

# Examples of occupational DC trust-based pension scheme breaches of the law

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# Introduction

## **This document provides examples of what to consider when deciding whether to report breaches of the law relating to occupational defined contribution (DC) trust-based pension schemes.**

On using these examples as a guide on whether to whistleblow a breach of the law, the content of the red, amber or green columns should be considered and what the 'reaction to the breach' has been and/or will be going forward.

As each breach of law will be surrounded by its own set of circumstances, there may be elements which apply from one or more of the red, amber and green columns. The whistleblower will need to exercise their own judgement to determine which of the overall reporting colours (ie red, amber and green) their reaction to the breach falls into. By carrying out this thought process, it should be possible to obtain a greater understanding on whether or not a breach of the law has been uncovered that is of material significance and whether there is a need to report the breach to The Pensions Regulator ('the regulator').

The remaining information for that breach category (impact, consequence and implication) are intended to provide an illustration on how the breach of law colour rating potentially affects the scheme itself and member outcomes.

# Internal workflow controls

(Forthcoming normal retirement member events)

## **This example is not exhaustive and is illustrative only**

In a real situation, there may be elements present from more than one column, and achieving an understanding which of these elements dominates will influence how material the breach is and whether it should be reported. This example should therefore not be taken to be a substitute for the exercise of judgement by the reporter based on the principles set out in Code of practice no: 1 as supported by relevant pensions legislation.



## Background scenario

During the last two months, the trustees have received complaint letters from five newly retired members. These members have complained that the scheme administrator failed to provide them with information about their retirement options (including the availability of an open market option) until a couple of weeks before their normal retirement date. As a result they were unable to make timely benefit choice decisions on retirement<sup>1</sup>.

### The cause of the breach

Internal workflow controls relating to forthcoming normal retirement member events not being adhered to by the administrator.

### The effect of the breach

Failure to promptly identify five forthcoming normal retirement member events during a two month period<sup>2</sup> with the consequence that the members are unable to give proper consideration to the full range of retirement options (for example amalgamating their pension pots) before their normal retirement date. This may result in a significant reduction to the members' pension income.

1  
See the 'Risk management' and 'Investment' sections of the DC code: [www.tpr.gov.uk/dccode](http://www.tpr.gov.uk/dccode)

Also see the 'Establishing a robust retirement process' section of the DC regulatory guidance: [www.tpr.gov.uk/dcguidance](http://www.tpr.gov.uk/dcguidance)

2  
See regulation 5(6) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 which requires trustees to inform a member at least six months before the member's expected retirement date about the open market option and supply them with specified information.

## The reaction to the breach

Red	Amber	Green
<p>Trustees:</p> <ul style="list-style-type: none"> <li>• Do not contact the administrator to establish the background facts of each member's case or seek confirmation on whether sufficient time and resources are being made available by the administrator to deal effectively with the issue.</li> <li>• Do not ensure that the five affected members do not lose out as a result of the delay in the notification to them of their options or, if the members have lost out, that the members are put back in the position they would have been in had the breach not occurred.</li> <li>• Do not request from the administrator a current workflow log with timescales for service level deadlines for the decumulation process which demonstrate that normal retirement events (and other events) for all other members of the scheme are being dealt with in line with agreed service level standards and disclosure regulations.</li> </ul>	<p>Trustees:</p> <ul style="list-style-type: none"> <li>• Immediately contact the administrator to obtain background facts on each member case and seek confirmation on whether sufficient time and resources are being made available by the administrator to deal effectively with the issue.</li> <li>• Ensure that the five affected members do not lose out as a result of the delay in the notification to them of their options or, if the members have lost out, that the members are put back in the position they would have been in had the breach not occurred.</li> <li>• Request from the administrator a current workflow log with timescales for service level deadlines for the decumulation process which demonstrate that normal retirement events (and other events) for all other members of the scheme are being dealt with in line with agreed service level standards and disclosure regulations. This does not arrive promptly but the trustees do not chase this up. The administrator has agreed to supply this information in the next couple of months.</li> </ul>	<p>Trustees:</p> <ul style="list-style-type: none"> <li>• Immediately contact the administrator to establish the background facts of each member's case, and seek confirmation on whether sufficient time and resources are being made available by the administrator to deal effectively with the issue.</li> <li>• Ensure that the five affected members do not lose out as a result of the delay in the notification to them of their options or, if the members have lost out, that the members are put back in the position they would have been in had the breach not occurred.</li> <li>• Request and receive promptly from the administrator a current workflow log with timescales for service level deadlines for the decumulation process which demonstrate that normal retirement events (and other events) for all other members of the scheme are being dealt with in line with agreed service level standards and disclosure regulations.</li> </ul>

continued...

