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BOROUGH**



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# Greater Gwent (Torfaen) Pension Fund Breaches Policy

## 2021/2022

Nigel Aurelius, CPFA  
Assistant Chief Executive Resources



## Greater Gwent (Torfaen) Pension Fund

### Breaches Policy

July 2021

## 1. Introduction

- 1.1 This document sets out the procedures to be followed in relation to reporting breaches of the law to The Pensions Regulator by individuals involved with the administration service of the Greater Gwent (Torfaen) Pension Fund, which is the Local Government Pension Scheme managed and administered by Torfaen County Borough Council.
- 1.2 Breaches can occur in relation to a wide variety of the tasks normally associated with the administration function of a Scheme such as record keeping, internal controls, calculating benefits and making investment or investment related decisions.
- 1.3 This policy and procedure document applies, in the main to:
  - All members of the Greater Gwent (Torfaen) Pension Board
  - All officers involved in the management of the Pension Fund; including members of the Pension Administration, Investments and Finance teams, the Head of Pensions and the Section 151 Officer to the Council.
  - Any professional advisors to the Fund including the Fund Actuary, auditors, legal advisers and fund managers and;
  - Officers or Employers participating within the Greater Gwent (Torfaen) Pension Fund who are responsible for matters relating to Local Government Pension Scheme.

## 2. Requirements

- 2.1 This section clarifies the full extent of the legal requirements and to whom they apply.

### 2.2 The Pension Act 2004

Section 70 of the Pension Act 2004 (the Act) impose a requirement on the following persons:

- a trustee or manager of an occupational or personal pension scheme
- a member of the pension board of a public service pension scheme
- a person who is otherwise involved in the administration of such a scheme an occupational or personal pension scheme
- the employer in relation to an occupational scheme
- a professional adviser in relation to such scheme; and
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme

To report a matter to The Pensions Regulator as soon as is reasonably practicable where that person has reasonable cause to believe that:

- a) a legal duty relating to the administration of the scheme has not been or is not being complied with, and
- b) the failure to comply is likely to be of material significance to the Pensions Regulator

The Act states that a person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse. The duty to report breaches under the Act overrides any other duties the individuals listed above may have. However, the duty to report does not override 'legal privilege'. This means that, generally, communications between a professional legal adviser and their client, or a person representing their client, in connection with the legal advice being given to the client do not have to be disclosed.

### 2.3 **The Pensions Regulator's Code of Practice**

Practical guidance in relation to this legal requirement is included in the Pensions Regulator's Code of Practice including the following areas:

- Implementing adequate procedures
- Judging whether a breach must be reported
- Submitting a report to the pensions regulator
- Whistleblowing protection and confidentiality

## The Greater Gwent (Torfaen) Pension Fund Reporting Breaches Procedure

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Greater Gwent (Torfaen) Pension Fund. Its aim is to ensure individuals responsible are able to meet their legal obligations, avoid placing any reliance on others to report. The procedure will also assist in providing early warning of possible malpractice and reduce risk.

### 1. Clarification of the law

1.1 Individuals may need to refer to regulations and guidance when considering whether or not to report a possible breach. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004:  
[www.legislation.gov.uk/ukpga/2004/35/contents](http://www.legislation.gov.uk/ukpga/2004/35/contents)
- Employment Rights Act 1996:  
[www.legislation.gov.uk/ukpga/1996/18/contents](http://www.legislation.gov.uk/ukpga/1996/18/contents)
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations):  
[www.legislation.gov.uk/uksi/2013/2734/contents/made](http://www.legislation.gov.uk/uksi/2013/2734/contents/made)
- Public Service Pension Schemes Act 2013: [www.legislation.gov.uk/ukpga/2013/25/contents](http://www.legislation.gov.uk/ukpga/2013/25/contents)
- Local Government Pension Scheme Regulations (various):  
<http://www.lgpsregs.org/timelineregs/Default.html> (pre 2014 schemes)  
<http://www.lgpsregs.org/index.php/regs-legislation> (2014 scheme)
- The Pensions Regulator's Code of Practice:  
[Code of practice no 14 - governance and administration of public service schemes \(thepensionsregulator.gov.uk\)](http://thepensionsregulator.gov.uk/code-of-practice-no-14-governance-and-administration-of-public-service-schemes)

