



## Report of the Section 151 Officer

Pension Fund Committee - 9 July 2020

### Breaches Report

<b>Purpose:</b>	The report presents any breaches which have occurred in the period in accordance with the Reporting Breaches Policy.
<b>Report Author:</b>	Claire Elliott, Pension Manager
<b>Finance Officer:</b>	Jeff Dong – Deputy S 151 Officer
<b>Legal Officer:</b>	Stephanie Williams – Principal Lawyer
<b>Access to Services Officer:</b>	N/A
<b>For Information</b>	

#### 1. Introduction

- 1.1 The Reporting Breaches policy was adopted with effect from 9 March 2017.
- 1.2 The policy requires a report to be presented to the Pension Board and Pension Fund Committee on a quarterly basis, highlighting any new breaches which have arisen since the previous meeting and setting out:
  - all breaches, including those reported to The Pensions 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
- 1.3 Following the introduction of GDPR requirements and the requirements to report any breaches to the Information Officer and ICO, if required, it has been determined good practice and transparent to also include GDPR breaches also within this report

#### 2. Breaches

- 2.1 Under the policy, breaches of the law are required to be reported to the Pensions Regulator where there is 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
- The failure to comply is likely to be of material significance to the regulator in the exercise of any of its functions

- 2.2 The Breaches Report is attached at Appendix A and the following further information is provided.
- 2.3 Under the LGPS regulations, interest is paid on retirement lump sum payments if the payment is made more than one month after retirement and calculated at one per cent above the base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.
- 2.4 Since the last report in March 2020, 11.67% of retirement lumps sums have not been paid within the benchmark (it should be noted that 100% of payments were made within 1 month when all documentation was received). The % of non-payment of retirement lump sums within the specified benchmark was due to the members not returning completed pension election forms within a timely manner. Communication sent to members at time of retirement has been reviewed to ensure that the importance of timely return of required documents is highlighted and reminder triggers put in place.
- 2.5 The basic objective of the General Data Protection Regulation (GDPR) is to enforce stronger data security and privacy rules among organisations when it comes to protecting an individual's personal data. The UK legislation is the Data Protection Act 2018 and mirrors many key principles of the Data Protection Act 1998. Where a breach of a member's personal data happens (a breach of personal data means that a security breach has taken place leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data, transmitted, stored or otherwise processed. [GDPR Article 4(12)]), the Pension Fund (who complies with Swansea Council GDPR Principles) has an obligation to undertake a full investigation within the initial 72-hours of acknowledging a data breach. When the Fund became aware of the breach, the appropriate investigation took place within the stipulated timeframe and the findings presented to the Data Breach Panel for review. The requirements presented for improved working practices by the Data Breach Panel the Fund has incorporated within the day-to-day working practices.
- 2.6 The Fund requires that employers pay employee and employer contributions to the Fund on a monthly basis and no later than the 19<sup>th</sup> of the month after which the contributions have been deducted. There have been a number of instances during the reporting period where breaches have occurred. In each case, Treasury Management staff have written to the employers to request payment and provide a reminder of the responsibilities to submit on time.
- 2.7 With regards to performance data in respect of processing refunds, in most cases, the sums are quite small and the problem is locating the member/former member to process the refund, quite often they may have moved address or even passed away.

2.8 The target asset allocation to global equities and UK equities has been superseded by the transition to WPP Opportunities; notwithstanding the same the existing specified limit has been breached. The Pension Fund Committee has previously approved a de-risking programme, which shall re-allocate those assets into real/yielding assets. Meanwhile an equity protection programme has been implemented in March 2019.

