter believes the breach is likely to be of material significance to the Regulator.

## **Judging whether there is “reasonable cause”**

Having “reasonable cause” to believe that a breach has occurred does not mean that a breach must actually have occurred provided that the reporter reasonably believes it has. However, “reasonable cause” means more than having a suspicion that cannot be substantiated. To establish whether there is “reasonable cause”, the reporter should ensure that where a breach is suspected, then checks are carried out to establish whether or not there is evidence to support the suspected breach. However, the reporter is not required to gather evidence to the standard that would be required by the Regulator to take action. It is important that the reporter considers the impact of any delay in reporting a potential breach, which may exacerbate or increase the risk of the breach. It may be appropriate to report directly to the Regulator any breaches relating to theft, suspected fraud or other serious offences where discussions may impede investigations by the police or other regulatory authority, or alert those implicated leading to potential concealment of evidence.

## **Judging “material significance”**

When deciding whether a breach is likely to be of “material significance” to the Regulator, the cause, effect, and reaction to the wider implications of the breach should be considered. The Regulator has provided a “Traffic Light” framework to assist in this decision and this is reproduced in Appendix 1.

Using the Traffic Light framework, each factor should be rated to determine the category that the breach falls into (red, amber or green).

A breach will not normally be materially significant if it has arisen from an isolated incident or where there has been prompt and effective action to investigate and correct the breach and its causes. However, it is important to consider wider aspects of the breach and they are likely to be of material significance under the following circumstances:

### **Cause**

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

### **Effect of the breach**

- A lack of adequate internal controls not having been established and operated
- Failure of the administration of any of the Pension Schemes to provide accurate information about benefits
- Failure to maintain appropriate records
- Pension Board members not having the appropriate degree of knowledge and/or understanding in order to fulfil their role
- Pension Board members having a conflict of interest
- Any other breaches that may result in poor governance of any of the Pension Schemes

### **Reaction to the breach**

- Lack of prompt and effective action to remedy the breach and identify and resolve the cause
- Lack of action to carry out corrective action to a proper conclusion
- Failure to notify an affected scheme member(s) where appropriate

### **Decision to report**

If, having used the Traffic Light framework to arrive at a decision about reporting a suspected breach, the reporter decides that a breach should be reported, this should be done as soon as reasonably practicable.

**Reporting breaches to the Regulator:** In the case of serious offences that require immediate investigation by the police or the Regulator, then the reporter should report these directly to the Regulator. Reports must be submitted in writing and can be sent by post or electronically by email or fax. Wherever possible, reporters should use the standard format available via the Pension Regulator's Exchange online service accessible from <https://login.thepensionsregulator.gov.uk/whatsavailable>

The County Council as Scheme Manager should be informed in any case where a reporter considers that there has been a breach, whether or not the reporter decides to report the breach to the Regulator.

A copy of any report of a suspected breach made to the Regulator should be sent to the Chief Finance Officer, the Head of Assurance Services and to the Chief Legal Officer.

The Regulator will acknowledge all reports within 5 working days of receipt and will be in contact in the event that clarifications or further information is required.

### **Reporting to the County Council's Pensions Committee**

The quarterly Risk and Performance report presented to the Pension Committee will detail:

- All breaches, including those reported to the Regulator and those unreported;
- For each breach, details of the action taken and result of any action (where not confidential); and
- Any future action to mitigate or eliminate the risk of any future breaches of a similar nature.

## APPENDIX 1 THE PENSION REGULATOR'S TRAFFIC LIGHT FRAMEWORK

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### **The Pensions Regulator Public Service toolkit 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				
Rating	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	Pension board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative/noncompliant entrenched behaviours  The scheme manager does not take appropriate action to address the failing in relation to conflicts	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				
Rating	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 risks 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 risks 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:

- that personal data is complete and accurate;
- correct contributions have been credited;
- what their pension may be at retirement.

Potential Investigation Outcomes				
Rating	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				
Rating	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 with regulations and within 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.	It is highly likely that the administrator is not following agreed service level standards and scheme procedures in other areas.  The scheme manager is likely to be in breach of other legal requirements such as the requirement to have adequate internal controls.
<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.	It is possible that the administrator is not following some of the agreed service level standards and scheme procedures in other areas.  It is possible that the scheme manager is in breach of other legal requirements.
<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