## The reaction to the breach continued...

Red	Amber	Green
<p>Trustees:</p> <ul style="list-style-type: none"> <li>• Do not take steps to ensure that there are no other potential errors in the notification process which may have occurred in respect of other members of the scheme in the past.</li> <li>• Do not arrange for monthly administration workflow logs to be sent to them for ongoing monitoring of the decumulation process.</li> <li>• Do not take steps to review their decumulation process more generally against legal requirements and the regulator's decumulation guidance<sup>3</sup>.</li> </ul>	<p>Trustees:</p> <ul style="list-style-type: none"> <li>• Do not take steps to ensure that there are no other potential errors in the notification process which may have occurred in respect of other members of the scheme in the past.</li> <li>• Do not arrange for monthly administration workflow logs to be sent to them for ongoing monitoring of the decumulation process.</li> <li>• Do not take steps to review their decumulation process more generally against legal requirements and the regulator's decumulation guidance<sup>4</sup>.</li> </ul>	<p>Trustees:</p> <ul style="list-style-type: none"> <li>• Take steps to ensure that there are no other potential errors in the notification process which may have occurred in respect of other members of the scheme in the past.</li> <li>• Arrange for monthly administration workflow logs to be sent to them for ongoing monitoring of the decumulation process.</li> <li>• Take steps to review their decumulation process more generally against legal requirements and the regulator's decumulation guidance<sup>5</sup>.</li> </ul>
<p>For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance <i>Complying with the duty to report breaches of the law</i>: <a href="http://www.tpr.gov.uk/breachesguidance">www.tpr.gov.uk/breachesguidance</a></p>		

3, 4 and 5  
See the 'Establishing a robust retirement process' section of the DC regulatory guidance: [www.tpr.gov.uk/dcguidance](http://www.tpr.gov.uk/dcguidance)

## The consequence of the breach

Red	Amber	Green
<p>Due to the trustees not taking any action, it is not clear whether:</p> <ul style="list-style-type: none"> <li>• The five members' complaints are justified.</li> <li>• They or other members have lost out as a result of errors in the decumulation process.</li> <li>• The scheme trustees know if the administrator's internal workflow controls are operating correctly and/or whether current administration workflow levels are under-resourced by the scheme administrator.</li> <li>• The decumulation process generally is operating effectively.</li> </ul>	<p>Although the trustees have (1) determined whether the five members' complaints are justified and (2) immediately taken action to ensure that the five affected members do not lose out as a result of the delay in the notification to them of their options or, if the members have lost out, that they are put back in the position they would have been in had the breach not occurred:</p> <ul style="list-style-type: none"> <li>• They do not take steps to ensure that there are no other potential errors in the notification process which may have occurred in respect of other members of the scheme in the past. Therefore, other members may have lost out.</li> <li>• They are not due to receive the requested workflow log with timescales relating to service level deadlines for the decumulation process for the next couple of months. As a result, the trustees do not currently have enough information to make an informed decision on their administrator's service level standards and whether the decumulation process generally is operating effectively.</li> </ul>	<p>As the trustees have (1) immediately taken action to ensure that the five affected members do not lose out as a result of the delay in the notification to them of their options or, if the members have lost out, that they are put back in the position they would have been in had the breach not occurred and (2) assessed the implications for the scheme more widely, they have been able to:</p> <ul style="list-style-type: none"> <li>• Determine whether the five members' complaints are justified and whether any other members have been affected.</li> <li>• Satisfy themselves that current workflow levels are being dealt with in line with agreed administration service level standards.</li> <li>• Satisfy themselves that the scheme's decumulation process is operating effectively and in line with legislation and/or make improvements as necessary.</li> </ul>