### **3. Equality and Engagement Implications**

N/A

### **4 Legal Implications**

4.1 Where breaches have occurred, the legal implications are outlined in Code of Practice no.14 and GDPR legislation

### **5. Financial Implications**

5.1 Minimal loss of investment income and a possible penalty charge from TPR.

**Background papers:** None

**Appendices:**

Appendix A: Breaches Register

**City and County of Swansea Breach Register**

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	New Breach (since last report)
Mar 2019	Investment asset allocation	The Investment Strategy Statement outlines an indicative allocation of 34% +/- 5% to Global Equities. At 31 <sup>st</sup> March 2017, the allocation was 43%	There is resulting over allocation to global equities	The asset class in question returned 33% during the year which has caused the uplift in valuation- the best performing asset class during the year.  There is a planned investment review for 2018/19 which shall review asset allocations on a long term basis	Noting the volatility of asset values and the pending asset allocation review, it is determined imprudent to incur material transaction costs to address the allocation imbalance. A longer term allocation shall be derived from the pending investment review.	Allocations shall be reviewed as part of the investment review	
Mar – May 2019	Administration	1.56% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 100% was paid	The administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due	% due to members failing to return pension election forms in a timely manner	.	Communication to members regarding retirement options reviewed to ensure the importance of returning documents in a	

		within 1 month of receipt of member option return	date, under the 2013 LGPS regulations			timely manner is emphasised	
30/04/2018	Administration	All annual returns for year-end by 30/04/2018 have been submitted.	N/A	N/A		N/A	
Apr – June 2019	Administration	Frozen refunds unclaimed for this period equates to 95.83%	In accordance with current Scheme Regulations, no further interest will accrue on or after 5-year anniversary. Should the member enter re-employment membership cannot be aggregated, the member will not be able to transfer the benefit out and if a refund is claimed there will be tax implications as this is deemed to be an unauthorised payment	High % due to member not making a positive election to claim refund	Information has been reported in the breach register	Member was written to 3 months prior to the date of the 5-year anniversary of date of leaving	

Jun-August 2019	Administration	1.67% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 100% was paid within 1 month of receipt of member option return	The administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due date, under the 2013 LGPS regulations	% due to delay in payment of 1 members AVC fund value from the Prudential		Communication to members highlighting a possible delay in the payment of their retirement benefits if the member continues paying AVCs up to and including the last month of employment	
Jul-August 2019	Administration	Frozen refunds unclaimed for this period equates to 81.25% .... This equates to a monetary value of £1,581.92	In accordance with current Scheme Regulations, no further interest will accrue on or after 5-year anniversary. Should the member enter re-employment membership cannot be aggregated, the member will not be able to transfer the benefit out and if a refund is claimed there will be tax implications as this is deemed to be an	High % due to member not making a positive election to claim refund	Information has been reported in the breach register	Member was written to 3 months prior to the date of the 5-year anniversary of date of leaving	

			unauthorised payment. The above is subject to change and we are waiting for confirmation that the above Regulation has been amended to support this. Going forward there will be no further requirement to report non-payment of refunds as the 5 year anniversary ruling will be removed.				
Apr – July 2019	Contributions	2 Employers have not paid contributions within required timescale	Loss of investment returns	Employers are contacted once breach has occurred		Employers are contacted as soon as the deadline for submission of contributions has passed	
Sept-Nov 2019	Administration	1.67% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement;	The administering authority has accrued interest payments on retirement lump sums, paid more than one month	% due to delay in payment of 1 members AVC fund value from the Prudential		Communication to members highlighting a possible delay in the payment of their retirement benefits if the member	

		100% was paid within 1 month of receipt of member option return	after their due date, under the 2013 LGPS regulations			continues paying AVCs up to and including the last month of employment	
Sept-Nov 2019	Administration	Frozen refunds unclaimed for this period equates to 83.34% .... This equates to a monetary value of £3,524.06	In accordance with current Scheme Regulations, no further interest will accrue on or after 5-year anniversary. Should the member enter re-employment membership cannot be aggregated, the member will not be able to transfer the benefit out and if a refund is claimed there will be tax implications as this is deemed to be an unauthorised payment. The above is subject to change and we are waiting for confirmation that the above Regulation has	High % due to member not making a positive election to claim refund	Information has been recorded in the breach register	Members were written to as at time of leaving and 3 months prior to the date of the 5-year anniversary of date of leaving	



			been amended to support this. Going forward there will be no further requirement to report non-payment of refunds as the 5 year anniversary ruling will be removed.				
Sept – Nov 2019	Contributions	3 Employers have not paid contributions within required timescale	Loss of investment returns	Employers are contacted once breach has occurred		Employers are contacted as soon as the deadline for submission of contributions has passed	
Dec 2019 – Feb 2020	Administration	1.71% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 100% was paid within 1 month of receipt of member option return	The administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due date, under the 2013 LGPS regulations	% due to delay in member returning the election form within a timely manner.		Member informed that the payment of the lump sum had been delayed due to late return of election forms.	
Dec 2019 – Feb 2020	Administration	Frozen refunds unclaimed for this period	Regulations, no further interest will accrue on or	% has reduced in comparison with the previous	Information has been recorded in the breach	Current procedure is that written	

