

Cronfa Bensiynau Clwyd

Clwyd Pension Fund

*Gweinyddwyd gan
Administered by*



Flintshire County Council

Administering Authority for Clwyd Pension Fund

**Procedure for Recording and Reporting Breaches of
the Law**

March 2022

Introduction

This document sets out the procedures to be followed by certain persons involved with the Clwyd Pension Fund, which is managed and administered by Flintshire County Council, in relation to identifying, recording and potentially reporting breaches of the law to The Pensions Regulator.

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.

This procedure has been developed to assist those individuals who have a legal responsibility to report certain breaches to The Pensions Regulator in determining whether a breach they have identified should be reported. It has also been developed to assist Flintshire County Council, in its role as Administering Authority, in ensuring it is aware of all breaches of the law in relation to the Clwyd Pension Fund and that these are appropriately recorded and then dealt with.

Flintshire County Council, as Administering Authority, has delegated responsibility for the implementation of these procedures to the Head of Clwyd Pension Fund.

The following persons, or any other person who has responsibility to report breaches of the law in relation to the Clwyd Pension Fund, are strongly encouraged to follow this procedure should they identify such a breach:

- all members of the Pension Fund Committee and the Pension Board
- all officers involved in the management or administration of the Pension Fund including staff members in the Flintshire County Council Pension Fund Team, the Chief Finance Office (Section 151 Officer) and the Corporate Manager, People and Organisational Development
- any professional advisers including external auditors, actuaries, legal advisers and fund managers¹
- officers of employers participating in the Clwyd Pension Fund who are responsible for pension matters
- any other person otherwise involved in advising the managers of the Fund, including Flintshire County Council's Monitoring Officer and staff members of the Internal Audit function

¹ However, these advisors should note that the application of this Procedure relates to the reporting of legal breaches relating to the administration of the Pension Fund, rather than any breaches relating to their role and responsibilities that do not affect the administration of the Fund. For example, if a fund manager has breached the investment association guidelines, then this would not be reportable under this Clwyd Pension Fund Procedure for Reporting Breaches (albeit the Administering Authority would still expect this information to be recorded separately and notified to Flintshire County Council).

Throughout this procedure, any person to whom this procedure applies, as a result of them identifying a breach or potential breach, will be referred to as the "individual".

The next section clarifies the full extent of the legal requirements and to whom they apply.

Requirements

Pensions Act 2004

Section 70 of the Pensions Act 2004 (the Act) imposes a requirement on the following persons:

- a trustee or manager of an occupational or personal pension scheme
- a member of the pension board of a public service pension scheme
- a person who is otherwise involved in the administration of an occupational or personal pension scheme
- the employer in relation to an occupational pension scheme
- a professional adviser in relation to such a scheme
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme,

to report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:

- a) a legal duty relating 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 The Pensions Regulator.

The Act states that 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 Act overrides any other duties the individuals listed above 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.

The Pension Regulator's Code of Practice

Practical guidance in relation to this legal requirement is provided in The Pension Regulator's Code of Practice including in the following areas:

- implementing adequate procedures to consider and record breaches
- judging whether a breach must be reported
- submitting a report to The Pensions Regulator

- whistleblowing protection and confidentiality.

Application to the Clwyd Pension Fund

Flintshire County Council has developed this procedure in relation to Clwyd Pension Fund. This document sets out how the Council will strive to achieve best practice through use of a formal reporting breaches procedure. It reflects the guidance contained in The Pension Regulator's Code of Practice.

Training on reporting breaches and related statutory duties, and the use of this procedure is provided to Pension Fund Committee members, Pension Board members and key officers involved with the management of the Clwyd Pension Fund on a regular basis. Further training can be provided on request to the Clwyd Pension Fund Manager.

