



**GOVERNANCE & ADMINISTRATION**  
**BREACH REPORTING PROCEDURE**

**Published:** February 2016

**Reviewed:** June 2019

### **1. Introduction**

- 1.1 The Pension Regulator (TPR) *Code of Practice 14: Governance and Administration of Public service Pension Schemes* (the Code) requires certain people to report breaches of the law in relation to the governance and administration of the Local Government Pension Scheme (Northern Ireland) (the Scheme) to TPR.
- 1.2 This procedure sets out the steps that should be followed and the actions taken to report an actual or suspected breach of the law by NILGOSC to TPR. It has been developed with reference to the requirements of the Code.

### **2. Purpose**

- 2.1 The purpose of this procedure is to:
  - provide a systematic process for the reporting, recording and investigation of potential or actual breaches of the law, in line with the Code
  - encourage all staff members and pension board members to be proactive and raise compliance issues that are of concern as soon as possible
  - enable the gathering of information to facilitate monitoring and reporting of compliance performance within NILGOSC
  - ensure that no individual is penalised or disadvantaged as a result of reporting a compliance breach

### **3. Reporting Requirements**

- 3.1 The Code states that certain people are required to report breaches of the law to TPR where they have reasonable cause to believe that:
  - a legal duty which is relevant to the administration of the Scheme has not been, or is not being, complied with; and
  - the failure to comply is likely to be of material significance to TPR in the exercise of any of its functions
- 3.2 Schemes should have effective arrangements in place to meet their duty to report breaches of the law.
- 3.3 Reliance cannot be placed on waiting for others to report.
- 3.4 Breaches should be reported as soon as reasonably practicable.
- 3.5 Failure to report when required to do so is a civil offence.

### **4. Who has a Duty to Report?**

- 4.1 People who are subject to the reporting requirement (reporters) are:

- NILGOSC staff
- pension board members
- any person who is otherwise involved in the administration of the Scheme
- Scheme employers
- professional advisors, including auditors, actuaries, legal advisers and investment managers
- any person who is otherwise involved in advising the managers of the Scheme in relation to the Scheme

4.2 **All NILGOSC staff and pension board members have a duty to report breaches of the law to TPR.** Staff are not expected to be experts on all aspects of Scheme regulations or pensions law but are expected to be alert to obvious breaches of compliance and those that occur within their working area of knowledge. Within NILGOSC, individuals who work in certain roles are expected to be familiar with the relevant legal requirements that relate to their area of responsibility and hence be able to identify when a breach has occurred. These roles and responsibilities are set out below:

<b>Area of Work/Job Title</b>	<b>Required Knowledge &amp; Understanding/Responsibilities</b>
Pension Board Members	Expected to be familiar with all legal requirements set out in the Code and have the appropriate level of knowledge and understanding in order to properly exercise the functions of their role as a pension board member.
Secretary & Deputy Secretary	High level of understanding of all the legal requirements set out in the Code and of Scheme Regulations, applicable pensions law and Scheme employers' responsibilities. Oversight responsibility for ensuring compliance across all functions in NILGOSC.
Pensions Manager	High level of understanding of the legal requirements of the Code relating to publishing information about the Scheme, Scheme record-keeping, internal controls, providing information to members, internal dispute resolution and reporting breaches of the law. High level of understanding of Scheme regulations and pensions law relating to the administration of the Scheme and of Scheme employers and their duties in relation to the Scheme.
Services Manager	High level of understanding of the legal requirements of the Code relating to publishing information about the Scheme, Scheme record-keeping, internal controls, providing information to members, internal dispute resolution and reporting breaches of the law. High level of understanding of Scheme regulations and pensions law relating to the administration of the Scheme and of Scheme employers and their duties in relation to the Scheme.
Head of Governance & Support Services	High level of understanding of the legal requirements of the Code relating to the governance of the Scheme, particularly in relation to knowledge and understanding requirements, conflicts of interest, publishing information about the Scheme, record-keeping, internal controls and reporting breaches of the law.

Investment Manager	High level of understanding of Scheme regulations and pensions law relating to investment of the Fund.
Finance Manager	High level of understanding of the legal requirements of the Code relating to publishing information about the Scheme, record-keeping, maintaining contributions, internal controls and reporting breaches of the law. High level of understanding of Scheme regulations and pensions law relating to the financial management and reporting aspects of the administration of the Scheme and investment of the Fund.
Finance and Payroll functions (within NILGOSC and Scheme employers)	Deadlines for making contributions, including employer and employee contributions and AVCs.
HR functions (within NILGOSC and Scheme employers)	Deadlines for providing information to Scheme members, potential members and beneficiaries.
IT function	High level of understanding of the internal controls required for the effective management of the IT systems used for the administration of the Scheme.

4.3 The individuals working in the roles and/or functions set out in the table above should ensure they have the appropriate level of knowledge and understanding to be able to carry out their responsibilities effectively. It is the responsibility of managers to ensure that staff within their teams are familiar with the compliance and reporting obligations in their work area.

## **5. What is a Breach?**

5.1 A breach includes non-compliance with the requirements of any legislation or rule of law relevant to the governance and administration of the Scheme. This includes pensions law, Scheme Regulations, breaches concerning personal data and relevant court decisions. It also applies where there is evidence of dishonesty or improper conduct by those involved with the governance and administration of the Scheme, including NILGOSC staff, pension board members and Scheme employers. TPR interprets administration of the Scheme to include such matters as funding and investment, custody of assets and anything which could potentially affect members.

5.2 Examples of breaches could be failures in the following areas<sup>1</sup>:

- Failure of Scheme employers to substantially pay the right contributions to NILGOSC within the prescribed timeframes
- Failure to appropriately safeguard NILGOSC assets
- Unauthorised and/or incorrect benefits paid to Scheme members or beneficiaries
- Failure to meet disclosure requirements
- Additional Voluntary Contributions allocated and invested incorrectly on behalf of Scheme members
- Incorrect or incomplete information issued to members in relation to the Scheme
- Scheme employers fail to advise NILGOSC about Scheme members' pensionable salary or change in hours

<sup>1</sup>This is not an exhaustive list - the examples provided are intended to highlight some areas where breaches may occur.

- Member information is not up to date on the pension administration system
- Breaches of personal data including special categories data
- The pension board does not have the appropriate level of knowledge and understanding, which may result in poor decision making and the Scheme not being properly governed and administered.
- Pension board members have conflicts of interest that may result in them being prejudiced in the way they carry out their role, ineffective governance and administration of the Scheme and/or NILGOSC breaching legal requirements.

5.3 All breaches should be considered and investigated but not every breach will be reportable to TPR. A reportable breach will depend on whether there has been a breach of the law and if the breach is considered materially significant to TPR.

5.4 The following steps sets out the action that should be taken when a breach is identified and provides guidance on how to assess whether the breach should be reported to TPR.

## 6. Identification of a Breach or Potential Breach

6.1 There is no requirement or expectation that reporters should search for breaches. However, all those involved with the governance and administration of the Scheme should be alert to breaches relevant to the service or services they are providing in relation to the Scheme.

6.2 When a breach or potential breach is identified or suspected, staff should notify their supervisor or appropriate line manager immediately. Upon receiving notification of a breach, the supervisor/line manager should notify the senior manager within their section. If it concerns the breach of personal data, the Data Protection Officer must be notified immediately. The DPO is required to consider the risks posed by the breach and is obliged to report certain breaches to the supervisory authority (The Information Commissioner's Office) within 72 hours.

6.3 If the individual feels unable to discuss the breach with their manager, they should notify the senior manager in their section or the Deputy Secretary<sup>2</sup>, as appropriate.

6.5 Breaches or potential breaches can be notified anonymously but individuals are encouraged to be open when notifying breaches so as to make the investigation process timelier and more effective. No individual will be penalised or disadvantaged as a result of notifying a breach or potential breach provided the action is taken in good faith.

6.6 Breaches can occur in relation to a wide variety of the tasks normally associated with the governance and administration of the Scheme. In order to assess whether a breach is reportable, there must be '**reasonable cause**' to believe that a breach has occurred. This means more than merely having a suspicion that cannot be substantiated.

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<sup>2</sup> In the absence of the Deputy Secretary, the responsibilities allocated to them throughout this policy falls to the Secretary or Acting Secretary.