		<p>equates to 64% .... This equates to a monetary value of £3,505.73</p>	<p>after 5-year anniversary. Should the member enter re-employment membership cannot be aggregated, the member will not be able to transfer the benefit out and if a refund is claimed there will be tax implications as this is deemed to be an unauthorised payment. The above is subject to change and we are waiting for confirmation that the above Regulation has been amended to support this. <b>Going forward there will be no further requirement to report non-payment of refunds as the 5 year anniversary</b></p>	<p>quarter however it is still high. This is because the member has not made a positive election to claim refund</p>	<p>register</p>	<p>communications are issued to the member when they leave providing the appropriate option of a refund or transfer. The member is contacted for a second time 3 months prior to the 5 year anniversary date of leaving.</p>	
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			<b>ruling will be removed.</b>				
Dec 2019 – Feb 2020	GDPR Breaches	1 breach reported during this quarter. Member coms inadvertently sent to the wrong person as the letter had become caught up with the individuals Pension Options.	Possible reporting of Section to the Independent Commissions Office (ICO).	Staff reminded of the importance of removing all documentation from the printer and to check correspondence to ensure this is going to the correct individual. Encouraging e-coms as a means of communication.	Reported breach to Swansea Council Data Protection Officer and an investigation undertaken.	Further to the investigation, it was deemed not necessary to report the breach to the ICO as adequate prevention measures have been identified and put in place.	
Dec 2019– Feb 2020	Contributions	3 Employers have not paid contributions within required timescale	Loss of investment returns	Employers are contacted once breach has occurred		Employers are contacted as soon as the deadline for submission of contributions has passed	
Mar – May 2020	Administration	11.67% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 99.97% was paid within 1 month of receipt of member option return	The administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due date, under the 2013 LGPS regulations	% due to members failing to return pension election forms in a timely manner/completed in full and late issue of pensionable pay information from the member's employers payroll section, which has		Communication to members regarding retirement options are constantly reviewed to ensure the importance of returning completed documents in a timely manner is	✓

				led to the late provision of pension options to the member.		highlighted. On a monthly basis employers payroll sections are issued with a spreadsheet listing all outstanding termination forms and are reminded of the importance of providing accurate information on a timely basis.	
Mar - May 2020	Administration	Frozen refunds unclaimed for this period equates to 69% .... This equates to a monetary value of £4,428.25	Regulations, no further interest will accrue on or after 5-year anniversary. Should the member enter re-employment membership cannot be aggregated, the member will not be able to transfer the benefit out and if a refund is claimed there will be tax implications as this is deemed to be an unauthorised	High % due to member not making a positive election to claim refund	Information has been recorded within the breach register	Member was written to 3 months prior to the date of the 5-year anniversary of date of leaving	✓

			<p>payment. The above is subject to change and we are waiting for confirmation that the above Regulation has been amended to support this.</p> <p><b>Awaiting confirmation of Regulatory change; going forward there will be no further requirement to report non-payment of refunds as the 5 year anniversary ruling will be removed.</b></p>				
Mar - May 2020	GDPR Breaches	1 breach reported during this quarter. Member coms inadvertently sent to the wrong email address	Possible reporting of the Pension Section to the Independent Commissions Office (ICO).	Staff have been reminded of the importance of checking the email autofill.	Reported breach to Swansea Council Data Protection Officer and an investigation undertaken.	Further to the investigation, it was deemed not necessary to report the breach to the ICO as adequate prevention measures have been identified and put in place.	✓

Mar – May 2020	Contributions	3 Employers have not paid contributions within required timescale	Loss of investment returns	Employers are contacted once breach has occurred		Employers are contacted as soon as the deadline for submission of contributions has passed	✓
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\*New breaches since the previous meeting should be highlighted