

Warwickshire Local Pension Board

Warwickshire Local Pension Board Update to Breaches Reporting Procedure

13 April 2021

Recommendation(s)

1. Note the report and comment on the proposed changes to the reporting and publication of breaches in sections 5 and 7.

1. Purpose of the Report

- 1.1 At its meeting on 26th January 2021 the Local Pensions Board (LPB) asked for further explanation in regard to the way that breaches are recorded and reported, in order to provide them with an assurance that this aspect of pensions administration is being effectively managed. This report provides that explanation.

2. Background: Reporting Breaches of the Law

- 2.1 The Pensions Regulator Code of Practice 14 sets out the legal requirements for reporting breaches of the law. In essence, certain people are required to report breaches of the law to the Pensions Regulator (tPR) where they have reasonable cause to believe that:
 - a) A legal duty which is relevant 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 in the exercise of any of its functions.
- 2.2 For the LGPS, the people who are subject to the reporting requirement are:
 - The Scheme Manager (i.e. Staff and Pensions Committee).
 - Members of the Local Pension Board.
 - Any person otherwise involved in the administration of the Fund.
 - Employers within the Scheme.
 - Professional advisers .
 - Any person otherwise involved in advising the managers of the Scheme.
- 2.3 Warwickshire Pension Fund's approach to complying with the requirements of the code is set out in its Breaches Policy, which is available on the Fund's

website: <https://www.warwickshirepensionfund.org.uk/home/employers-new-employers/1> under information for current employers.

3. Recording of Breaches

3.1 To determine whether a breach is reportable to tPR, it is necessary to establish firstly that:

- a) There is reasonable cause to believe that a breach has occurred.
- b) A legal duty has not been complied with.
- c) The failure to comply is likely to be of material significance.

Materiality is based on the following factors:

Cause	e.g. dishonesty, poor governance, incomplete or inaccurate information, acting or failing to act in contravention of the law.
Effect	Does the nature of the breach lead to an increased likelihood of further material breaches? Is it likely to cause, for example, ineffective internal controls, lack of knowledge and understanding, inaccurate records, potential for further breaches occurring.
Reaction	e.g. taking prompt and effective action to resolve a breach, notifying scheme members where appropriate.
Wider implications	e.g. where a breach has occurred due to lack of knowledge or poor systems and processes making it more likely that other breaches will emerge in the future.

3.2 The Pensions Administration Service (PAS) records all breaches in order that the above tests can be applied, and decisions taken to determine whether a breach should be reported to tPR.

3.3 In reality, most breaches relate to the late submission of data or late payment of contributions by employers.

4. Assessment of Breaches

4.1 The Breaches Policy sets out the process for assessing breaches, which are categorised as red, amber or green, according to their severity. This process is included at Appendix A. In order for this assessment process to be carried out, the PAS records all breaches on its Breaches Log.

4.2 It is a requirement of tPR that breaches that are not found to be material are still recorded. This allows action to be taken to improve areas of activity where breaches occur. It also allows the PAS to identify instances where there are repeated breaches, for example, by a particular employer, which because of their ongoing nature should be escalated through the “traffic light” system.

- 4.3 For example, where an employer submits data or contributions more than one week late on more than three occasions in one year, or more than five weeks late on one occasion, the breach would be escalated from Green to Amber. All such Amber breaches are addressed directly with the employer to attempt resolution. If resolution cannot be reached within a reasonable timeframe, the assessment process is used to determine whether the issues should be reported to tPR as a Red breach. Senior managers meet monthly to review all breaches, to ensure timely action is being taken to address areas of concern, and where appropriate, to escalate to Red and report to tPR.
- 4.4 It is proposed to simplify and increase the robustness of the breaches triggers for data submissions and contributions by amending them to the following:

Criteria	Data Submissions and Contributions	Other Breaches
Green	Late (1 day or more)	Literal / technical breaches with no practical consequences or action required
Amber	Late on more than one occasion	Breaches with noticeable but not material implications for the Fund or Employers or Members, which require action to resolve
Red	Late on more than 3 occasions having been escalated to senior level to attempt resolution with the employer	Material breaches as per the tPR code.

- 4.6 It is proposed that the breaches policy and the administration strategy will be amended to reflect these changes, subject to approval by Staff and Pensions Committee.