### 2. Requirement to report a breach of the law

2.1 The decision whether to report an identified breach depends on whether:

- there is reasonable cause to believe there has been a breach of the law
- and if so, is the breach likely to be of material significance to the Regulator

2.2 Not every breach that is identified needs to be reported to the Pensions Regulator, only those where this is likely to be of material significance. All breaches are recorded on the Fund's breaches log. This log is reviewed on an on-going basis to determine any trends in the breaches that might indicate any serious failings or fraudulent behaviour.

2.3 Where a non-material breach has been identified, a plan of action will be put in place to rectify the matter and prevent such and occurrence in the future.

### 3. Reasonable cause

3.1 Individuals need to have 'reasonable cause' to believe that a breach has occurred, not just a suspicion. Where a breach is suspected, the individual should carry out further checks to establish whether or not a breach has in fact occurred.

- 3.2 Where the individual does not know the facts or events around the suspected breach it will usually be appropriate to consult the Pension Manager, Head of Pensions, the Council's Section 151 Officer, Pension Board or Pensions Committee or others who are able to explain what has happened.
- 3.3 There may be cases where it would not be appropriate to make further check in cases of theft, suspected fraud or other serious offences where discussions might alert those involved or hampering the actions of the police or a regulatory authority. Under these circumstances the reporter should alert the Regulator without delay.

#### 4. Determining whether a breach is likely to be of material significance

- 4.1 In order to decide whether a breach is likely to be of material significance the Fund, officers and Pension Board will in all cases consider the following:

##### The cause of the breach

The breach is likely to be of material significance to the Regulator where it was caused by:

- dishonesty, negligence, or reckless behaviour
- poor governance, ineffective controls resulting in deficient administration, or slow or inappropriate decision-making practices
- incomplete or inaccurate advice
- a deliberate act or failure to act

When deciding whether a cause is likely to be of material significance individuals should consider:

- Whether the breach has been caused by an isolated incident such as a power outage, fire, flood or a genuine one-off mistake.
- Whether there have been any breaches (reported to the Regulator or not) which when taken together may become materially significant.

##### The effect of the breach

The Pensions Regulator considers a breach to be significant where the effects are as follows:

- A significant proportion of members, or a significant proportion of members of a particular category or membership are affected by the breach.
- The breach has a significant effect on the benefits being paid, to be paid, or being advised to members.
- The breach - or series of unrelated breaches - have a pattern or recurrence in relation to participating employers, certain members or groups or members.
- Governing bodies do not have the appropriate degree of knowledge and understanding, preventing them from fulfilling their roles and resulting in the scheme not being properly governed and administered and/or breaching other legal requirements.
- There are unmanaged conflict of interests within the governing body, resulting in; it being prejudiced in the way it carries out the role; ineffective governance and administration of the scheme, and/or breaches of legal requirements.
- Systems of governance and/or internal controls are not established or operated, leading to schemes not being run in accordance with their governing documents and other legal requirements.
- Risks are not properly identified and managed and/or the right money is not being paid to or by the scheme at the right time.

## Breaches Policy 2021/2022

- Accurate information about benefits and scheme administration is not being provided to scheme members and others, so members are unable to effectively plan or make decisions about their retirement.
- Appropriate records, including those for the dashboard, are not being maintained, resulting in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Governing bodies or anyone associated with the scheme misappropriate scheme assets or are likely to do so.

### The reaction to the breach

The Pensions Regulator will not normally consider a breach to be materially significant if prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, all affected scheme members have been notified.

