



## Report of the Section 151 Officer

Local Pension Board – 2 December 2021

### Breaches Report

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

**Report Author:** Claire Elliott

**Finance Officer:** Jeff Dong

**Legal Officer:** Stephanie Williams

**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 August 2021, 14% 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**

- 3.1 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**

**Appendix A**

Date	Category (e.g. administration, contributions, funding)	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)
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 equates to 64% .... This equates to a monetary value of £3,505.73	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	% has reduced in comparison with the previous quarter however it is still high. This is because the member has not made a positive election to claim refund	Information has been recorded in the breach register	Current procedure is that written 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	

			<p>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 ruling will be removed.</b></p>			of leaving.	
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	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-	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.	

		Pension Options.		coms as a means of communication.			
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 led to the late provision of pension options to the member.		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.	
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 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</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	

			<b>will be no further requirement to report non-payment of refunds as the 5 year anniversary ruling will be removed.</b>				
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	The administering authority has accrued interest payments on retirement lump	% due to members failing to return pension election forms in a timely manner/completed		Communication to members regarding retirement options are constantly	



		months of early retirement; 100% of member option forms returned were paid within 1 month of date of return	sums, paid more than one month after their due date, under the 2013 LGPS regulations	in full. Late provision of information provided by the members employer payroll sections.		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.	
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	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	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	

		membership) This equates to a monetary value of £8,030.64 (of which £888.39 is subject to transfer)	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 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	Contributions	2 Employers	Loss of	Employers are		Employers are	

2020		have not paid contributions within required timescale	investment returns	contacted once breach has occurred		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	Administration	Frozen refunds	Regulations, no	High % due to	Information has	Member was	

20		unclaimed for this period equates to 64.29% .... This equates to a monetary value of £872.	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 further</b>	member not making a positive election to claim refund	been recorded within the breach register	written to 3 months prior to the date of the 5-year anniversary of date of leaving	
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			<b>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	
Nov 20 – Feb 2021	Administration	19.23% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 96.84% 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 retiring from age 55 but before normal pension age and late return of options confirming early access of retirement benefits. % due to a delay in the return of member pension options/completed		Communication to members regarding retirement options are constantly reviewed to ensure the importance of returning completed documents in a timely manner is highlighted.	

				in full for the month of December.			
Nov 20 – Feb 21	Administration	Frozen refunds unclaimed for this period equates to 86% .... This equates to a monetary value of £7,488.70.	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</b>	High % due to member not making a positive election to claim refund	Information has been recorded within the breach register	Members are written to 3 months prior to the date of the 5-year anniversary of date of leaving	

			<b>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>				
Nov 20 – Feb 21	GDPR Breaches	No breaches to report during this quarter					
Nov 20 – Feb 21	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	
Mar 2021	Administration	30.55% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 91.89% 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	A % of late payments was in main due to the Pru failing to disinvest AVC monies and forward payments in a timely manner. The Pru have migrated to a new system and are experiencing ongoing problems.		The Fund has maintained regular contact with the Pru chasing payments of monies / requesting updates to communicate to members. Communication to members	

				Members failed 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 led to the late provision of pension options to the member.		regarding retirement options are subject to review on a regular basis. Members are made aware of the importance of returning completed documents in a timely manner. The Pension Section provide member employer payroll sections with a listing of outstanding termination forms and are reminded of the importance of providing accurate information on a timely basis.	
Mar 2021	Administration	Frozen refunds unclaimed for this period equates to 94.3% .... This equates to a monetary value of £3,189	Regulations state, no further interest will accrue on or after 5-year anniversary. Should the member enter re-employment membership cannot be	High % due to member not making a positive election to claim refund	Information has been recorded within the breach register	Members are written to 3 months prior to the date of their 5-year anniversary from date of leaving	



			<p>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.</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>				
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Mar 2021	GDPR Breaches	No breaches to report					
Apr - Jun 2021	Administration	15.91% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 97.78% 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	A % of late payments was in main due to the Pru failing to disinvest AVC monies and forward payments in a timely manner. The Pru have migrated to a new system and are experiencing ongoing problems. Members failed 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 led to the late provision of pension options to the member		The Fund has maintained regular contact with the Pru chasing payments of monies / requesting updates to communicate to members. Communication to members regarding retirement options are subject to review on a regular basis. Members are made aware of the importance of returning completed documents in a timely manner. The Pension Section provide member employer payroll sections with a listing of outstanding termination forms and are reminded of the importance	

						of providing accurate information on a timely basis.	
Apr - Jun 2021	Administration	Frozen refunds unclaimed for this period equates to 84.6% .... This equates to a monetary value of £4,770.17	Regulations state, 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</b>	High % due to member not making a positive election to claim refund	Information has been recorded within the breach register	Members are written to 3 months prior to the date of their 5-year anniversary from date of leaving	✓

			<b>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>				
Apr - Jun 2021	GDPR Breaches	No breaches to report					
Apr 21 – May 21	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	
July – August 2021	Administration	7% 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	The administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due date, under the 2013 LGPS	A % of late payments was in main due to the Pru failing to disinvest AVC monies and forward payments in a timely manner. The Pru have continued to experience		The Fund has maintained regular contact with the Pru chasing payments of monies / requesting updates to communicate to members.	

		member option return	regulations	problems with the new system however going forward it is anticipated that these issues should now be resolved. Members failed to return pension election forms in a timely manner		Communication to members regarding retirement options are subject to review on a regular basis. Members are made aware of the importance of returning completed documents in a timely manner. The Pension Section provide member employer payroll sections with a listing of outstanding termination forms and are reminded of the importance of providing accurate information on a timely basis.	
July – August 2021	Administration	Frozen refunds unclaimed for this period equates to 94% .... This equates to a monetary value of £16,808.32	Regulations state, no further interest will accrue on or after 5-year anniversary. Should the member enter re-employment	High % due to member not making a positive election to claim refund	Information has been recorded within the breach register	Members are written to 3 months prior to the date of their 5-year anniversary from date of leaving	

			<p>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.</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</b></p>				
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			<b>removed.</b>				
July – August 2021	GDPR Breaches	No breaches to report					
June – July 21	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	
Sept – Oct 2021	Administration	14% 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	% (3 in total) due to late receipt of confirmation of retirement from the members employer / members failing to return pension options in a timely manner		Member coms highlight the importance of returning the completed forms / certificates in a timely manner. Payroll sections are issued with a monthly spreadsheet listing all outstanding termination forms and are reminded of the importance of providing accurate information on a timely basis.	✓
Sept – Oct 2021	Administration	Frozen refunds unclaimed for	Regulations state, no further	% due to member not making a	Information has been recorded	Members are written to 3	✓

		<p>this period is 80% .... This equates to a monetary value of £4,826.52</p>	<p>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.</p> <p><b>Awaiting confirmation of Regulatory change; going forward there will be no further</b></p>	<p>positive election to claim refund</p>	<p>within the breach register</p>	<p>months prior to the date of their 5-year anniversary from date of leaving</p>	
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			<b>requirement to report non-payment of refunds as the 5 year anniversary ruling will be removed.</b>				
Sept – Oct 2021	GDPR breaches	No breaches to report					✓
August – Sept 21	Contributions	3 Employer 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	✓

✓ New breaches since the previous meeting