- 6.7 The senior manager to whom the breach has been reported (the reporter) should carry out checks to establish whether or not a breach has actually occurred. If they do not know the facts or events around the suspected breach, or are unclear about the relevant legal provision, it will be appropriate to check with those who are in a position to confirm what has happened. 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 further action. ***Under these circumstances, the suspected breach, if considered to be materially significant, should be reported directly to TPR without delay.*** Where a breach relates to suspected fraud or bribery, reports should refer to NILGOSC's Fraud and Corruption Response Plan for investigation and reporting procedures.
- 6.8 If the breach concerns personal data including special categories of data, the senior manager should report the breach immediately to the Data Protection Officer without undue delay. The DPO will then continue to liaise with the relevant manager to establish all the facts surrounding the suspected breach.
- 6.9 If there is any doubt about whether a legal requirement has been breached, it may be necessary to seek legal advice.
- 6.10 Where there is reasonable cause to believe a breach has occurred, the reporter should take immediate, common sense action to limit or contain the breach. Depending on the nature of the breach, different actions may be required, such as stopping unauthorised payments, communication with members, suspension of a staff member/pension board member. Any evidence should be retained that may be valuable in determining the cause of the breach or allow corrective action to be taken.
- 6.11 The reporter should email details of the breach to the Deputy Secretary, as appropriate, and copy to the Governance Manager/Head of Governance and Support Services. The reporter should also record the breach on the Breach Register (see section 8 for further information on recording a breach).

## 7. Breach Assessment and Escalation

- 7.1 There is a legal requirement to report any breaches that are likely to be of material significance to TPR in carrying out any of its functions. Assessing whether a breach is materially significant will depend on the following:
- 1) cause of the breach
  - 2) effect of the breach
  - 3) reaction to the breach
  - 4) wider implications of the breach
- 7.2 In order to assess whether a breach is reportable, the reporter should consider each of the above points separately. TPR has developed the following traffic light framework to assist with deciding whether or not a breach should be reported:
- **Red** breaches must be reported
  - **Amber** breaches are less clear cut; reporters must take into account the context of the breach in order to decide whether it is of material significance and should be reported
  - **Green** breaches do not need to be reported

- 7.3 The traffic light framework provides some examples of breaches and their assessment to determine which category they fall into. The framework is provided at Appendix A. These examples are not an exhaustive list. They are designed to illustrate situations with which any actual breach can be compared and thereby assist the reporter in reaching an appropriate decision.
- 7.4 Guidance on what may be considered materially significant and how to determine the RAG status of a breach is provided below. ***This has been summarised in the flowcharts attached at Appendix B, which should be used by reporters when considering a breach.*** The flowcharts are a guide only and the status will depend on the individual circumstances of each breach. NILGOSC's *Credit Control Policy & Procedures* sets out specific guidance that should be followed when considering whether a breach in relation to maintaining contributions and payment of benefits to Scheme members is materially significant.

### **Cause of the Breach**

- 7.5 If the cause of the breach is considered to be in relation to theft, suspected fraud or other serious offences committed by those involved in the governance and administration of the Scheme, these are categorised as red and should be reported immediately to TPR. In the case of suspected fraud or bribery, reporters should also refer to NILGOSC's *Fraud and Corruption Response Plan* for onward reporting.
- 7.6 A breach will not normally be considered materially significant if it has arisen from an isolated incident, such as resulting from teething problems with a new system or procedures, or from an unusual or unpredictable combination of circumstances.
- 7.7 Reporters should consider other reported and unreported breaches (refer to the Breach Register) as persistent isolated breaches could be indicative of wider issues and considered materially significant.

### **Effect of the Breach**

- 7.8 Reporters need to consider the effects of the breach in relation to who will be affected and what the consequences of the breach are likely to be. ***The potential impact on Scheme members, employers and NILGOSC is the key consideration in deciding whether a breach should be reported to the TPR.*** The extent of the impact will be dependent on a number of factors.
- 7.9 Where the breach is likely to affect a large number of members or volume of records, have a significant financial impact or damage NILGOSC's credibility or reputation as a pension service provider, these will normally always be categorised as a red breach and vice versa for a green breach. Some examples of breaches and how the effects may be categorised are set out in Appendices B and C, which should be considered by reporters when assessing a potential breach situation. Some further guidance to consider when assessing the effect of a breach is set out in the table below:



<b>Red</b>	<p>Number of Members/Records affected: &gt; 10%</p> <p>Monetary threshold: &gt;£100k</p> <p>Consequences of the breach: would have a significant impact on NILGOSC's service delivery and reputation.</p>
<b>Amber</b>	<p>Number of Members/Records affected: 1 - 10%</p> <p>Monetary threshold: 50k - £100k</p> <p>Consequences of the breach: would have a moderate impact on NILGOSC's service delivery and reputation.</p>
<b>Green</b>	<p>Number of Members/Records affected: &lt;1%</p> <p>Monetary threshold: No financial impact or &lt;£50k</p> <p>Consequences of the breach: would have a minor impact on NILGOSC's service delivery and reputation.</p>

7.10 The limits/thresholds in the table above are provided as guidance only. If these limits are breached, this will not always mean a breach should be reported – the effects of each individual breach will need to be considered together with the cause, reaction and wider implications. Reporters need to take care to consider the effects of the breach, including any other breaches occurring as a result of the initial breach and the effects of those resulting breaches.

**Reaction to the Breach**

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

7.12 A breach is likely to be of concern and material significance to TPR 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 to minimise the risk of reoccurrence
- 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**

7.13 The wider implications of the breach should be considered when assessing whether a breach is likely to be materially significant to TPR. 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. For example, this could be due to pension board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities
- other pension schemes may be affected. For example, if the breach is a result of a pension administration software system failure, this could affect other LGPS's using the same software provider.



- 7.14 If the breach indicates that is highly likely that NILGOSC will be in breach of other legal requirements in the future; it is indicative of wider Scheme administrative issues and/or other Schemes are likely to be affected, these should be categorised as red.
- 7.15 In deciding whether a particular breach may have wider implications, the reporter should take into account such general risk factors as the Scheme's funding level or how well run the Scheme appears to be. In deciding this, it may be helpful to review the Breach Register and determine whether NILGOSC has had any fines imposed or been subject to regulatory action in the last two years. Some breaches that arise in respect of a poorly funded, poorly administered scheme will be more significant to TPR than the same breaches would be in a well funded, well administered scheme, consistent with its risk-focused approach.

### **Overall Assessment**

- 7.16 As each breach will have a unique set of circumstances, there may be elements which apply from one or more of the red, amber and green categories for the cause, effect, reaction and wider implications. Reporters should use the Breach Assessment Matrix attached at Appendix C to record the RAG status of each area (the flowcharts at Appendix B should be used to inform this). Reporters then need to use their own judgement to determine which overall reporting category the breach falls into. As a general rule, if more than two areas are categorised as red, it is likely that the breach will be considered as materially significant to TPR.
- 7.17 Where the overall assessment is amber, the indicators provided in the Breach Assessment Matrix should be considered to determine whether the breach should be reported to TPR.
- 7.18 Some breaches may be considered so serious in relation to any one area that it will warrant immediate reporting to TPR.

## **8. Recording and Reporting**

### **Breach Register**

- 8.1 All breaches must be recorded on the Breach Register even if the decision is not to report. A full record of all potential breaches, reported breaches, investigations and corrective actions undertaken should be recorded on this register.
- 8.2 The Breach Register is held centrally and accessible via the Staff Intranet. When a breach has been identified, the reporter should record the breach on the register and fully update the register as the assessment and reporting process progresses.
- 8.3 In the case of monitoring compliance with statutory pensions administration targets, NILGOSC will report against this on a regular basis and, where these targets have been breached, NILGOSC will make a record of this on the Breach Register and assess this in line with the guidance set out in section 7. To facilitate this, NILGOSC needs to review and develop the reporting capabilities within its systems to ensure potential breaches of statutory targets can be monitored and reported against, which will be implemented going forward. NILGOSC expects that there will be occasions that these timeframes will be breached but it will monitor this and take mitigating action to address any issues.

- 8.4 The Governance Team will undertake a review of the Breach Register and prepare a report for the senior management team (SMT) on a six-monthly basis, for onward reporting to the Audit & Risk Assurance Committee.

