Rhondda Cynon Taf Pension Fund
(last update January 2017)

Reporting Breaches Policy

Introduction

1. The Public Services Pension Act 2013 introduced the framework for the governance and administration of public service pension schemes and provides an extended regulatory oversight by the Pension Regulator. On 1st April 2015 the Pensions Regulators Code of Practice 14: Governance and Administration of Public Service Pension Schemes came into effect.

2. The Code of Practice is not a statement of law itself but sets out the legal requirements for public service pension schemes in respect of certain specific matters. It contains practical guidance and sets out standards of conduct and practice expected of those who exercise functions in relation to those legal requirements. The Code explains that where a breach of the law which affects the scheme may have occurred that consideration should be made as to whether this should be reported to the Pensions Regulator.

Responsibility to Report

3. Certain people are required to report breaches of the law. The requirement to report applies to:

- the Rhondda Cynon Taf Pension Fund Committee;
- the Rhondda Cynon Taf Pension Fund Investment and Administration Advisory Panel;
- the Rhondda Cynon Taf Pension Fund Local Pension Board;
- any person who is involved in the administration of the pension fund;
- participating employers of the Rhondda Cynon Taf Pension Fund;
- all advisers, including auditors, actuaries, Fund managers, custodians;
- any person who is otherwise involved in advising the mangers of the scheme in relation to the scheme.

Decision to Report

4. Breaches of the law which affect pension schemes should be considered for reporting to the Pensions Regulator. Not every breach needs to be reported.

5. The decision to report requires two key judgements:

   i) is there reasonable cause to believe there has been a breach of the law;
   ii) if so, is the breach likely to be of material significance to the Pensions Regulator?

6. Reasonable Cause means having more than a suspicion that cannot be substantiated.

7. If a breach is suspected then checks should be carried out to determine whether or not a breach has actually taken place. However, it would not be appropriate to check in cases of theft, or if the reporter is concerned that a fraud or other serious offence might have been committed and discussion with those persons might alert those implicated or impede the actions of the police or a regulatory authority.

8. If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent to form a view.

9. In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Pensions Regulator would require before taking legal action as any delay may exacerbate or increase the risk of the breach.

Material Significance

10. The legal requirement is that breaches that are likely to be of material significance to the Pensions Regulator in carrying out its functions must be reported. Whether or not the breach is of material significance depends on:
    - the cause of the breach;
    - the effect of the breach;
    - the reaction to the breach;
    - the wider implications of the breach.

    when reaching a decision whether to report, the reporter should consider these points together.

11. The breach is likely to be of material significance to the Pensions Regulator if the breach was caused by:
    - dishonesty;
    - poor governance, inadequate controls, poor administration;
    - slow or inappropriate decision making practices;
    - incomplete or inaccurate advice; or
    - acting (or failing to act) in deliberate contravention of the law.

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

13. 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.

Effect of the breach

14. Reporters need to consider the effects of any breach, but with the Regulators role in relation to public service pension schemes and its statutory objectives in mind.

15. The Pensions Regulator considers the following to be particular important elements which are likely to be of material significance to the regulator.
    - That the right money is paid into the scheme at the right time;
    - Assets are appropriately safeguarded;
    - Payments out of the scheme are legitimate and timely;
    - Schemes are complying with legal requirements on scheme funding;
    - Investment policies are being adhered to and that advice is appropriately considered;
    - Schemes are being administered properly and appropriate records maintained;
    - members receive accurate, clear and impartial information without delay.

Reaction to the breach

16. Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, the Regulator will not normally consider this to be materially significant.

17. 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;
    - fail to notify affected scheme members where it would have been appropriate to do so.

Wider implications of the breach

18. 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 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.

The Traffic Light Framework

19. When determining whether or not to report the breach the Pensions Regulator's traffic light framework should be used.

