

LEICESTERSHIRE

FIRE and RESCUE SERVICE

Status of Report: Public **Agenda Item:**

Meeting: Pensions Board

Date: 12th December 2018

Subject: Firefighter's Pension Scheme Breaches Register

Report by: The Treasurer/Scheme Manager

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For: Discussion

1. Recommendations

1.1 The Board notes the Breach Register as attached at Appendices 1 and 2, which identifies that no breaches have taken place in the reporting period.

2. Background

2.1 The Pensions Act 2004 required that The Pension Regulator must be informed of breaches to the law where that breach is likely to be of material significance.

2.2 A breach is where a legal duty relevant to the administration of the scheme hasn't been or isn't being complied with: this could relate for instance to keeping records, internal controls or calculating benefits.

2.3 The Pensions Regulator recommends that the pension scheme should have adequate procedures that enable breaches of the law to be considered and reported. This includes having a system to record breaches even if they are not reported to the regulator.

3. Report

3.1 Whilst previous breaches have been considered, and where necessary reported to the Pensions Regulator, there is currently no systematic method of capturing where

potential breaches have been identified, reviewed and what subsequent action has been taken.

3.2 The following people are required to report breaches to the Pensions Regulator:

- Scheme Manager;
- Pension Board Members;
- Employer;
- Professional Advisor;
- Scheme Administrator;
- Any advisor to the Scheme Manager

3.3 The Local Government Association have issued some suggested templates for assessing breaches. These have been used to draw up a LF&RS breach assessment template, register and associated guidance. These can be found at Appendices 1 and 2.

3.4 The assessment considers the cause, effect, reaction and wider implications of the breach. Each of these is then assessed according to whether it is of material significance by using the Red / Amber / Green assessment tool as recommended by the Pensions Regulator. Further details can be found in Appendix 1.

3.5 The assessment should, in normal circumstances be completed within 4 weeks of the breach first coming to light, signed by the Scheme Manager and reported back to the Pensions Board at the earliest opportunity.

4. Financial Implications

4.1 There are no financial implications arising directly from this report. Any financial implications for the Authority will be reported to the Corporate Governance Committee.

5. Legal Implications

5.1 The Public Service Pensions Act 2013 introduced a framework for the governance and administration of public service pension schemes. This report aims to fulfil the requirement for Pension Board members to assist the Scheme Manager in ensuring that effective administration arrangements are in place.

ALISON GREENHILL
SCHEME MANAGER

LF&RS Breach Assessment Template

Registered Breach Number (from Register):

Date:

Person Completing Assessment:

Breach Identified by:

How was breach identified – eg informed by scheme manager, picked up from technical notes / LGA bulletins

Details:

Brief details of breach being assessed.

Using attached guidance comment on the four areas and score red, amber or green

| | Cause | Effect | Reaction | Wider Implications |
|-------|-------|--------|----------|--------------------|
| Red | | | | |
| Amber | | | | |
| Green | | | | |

Action

What is course of action in response to the breach?

History / Frequency

Has this breach occurred before and with what frequency?

Decision

| | |
|---------------------------|--|
| Report as Material Breach | |
| Recorded as Breach | |

Note that where a breach is reportable as a serious breach, it should be reported to the Pensions Regulator without unnecessary delay. A decision is expected to be reached within working weeks of the breach being identified unless there is reason that this deadline cannot be met. In this instance, the reason should be recorded and new deadline set according to the information available.

| |
|--|
| Assessed by: Date of Assessment: Who else has been consulted regarding assessment? |
|--|

| |
|---------------------------|
| Signed by Scheme Manager: |
|---------------------------|

The assessment should normally be signed by the Scheme Manager.

Guidance for completing the Assessment Cause

You need to have reasonable cause to believe that a breach has occurred, not just a suspicion. Where a breach is suspected you should carry out further checks. However the regulator should be contacted without delay if you become aware of either theft, suspected fraud or other serious offence and you are also concerned that by making further checks there is a risk of either alerting those involved or hampering the actions of the police or regulatory authority.

Some causes are likely to be of more concern to the regulator than others.

Here are some examples:

- acting, or failing to act, in deliberate contravention of the law
- dishonesty
- incomplete or inaccurate advice
- poor administration, ie failure to implement adequate administration procedures
- poor governance
- slow or inappropriate decision-making practices

When deciding whether a cause is likely to be of material significance you 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
- there have been any other breaches (reported to the regulator or not) which when taken together may become materially significant

Effect

You will need to consider the effects of any breach when deciding whether to report it.

Bearing this in mind, the causes and effects below are considered likely to be of material significance to the regulator:

- Pension board members not having the appropriate degree of knowledge and understanding
- Pension board members having a conflict of interest

- Adequate internal controls not being established and operated
- Accurate information about benefits and scheme administration not being provided to the scheme members and others • Appropriate records not being maintained
- Pension board members having misappropriated assets of the scheme or being likely to do so
- Any other breach

Reaction

The reaction to a breach should be taken into account when assessing whether the breach is likely to be of material significance to the regulator.

For example the regulator will not normally consider a breach to be materially significant where:

- prompt and effective action has been taken to investigate and correct the breach
- processes are in place to minimise the risk of the breach happening again
- those affected have been notified, where appropriate.

However, when considering whether to report the breach you should consider collectively the cause, effect, reaction and wider implications of the breach, not the reaction to the breach alone.

Where you do not know the facts or events around a suspected breach, you may want to check with the pension board or scheme manager or with others who are in a position to confirm what has happened.

However, remember that it would not be appropriate to check in cases of theft, suspected fraud or other serious offences where discussions might alert those implicated or impede the actions of the police or a regulatory authority.

Wider Implications

You should also consider the wider implications when deciding whether a breach must be reported.

The breach is likely to be of material significance to the regulator where the fact that a breach has occurred makes it more likely that:

- further breaches will occur within the scheme
- further breaches will occur in other schemes

Here are two examples:

- poor record-keeping or a lack of appropriate knowledge and understanding of pension board members are likely to result in multiple breaches
- a breach caused by a system failure is likely to cause additional breaches in other public service schemes that use the same system

Traffic Light Framework for Deciding Whether or not to Report

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 the regulator.

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 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. The breach must still be recorded regardless of whether or not the breach is reported to the regulator.

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 and wider implications of a breach, when considered together are not likely to be of material significance. These are recorded but not reported.

Example: A members' 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.

Appendix 2 **LF&RS Register of Fire Fighter Pension Fund Breaches**

| Number | Date | Brief Description | Red / Amber / Green Assessment | Officer Responsible for Assessment | Outcome | Date Reported to TPR |
|---------------|-------------|--------------------------|---------------------------------------|---|----------------|-----------------------------|
| 001 | | | | | | |
| 002 | | | | | | |
| 003 | | | | | | |
| 004 | | | | | | |
| 005 | | | | | | |
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Last updated: 12 March 2018

Updated by: Alison Greenhill, Scheme Manager