### **When to Report**

- 8.5 A Breach Report Form (template attached at Appendix D) should be completed by the reporter when considering a breach. In the event that a group of breaches are being considered together, for example, potential breaches of statutory administration targets or late payment of contributions, the reporter can complete one form per group, if it is considered appropriate to do so. If, after assessment, the reporter decides that there is reasonable cause to believe that a breach has occurred, and that it is of material significance to TPR, this should be recorded on the form. The Breach Report Form must be countersigned by Deputy Secretary. The reporter should send the completed form to the Governance Team for the records. If the decision reached is to report, the breach should be reported by the reporter to TPR **as soon as reasonably practicable** (refer to section 8.9 below)
- 8.6 What is reasonably practicable depends on the circumstances – the time taken should reflect the seriousness of the breach but in all cases the intention should be to assess the breach and make a decision about reporting as quickly as possible and **no longer than 30 days from when the breach was identified**.
- 8.7 In cases of immediate risk to Scheme assets, the payment of members' benefits, or where there is any indication of dishonesty, TPR does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies but only to make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently these necessary checks should be made. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should report to TPR by the quickest means possible.
- 8.8 TPR has specific guidance in the Code relating to maintaining contributions and reporting payment failures by employers. NILGOSC is legally required to report payment failures that are likely to be of material significance to TPR within a reasonable period. A reasonable period for reporting to TPR would be within **10 working days** from determining a reasonable cause to believe a payment failure is likely to be of material significance. Where an employer has failed to pay employee contributions to the Scheme, a report should be made to affected members **within 30 days** of having reported to TPR. NILGOSC's *Credit Control Policy and Procedures* sets out the action that NILGOSC takes to monitor payment of contributions and guidance on assessing whether a payment failure should be reported to TPR and when.

### **How to Report**

- 8.9 Reports must be submitted in writing to TPR. The report should include as a minimum:
- Date the report is being made
  - Name of the Scheme (LGPS Northern Ireland)
  - Description of the breach
  - Any relevant dates
  - Name of the employer (where relevant)
  - Name, position and contact details of the reporter
  - Role of the reporter in relation to the Scheme

8.10 Additionally, TPR would expect to see the following included in a report:

- Reason the breach is considered to be of material significance to TPR
- NILGOSC address
- Name of NILGOSC contact (if not reporter - Deputy Secretary)
- Scheme type (defined benefit)
- Pension Scheme Registry Number (10123043)
- Employer address (where relevant)

8.11 Reporters should wherever practicable use TPR's online Exchange service for reporting breaches of the law, including late or non-payment of contributions. Exchange can be accessed via the link below:

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

8.12 NILGOSC's senior managers are registered as NILGOSC users and linked to the Scheme on Exchange. However, new users can also register and report breaches online using Exchange. The online breach reporting process is secure and only NILGOSC registered users and TPR can access the data online. The steps to follow to submit a report are attached at Appendix E.

8.13 When submitting a report, **Save/Print a copy of the report and forward this to the Governance inbox.**

8.14 Reports can also be submitted by post or email to the contact details set out below:

Address: The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

Email: [exchange@tpr.gov.uk](mailto:exchange@tpr.gov.uk)

Telephone: 0845 600 5666

### **Whistleblowing**

8.15 The statutory duty to report breaches of the law to TPR overrides any other duties a reporter may have, such as confidentiality and any such duty is not breached by making a report. However, the statutory duty to report does not 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.

8.16 If you wish to report a breach of the law anonymously to TPR, you can use TPR's online whistleblowing form available on their website:

<https://www.thepensionsregulator.gov.uk/en/contact-us/whistleblowing-contact-us>

8.17 Alternatively, you can email TPR with the details of the breach at [wb@tpr.gov.uk](mailto:wb@tpr.gov.uk) or call 0345 600 7060.

- 8.18 TPR does encourage reporters to provide their contact details in case they need to ask for further information during the course of the investigation into the concerns raised. TPR will do its best to protect a reporter's identity (if desired) and will not disclose the information unless legally required to do so. There is whistleblowing protection under the Employment Rights Act 1996 which protects most employees if they raise a concern about wrongdoing – either internally or with TPR.
- 8.19 Reporters can also use NILGOSC's Whistleblowing Policy to report a concern or breach of the law internally. The Policy is available on the Staff Intranet.

### **Follow-Up**

- 8.20 Reporters should ensure they receive an acknowledgement for any report they send to TPR. TPR will acknowledge all reports within five working days of receipt. The acknowledgement is confirmation that the report has been received by TPR - if an acknowledgment is not received, the reporter should follow this up. The acknowledgement email must be sent to the Governance inbox.
- 8.21 Once a report is received, TPR will make initial enquiries and may contact the reporter to clarify information (if contact details are provided). TPR does not encourage reporters to try and get any new information.
- 8.22 If appropriate, TPR will refer the concerns raised internally for investigation. However, due to legal restrictions, TPR will not generally keep reporters informed of the steps taken in response to a report or provide any feedback on the investigation. If a report has been made against an employer or third party, TPR will provide a designated point of contact and ensure any witnesses are supported throughout any enforcement process.
- 8.23 Any action taken by TPR will be in accordance with its *TPR Compliance and Enforcement Policy for Public Service Pension Schemes*. If TPR is considering imposing a civil penalty, or exercising one of its other functions, directly affected parties will receive a warning notice.

### **Failure to Report**

- 8.24 Failure to comply with the duty imposed by the requirement to report breaches of the law without 'reasonable excuse' is a civil offence. To decide whether the reporter has a reasonable excuse for not reporting as required or for reporting a breach later than TPR would have expected, TPR will look at:
- The legislation, case law, relevant TPR codes of practice and any guidance issued by TPR
  - The role of the reporter in relation to the Scheme
  - The training provided to individual staff, and the level of knowledge it would be reasonable to expect that individual or those staff to have
  - The procedures put in place to identify and evaluate breaches and whether these procedures had been followed
  - The seriousness of the breach and therefore how important it was to report to TPR without delay
  - Any reason for the delay in reporting
  - Any other relevant considerations relating to the case in question

### 9. Investigation & Corrective Action

- 9.1 If necessary, an investigation into the breach should be undertaken. The level of investigative effort should reflect the seriousness of the breach. Investigations should:
- determine the root causes of the breach
  - determine whether it was a systemic breach, an isolated incident or a deliberate act
  - be completed within six weeks of the Breach Report Form being completed or the breach being reported
- 9.2 Any non-reportable breaches should be investigated by the senior manager within the area in which the breach relates to. Any serious breaches reported to TPR will be investigated by the Governance Team, with assistance and input provided by the relevant staff and managers. Where it is not appropriate for the investigation to be undertaken by the section senior manager or Governance Team, the Deputy Secretary will appoint an investigator. In either case, the outcome of the investigation should be reported to the Deputy Secretary/Secretary as appropriate within six weeks of the investigation commencing.
- 9.3 The investigation report should identify recommended/corrective action, where appropriate, the persons responsible for implementing the action and target completion times for implementation. Where systemic issues are identified, an improvement plan should be developed to address policy/process improvement. The appropriate manager should monitor implementation of corrective action to ensure it is completed and report any issues to the Deputy Secretary.
- 9.4 Where a breach relates to suspected fraud/bribery, reporters should refer to NILGOSC's Fraud and Corruption Response Plan for investigation and reporting procedures.
- 9.5 Where a breach relates to personal data including special categories of personal data, reporters should refer to the Data Protection Policy and Procedures for more information.

