

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:

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.
- 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 such as 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:

- PSB/ISC/PAB members not having sufficient knowledge and understanding, resulting in them not fulfilling their roles, resulting in the Fund not being properly governed and administered and/or breaching other legal requirements
- Conflicts of interest of PSB, ISC and PAB 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 Fund and/or 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 Fund 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, resulting in scheme assets not being safeguarded
- Other breaches which result in the Fund being poorly governed, managed or administered

Essex Pension Fund

Policy for Recording and Reporting Breaches of the Law

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.