Other Administering Authority or Organisational Requirements

In addition to the requirements of this Procedure, there may be other policies and procedures which may be in place relating to areas such as fraud or whistleblowing that apply to the individuals covered by this Procedure for reporting and recording breaches in relation to Clwyd Pension Fund matters. For example, Flintshire County Council has in place the following:

- Corporate Anti-fraud and Corruption Strategy – applies to all employees and members of Flintshire County Council, partner organisations, Council suppliers, contractors and consultants, and the general public
- Fraud and Irregularity Response Plan – guidance for employees and management of Flintshire County Council
- Whistleblowing Policy – setting out how someone working with or within Flintshire County Council can raise an issue in confidence.

This Procedure should be followed in addition to any existing procedures or policies that may be in place, such as those listed above. In particular, individuals are reminded that there is a legal requirement to report breaches of the law in relation to the Clwyd Pension Fund that could be considered significant to The Pensions Regulator. The Council's Monitoring Officer (contact details at the end of this procedure document) can assist if an individual is uncertain how to deal with the interaction between this Procedure and any other organisation's policy or procedure that may be in place.

The Clwyd Pension Fund Breaches Procedure

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess, record and report (if appropriate) a breach of law relating to the Clwyd Pension Fund.

It aims to ensure individuals responsible 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 a suspected breach is an actual breach
3. Determining whether the breach is likely to be of material significance and so should be reported to The Pensions Regulator
4. Recording the breach, even if it is not reported

These steps are explained below.

1. Understanding the law and what is a breach

Individuals 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)
- The Pensions Regulator's Code of Practice:
<http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>

In particular, individuals should refer to the section on 'Reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, the section of the Code on 'Maintaining contributions'.

Further guidance and assistance can be provided by the Head of Clwyd Pension Fund, 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 also included in Appendix A.

2. Determining whether a suspected breach is an actual breach

Individuals then 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 individual should carry out further checks to confirm the breach has occurred.

Where the individual does not know the facts or events, it will usually be appropriate to check with the Head of Clwyd Pension Fund at Flintshire County Council, a member of the Pension Fund Committee or Pension Board or others who are able to explain what has happened. However there are some instances where it would not be appropriate to make further checks, for example, if the individual 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 The Pensions Regulator should be contacted without delay.

3. Determining whether the breach is likely to be of material significance

Should an individual have reasonable cause to believe that breach of the law has occurred, they must decide whether that breach is likely to be of material significance to The Pensions Regulator, and therefore should be reported to The Pensions 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

Individuals may also request the most recent breaches report from the Head of Clwyd Pension Fund, as there may be details on other breaches which may provide a useful precedent on the appropriate action to take.

Further details on the above four considerations are provided in Appendix B to this procedure.

The individual should use the traffic light framework described in Appendix C to help assess the material significance of each breach and to formally support and document their decision.

It should be noted that the Pensions Regulator's role is in relation to requirements under the Pensions Act 2004. As such, it is possible that some breaches of the law do not fall within the Regulator's remit. However, given the complex nature of the law, including the wide ranging responsibilities covered by the Pensions Act 2004, Flintshire County Council encourages reporting of any breach that is considered to be materially significant regardless of the specific area of the law that has been breached. The Pensions Regulator can then determine whether it is a matter they have jurisdiction over or not.

The Head of Clwyd Pension Fund can assist with determining whether the breach should be reported and can also assist in completing the document to report the breach. However the individual is ultimately responsible for determining what should be included in the report and for submitting the report to The Pensions Regulator.

4. Recording the breach, even if it is not reported

The record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). The Head of Clwyd Pension Fund will maintain a record of all breaches identified. Therefore individuals should provide the following information to the Head of Clwyd Pension Fund so that all identified breaches can be recorded:

- copies of reports submitted to The Pensions Regulator
- copies of information relating to any other breach the individual has identified

The information should be provided to the Head of Clwyd Pension Fund as soon as reasonably practicable and certainly no later than within 20 working days of the decision made to report or not. The record of all breaches (reported or otherwise) will be included in the Governance Update Report at each Pension Fund Committee meeting, and this will also be shared with the Pension Board.

Assistance for individuals in following this procedure

The following information is provided to assist individuals in following this procedure.