### 10. Review

- 10.1 The TPR Breach Reporting Procedure will be subject to formal review every three years. However, the procedure will be updated when required to remain current and reflective of TPR guidance.
- 10.2 Due for review: June 2019  
Last Approved: 28 January 2016 (SMT)

# Public Service toolkit downloadable

## 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 clearcut: 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			
	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	<p>Pension board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative/non-compliant entrenched behaviours</p> <p>The scheme manager does not take appropriate action to address the failing in relation to conflicts</p>	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			
	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 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
<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 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

## 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:

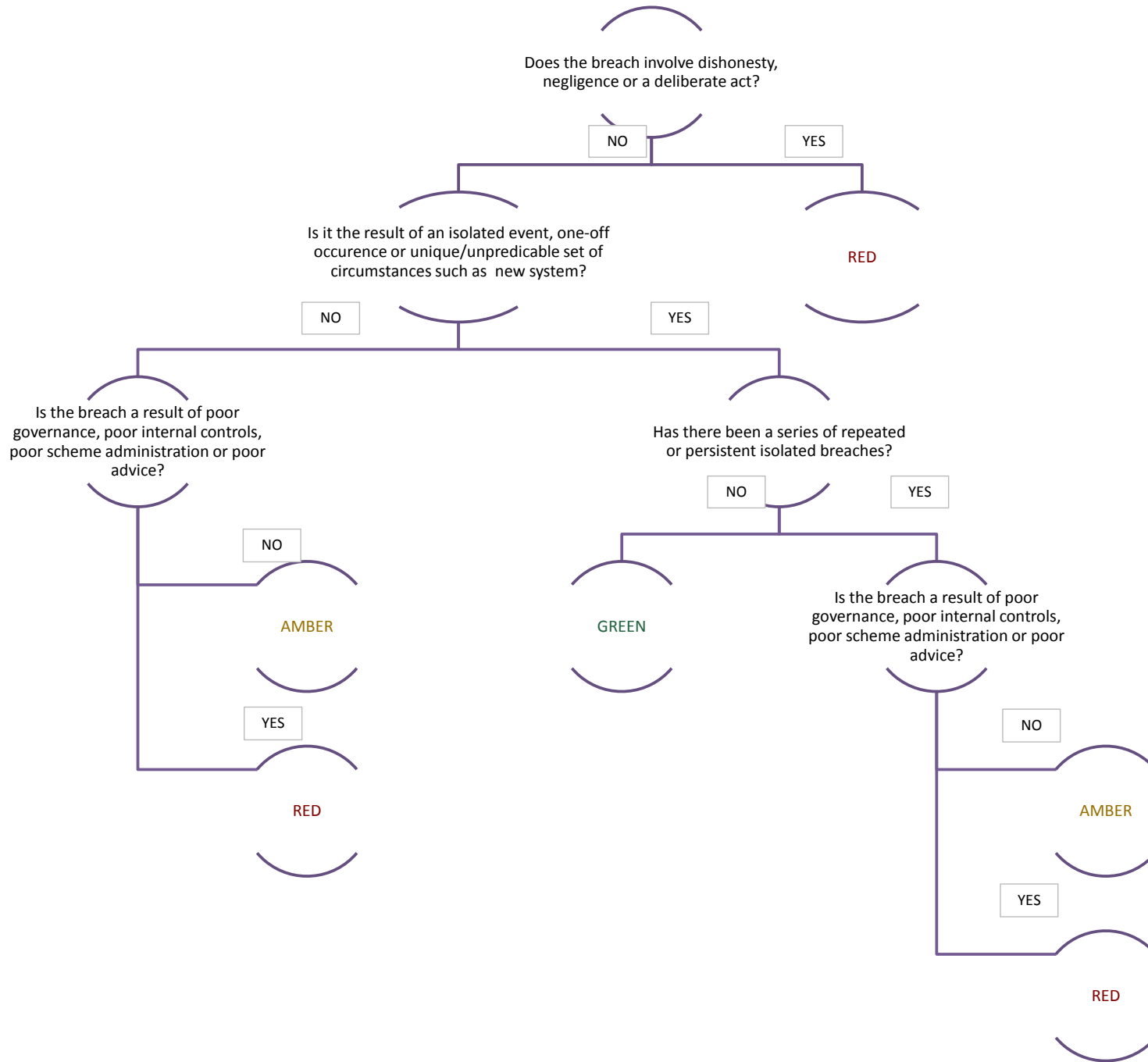
- personal data is complete and accurate
- correct contributions have been credited
- what their pension may be at retirement

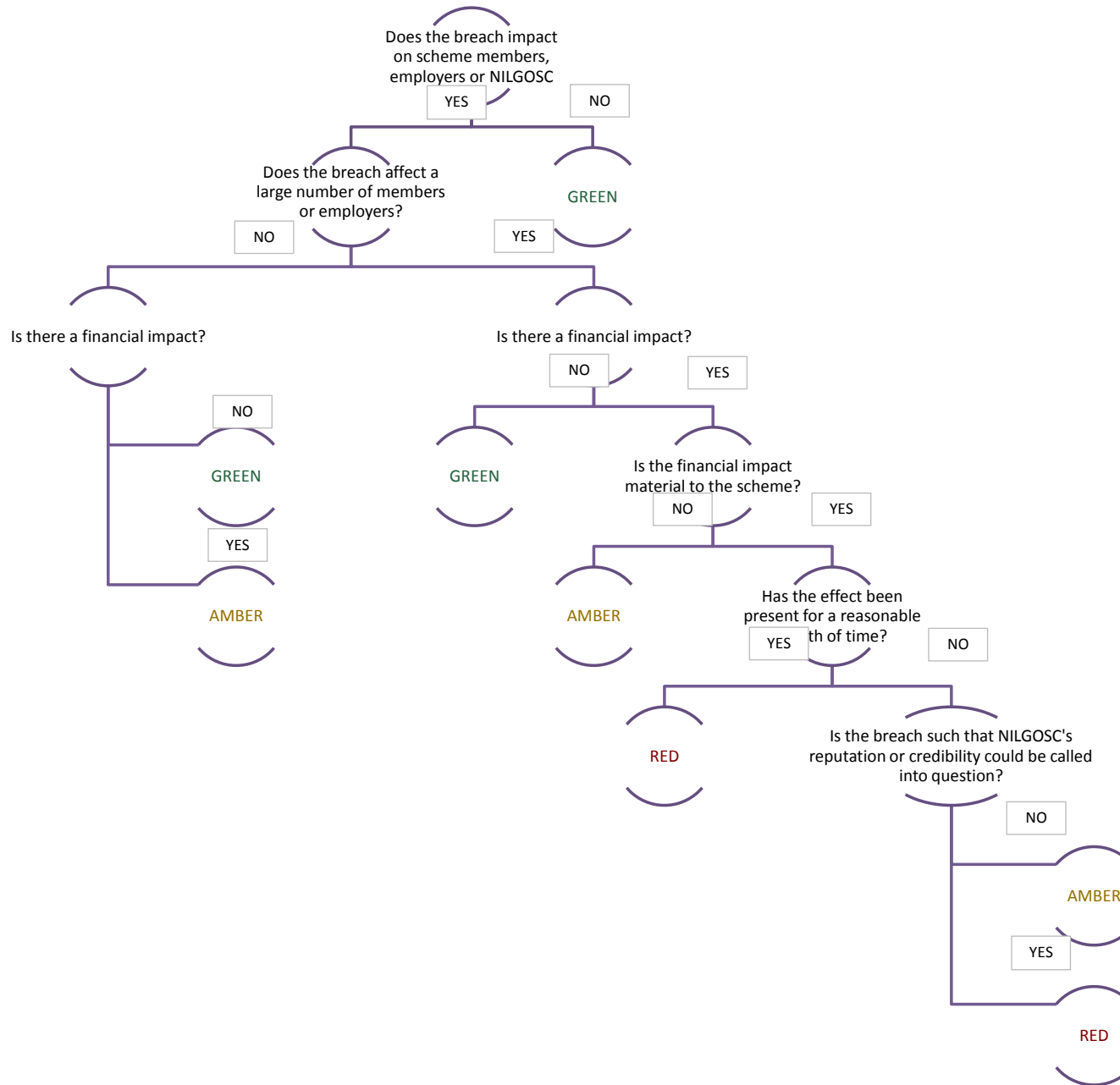
	Potential investigation outcomes			
	Cause	Effect	Reaction	Wider implications
<b>Red</b>	Inadequate internal processes for issuing annual benefit statements, indicating a systemic problem	All members may have been affected	Action has not been taken to correct the breach and/or identify and tackle its 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