## The implication of the breach

Red	Amber	Green
<p>By their reaction to the member complaints, the trustees have demonstrated that:</p> <ul style="list-style-type: none"> <li>• They do not understand the extent of their ongoing legal responsibility for the administration of the scheme as a member approaches retirement.</li> <li>• There are likely to be inadequate internal scheme controls in relation to the administration of the decumulation process.</li> <li>• If the decumulation is not carried out effectively and in accordance with legal requirements, members' income at and after retirement may be considerably lower than it would have been had the trustees taken appropriate action.</li> </ul>	<p>By their reaction to the member complaints, the trustees have demonstrated that:</p> <ul style="list-style-type: none"> <li>• They only understand to a limited extent their ongoing legal responsibility for the administration of the scheme as a member approaches retirement because they have taken no steps to establish whether the errors have affected the membership more widely.</li> <li>• They are currently unaware of the administrator's service level standards and whether the decumulation process generally is operating effectively.</li> </ul>	<p>By their reaction to the member complaints, the trustees have demonstrated that:</p> <ul style="list-style-type: none"> <li>• They understand their overall and ongoing legal responsibility for the administration of the scheme as a member approaches retirement.</li> <li>• The supply of monthly workflow logs going forward will enable them to monitor whether scheme member events continue to be dealt with properly in the future.</li> <li>• They understand the importance of managing the decumulation process effectively.</li> </ul>

# Trustees' relevant knowledge, understanding and skills

(Obligations to prepare, maintain and revise a statement of investment principles)

## **This example is not exhaustive and is illustrative only.**

In a real situation, there may be elements present from more than one column, and achieving an understanding which of these elements dominates will influence how material the breach is and whether it should be reported. This example should therefore not be taken to be a substitute for the exercise of judgement by the reporter based on the principles set out in Code of practice no: 1 as supported by relevant pensions legislation.

## Background scenario

During a trustees' meeting, the updating of the scheme's statement of investment principles (SIP) is raised. The SIP has not been reviewed during the last four years and the profile of the scheme membership changed significantly a year ago due to a scheme merger. As discussion time is short, responsibility for preparing the revised SIP is delegated in his absence to one of the appointed trustees, Mr Smith. No investment advice is sought, nor do the trustees consult with the employer in relation to the contents of the SIP<sup>6</sup>.

### The cause of the breach

Trustees do not have the relevant knowledge, understanding<sup>7</sup> and skills regarding their obligations to prepare, maintain and revise a SIP<sup>8</sup>.

### The effect of the breach

- Failure to regularly review (at least every three years or without delay after any significant change in investment policy<sup>9</sup>) and, if necessary, revise the scheme's SIP.
- Failure to act in the best interests of scheme beneficiaries in relation to investment matters<sup>10</sup>.
- Failure to appreciate that when preparing or revising their SIP the trustees must:
  - obtain and consider the written advice of an appropriately qualified investment adviser
  - consult the scheme's sponsoring employer<sup>11</sup>.

6  
See the 'Investment' section of the DC code: [www.tpr.gov.uk/dccode](http://www.tpr.gov.uk/dccode)

7  
See section 247-249 of the Pensions Act 2004 which describes trustee duties around trustee knowledge and understanding. See also the 'Know your scheme' section in the DC code for more detail of how this applies in a DC context: [www.tpr.gov.uk/dccode](http://www.tpr.gov.uk/dccode)

8  
See section 35 of the Pensions Act 1995 and regulation 2 of the Occupational Pension Schemes (Investment) Regulations 2005.

9  
See regulation 2(1) of the Occupational Pension Schemes (Investment) Regulations 2005.

10  
See regulation 4(2) of the Occupational Pension Schemes (Investment) Regulations 2005.

11  
See regulation 2(2) of the Occupational Pension Schemes (Investment) Regulations 2005.

## The reaction to the breach

Red	Amber	Green
<ul style="list-style-type: none"> <li>Mr Smith, on learning that he has been delegated responsibility for updating the SIP, decides to look at this task in six to eight months time due to a number of other work commitments in the future.</li> <li>He is aware that he is not sure what he actually has to do, but decides not to worry about that as he is too busy to deal with it.</li> <li>Once Mr Smith turns his attention to the issue, he does not ensure that he understands his legal obligations in relation to the SIP. He amends the SIP himself without taking advice from a suitably qualified adviser, without referring the matter back to the trustee board and without consulting the employer.</li> </ul>	<ul style="list-style-type: none"> <li>Mr Smith, on learning that he has been delegated responsibility for updating the SIP, decides to look at this task in a couple of months time as he is only partially aware of his legal obligations in relation to the scheme's SIP.</li> <li>Once Mr Smith turns his attention to the issue, he gets quickly up to speed with his legal obligations in relation to the scheme's SIP. For example, the trustee's policy on setting the investment objective and defining, monitoring and reviewing the default strategy, monitoring and reviewing alternative investments, risk, realising investments, social, environmental or ethical considerations<sup>12</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>Mr Smith, on learning that he has been delegated responsibility for updating the SIP, immediately starts to look at what is required, by whom and when, as he is fully aware of his legal obligations in relation to the scheme's SIP.</li> <li>He satisfies himself that the individual who will be advising the trustees on investment matters relating to the SIP is suitably qualified and has been properly appointed.</li> <li>Mr Smith leads the review process but ensures that decisions around revisions necessary to the SIP and preparation of the relevant documentation are discussed and agreed by the full trustee board, in consultation with the employer.</li> </ul>
<p>For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance <i>Complying with the duty to report breaches of the law</i>: <a href="http://www.tpr.gov.uk/breachesguidance">www.tpr.gov.uk/breachesguidance</a></p>		

continued...