5. Reporting of Breaches

- 5.1 Statistics on breaches are reported to each meeting of the Local Pension Board and the Staff and Pensions Committee. However, following discussions at the LPB meeting on 26th January, it is agreed that the format of this reporting could be made more informative and meaningful. This would also help to ensure consistency with reporting elsewhere on the Board and Committee's agendas.
- 5.2 With this in mind, the PAS has reviewed the way that it records and reports breaches. For future reports it is proposed that the number of red, amber and green breaches for each month are reported, accompanied by a narrative explaining any key areas of concern and action being taken. This information

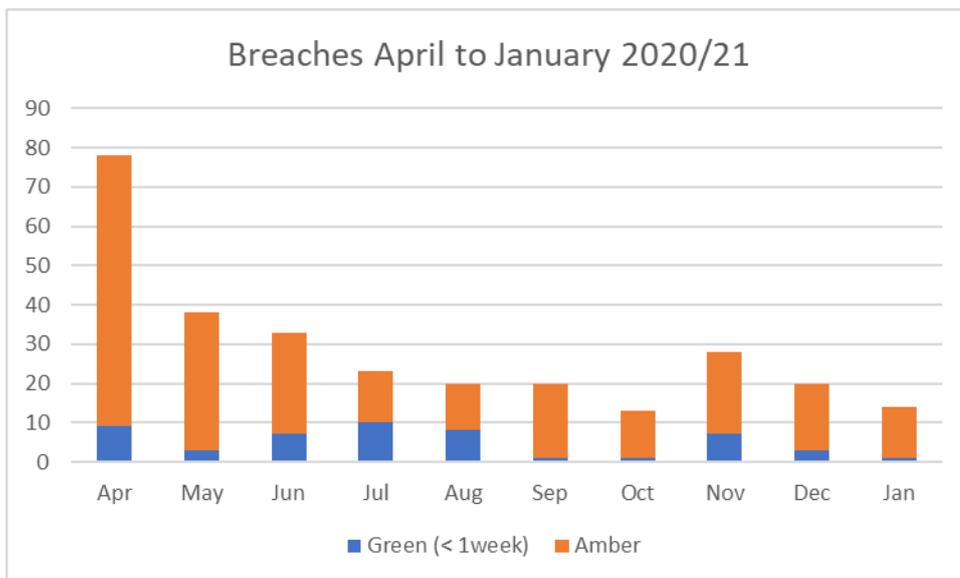
can be presented graphically, so that over time, trends can be identified and used to manage improvements in performance.

- 5.3 For this meeting, the latest breaches information is shown in section 6 of the report. From July 2021, the information will be presented as part of the regular Pensions Administration Activity and Performance Update report.

6. Breaches Information 2020/21 April to January

- 6.1 This section of the report sets out information on the breaches recorded from April to January 2020/21. Employers are required to submit their data and contributions by the 19th of the month following the submission period (or 23rd of the month where contributions are paid by BACS). The PAS then have to review one-off and repeated late submissions in order to update the breaches register, so there is a short time-lag between the deadline and the recording of breaches.

- 6.2 Chart 1 below shows the number of breaches that occurred by month from April 2020 to January 2021 (noting that the Fund has approximately 200 employers submitting data):



- 6.3 As more employers are onboarded onto i-Connect it is expected that over the coming months we will see a decline in breaches related to late data submissions.
- 6.4 Issues relating to two employers have been escalated and are being reviewed to assess whether they should move to Red status according to the material significance of each breach.

7. Publication of Breaches

- 7.1 Currently, the Breaches Log is publicly available through the Employer section of the Warwickshire Pension Fund website. It is proposed that this detailed log is removed and replaced with summarised and anonymised data which is updated each month and sets out the total number of breaches and their “traffic light” status.
- 7.2 The detailed breaches register would continue to be maintained within the PAS and used to populate the information published on the website at summary level.

8. Financial Implications

None

9. Environmental Implications

None

10. Timescales associated with the decision and next steps

- 10.1 Subject to agreement by the Board, these new arrangements for reporting on breaches will be introduced with immediate effect.

Appendices

None

Background Papers

None

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The report was circulated to the following members prior to publication:

Local Member(s):

Other members:

Process for assessing whether a breach has occurred