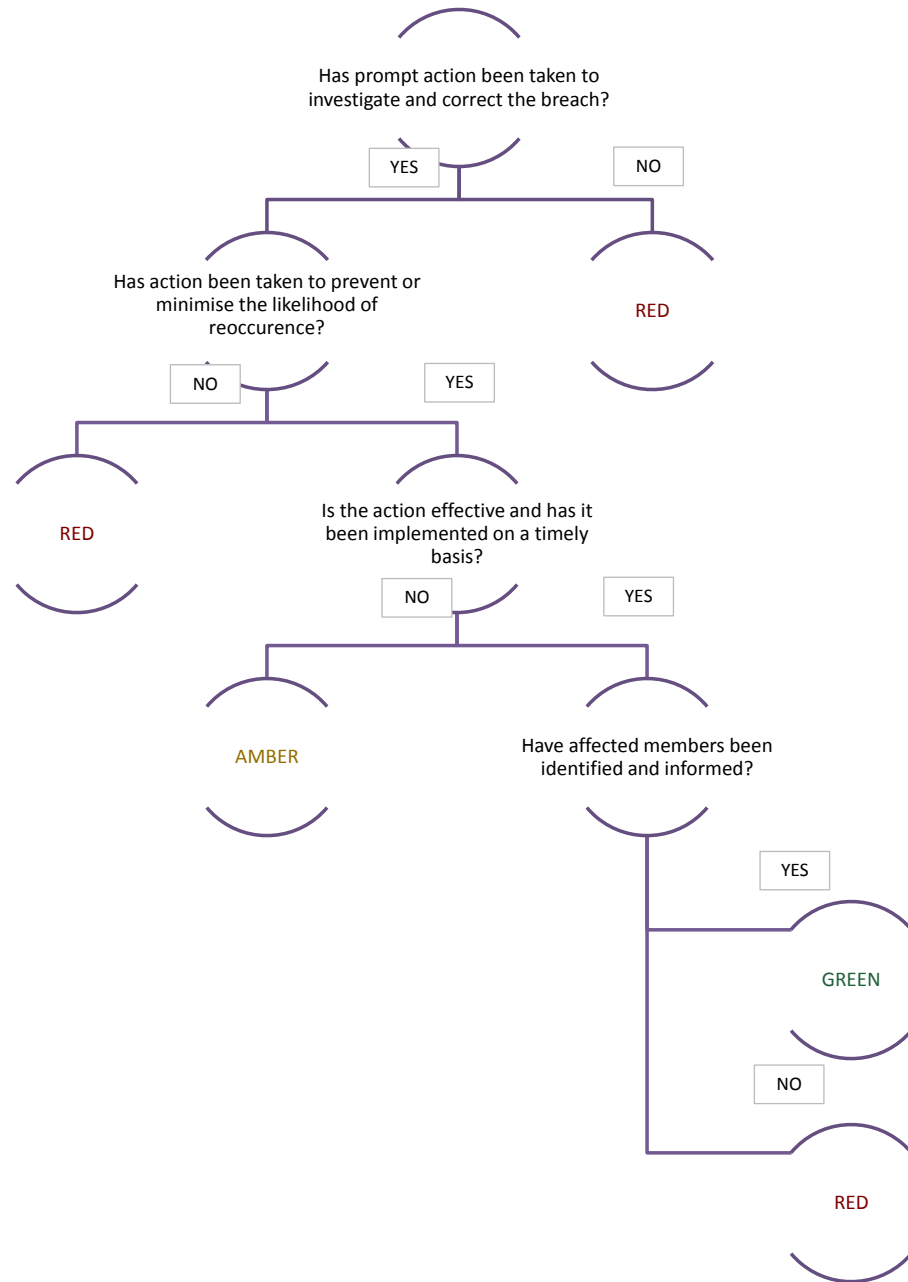
## Internal controls

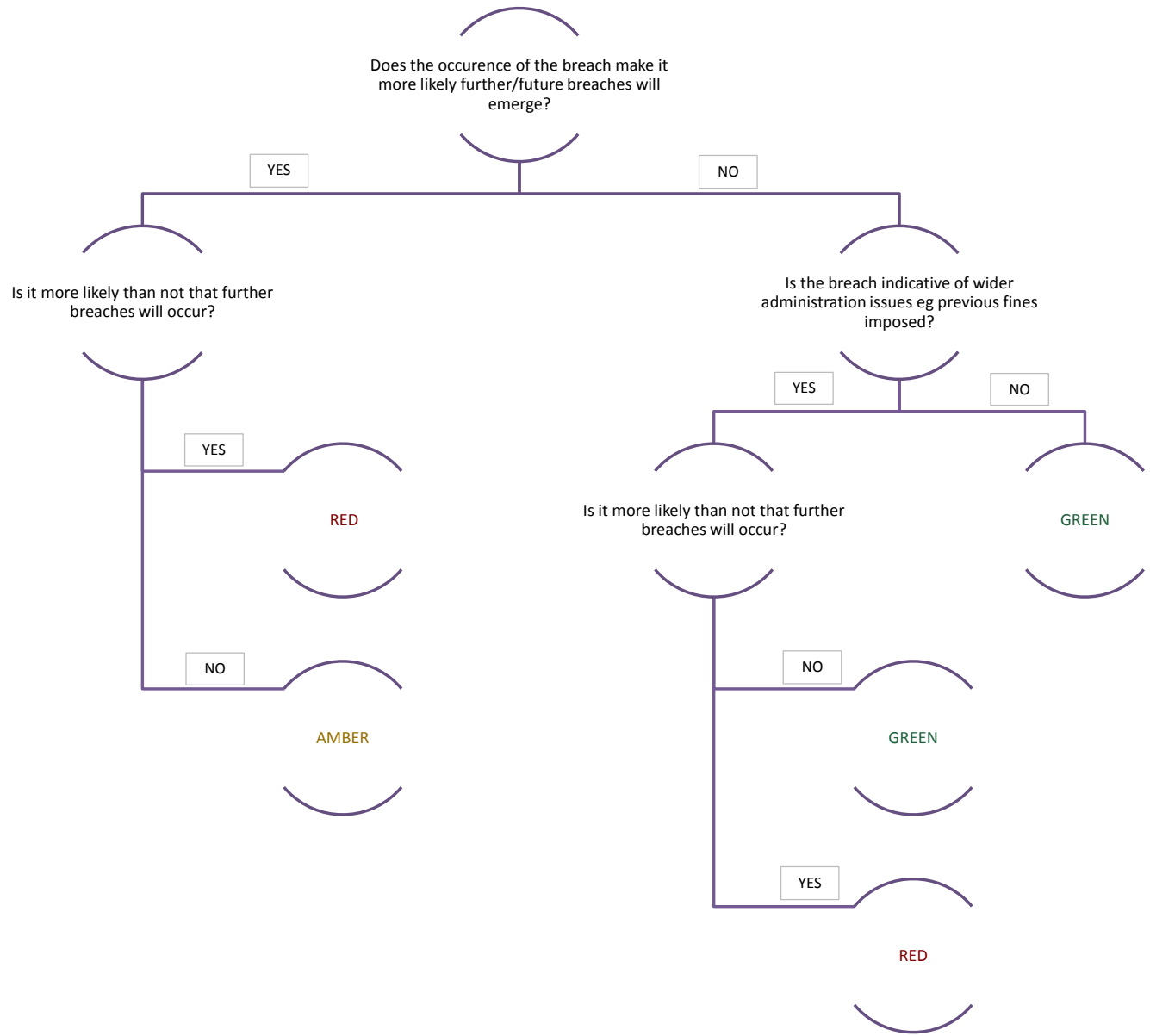
Example scenario: A DB public service scheme has outsourced all aspects of scheme administration to a third party, including receiving contributions from employers and making payments to the scheme. Some contributions due to the scheme on behalf of employers and members are outstanding.

