



## Report of the Section 151 Officer

Pension Fund Committee – 12 November 2020

### Breaches Report

Purpose: The report presents any breaches which have occurred in the period in accordance with the Reporting Breaches Policy.

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Finance Officer: Jeff Dong – Deputy S 151 Officer

Legal Officer: Stephanie Williams – Principal Lawyer

Access to Services Officer: N/A

#### For Information

#### 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 October 2020, 15% 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 becomes aware of a breach, the appropriate investigation takes 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. There has been no GDPR breach since last reporting date
- 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 single instance during the reporting period where breaches have occurred. In this 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.

### **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<br>(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   | <p>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.</p> <p>There is a planned investment review for 2018/19 which shall review asset allocations on a long term basis</p> | 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 |  |

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| 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   |  |

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|                 |                |   | 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 |  |

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|               |                | 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 |  |



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|                     |                |   | 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   |  |

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|  |  | <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    |  |

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|                |                |  |   | 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  |  |

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|                |               |  | <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   |  |
| Jun – Aug 2020 | Administration | 17% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 100% of member option forms returned were paid within 1 month of date of 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. Late provision of information provided by the members employer payroll sections. |  | Communication to members regarding retirement options are constantly reviewed to ensure the importance of returning completed documents in a timely manner is 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. |  |

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| Jun – Aug 2020 | Administration | Frozen refunds unclaimed for this period equates to 70.22% .... (of this 8.51% the Fund is in the process of transferring under the autoagg rules as the member has entered further LGPS membership) This equates to a monetary value of £8,030.64 (of which £888.39 is subject to transfer) | 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 been amended to support this. <b>Awaiting confirmation of Regulatory change; going forward there will be no</b> | 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 |  |
|----------------|----------------|--|---|---|--|---|--|

|                |                |   |   |  |  |   |   |
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|                |                |   | <b>further requirement to report non-payment of refunds as the 5 year anniversary ruling will be removed.</b>   |  |  |   |   |
| Jun – Aug 2020 | GDPR Breaches  | No breaches to report during this quarter.  |   |  |  |   |   |
| Jun – Aug 2020 | 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 – Oct 20  | Administration | 15% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 100% of member option forms returned were paid within 1 month of date of 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 late receipt of confirmation from the members Payroll Section of retirement. Delay in the return of member pension options/completed in full. |  | Communication to members regarding retirement options are constantly reviewed to ensure the importance of returning completed documents in a timely manner is 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. |   |
| Sept – Oct 20 | Administration | Frozen refunds unclaimed for this period equates to 64.29% .... This equates to a monetary value of £872. | 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 | 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  | ✓ |

|               |               |   |   |  |  |  |   |
|---------------|---------------|---|---|--|--|--|---|
|               |               |   | to change and we are waiting for confirmation that the above Regulation has been amended to support this.<br><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> |  |  |  |   |
| Sept – Oct 20 | GDPR Breaches | No breaches to report during this quarter.                      |   |  |  |  | ✓ |
| Sept – Oct 20 | Contributions | 1 Employer has 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 | ✓ |

\*New breaches since the previous meeting should be highlighted