

Procedure for Reporting Breaches of the Law to the Pensions Regulator East Riding Pension Fund

1. Introduction

- 1.1 This document sets out the procedures to be followed by certain persons involved with the East Riding Pension Fund (the ERPF) in respect of the Local Government Pension Scheme (LGPS) managed and administered by East Riding of Yorkshire Council, in relation to reporting breaches of the law to The Pensions Regulator (the Regulator).
- 1.2 Breaches can occur in relation to a wide variety of the tasks normally associated with the administrative function of a pension scheme such as keeping records, internal controls, calculating benefits and making investment or investment related decisions.
- 1.3 This Procedure document applies to:
- the scheme manager;
 - all members of the ERPF Local Pension Board;
 - all members of the Pensions Committee;
 - all officers involved in the administration of the ERPF;
 - officers of employers participating in the ERPF;
 - professional advisers including auditors, actuaries, legal advisers and fund managers; and
 - any person who is otherwise involved in advising managers of the ERPF in relation to the LGPS.

2. Requirements

- 2.1 This section clarifies the full extent of the legal requirements and to whom they apply.

2.2 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 such a scheme an occupational or personal pension scheme;
- the employer in relation to an occupational pension scheme;
- a professional adviser in relation to such a scheme; and
- 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 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 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 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.

2.3 **The Regulator's Code of Practice**

Practical guidance in relation to this legal requirement is included in the Regulator's Code of Practice which includes:

- implementing adequate procedures;
- judging whether a breach must be reported;
- submitting a report to the Regulator; and
- whistleblowing protection and confidentiality.

2.4 **Application to the ERPF**

This procedure has been developed to reflect the guidance contained in the Regulator's Code of Practice in relation to the ERPF and this document sets out how the ERPF will strive to achieve best practice through use of a formal reporting breaches procedure.

3 **The ERPF Reporting Breaches Procedure**

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the ERPF. 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.

3.1 **Clarification of the law**

Individuals may need to refer to regulations and guidance when considering whether or not to report a possible breach. 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://lgpsregs.webdigi.co.uk/schemeregs/index.php>
- 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 in the Regulator's Code of Practice on 'Reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, see the section of the Code on 'Maintaining contributions'.

Guidance and assistance will be provided by the Head of Finance, the Monitoring Officer and the Interim Director of Corporate Resources for East Riding of Yorkshire Council, 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).

3.2 **Clarification when a breach is suspected**

Individuals need to have reasonable cause to believe that a breach 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 Finance, the Monitoring Officer or the Interim Director of Corporate Resources. 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 Regulator should be contacted without delay.

3.3 **Determining whether the breach is likely to be of material significance**

To decide whether a breach is likely to be of material significance an individual should consider the following, both separately and collectively:

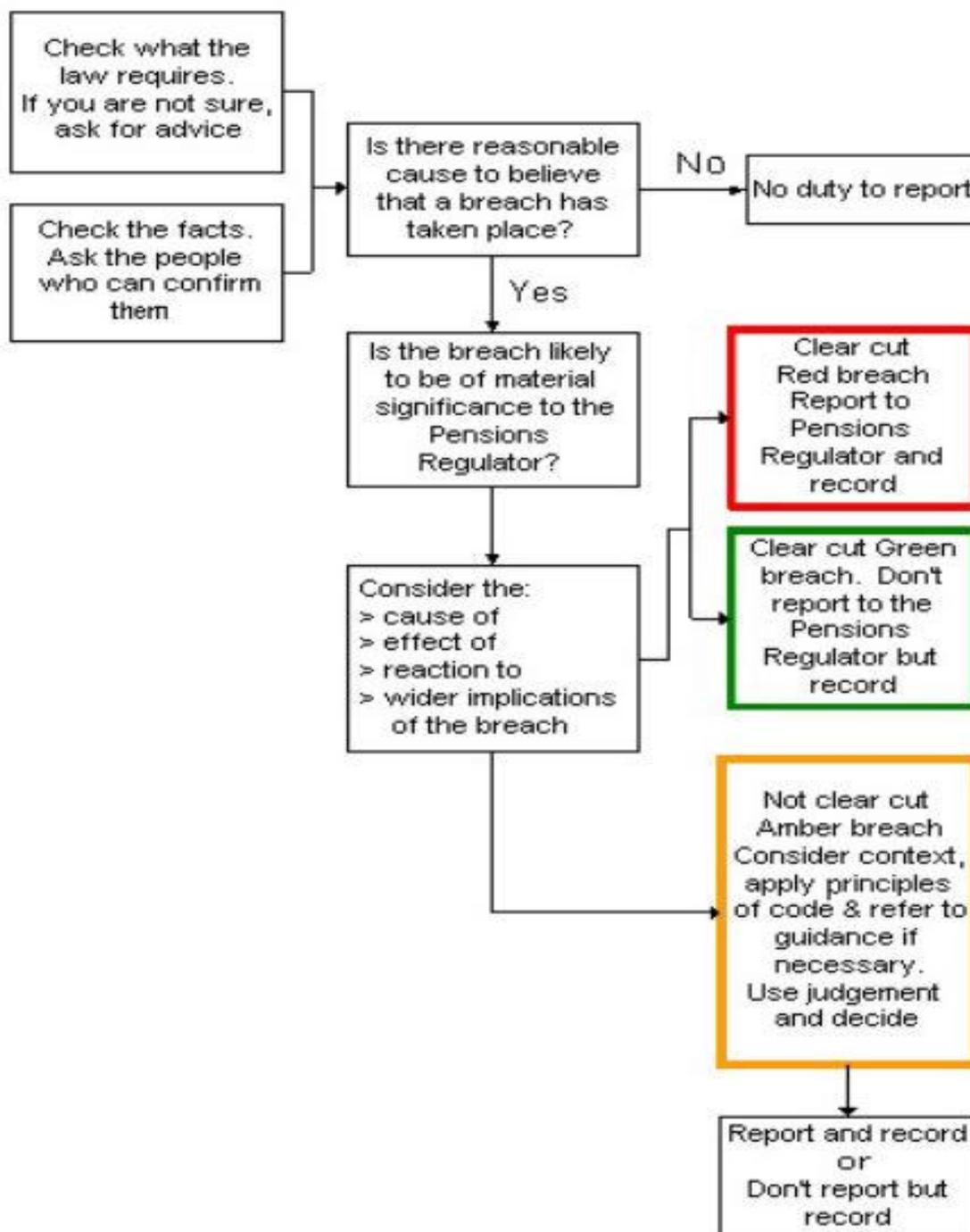
- cause of the breach (what made it happen);
- effect of the breach (the consequence(s) of the breach);
- reaction to the breach; and
- wider implications of the breach.

Further details on the above four considerations are provided in Appendix A to this procedure and guidance and assistance will be provided by the Head of Finance, the Monitoring Officer and the Interim Director of Corporate Resources for East Riding of Yorkshire Council.

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

3.4 The following decision tree shows the process for deciding whether or not a breach has taken place and whether it is materially significant and therefore requires to be reported.

Decision-tree: deciding whether to report



- 3.5 **Referral to a level of seniority for a decision to be made on whether to report**
 East Riding of Yorkshire Council has a designated Monitoring Officer to ensure the Council acts and operates within the law. The Monitoring Officer 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 Regulator, where appropriate. If breaches relate to late or incorrect payment of contributions or pension benefits, the matter should be highlighted to the Head of Finance or the Interim Director of Corporate

Resources at the earliest opportunity to ensure the matter is resolved as a matter of urgency. Individuals must bear in mind, however, that the involvement of the Monitoring Officer is to help clarify the potential reporter's thought process and to ensure this procedure is followed. The reporter remains responsible for the final decision as to whether a matter should be reported to the Regulator.

The matter should not be referred to any of these officers if doing so will alert any person responsible for a possible serious offence to the investigation (as highlighted in section 2). If that is the case, the individual should report the matter to the Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to the Regulator before the submission may be appropriate, particularly in more serious breaches.

3.6 **Dealing with complex cases**

The Head of Finance or the Interim Director of Corporate Resources may be able to provide guidance on particularly complex cases. Information may also be available from national resources such as the Scheme Advisory Board or the LGPC Secretariat (part of the LG Group - <http://www.lgpsregs.org/>).

3.7. **Timescales for reporting**

The Pensions Act and the Regulator's Code of Practice require that if an individual decides to report a breach (the reporter), the report must be made in writing as soon as reasonably practicable. Individuals should not rely on waiting for others to report and nor is it necessary for a reporter to gather all the evidence which the Regulator may require before taking action. A delay in reporting may exacerbate or increase the risk 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.

3.8 **Early identification of very serious breaches**

In cases of immediate risk to the scheme, 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.

