



## Report of the Section 151 Officer

Pension Fund Committee – 16 November 2022

### 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
<b>Finance Officer:</b>	Jeff Dong
<b>Legal Officer:</b>	Stephanie Williams
<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 September 2022, 14.9% 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

## Appendix A - City and County of Swansea Breaches Register

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)
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 in full for the month of December.		Communication to members regarding retirement options are constantly reviewed to ensure the importance of returning completed documents in a timely manner is highlighted.	
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	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	

			<p>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>				
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. 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 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	

				the 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 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	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	

			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>				
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.		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.	
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	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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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 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 continued to experience 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		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.	
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 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	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	

			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>				
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	Administration	14% of	The	% (3 in total) due		Member coms	

2021		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	administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due date, under the 2013 LGPS regulations	to late receipt of confirmation of retirement from the members employer / members failing to return pension options in a timely manner		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 this period is 80% .... This equates to a monetary value of £4,826.52	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	% 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>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>				
Sept – Oct 2021	GDPR breaches	No breaches to report					
August – Sept 21	Contributions	3 Employer have not paid contributions within required	Loss of investment returns	Employers are contacted once breach has occurred		Employers are contacted as soon as the deadline for	

		timescale				submission of contributions has passed	
Nov 21 – Feb 2022	Administration	20.6% of retirement lump sums not paid within 1 month of normal retirement or 2 months of early retirement; 97.06% 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 the late provision of final pensionable pay figures from members employer payroll section / late return of completed option forms by member.		Communications to employers HR / Payroll Section and members regarding the provision of termination forms, final pensionable pay figures is subject to ongoing review and the importance of returning completed forms in a timely manner and the consequences of failure to comply is highlighted	
Nov 21 – Feb 2022	Administration	Frozen refunds unclaimed for this period equates to 75% .... This equates to a monetary value of £7,579.74	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	High % due to member not making a positive election to claim refund or transfer a cash transfer sum (CTS) to an alternative pension arrangement	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	



			<p>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>				
Nov 21 – Feb 2022	GDPR Breaches	No breaches to report during					

		this quarter					
Nov 21 – Feb 2022	Contributions	5 Employer have not paid contributions within required timescale – see below for detail	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 2022	Administration	12.50% 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	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 continues to remind its members of the importance of returning pension option forms in a timely manner. The Pension Section provide member employer payroll sections with a listing of outstanding termination forms on a monthly basis. All communications are subject to review.	
Mar 2022	Administration	Frozen refunds unclaimed for this period equates to 82.36% .... This	Regulations state, no further interest will accrue on or after 5-year	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	

		equates to a monetary value of £1,862.60	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 requirement to report non-payment of</b>			anniversary from date of leaving	
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			<b>refunds as the 5 year anniversary ruling will be removed.</b>				
Mar 2022	GDPR Breaches	No breaches to report					
Apr – Jun 2022	Administration	16.28% 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 a delay with the return of the completed pension options		The Fund continues to remind its members of the importance of returning pension option forms in a timely manner	
Apr – Jun 2022	Administration	Frozen refunds unclaimed for this period equates to 94.12% .... This equates to a monetary value of £2581.94	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	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>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>				
Apr – Jun 2022	GDPR Breaches	No breaches to report					
March – May 22	Contributions	3 Employer have not paid contributions within required	Loss of investment returns	Employers are contacted once breach has occurred		Employers are contacted as soon as the deadline for	

		timescale – see below for detail				submission of contributions has passed	
July – August 2022	Administration	5% 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 a delay with the return of the completed pension options		The Fund continues to remind its members of the importance of returning pension option forms in a timely manner	
July – August 2022	Administration	Frozen refunds unclaimed for this period equates to 84.37% .... This equates to a monetary value of £12,043.54	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	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	

			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>				
July – August 2022	GDPR	No breaches to report					
July – August 2022	Contributions		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	

September – October 2022	Administration	14.29% 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 a delay with the return of the completed pension options (total number 3)		The Fund continues to remind its members of the importance of returning pension option forms in a timely manner	✓
September – October 2022	Administration	Frozen refunds unclaimed for this period is 89.19% .... This equates to a monetary value of £14,786.48	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	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	✓



			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>				
September – October 2022	GDPR	No breaches to report					✓
September – October 2022	Contributions	2 Employers have not paid contributions within required timescale – see below for detail	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

The details of the two late Contributors :

<b>No. of Contributors</b>	<b>Due Date</b>	<b>Date Paid</b>	<b>No of Months</b>	<b>Amount £</b>	<b>Organisation Type</b>	<b>Reason</b>
2	19/08/22 19/09/22 19/10/22	12/09/22 29/09/22 NYP	3	372.89 372.89	Small Town Council	Persistently late in paying
11	19/08/22 19/10/22	09/09/22 24/10/22	2	4,657.85 4,657.85	Small Town council	New Staff Member

NYP – Not yet paid