12  
See paragraph 82  
of the DC code:  
[www.tpr.gov.uk/dccode](http://www.tpr.gov.uk/dccode)

## The reaction to the breach continued...

Red	Amber	Green
	<ul style="list-style-type: none"> <li>• He satisfies himself that the individual who will be advising the trustees on investment matters relating to the SIP is suitably qualified and has been properly appointed.</li> <li>• Mr Smith leads the review process but ensures that decisions around revisions necessary to the SIP and preparation of the relevant documentation are discussed and agreed by the full trustee board in consultation with the employer.</li> <li>• He also ensures that (1) arrangements are established to ensure the ongoing appropriateness of the default strategy (and its underlying investment options) and alternative investment options from which members can set their own investment strategy, and (2) the performance of each investment option, including the default strategy, is regularly assessed against investment objectives.</li> </ul>	

For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance *Complying with the duty to report breaches of the law*: [www.tpr.gov.uk/breachesguidance](http://www.tpr.gov.uk/breachesguidance)

## The consequence of the breach

Red	Amber	Green
<p>By reacting as above, Mr Smith has not demonstrated that he has the appropriate knowledge and understanding in relation to (1) his obligations around the scheme's SIP, and (2) investment matters more generally.</p>	<p>By reacting as above, Mr Smith has demonstrated that he has some knowledge in relation to his obligations around the scheme's SIP and investment matters more generally, and gets himself up to speed once he focuses on the task. However, he has not demonstrated a sense of urgency in carrying out this task.</p>	<p>By reacting as above, Mr Smith has demonstrated that he has the appropriate knowledge and understanding in relation to both the scheme's SIP and investment matters more generally.</p>

## The implication of the breach

Red	Amber	Green
<ul style="list-style-type: none"> <li>• The SIP is out of date, which may be to the financial detriment of members.</li> <li>• This is not remedied in an appropriate timescale in a way which is compliant with the trustees' duties in relation to the scheme's SIP and investment matters more generally.</li> </ul>	<ul style="list-style-type: none"> <li>• The SIP is out of date, which may be to the financial detriment of members.</li> <li>• Ultimately, the SIP is amended in a way which is compliant with the trustees' legal duties. However, the extent of Mr Smith's trustee knowledge and understanding in relation to the scheme's SIP and investment matters more generally is not clear because Mr Smith does not demonstrate a sense of urgency when carrying out his task.</li> </ul>	<ul style="list-style-type: none"> <li>• The SIP is out of date, which may be to the financial detriment of members.</li> <li>• However, once this matter is drawn to Mr Smith's attention, the timescales he works to surrounding the revising of the scheme's SIP demonstrate a sense of urgency.</li> <li>• It is clear Mr Smith understands his duties in relation to the SIP and investment matters more generally and that he has ensured that the revised SIP is prepared in a way that complies with legislative requirements.</li> </ul>

# Specific internal maintenance control by administrator

(DC member records)

## This example is not exhaustive and is illustrative only

In a real situation, there may be elements present from more than one column, and achieving an understanding which of these elements dominates will influence how material the breach is and whether it should be reported. This example should therefore not be taken to be a substitute for the exercise of judgement by the reporter based on the principles set out in Code of practice no: 1 as supported by relevant pensions legislation.

## Background scenario

It has come to the attention of the DC scheme administrator that upon receipt of contributions, member records have not been promptly updated to record accurate member unitisation and contribution investments for a two month period<sup>13</sup>.

### The cause of the breach

Lack of specific internal maintenance control by administrator relating to a number of DC member records.

### The effect of the breach

Failure to promptly and accurately record member unitisation and contribution investments<sup>14</sup>.

13

See the 'Administration' and 'Risk management' sections of the DC code: [www.tpr.gov.uk/dccode](http://www.tpr.gov.uk/dccode)

14

See regulation 12 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 which require pension schemes to keep records of all contributions received, payments to and from the scheme and details of transfers of all members' benefits to and from the scheme.