A breach is likely to be of concern and material significance to the Pensions Regulator where a breach has been identified that:

- does not receive prompt and effective action to remedy the breach and identify and tackle its cause to minimise risk of reoccurrence
- is not being given appropriate priority by the governing body or relevant service providers
- has not been communicated to affected scheme members where it would have been appropriate to do so
- where it forms part of a series of breaches indicating poor governance

### The wider implications of the breach

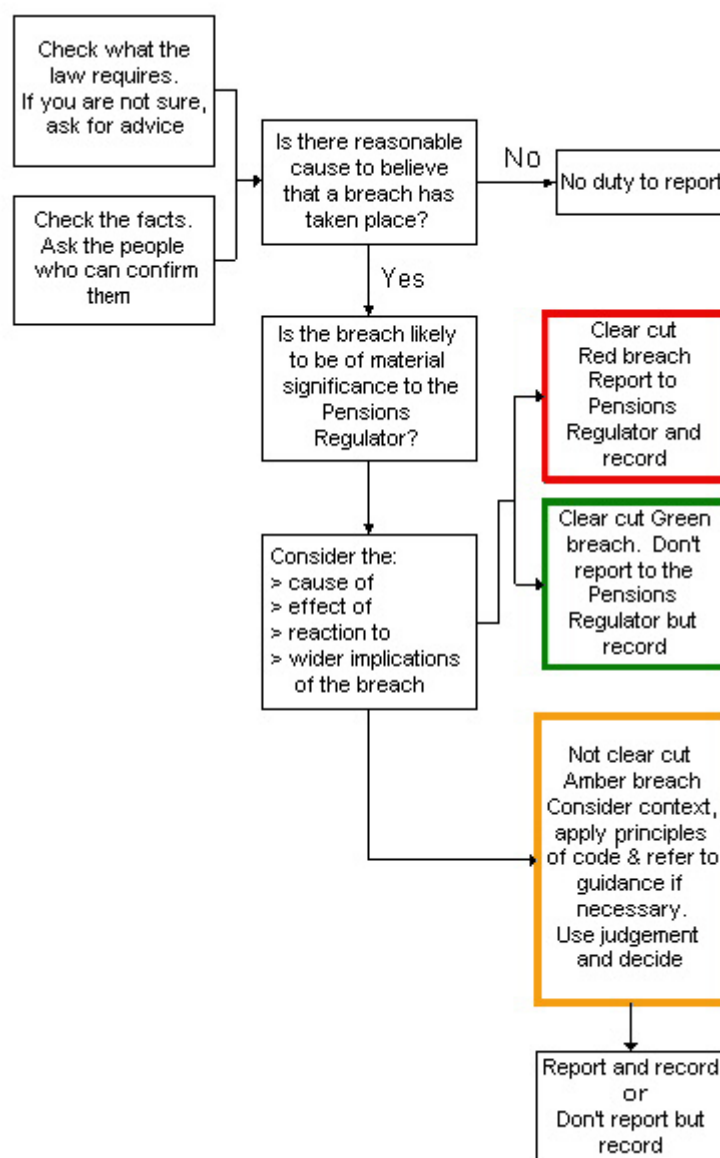
The wider implications of a breach should be considered when assessing whether it is likely to be of material significance to the Pensions Regulator. A breach is likely to be of material significance where:

- the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future
- other schemes may be affected

- 4.2 The Pensions Regulator has produced a decision tree to assist schemes in identifying the severity of a breach and whether it should be reported.

## Breaches Policy 2021/2022

- 4.3 The Fund will use the Pensions Regulator's decision tree as a means of identifying whether any breach is to be considered as materially significant and so reported to the Pensions Regulator.



- 4.4 The decision tree provides a 'traffic light' framework to categorise an identified breach.

### Red

Where the cause, effect, reaction and wider implications of a breach, when considered together are likely to be of material significance.

These must be reported to the Pensions Regulator.

Example: Several members have contacted the scheme as they believe their benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.

### Amber

Where the cause, effect, reaction and wider implications of a breach when considered together, may be of material significance.

They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right. You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported.

Example: Several members' benefits have been calculated incorrectly. The errors have been corrected, with no financial detriment to the members. However the breach was caused by a system error which may have wider implications for other public service schemes using the same system.

### Green

Where the cause, effect, reaction and wider implications of a breach, when considered together, are not likely to be of material significance, the breach is 'green'. These should be recorded but do not need to be reported.