	Potential investigation outcomes			
	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 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
<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









NOTE: IF THE BREACH IMPACTS ON OTHER PENSION SCHEMES EG PENSION SOFTWARE FAILURE THIS IS LIKELY TO RESULT IN A RED RATING



## Breach Assessment Matrix

	Red	Amber	Green
<i>Effect</i>			
<i>Reaction</i>			
<i>Wider Implications</i>			
<b>Overall Assessment</b>			
<b>Rationale</b>			

If the overall assessment is **RED** – report breach to TPR

If the overall assessment is **GREEN** – do not report breach to TPR

If the overall assessment is **AMBER**, the following indicators should be used to determine whether the breach is reportable to TPR:

<b>Not Reportable</b>	<b>Reportable</b>
Single cause of breach	Multiple factors or control failures caused breach
Primarily a result of external factors outside NILGOSC's control	Primarily a result of internal factors within NILGOSC's control
Short term	Long term issue or significant period before breach can be rectified/remedied
Effective and timely response taken	Ineffective or slow action to remedy
Impact limited to NILGOSC	Impacts other pension schemes
Human error or inadvertent act	Deliberate act or poor controls/procedures
Few members affected	Widespread/impact unknown
Affected members have been notified	Affected members have not been notified
No impact on scheme funding	Impact on scheme funding
Isolated breach	Repeated or persistent breaches of a similar nature (refer to Breach Register)
Has acted in good faith	Acting (or failing to act) in deliberate contravention of the law, including theft, fraud or other serious offences

**Breach Report Form**

*(Refer to NiLGOSC's TPR Breach Reporting Procedure)*

<b>1.</b>	<b>Do you believe that there has been a breach of the law?</b> <ul style="list-style-type: none"> <li>• <i>Reasonable cause is more than a suspicion that cannot be substantiated</i></li> <li>• <i>Check facts or events</i></li> <li>• <i>Clarify understanding of law to extent necessary to form a view</i></li> </ul>
	<p><b>Member #:</b></p> <p><b>Background:</b></p> <p><b>Legal requirement:</b></p> <p><b>Has there been a breach:</b> Yes/No <i>(Delete as appropriate)</i></p>
<b>2.</b>	<b>Do you believe that the breach is likely to be of material significance to the Pensions Regulator (TPR)?</b> <i>What makes a breach significant depends on:</i>
<b>2a</b>	<b>Cause of the breach</b>
	<p>RAG Status: Red/Amber/Green <i>(Delete as appropriate)</i></p> <p><i>Rationale</i></p>
<b>2b</b>	<b>Effect of the breach</b>
	<p>RAG Status: Red/Amber/Green <i>(Delete as appropriate)</i></p> <p><i>Rationale</i></p>
<b>2c</b>	<b>The reaction to the breach</b>
	<p>RAG Status: Red/Amber/Green <i>(Delete as appropriate)</i></p> <p><i>Rationale</i></p>
<b>2d</b>	<b>The wider implications of the breach</b>
	<p>RAG Status: Red/Amber/Green <i>(Delete as appropriate)</i></p> <p><i>Rationale</i></p>
<b>3.</b>	<b>Overall Conclusion/Decision</b> Consider the cause/effect/reaction and wider implications above and determine whether the breach is likely to be of material significance to TPR and therefore reportable.
	<p>Report to TPR/ Do not report to TPR <i>(Delete as appropriate)</i></p> <p><i>Briefly outline the overall rationale for the decision to report or not report</i></p>

**APPENDIX D**

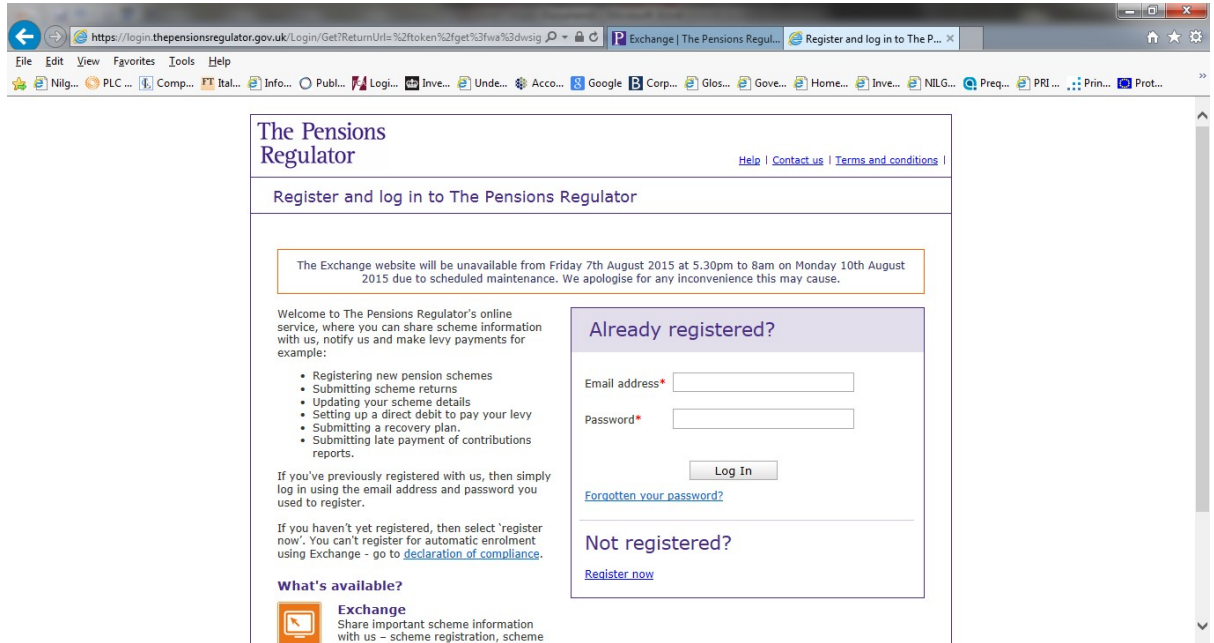
<b>5.</b>	<b>Reporter</b>
	Breach considered by: Date considered:
<b>5.</b>	<b>Approval</b>
	Decision approved: Yes/No ( <i>Delete as appropriate</i> ) <i>(If not approved, record the reason)</i> Authorised by: David Murphy/Nicola Todd ( <i>Delete as appropriate</i> ) Date authorised:
<b>6.</b>	<b>If decision to report, must be done as soon as reasonably practicable using Exchange. <i>Send form back to Reporter to submit a report.</i></b>
	Date reported to TPR: Date recorded on NILGOSC's Breach Register:

## Submit a Report using TPR Exchange

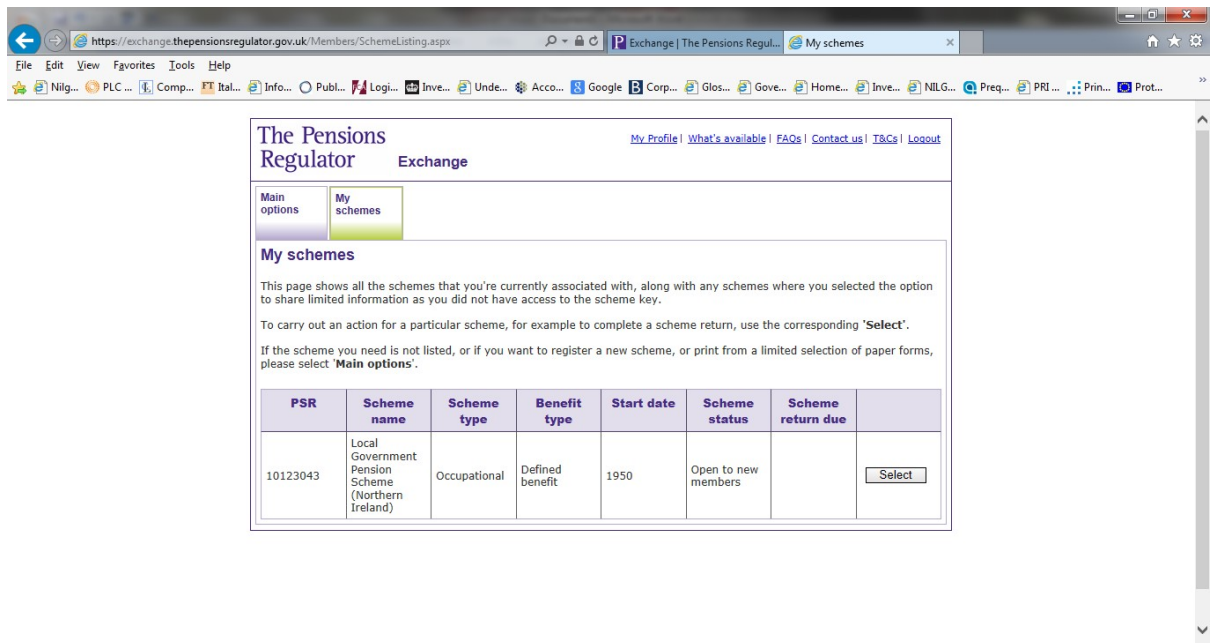
Access Exchange via the following link:

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

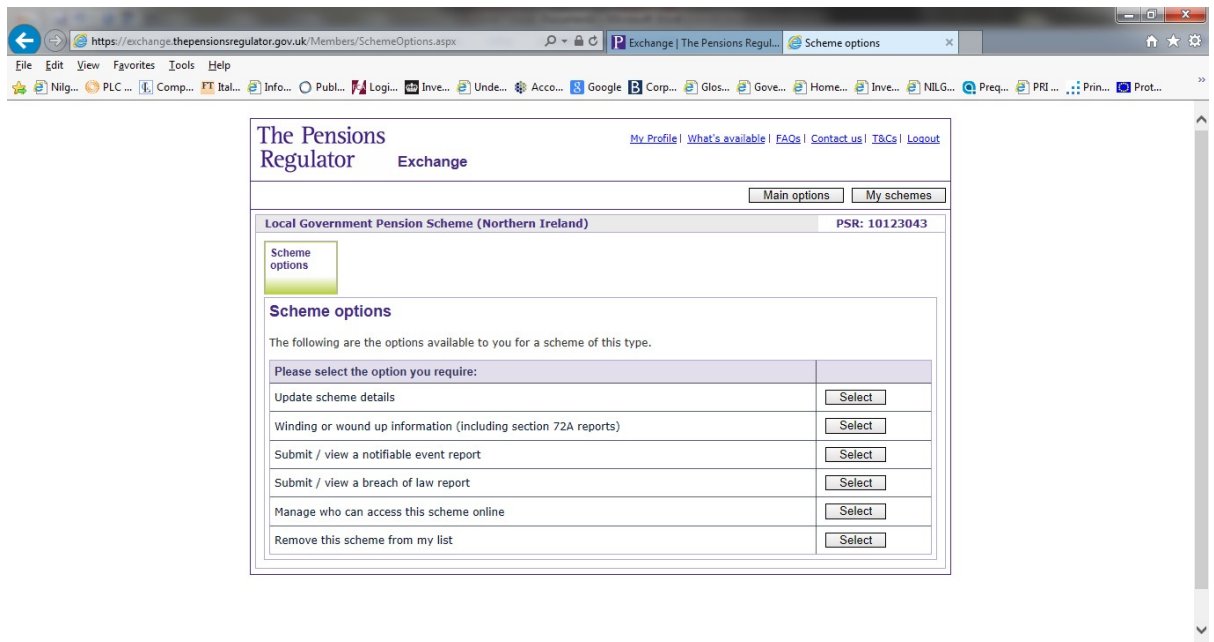
### 1. Log in using username and password