3.9 **Recording all breaches even if they are 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). As well as the Monitoring Officer, the ERPF will maintain a record of all breaches identified by individuals and reporters should therefore provide copies of reports, using the form in Appendix C, to the Interim Director of Corporate Resources. Records of unreported breaches should also be provided as soon as reasonably practicable and certainly no later than within 20 working days of the decision made not to report. These will be recorded alongside all reported breaches. The record of all breaches (reported or otherwise) will be included in the bi-annual Pension Fund Risk Register Report to the Pensions Committee, and this will also be shared with the ERPF Local Pension Board.

3.10 Reporting a breach

Reports must be submitted in writing via the Regulator's online system at www.tpr.gov.uk/exchange, or by post, email or fax, and should be marked urgent if appropriate.

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

Email: exchange@tpr.gov.uk

Fax: 0870 2411144

If necessary, a written report can be preceded by a telephone call. Reporters should ensure they receive an acknowledgement for any report they send to the Regulator. The Regulator will acknowledge receipt of all reports within five working days and may contact reporters to request further information. Reporters will not usually be informed of any actions taken by the Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name (the East Riding Pension Fund);
- description of the breach(es);
- any relevant dates;
- name, position and contact details;
- role in connection to the scheme; and
- employer name or name of scheme manager (the latter is East Riding of Yorkshire Council).

If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to the 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 – 10079121); and
- whether the breach has been reported before.

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

3.11 Whistleblowing protection and confidentiality

If requested, the Regulator will do its best to protect a reporter's identity and will not disclose information except where it is lawfully required to do so. If an individual's employer decides not to report and the individual employed by them disagrees with this and decides to report a breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report in good faith. East

Riding of Yorkshire Council has its own whistleblowing policy and the Monitoring Officer will take this into account when assessing the case. The whistleblowing process can also be used as a means for potential breaches to be reported.

3.12 **Reporting to Pensions Committee and the ERPF Local Pension Board**

As part of the Pension Fund Risk Register review, a report will be presented to the Pensions Committee and the ERPF Local Pension Board on a six monthly basis setting out:

- all breaches, including those reported to the Regulator and those unreported, 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; and
- highlighting new breaches which have arisen in the last year/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.

3.13 **Review**

This Reporting Breaches Procedure was originally developed in August 2015. It will be kept under review and updated as considered appropriate by the Head of Finance or the Interim Director of Corporate Resources. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

Further Information

If you require further information about the reporting breaches procedure, please contact:

Graham Ferry - Pensions Manager

Telephone Number: 01482 394171

E-mail: Graham.Ferry@eastriding.gov.uk

Address East Riding Pension Fund
PO Box 118
Council Offices
Church Street
Goole
East Riding of Yorkshire
DN14 5BG

Mark Lyon - Head of Investments

Telephone Number: 01482 394135

E-mail: Mark.Lyon@eastriding.gov.uk

Designated officer contact details:

Julian Neilson - Head of Finance

Telephone Number: 01482 394100

E-mail: julian.neilson@eastriding.gov.uk

Darren Stevens - Interim Director of Corporate Resources

Telephone Number: 01482 393000

E-mail: darren.stevens@eastriding.gov.uk

Mathew Buckley - Monitoring Officer

Telephone Number: 01482 393100

E-mail: mathew.buckley@eastriding.gov.uk

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; and
- the wider implications of the breach.

The cause of the breach

Examples of causes which are likely to be of concern to the 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; or
- 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, for example, resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances caused by a power outage, fire, flood or a genuine one off mistake.
- whether there have been any other breaches (reported to the 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 Regulator in the context of the LGPS are given below:

- Pensions Committee/Local Pension Board members not having enough knowledge and understanding, resulting in the Committee or Board not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements.
- conflicts of interest of Pensions Committee or Local Pension 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 by anyone involved with the administration or management of the ERPF, 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 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 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.

Examples of breaches

Example 1

An employer is late in paying over employee and employer contributions, and so late that the employer is in breach of the statutory period for making such payments. The employer is contacted by officers from the administering authority, and immediately pays the moneys that are overdue, as well as improving its procedures so that in future contributions are paid over on time. In this instance there has been a breach but members have not been adversely affected and the employer has put its house in order regarding future payments.

The breach is therefore not material to The Pensions Regulator and need not be reported but it will be recorded.

Example 2

An employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. The employer is also late in paying Additional Voluntary Contributions (AVCs) to the Prudential. The employer is contacted by officers from the administering authority, and it eventually pays the moneys that are overdue, including AVCs to the Prudential. This has happened before, with there being no evidence that the employer is putting its house in order. In this instance there has been a breach that is relevant to The Pensions Regulator, in part because of the employer's repeated failures, and also because those members paying AVCs will typically be adversely affected by the delay in the investing of their AVCs.