Referral to a level of seniority for assistance

Flintshire County Council has designated an officer (the Head of Clwyd Pension Fund) to assist any individual with following this procedure. The Head of Clwyd Pension Fund 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.

Individuals must bear in mind, however, that the involvement of the Head of Clwyd Pension Fund is to help clarify the individual's thought process and to ensure this procedure is followed. The individual remains responsible for the final decision as to whether a matter should be reported to The Pensions Regulator and for completing the reporting procedure.

The matter should **not** be referred to the Head of Clwyd Pension Fund 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 individual may instead refer the matter to the Council's Monitoring Officer. Otherwise, the individual should report the matter to The Pensions Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to The Pensions Regulator before the submission may be appropriate, particularly in the case of a more serious breach.

Dealing with complex cases

The Head of Clwyd Pension Fund 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 Flintshire 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 (www.lgpsboard.org) 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 Committee or Board meeting.

Timescales for reporting

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. Individuals should not wait for others to report and nor is it necessary for an individual to gather all the evidence which The Pensions Regulator may require before taking action. A delay in reporting may exacerbate or increase the consequences of the breach. The time taken to reach the judgements on “reasonable cause to believe” and on “material significance” should be consistent with the speed implied by “as soon as reasonably practicable”. In particular, the time taken should reflect the seriousness of the suspected breach.

Early identification of very serious breaches

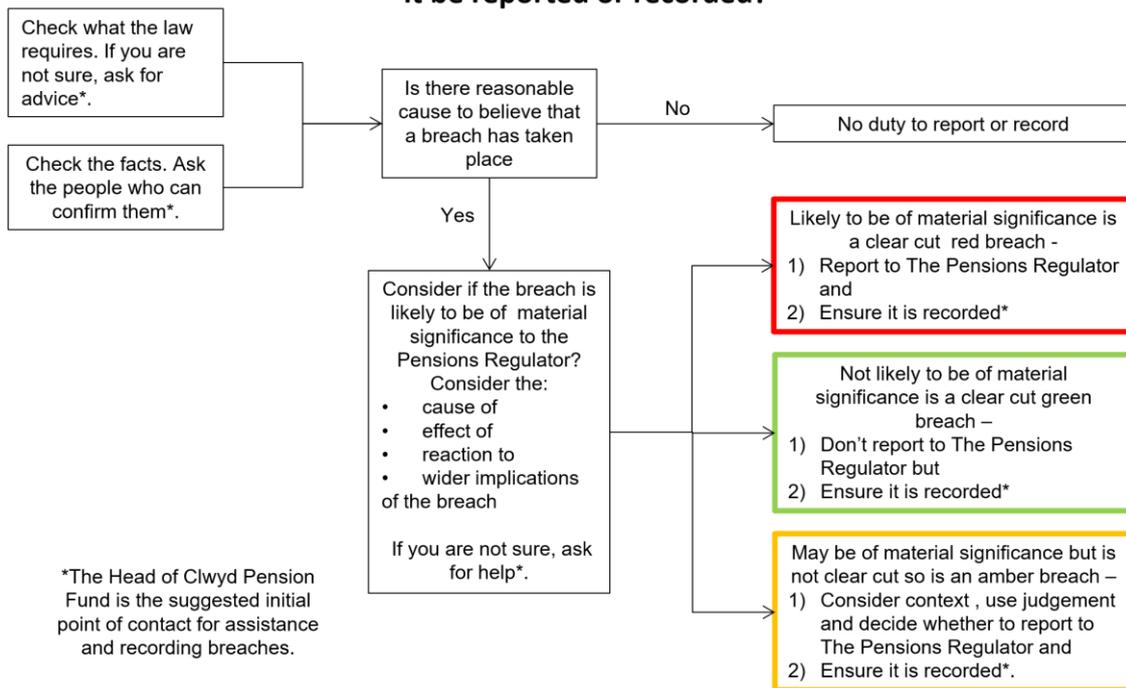
In cases of immediate risk to the scheme, for instance, where there is any indication of dishonesty, The Pensions Regulator does not expect individuals to seek an explanation or to assess the effectiveness of proposed remedies. They should only make such immediate checks as are necessary.