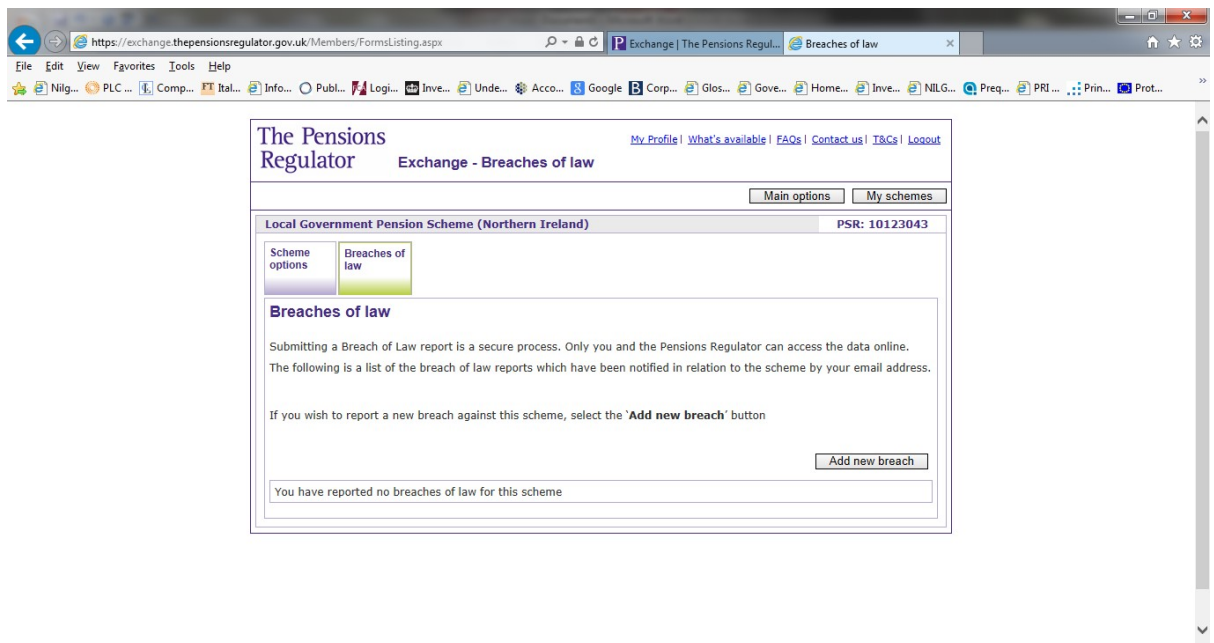
### 2. Select Scheme



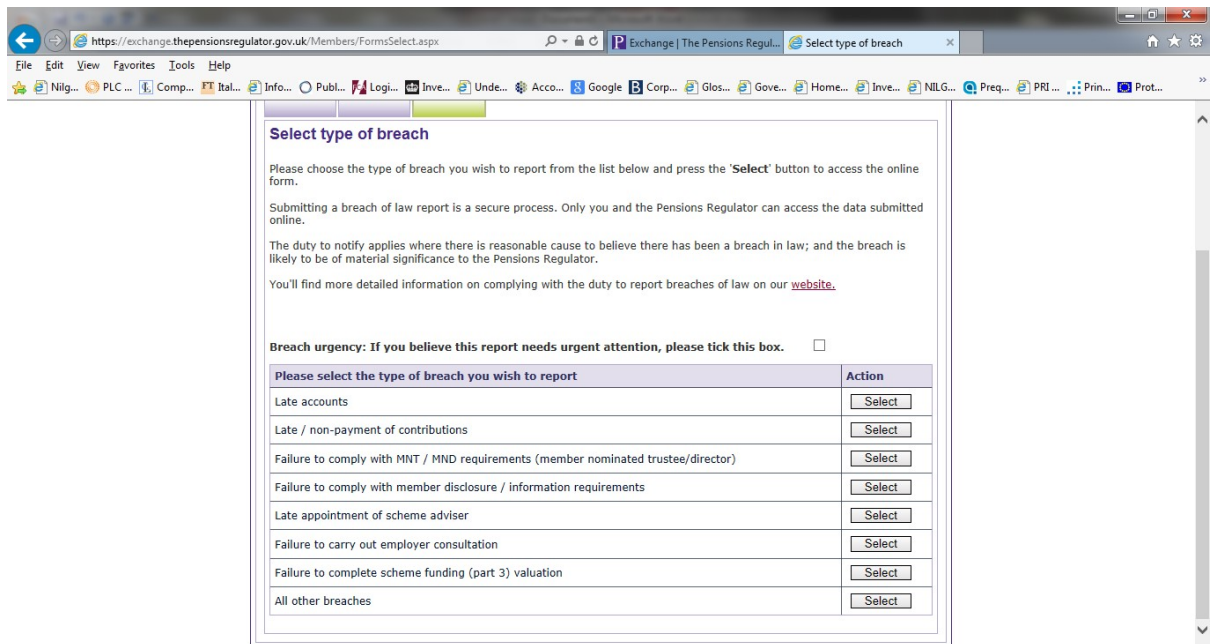
3. Submit/View a breach of law report



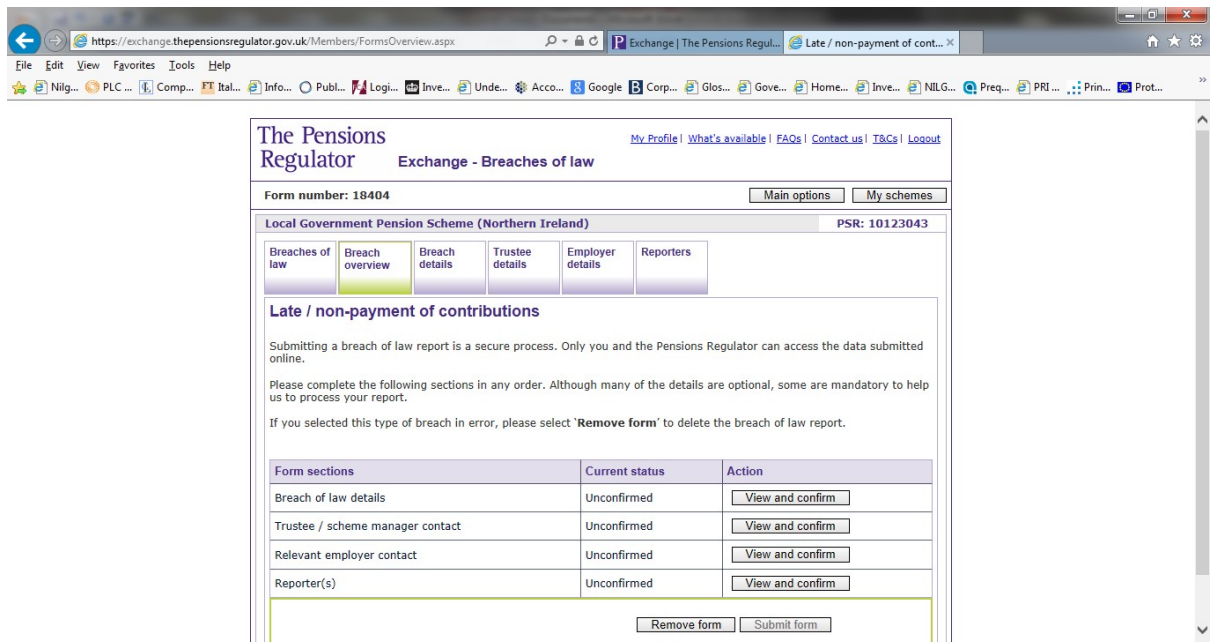
4. Add New Breach



5. Select Type of Breach



6. Complete Details of Breach (example: late/non-payment of contributions)



7. Breach Details

The screenshot shows a web browser window with the URL <https://exchange.thepensionsregulator.gov.uk/Members/BreachesOfLawType2.aspx>. The page title is "The Pensions Regulator Exchange - Breaches of law". The form number is 18404 and the PSR number is 10123043. The form is for a "Local Government Pension Scheme (Northern Ireland)".

The form has several tabs: "Breach overview", "Breach details" (selected), "Trustee details", "Employer details", and "Reporters".

The "Breach details" section is titled "Late / non payment of contributions". It includes the following text: "Please give details about the breach of law in accordance with the regulations set out under Section 70 of the Pensions Act 2004. You'll find more detailed information on complying with the duty to report breaches of law in our guidance and code of practice available on our [website](#)."

A note states: "Fields marked with an asterisk \* are required".

The "Breach details" section contains the following fields:

- Date of breach\* (text input)
- Please provide details of the breach (to a maximum of 4000 characters)\* (text area)
- Is this a breach of the scheduled contributions in relation to a recovery plan?\* (radio buttons for Yes and No)

The screenshot shows the "Payment details" section of the form. It includes the following fields:

- Total amount outstanding\* (text input with £ symbol)
- Please provide a breakdown of the amount unpaid between employee and employer amounts:
  - Employee amount (text input with £ symbol)
  - Employer amount (text input with £ symbol)
- Month(s) outstanding (text input)
- Number of members affected (text input)
- Have the members been notified? (radio buttons for Yes and No)

Below the "Payment details" section is the "Additional breaches or any other information" section, which includes a text area for providing details of any additional breaches or other information that you think is relevant (to a maximum of 4000 characters).

At the bottom of the form are two buttons: "Cancel" and "Save and confirm".



8. Scheme Details – Complete then Save and Confirm

**Trustee / scheme manager contact details**

Type of contact\*  Trustee  Manager of the scheme

Company name (if applicable)\*

Title (Mr, Mrs, Dr etc)

First name(s)

Surname\*

Type of trustee\* Please select

Direct telephone number\*

Email address

---

**Trustee / scheme manager contact address**

Enter postcode\*

Select address

[For overseas address please click here.](#)

9. Select Employer from List or 'Add New Employer'

The Pensions Regulator Exchange - Breaches of law

Form number: 18404

Local Government Pension Scheme (Northern Ireland) PSR: 10123043

Breach overview | Breach details | Trustee details | **Employer details** | Reporters

**Scheme Employers**

Please select the relevant employer contact from the list below and add their details to the event by pressing the 'Select as relevant employer contact'.

This should be the employer with the most members in the scheme, unless the report is in respect of a specific employer participating in the scheme, in which case you should give details of this employer.

If the employer is not listed below, please add the details by selecting 'Add new employer'

[All](#) [A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

In total there are 177 employer entries

Employer name	Employer type	Address	Action
Abbey Christian Brothers GS	Participating Employer	77a Ashgrove Road NEWRY County Down BT34 1QN	<input type="button" value="Select as relevant employer contact"/>
Acorn Integrated Primary	Participating Employer	110 Victoria Road	<input type="button" value="Select as relevant employer contact"/>

10. Check Employer Details –Save and Confirm

The screenshot shows a web browser window with the URL <https://exchange.thepensionsregulator.gov.uk/Members/FormsEmployerDetails.aspx>. The page title is "Employer details".

**Employer details**

Please provide the contact details of the employer with the most members in the scheme, unless the report is in respect of a specific employer participating in the scheme, in which case give details of this employer.

If you want the system to pre-populate the contact details with your registered details, please select the 'Replace with my details' button.

Fields marked with an asterisk \* are required.

**Employer details**

Employer name\* Abbey Christian Brothers GS [?]

Employer trading status\* Active

Companies House number [?]

Registered charity number [?]

**Contact at employer**

Replace with my details

Title\*

First name(s)\*

Surname\*

---

**Address**

Enter postcode\* [Find UK address]

Select address

Select address

Address line 1\* 77a Ashgrove Road

Address line 2\* NEWRY

Address line 3 County Down

Address line 4

Address line 5

Postcode\* BT34 1QN

Country\* United Kingdom

Cancel Save and confirm

11. Reporter Details - Save and Confirm

The screenshot shows a web browser window with the URL <https://exchange.thepensionsregulator.gov.uk/Members/FormsReporterDetails.aspx>. The page title is 'Reporter details'. The form is divided into two main sections: 'Reporter details' and 'Address'.

**Reporter details section:**

- Title (Mr, Mrs, Dr etc)\*:
- First name(s)\*:
- Surname\*:
- Role\*:  [?]
- If other, give details:
- Direct telephone number\*:
- Email address:

**Address section:**

- Company name:
- Enter postcode\*:
- Select address:

Below the address section, there is a link: [For overseas address please click here.](#)

12. Breach Overview - Submit Form. Save/print a copy and send to Governance inbox

The screenshot shows a web browser window with the URL <https://exchange.thepensionsregulator.gov.uk/Members/FormsOverview.aspx>. The page title is 'Regulator Exchange - Breaches of law'. The page displays details for a specific breach of law report.

**Form number:** 18404

**Local Government Pension Scheme (Northern Ireland)** PSR: 10123043

**Breaches of law overview:**

- Breaches of law
- Breach overview**
- Breach details
- Trustee details
- Employer details
- Reporters

**Late / non-payment of contributions**

Submitting a breach of law report is a secure process. Only you and the Pensions Regulator can access the data submitted online.

Please complete the following sections in any order. Although many of the details are optional, some are mandatory to help us to process your report.

If you selected this type of breach in error, please select 'Remove form' to delete the breach of law report.

Form sections	Current status	Action
Breach of law details	Unconfirmed	<input type="button" value="View and confirm"/>
Trustee / scheme manager contact	Unconfirmed	<input type="button" value="View and confirm"/>
Relevant employer contact	Unconfirmed	<input type="button" value="View and confirm"/>
Reporter(s)	Unconfirmed	<input type="button" value="View and confirm"/>