20. **Red** breach situations are always of material significance to the Pensions Regulator and should be reported. A breach is in this category if one or more of the following apply
    - it was caused by dishonesty, poor scheme governance, poor advice or by deliberate contravention of the law;
    - its effect is significant;
    - inadequate steps are being taken to put matters right; or
    - it has wider implications

21. **Amber** breach situations are less clear cut; a reporter must take into account the context of the breach in order to decide whether it is of material significance and should be reported.

22. **Green** breach situations are not of material significance and do not have to be reported (but should be recorded). A breach is in this category if one or more of the following apply
    - it was not caused by dishonesty, poor scheme governance, poor advice or by a deliberate contravention of the law;
    - its effect is not significant;
    - proper steps are being taken to put matters rights; and
    - it does not have wider implications.

23. A decision Tree outlining the breach consideration process together with some examples obtained from 'The Pensions Regulator' is included as Appendix 1 to this policy.

Deciding whether a breach should be reported to the Regulator

24. After obtaining clarification of the law, if required, and the facts around the breach the reporter should refer the potential breach to the Pensions Administration Manager and Head of Service, Pensions, Payroll & Payments who will undertake their own investigations and, using the traffic light framework, determine whether they categorise it to be red, amber or green.

25. Any necessary courses of action to deal with the potential breach should be put in place as soon as they are identified.

26. The Head of Service, Pensions, Payroll & Payments will refer the case <u>immediately</u> to the Group Director Corporate & Frontline Services (Section 151 Officer) for reporting decision.

If a judgement has been reached that there is reasonable cause to believe that a breach has occurred, and that it is of material significance to the Pensions Regulator, it must be reported as soon as reasonably practicable. What is reasonably practicable depends on the circumstances; in particular, the time taken should reflect the seriousness of the suspected breach.

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27. To satisfy good governance and transparency, all potential and actual breaches will be formally reported (quarterly) into the Fund's Investment and Administration Panel and the Fund's Pension Board for review.

Making a report

28. Reports must be submitted in writing and reporters wherever practicable should use the standard format available on the Pensions Regulators website. The report should be dated and should include as a minimum:
    - name of the Fund;
    - description of the breach or breaches;
    - any relevant dates;
    - name of the employer or scheme manager;
    - 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 Pensions Regulator;
    - the address of the Fund;
    - the pension schemes registry number; and
    - whether the concern has been reported before

29. 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.

30. 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 the Regulator has received their report.

31. The Regulator 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.

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

33. 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.

34. In cases of immediate risk to the Fund, 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 the Regulator to the breach.

Recording Breaches

35. A log of all suspected breaches, whether or not they are reported to the Pensions Regulator, will be maintained. Should similar breaches continue (for example, late payment by the same Employer), this may contribute to the materiality consideration for 'Breach' reporting purposes or indicate that insufficient action has been taken to mitigate such re-occurrences.

Whistleblowing protection and confidentiality

36. The Pensions Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report. The Regulator understands the potential impact of a report on relationships, for example, between an employee and their employer.