Example: A member's benefits have been calculated incorrectly. This was an isolated incident, which has been promptly identified and corrected, with no financial detriment to the member. Procedures have been put in place to mitigate against this happening again.

## 5. Referral to a level of seniority for a decision to be made on whether to report

Where it is considered that there is a material breach, the Pension Manager will produce a report for the Head of Pensions, who will consider the breach in line with the Code of Practice, investigate as necessary and obtain legal advice where required to determine whether the breach is considered of material significance to the Regulator. Where uncertainty exists as to the materiality of any identified breach Officers, Management, the Council, the Pensions Committee or Local Pension Board will be required to informally notify the Regulator of the issue and the steps being taken to resolve the issue.

## 6. Dealing with complex cases

Complex cases should be referred to the Head of Pensions for consideration and guidance. Information may also be available from the Scheme Advisory Board or the LGPC Secretariat at <http://www.lgpsregs.org>. If timescales allow, professional advice can be taken and the case will be discussed at the next Pension Board meeting.

## 7. Reporting breaches

The Pension Act and the Pensions Regulator's Code of Practice require that if an individual decides to report a breach, the report must be made in writing as soon as is reasonably practical.

Reports must be submitted in writing via:

- The regulator's online system Exchange: [www.tpr.gov.uk/exchange](http://www.tpr.gov.uk/exchange)
- By post to: The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW
- By email: [customersupport@thepensionsregulator.gov.uk](mailto:customersupport@thepensionsregulator.gov.uk)
- By Fax: 0870 241114



# Breaches Policy 2021/2022

As a minimum, schemes should provide:

- full scheme name
- description of breach(es) including any relevant dates
- employer name or name of scheme manager
- your name, position and contact details
- your role in connection to the scheme

Further information should be supplied wherever possible including for example:

- the reason why the breach is thought to be of material significance to the Regulator
- scheme address
- type of scheme
- scheme manager contact details
- pension scheme registry number (PSR)
- whether the breach has been reported before

If the matter of concern is considered to be particularly serious, the Pensions Regulator can be contacted by phone on 0870 6063636, prior to the submission of a written report.

The Pensions Regulator should be contacted without delay if an individual has become aware of either theft, suspected fraud or another serious offence and where the individual is also concerned that by making further checks there is a risk of either:

- alerting those involved
- hampering actions of the police or a regulatory authority

## 8. Recording breaches

In addition to the requirement to report material breaches to the Pensions Regulator, the Pension Manager will formally report all breaches to the Greater Gwent (Torfaen) Pension Board on a quarterly basis, notifying the Chair of the board of any significant issues as appropriate. An example of the breaches log is available as [Appendix A](#).

## 9. Whistleblowing and confidentiality

If requested, the Pensions Regulator will do its best to protect the reporter's identity and will not disclose information except where it is lawfully required to do so, for example when ordered by a court to disclose the reporter's identity.

If an employer decides not to report and an individual employed by them disagrees with this and decides to report the breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report.

## 10. Training

The Head of Pensions will ensure that all relevant members and officers, as well as members of the Pension Board will receive appropriate training on this policy at the commencement of their employment or appointment to the Pension Board as appropriate and on an ongoing basis.

## 11. Contacts

If you require further information about reporting breaches or this procedure, please contact:

Joanne Griffiths	-	Pension Manager
Email	-	<a href="mailto:joanne.griffiths@torfaen.gov.uk">joanne.griffiths@torfaen.gov.uk</a>
Telephone	-	(01495) 766280

## 12. Review

This Reporting Breaches Policy and Procedure will be kept under review and updated as considered appropriate by the Pension Manager. It may be changed as a result of legal or regulatory changes, evolving best practice and ongoing review of the effectiveness of the procedure.

**Resources Directorate**  
**Torfaen County Borough Council**  
**July 2021**

## Breaches Policy 2021/2022

### Appendix A

#### Example Record of Breaches

Breach Number	Year	Date of Breach	Failure Type	Number of incidents	Description	Been reported to TPR	Report to TPR	Action taken to rectify the breach