## The reaction to the breach

Red	Amber	Green
<p>On learning of the problem, the administrator:</p> <ul style="list-style-type: none"> <li>• Due to high volumes of work decides not to take any immediate action to resolve the record-keeping problem or carry out any checks to establish whether other DC schemes have also been impacted; individual records can be checked for accuracy as and when member events occur.</li> <li>• Does not inform the scheme trustees that a member record-keeping problem has occurred on the scheme.</li> </ul>	<p>On learning of the problem, the administrator:</p> <ul style="list-style-type: none"> <li>• Takes effective and speedy action to rebuild all affected accounts and correct each affected member's records.</li> <li>• Discovers, as part of the rebuild process, that a number of recent transfer payments in respect of other members in the scheme have been underpaid but does not fully investigate the matter at this time.</li> <li>• Advises the trustees that a problem has occurred in respect of unitisation and that all affected members' accounts have been rebuilt to show the correct unitisation.</li> <li>• Confirms that the affected members have been sent communications relating to the problem and its rectification.</li> </ul>	<p>On learning of the problem, the administrator:</p> <ul style="list-style-type: none"> <li>• Takes effective and speedy action to rebuild all affected accounts and correct each affected member's records.</li> <li>• Promptly advises the trustees that a problem has occurred in respect of unitisation and that all affected members' accounts have been rebuilt to show the correct unitisation.</li> <li>• Confirms that the affected members have been sent communications relating to the problem and its rectification.</li> <li>• Advises that on correcting affected members' unitisation records, they have also discovered that a number of recent transfer payments in respect of other members in the scheme have been underpaid.</li> </ul>
<p>For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance <i>Complying with the duty to report breaches of the law</i>:  <a href="http://www.tpr.gov.uk/breachesguidance">www.tpr.gov.uk/breachesguidance</a></p>		

continued...

## The reaction to the breach continued...

Red	Amber	Green
	<ul style="list-style-type: none"> <li>• Advises that on correcting affected member records, they have also discovered a number of recent member transfer payments in respect of other members in the scheme have also been underpaid, but simply states that the extent of the numbers of members and amount of funds involved are currently being established.</li> <li>• In addition to delaying investigation of the transfer payment issue, decides to check whether members and other schemes have been affected by the same type of internal controls failure in the next couple of months.</li> </ul>	<ul style="list-style-type: none"> <li>• Confirms the amount of the transfer underpayment for each affected member and the corrective action it will be taking within a defined period of time.</li> <li>• Takes swift action to correct all affected members' benefits and puts all members, including those who had transferred out of the scheme, back in the position they would have been in had the errors not occurred.</li> <li>• Promptly checks whether other members and other schemes have been affected by the same internal controls failure (and where problems have occurred, takes corrective action).</li> <li>• Reviews its internal controls processes to ensure that this specific problem does not occur again, taking remedial action if necessary.</li> </ul>

For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance *Complying with the duty to report breaches of the law*: [www.tpr.gov.uk/breachesguidance](http://www.tpr.gov.uk/breachesguidance)

## The consequence of the breach

Red	Amber	Green
<ul style="list-style-type: none"> <li>• Due to the scheme administrator not taking any immediate effective action to rectify the breach, members' benefits are recorded as being lower than they should be and the full extent of the issue and its implications (both for affected members and more widely within all schemes for which the administrator is responsible) are not identified and resolved.</li> <li>• The administrator does not discover the additional issue of underpayments of transfer values with the result that former members' benefits remain lower than they should be.</li> </ul>	<ul style="list-style-type: none"> <li>• Although member unitisation and contribution investments have been incorrectly recorded, the administrator has taken effective action to correct data for affected members.</li> <li>• However, it is clear that there has been a further breach of the law in that a number of member transfer payments have been underpaid, with the result that members' retirement benefits are lower than they should be. The administrator has not taken immediate action to resolve the issue. As these members have already transferred out (and may have crystallised their benefits by for example purchasing annuities), this is an area which requires prompt attention to minimise potential loss to members at retirement.</li> </ul>	<ul style="list-style-type: none"> <li>• Although member unitisation and contribution investments have been incorrectly recorded, the administrator has taken effective and speedy action to correct affected members' data and to ensure there are no problems elsewhere. This has minimised the impact on members' benefits.</li> <li>• The administrator has also discovered and resolved a further breach of the law as a result of comprehensive investigations. The impact of the loss to members who have transferred out has been mitigated because the administrator has acted swiftly to put them back in the position they should be had the breach not occurred.</li> </ul>