The breach is therefore material to The Pensions Regulator and needs to be reported and recorded.

Example 3

An employer is late in submitting its statutory year end return of pay and contributions in respect of each of its active members and as such it is in breach. Despite repeated reminders the employer still does not supply its year end return. Because the administering authority does not have the year end data it is unable to supply, by 31 August, annual benefit statements to the employer's members. In this instance there has been a breach which is relevant to The Pensions Regulator, in part because of the employer's failures, in part because of the enforced breach by the administering authority, and also because members are being denied their annual benefits statements.

The breach is therefore material to The Pensions Regulator and needs to be reported and recorded.

Example 4

A member of the Pensions Committee, who is also on the Property Working Group, owns a property. A report is made to the Property Working Group about a possible investment by the Fund, in the same area in which the member's property is situated. The member supports the investment but does not declare an interest and is later found to have materially benefitted when the Fund's investment proceeds. In this case a material breach has arisen, not because of the conflict of interest, but rather because the conflict was not reported.

The breach is therefore material to The Pensions Regulator and needs to be reported and recorded.

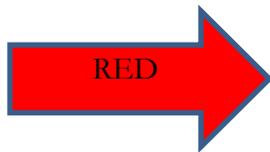
Example 5

A pension overpayment is discovered and thus the administering authority has failed to pay the right amounts to the right person at the right time. A breach has therefore occurred. The overpayment is however for a modest amount and the pensioner could not have known that (s)he was being overpaid. The overpayment is therefore waived. In this case there is no need to report the breach as it is not material.

The breach is therefore not material to The Pensions Regulator and need not be reported but it will be recorded.

Traffic light framework for deciding whether or not to report

It is recommended that those responsible for reporting use the traffic light framework when deciding whether to report to the Regulator. This is illustrated below:



Where the cause, effect, reaction and wider implications of a breach, when considered together, are likely to be of material significance.

These must be recorded and reported to the Regulator.

Example: Several members' benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.



Where the cause, effect, reaction and wider implications of a breach, when considered together, may be of material significance. They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right. You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported. The breach must still be recorded regardless of whether or not the breach is reported to the Regulator

Example: Several members' benefits have been calculated incorrectly. The errors have been corrected, with no financial detriment to the members. However the breach was caused by a system error which may have wider implications for other public service schemes using the same system.



Where the cause, effect, reaction and wider implications of a breach, when considered together, are not likely to be of material significance. These should be recorded but do not need to be reported.

Example: A member's benefits have been calculated incorrectly. This was an isolated incident, which has been promptly identified and corrected, with no financial detriment to the member. Procedures have been put in place to mitigate against this happening again.

For the avoidance of doubt, 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 considering the four together. Some useful examples of this framework are provided by the Regulator at the following link:

[http:// www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx](http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx)

Form to Report a breach of the law to the Interim Director of Corporate Resources

Name of Reporter:

Position:

Contact details: Telephone number

Email address

Address

Description of the breach (please include any relevant dates):

Do you believe that the breach is of material significance to The Pensions Regulator? Please give your reasons:

Have you reported the breach to The Pensions Regulator?

Please send the completed form by email or post to:

Darren Stevens – Interim Director of Corporate Resources

Telephone Number: 01482 393000

E-mail: darren.stevens@eastriding.gov.uk

Address: Interim Director of Corporate Resources

East Riding of Yorkshire Council

County Hall

Beverley

East Riding of Yorkshire

HU17 9BA

Example Record of Breaches

Date	Category (e.g. administration, contributions, funding, investment, criminal activity)	Description and cause of breach	Possible effect of breach and wider implications	Reaction of relevant parties to breach	Reported / Not reported (with justification if not reported and dates)	Outcome of report and/or investigations	Outstanding actions
<i>30.09.2015</i>	<i>Contributions.</i>	<i>No employer and employee contributions paid by employer for two months (June and July). Queried with employer on 23.08.2015.</i>	<i>Where contributions remain outstanding for more than 90 days, then likely to be of material significance to the Regulator.</i>	<i>Employer advised Fund on 26.08.2015 that late payment of contributions due to installation of new payroll system and outstanding contributions will be paid without delay.</i>	<i>Not reported as outstanding contributions paid over on 31.08.2015 and therefore not of material significance as paid within 90 days of the due date.</i>	<i>Investigations showed that the employer had not previously been late in paying contributions. Contributions for August paid on 19.09.2015.</i>	<i>Monitor payments on 19.10.2015 to ensure that late payment was a one off failure.</i>

*New breaches since the previous meeting should be highlighted.