



## Report of the Section 151 Officer

Pension Fund Committee – 15 November 2023

### 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 2023, 16% 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. Integrated Impact Assessment Implications**

The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage.
- Consider opportunities for people to use the Welsh language.
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to their own needs.

The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

There are no equality impact implications arising from this report.

### **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)
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 to be an unauthorised payment. The above is subject to change and we are waiting for confirmation that the above	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	

			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	The administering authority has accrued interest payments on retirement lump sums, paid more than one month after their due	% 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	

		within 1 month of receipt of member option return	date, under the 2013 LGPS regulations				
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 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>				
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	
November 2022 – February 2023	Administration	28.17% 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/late provision of pensionable pay figures by the members employer		The Fund continues to remind its members/employers of the importance of returning pension option forms/final pensionable pay figures in a timely manner	✓
November	Administration	Frozen refunds	Regulations	High % due to	Information has	Members are	

<p>2022 – February 2023</p>		<p>unclaimed for this period is 37.10% .... This equates to a monetary value of £11,337.43</p>	<p>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 confirmation of Regulatory change; going forward there will be no</b></p>	<p>member not making a positive election to claim refund</p>	<p>been recorded within the breach register</p>	<p>written to 3 months prior to the date of their 5-year anniversary from date of leaving</p>	
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			<b>further requirement to report non-payment of refunds as the 5-year anniversary ruling will be removed</b>				
November 2022 – February 2023	GDPR	No breaches to report					
November 2022 – February 2023	Contributions	2	2 Employers have not paid contributions within required timescale – see below for detail	Loss of investment returns		Employers are contacted as soon as the deadline for submission of contributions has passed	
March 2023 – June 2023	Administration	17.77% 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/late provision of pensionable pay figures by the members employer		The Fund continues to remind its members/employers of the importance of returning pension option forms/final pensionable pay figures in a timely manner	
March 2023 – June 2023	Administration	Frozen refunds unclaimed for this period is 91.03% .... This equates to a	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 anniversary from	

		monetary value of £20,258	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>			date of leaving	
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			<b>refunds as the 5-year anniversary ruling will be removed</b>				
March 2023 – June 2023	GDPR	No breaches to report					
March 2023 – June 2023	Contributions	3	3 Employers have not paid contributions within required timescale – see below for detail	Loss of investment returns		Employers are contacted as soon as the deadline for submission of contributions has passed	
July – August 2023	Administration	4.55% (1 in total) of retirement lump sums not paid within 1 month of normal retirement. 100% of lump sum payments were made within 2-months of early retirement. 100% of lump sum payments were processed within 1 month of receipt of fully completed pension options	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 provision of final pensionable pay figures by the members employer. As a result of this completed pension options were received outside of the 1-month timeframe by a matter of days.		The Fund continues to remind its employers of the importance of providing final pensionable pay figures in a timely manner.	✓
July – August 2023	Administration	Frozen refunds unclaimed for this period is	Regulations state, no further interest will	High % due to member not making a positive	Information has been recorded within the	Members are written to 3 months prior to the date of	✓

		83.87% .... This equates to a monetary value of £14,390.73	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 requirement to</b>	election to claim a refund of pension contributions within the 5-year timeframe	breach register	their 5-year anniversary from date of leaving	
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			<b>report non-payment of refunds as the 5-year anniversary ruling will be removed</b>				
July – August 2023	GDPR	A possible data breach was investigated and recorded during the month of August	Data breach happened because a staff member failed to complete a process in its entirety.	Training procedures are in place for all tasks actioned. In this instance a staff member updated a members address on our database however during the process the member status i.e. a pensioner member was not identified. The training procedure clearly states that when a member status is listed as a pensioner member, we are obliged to inform Pension Payroll of this change. Unfortunately, the final stage of the process was not adhered to which resulted in three separate hardcopy correspondence	The breach was reported to a Data Protection Officer for Swansea Council for consideration. Following a review of all of the information presented it was determined that the data breach did not reach the threshold for reporting to the ICO. The judgement is based on the risk to the data subject being minimal	Recommendation received from the DPO was to remind staff members of the process guidelines documented with the Change of Address procedure.	✓

				containing being sent to the members previous address.			
July – August 2023	Contributions	2	2 Employers have not paid contributions within required timescale – see below for detail	Loss of investment returns		Employers are contacted as soon as the deadline for submission of contributions has passed	
Sept – October 2023	Administration	16% 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 by the member, disinvestment of AVC pot and / or late provision of final pensionable pay details by employer (total number 4)		The Fund continues to remind its members of the importance of returning pension option forms in a timely manner, reminding employers of their KPI requirements to provide final pensionable pay figures. Delay with the disinvestment of AVC monies due to the crossover with the final AVC payment.	✓
Sept – October 2023	Administration	Frozen refunds unclaimed for this period is 71.70% .... This equates to a	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 anniversary from	✓

		monetary value of £4,213.84	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>			date of leaving. Member coms has been revised with extra emphasis placed on tax implications i.e. 40% taxation to be applied to net value of refund of contributions as payment is deemed to be an unauthorised payment by HMRC.	
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			<b>refunds as the 5-year anniversary ruling will be removed</b>				
April – October 2023	Administration	Swansea Council have not provided an i-Connect file since March 2023.	<p>As an Administering Authority the Fund has failed to meet its commitment in terms of member engagement. This applied to all new starters and those members who have left employment during this period. Total number of members affected was approx. 1,200.</p> <p>The Fund failed to comply with the KPI's published within the Pension Admin Strategy in terms of member engagement.</p>	Non provision of i-Connect file is resulting from the failure to export accurate data following the instal of a new payroll system.	Information has been recorded within the breach register	<p>New starters were set-up manually on the Pension database and a pension welcome pack issued.</p> <p>Members who have left employment were issued with options pertaining to the membership vesting period i.e. refund of contributions / deferred benefits.</p> <p>Due to the volume of cases a number of staff worked one weekend to deal with the backlog of caseloads as this would have encroached on their day-to-day workload.</p>	✓
Sept –	GDPR	No breaches to					✓



October 2023		report					
Sept – October 23	Contributions	2	2 Employers have not paid contributions within required timescale – see below for detail	Loss of investment returns		Employers are contacted as soon as the deadline for submission of contributions has passed	✓

✓ New breaches since the previous meeting

The details of the late Contributors :

No. of Contributors	Due Date	Date Paid	No of Months	Amount £	Organisation Type	Reason
1	19 <sup>th</sup> Sept	12 <sup>th</sup> Oct	1	157.86	Small admitted body	New joiner, Oct paid on time
480	19 <sup>th</sup> Oct	20 <sup>th</sup> Oct	1	264,678.76	College	Processing error- new staff