## The implication of the breach

Red	Amber	Green
<ul style="list-style-type: none"> <li>• Poor scheme governance on a specific issue raises the possibility of wider governance issues in relation to the affected scheme and others for which the administrator is responsible.</li> <li>• Lack of immediate corrective action can demonstrate a lack of understanding by the administrator of the need to maintain adequate DC records.</li> <li>• Poor communication between the administrator and trustees indicates lack of transparency between the two parties and lack of trustee governance on services being supplied by third parties.</li> </ul>	<ul style="list-style-type: none"> <li>• Effective and speedy action to correct member records in the first instance demonstrates a partial appreciation of needing to maintain good DC records and action matters promptly.</li> <li>• Although member unitisation and contribution investments have been incorrectly recorded, the administrator has taken effective action to correct data for affected members.</li> <li>• However, the delays in addressing the second breach show that the administrator may not fully understand the extent of their legal duties around recording and payment of benefits. Prompt attention to minimise potential loss to members who have already transferred out and those who may have crystallised their benefits is critical to ensuring that members are not adversely treated.</li> </ul>	<ul style="list-style-type: none"> <li>• Effective and speedy action to correct member records demonstrates appreciation of needing to maintain good DC records.</li> <li>• Open communication channels between the scheme trustees and administrator demonstrate that these parties have a good working relationship.</li> <li>• Prompt review of other scheme records will eliminate/mitigate potential problems.</li> </ul>

continued...

## The implication of the breach continued...

Red	Amber	Green
	<ul style="list-style-type: none"> <li>• Although some details around the underpayment of transfer values have been provided to the trustees, the administrator is unclear of the extent to which the trustees fully appreciate the scope of the breach and the timeframe in which they anticipate that the errors will be addressed. This demonstrates there may be scope for improved communication between the administrator and the trustees.</li> <li>• Potentially, record-keeping problems exist in other schemes and the administrator does not address this issue.</li> </ul>	

# Trustee knowledge and understanding

(Exercise their function as a trustee and comply with obligations on wind-up)

## **This example is not exhaustive and is illustrative only**

In a real situation, there may be elements present from more than one column, and achieving an understanding which of these elements dominates will influence how material the breach is and whether it should be reported. This example should therefore not be taken to be a substitute for the exercise of judgement by the reporter based on the principles set out in Code of practice no: 1 as supported by relevant pensions legislation.

## Background scenario

The trustees of a hybrid scheme have received written notification from the employer of their scheme to terminate the scheme and have resolved in accordance with the scheme rules to wind up the scheme. Two months after the start of wind-up, the trustees formally sign off the content of the notice to members that the scheme is being wound up. On agreeing the content of this initial winding up letter, the trustees do not spot that the reason why the scheme is winding-up has not been included within the letter and that no scheme contact details have been provided for any member queries. The trustees inform The Pensions Regulator ('the regulator') via Exchange that wind up of the scheme has commenced five months after it started winding up.

### The cause of the breach

Lack of an appropriate degree of trustee knowledge and understanding (TKU) to enable them to properly exercise their function as a trustee and comply with obligations on wind up.

### The effect of the breach

Failure by the trustee to meet their legal obligations on wind-up<sup>15</sup>.

15  
See regulation 5(10) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996. These provisions require trustees to issue a notice to members that the scheme is being wound up, with minimum information, including reasons why the scheme is winding up and a contact name and address for queries.

Section 62(4) of the Pensions Act 2004 and regulation 3 of the Register of Occupational and Personal Pension Schemes 2005 also require the trustees to inform The Pensions Regulator that wind-up of the scheme has commenced via Exchange within three months of the start of wind-up.