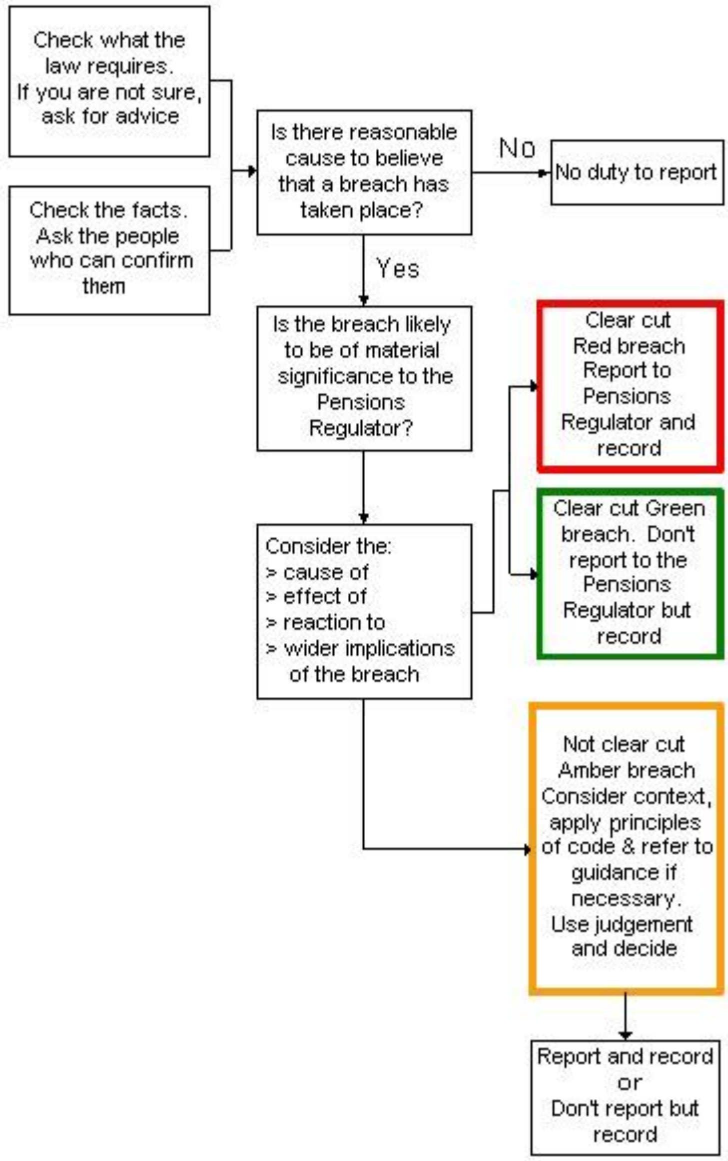
37. The statutory duty to report does not, however, override 'legal privilege. This means that oral and written communications between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

38. The Regulator will do its best to protect a reporter's identity (if desired) and will not disclose the information except where lawfully required to do so. It will take all reasonable steps to maintain confidentiality, but it cannot give any categorical assurances as the circumstances may mean that disclosure of the reporter's identity becomes unavoidable in law. This includes circumstances where the regulator is ordered by a court to disclose it.

39. The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the regulator. Consequently, where individuals employed by firms or another organisation having a statutory duty to report disagree with a decision not to report to the regulator, they may have protection under the ERA if they make an individual report in good faith. The Regulator expects such individual reports to be rare and confined to the most serious cases.

Appendix 1

Decision-tree: deciding whether to report



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Example Breach of the Law and the traffic light framework - 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			
	Cause	**Effect**	**Reaction**	**Wider Implications**
Red	Pension Board members have failed to take steps to acquire and retain the appropriate degree of knowledge and understanding about the schemes administration policies	A Pension Board member does not have knowledge and understanding of the schemes administration policy about conflicts of interest. The pension board member fails to disclose a potential conflict, which results in the members acting improperly.	Pension Board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative/non-compliant 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.
Amber	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
Green	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

Example Breach of the Law and the traffic light framework - Scheme Record-Keeping

Example scenario: An evaluation of member data has identified incomplete and inaccurate records

	Potential Investigation Outcomes			
	Cause	**Effect**	**Reaction**	**Wider Implications**
	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 risk 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
	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
	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 risk of recurrence	It is unlikely that there are wider scheme issues or that the scheme manager will be in breach of other legal requirements

Example Breach of the Law and the traffic light framework - 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:

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

	Potential Investigation Outcomes			
	Cause	**Effect**	**Reaction**	**Wider Implications**
Red	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
Amber	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
Green	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

Example Breach of the Law and the traffic light framework - Internal Controls

Example scenario: A Defined Benefit (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			
	Cause	**Effect**	**Reaction**	**Wider Implications**
Red	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 within the 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
Amber	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
Green	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