The more serious the potential breach and its consequences, the more urgently individuals should make these necessary checks. In cases of potential dishonesty the individual should avoid, where possible, checks which might alert those implicated. In serious cases, individuals should use the quickest means possible to alert The Pensions Regulator to the breach.

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 The Pensions Regulator and therefore needs to be reported, and then ensuring it is recorded.

Decision-tree: Has a breach occurred and should it be reported or recorded?



Reporting a breach to The Pensions Regulator

Reports must be submitted in writing via The Pensions Regulator's online system at <https://login.thepensionsregulator.gov.uk>, or by post, email or fax, and should be marked urgent if appropriate. If necessary a written report can be preceded by a telephone call.

The individual should ensure they receive an acknowledgement for any report they send to The Pensions Regulator. The Pensions Regulator will acknowledge receipt of all reports within five working days and may contact the individual to request further information. The individual will not usually be informed of any actions taken by The Pensions Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name (Clwyd Pension Fund)
- description of breach(es)
- any relevant dates
- name, position and contact details
- role in connection to the scheme
- employer name or name of scheme manager (the latter is Flintshire County Council)

If possible, individuals should also indicate:

- the reason why the breach is thought to be of material significance to The Pensions Regulator
- scheme address (provided at the end of this procedures document)
- scheme manager contact details (provided at the end of this procedures document)
- pension scheme registry number (PSR – 00329655RN)
- whether the breach has been reported before

The individual should provide further information or reports of further breaches if this may help The Pensions Regulator in the exercise of its functions. The Pensions Regulator may make contact to request further information.

Confidentiality

If requested, The Pensions Regulator 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 Pension Fund Committee

A report will be presented to the Pension Fund Committee on a quarterly basis setting out:

- all breaches, including those reported to The Pensions Regulator and those not reported, with the associated dates.
- in relation to each breach, details of what action was taken and the result of any action (where not confidential)
- any future actions for the prevention of the breach in question being repeated
- new breaches which have arisen since the previous meeting.

This information will also be provided upon request by any other individual or organisation (excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings).

An example of the information to be included in the quarterly reports is provided in Appendix D to this procedure.

Approval and Review

This version of the Reporting Breaches Procedure was reviewed and approved at the Clwyd Pension Fund Committee on 16 March 2022. It will be kept under review and updated as

considered appropriate. After any update it will be sent to all individuals who, or key contacts at organisations which, are considered to be subject to the procedure.

Further Information

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

Philip Latham

Head of Clwyd Pension Fund, Flintshire County Council

E-mail: Philip.latham@flintshire.gov.uk

Telephone: 01352 702264

Alternative designated officer contact details:

Gareth Owens

Monitoring Officer, Flintshire County Council

E-mail: gareth.legal@flintshire.gov.uk

Telephone: 01352 702344

Appendix A – Example breaches of the law

In this appendix we provide just 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.

Not consulting on the Funding Strategy Statement in line with LGPS Regulations and 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	Two 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	One month from date of retirement if on or after Normal Pension Age Two months from date of retirement if before Normal Pension Age

Process	Legal Requirement
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 or 22 nd if paid electronically.

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 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 information 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 individuals 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 The Pensions Regulator 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.

When deciding whether a cause is likely to be of material significance individuals 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 The Pensions Regulator or not) which when taken together may become materially significant

The effect of the breach

Examples of the possible effects (with possible causes) of breaches which are considered likely to be of material significance to The Pensions Regulator 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 The Pensions Regulator where a breach has been identified and those involved:

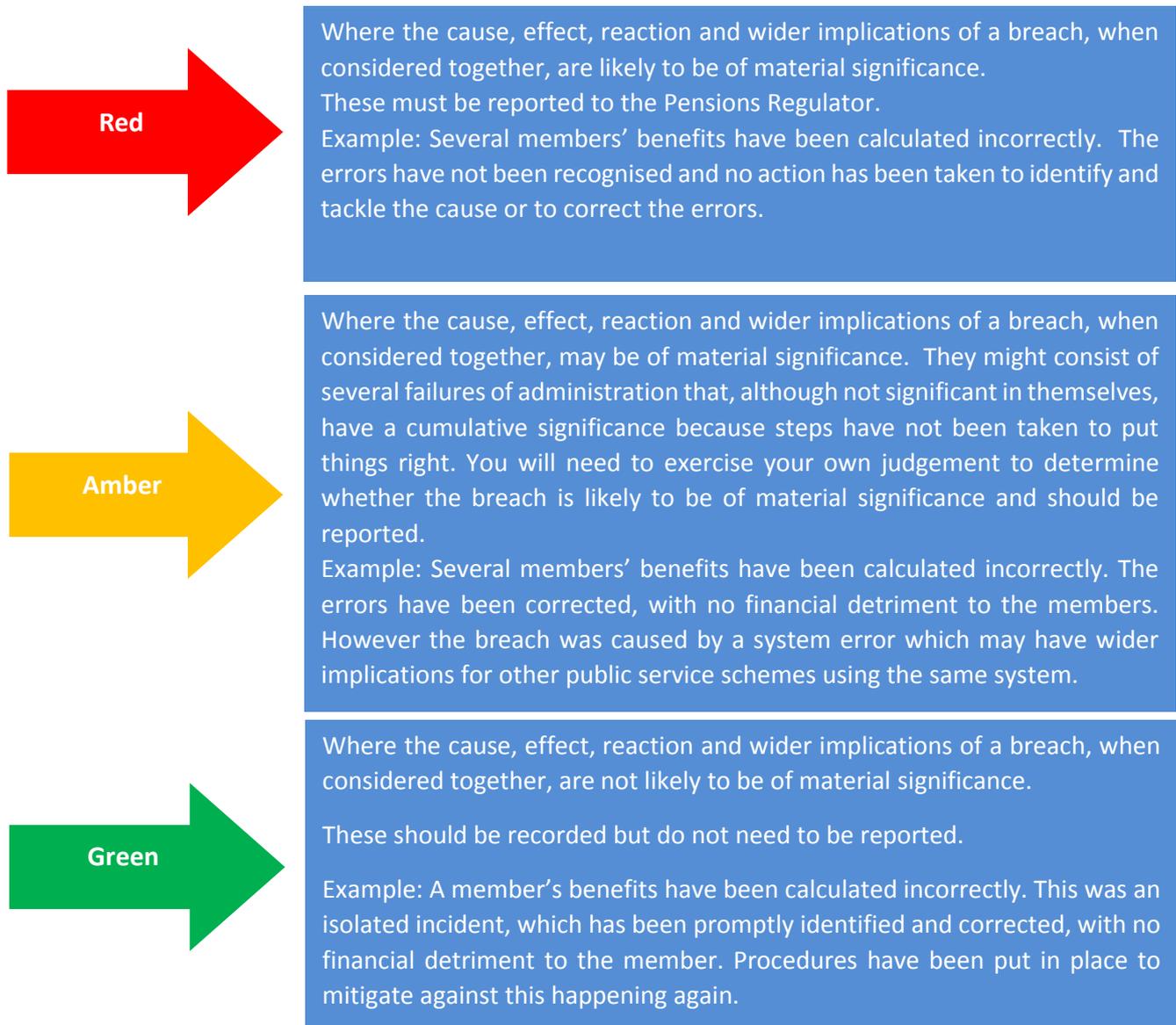
- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence
- are not pursuing corrective action to a proper conclusion, or
- fail to notify affected scheme members where it would have been appropriate to do so.

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 The Pensions Regulator 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

Flintshire County Council recommends those responsible for reporting to use the traffic light framework when deciding whether to report to The Pensions Regulator. This is illustrated below:



All breaches should be recorded even if the decision is not to report.

When using the traffic light framework individuals 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 is provided by The Pensions Regulator at the following link:

<http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx>