## The reaction to the breach

Red	Amber	Green
<p>On learning of the breaches, the trustees do not:</p> <ul style="list-style-type: none"> <li>• Reissue a revised communication with the correct information on the basis they will cover off the information in a later communication.</li> <li>• Ask their administrators via Exchange to inform the regulator that wind-up has commenced.</li> <li>• Decide that a trustee meeting is not necessary and wait for the employer to advise them of next steps.</li> </ul>	<p>On learning of the breaches, the trustees:</p> <ul style="list-style-type: none"> <li>• Immediately reissue the notice to members with the correct information and contact details for the scheme in case members have any queries.</li> <li>• Immediately arrange via Exchange to inform the regulator that wind-up has commenced.</li> <li>• Arrange to meet once a year to check on progress in case any issues have arisen which need addressing.</li> <li>• Do not take professional advice on the steps required to wind up the scheme and do not familiarise themselves with the process.</li> </ul>	<p>On learning of the breaches, the trustees:</p> <ul style="list-style-type: none"> <li>• Immediately reissue the notice to members with the correct information and contact details for the scheme in case members have any queries.</li> <li>• Immediately arrange via Exchange to inform the regulator that wind-up has commenced.</li> <li>• Promptly take professional advice on the steps required to wind up the scheme including commissioning a detailed checklist of what needs to be done, by whom and by when.</li> <li>• Allocate out various roles assigned to the trustee to members of the trustee board to ensure they are done correctly and on time.</li> <li>• Arrange for the trustee board to meet regularly so they are updated on the progress of wind-up and that activities are effectively monitored and actioned where necessary.</li> </ul>
<p>For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance Complying with the duty to report breaches of the law: <a href="http://www.tpr.gov.uk/breachesguidance">www.tpr.gov.uk/breachesguidance</a></p>		



## The consequence of the breach

Red	Amber	Green
<p>Scheme members and the regulator are not aware that the scheme is being wound up and the impact this will have on the provision of members benefits (for example, they may wish to exercise an option to transfer out before wind-up or receive a winding-up lump sum prior to benefits being secured with an insurer/annuity provider).</p>	<p>Members and the regulator receive late notification on why the scheme is winding up but the revised contents reflect the legal requirements and are issued within a short timeframe of the deadline expiring.</p>	<p>Members and the regulator receive late notification on why the scheme is winding up but the revised contents reflect the legal requirements and are issued within a short timeframe of the deadline expiring.</p>

## The implication of the breach

Red	Amber	Green
<p>By acting as above, the trustees have demonstrated that:</p> <ul style="list-style-type: none"> <li>• They do not understand their legal duties and obligations on wind-up.</li> <li>• There may be a more general lack of internal controls and good governance within the scheme which adversely affect members' benefits.</li> </ul>	<p>By acting as above, the trustees have demonstrated that:</p> <ul style="list-style-type: none"> <li>• They understand their legal duties and obligations on wind-up to a limited extent.</li> <li>• Whilst they have corrected the breach around the initial notice to members and the regulator, by not familiarising themselves generally with the process and taking professional advice on the steps required to wind up the scheme, there is a risk that further breaches will occur as the wind-up progresses.</li> </ul>	<p>By acting as above, the trustees have demonstrated that:</p> <ul style="list-style-type: none"> <li>• They understand their legal duties and obligations on wind-up.</li> <li>• They have established suitable controls to monitor and manage the wind-up process.</li> </ul>

# Inadequate internal record-keeping controls

(By the prior scheme administrator including maintaining accurate and up-to-date member data)

## **This example is not exhaustive and is illustrative only**

In a real situation, there may be elements present from more than one column, and achieving an understanding which of these elements dominates will influence how material the breach is and whether it should be reported. This example should therefore not be taken to be a substitute for the exercise of judgement by the reporter based on the principles set out in Code of practice no: 1 as supported by relevant pensions legislation.



## Background scenario

The trustees of a scheme are told by their scheme administrator that several member benefit entitlements have not been paid in accordance with the scheme rules. The scheme administrator has advised the trustees that these problems have occurred due to the poor standard of installation data recently inherited from the prior administrator<sup>16</sup>.

### The cause of the breach

Inadequate internal record-keeping controls by the prior scheme administrator to manage the administration of the scheme (including maintaining accurate and up-to-date member data).

### The effect of the breach

Failure by the scheme administrators to pay member benefit entitlements in accordance with the scheme rules with the result that members' benefits may be lower than they should be or, where they are higher, that members have an incorrect expectation as to their retirement income.

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See the 'Administration' and 'Risk management' sections of the DC code: [www.tpr.gov.uk/dccode](http://www.tpr.gov.uk/dccode)

## The reaction to the breach

Red	Amber	Green
<p>On learning of the incorrect benefit payments, the trustees:</p> <ul style="list-style-type: none"> <li>• Do not establish how the affected member benefit over/underpayments will be corrected and within what timescales.</li> <li>• Do not ensure corrections are carried out quickly and effectively to affected members' benefit entitlements but leave the matter for the administrator to oversee and resolve where it determines to be appropriate.</li> <li>• Do not investigate the scheme's member data or the controls around this any further, believing that any issues should be directly resolved between the prior and current scheme administrators without the trustees' input.</li> </ul>	<p>On learning of the incorrect benefit payments, the trustees:</p> <ul style="list-style-type: none"> <li>• Establish how the affected member benefit over/underpayments will be corrected and within what timescales.</li> <li>• Ensure corrections are carried out quickly and effectively to affected members' benefit entitlements so they are put back in the position they would have been in had the breaches not occurred. They also advise affected members accordingly.</li> <li>• Ensure affected members have been sent communications relating to the problem and its rectification.</li> <li>• Do not establish how the issue impacts on other members in the scheme (who have not to date been identified by the administrator as being affected) and if there are any issues, resolve them quickly and effectively.</li> </ul>	<p>On learning of the incorrect benefit payments, the trustees:</p> <ul style="list-style-type: none"> <li>• Establish how the affected member benefit over/underpayments will be corrected and within what timescales.</li> <li>• Ensure corrections are carried out quickly and effectively to affected members' benefit entitlements so they are put back in the position they would have been in had the breaches not occurred. They also advise affected members accordingly.</li> <li>• Ensure affected members have been sent communications relating to the problem and its rectification.</li> <li>• Establish how the issue impacts on other members in the scheme (who have not to date been identified by the administrator as being affected) and if there are any issues, resolve them quickly and effectively.</li> </ul>

For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance Complying with the duty to report breaches of the law: [www.tpr.gov.uk/breachesguidance](http://www.tpr.gov.uk/breachesguidance)

continued...

## The reaction to the breach continued...

Red	Amber	Green
	<ul style="list-style-type: none"> <li>• Do not undertake a data review exercise or follow up with a data improvement plan.</li> <li>• Do not understand from the new administrator what controls are operated by the administrator to ensure the integrity of member data is retained going forward.</li> </ul>	<ul style="list-style-type: none"> <li>• Undertake a data review exercise to assess the accuracy and completeness of the data which has been transferred and establish whether the issue relates to the quality of the data transfer files or the data itself.</li> <li>• Understand from the new administrator what controls are operated by the administrator to ensure the integrity of member data is retained going forward.</li> <li>• On identifying poor quality data, ensure that there is a data improvement plan in place, and monitor and track specific data improvement measures.</li> </ul>
<p>For help deciding whether a breach is likely to be of material significance, see paragraphs 35 to 45 of the code-related guidance <i>Complying with the duty to report breaches of the law</i>: <a href="http://www.tpr.gov.uk/breachesguidance">www.tpr.gov.uk/breachesguidance</a></p>		

## The consequence of the breach

Red	Amber	Green
<ul style="list-style-type: none"> <li>• Incorrect member benefit payments will remain unresolved, and if resolved the trustees may not be made aware of how this occurred.</li> <li>• Poor quality data is very likely to exist within the scheme.</li> <li>• No controls appear to be in place to ensure that the integrity of the data under the new administrator is maintained.</li> </ul>	<ul style="list-style-type: none"> <li>• Incorrect benefit payments for all members whom the administrator has indentified as being affected are rectified quickly and benefit entitlements updated accordingly. However, there may be a number of additional members whose benefit payments remain incorrect because no steps have been taken to establish how the issue affects other members of the scheme.</li> <li>• Poor quality data may still exist within the scheme because data records for the scheme generally have not been reviewed.</li> <li>• It is not clear whether adequate controls are in place to ensure that the integrity of data under the new administrator is maintained.</li> </ul>	<ul style="list-style-type: none"> <li>• Incorrect benefit payments for all members are rectified quickly and benefit entitlements updated accordingly.</li> <li>• Data records for the scheme generally are reviewed and where necessary poor quality data is addressed.</li> <li>• Adequate controls are in place to ensure the integrity of member data under the new administrator is maintained.</li> </ul>

## The implication of the breach

<b>Red</b>	<b>Amber</b>	<b>Green</b>
<p>By their reaction, the trustees have demonstrated that they do not understand their record-keeping obligations and the need to pay benefits in accordance with the scheme rules.</p>	<p>By their reaction, the trustees have demonstrated that, although they understand that they must pay benefits in accordance with the scheme rules, they only understand their record-keeping obligations to a limited extent.</p>	<p>By their reaction, the trustees have demonstrated that they understand their record-keeping obligations and the need to pay benefits in accordance with the scheme rules.</p>

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### **Examples of occupational DC trust-based pension scheme breaches of the law**

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