



Greater Gwent (Torfaen) Pension Fund

Breaches Policy

2025

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Greater Gwent (Torfaen) Pension Fund

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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. This document should be read in conjunction with the Wales Pension Partnership Breaches and Errors Policy [wpp-breaches-and-errors-policy.pdf](#).
- 1.2 The Pensions Regulator's interpretation of administration in the General Code of Practice is broader than day to day administrative tasks, such as record keeping, dealing with membership movements, calculating benefits, and preparing accounts. It also includes considering investment policy, investment management, the custody of invested assets in all schemes, and scheme funding in defined benefit schemes. The Pensions Regulator's interpretation covers anything that could affect members' benefits, or members and other's ability to access the information they are entitled to.
- 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
- 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 in exercising any of their function

- 2.3 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.

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 that 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
- Employment Rights Act 1996:
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
- Public Service Pension Schemes Act 2013: www.legislation.gov.uk/ukpga/2013/25/contents
- Local Government Pension Scheme Regulations (various):
<http://www.lgpsregs.org/timelinereg/default.html> (pre 2014 schemes)
<http://www.lgpsregs.org/index.php/regs-legislation> (2014 scheme)
- The Pensions Regulator's Single Code of Practice
[TPR general \(single\) code of practice | The Pensions Regulator](http://www.thepensionsregulator.gov.uk/tpregeneral/singlecodeofpractice)

2. Decision to report a breach to the Pensions Regulator

2.1 There are two key judgements required when deciding to report a breach of the law:

- a. Is there reasonable cause to believe there has been a breach of the law?
- b. Is the breach likely to be of material significance to the Pension 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 Having a reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be proved.

- 3.2 Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with members of the Pension Committee, Pension Board or with others who are able to confirm what happened.
- 3.3 It would not be appropriate to alert those implicated in potential serious offences involving dishonesty, such as theft or fraud. In such cases, due to the immediate risk to scheme assets reporters should bypass the usual checks making only those they deem necessary and not cause undue delay to the report being made to the Pensions Regulator.
- 3.4 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.

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

- 4.1 By law, any breaches must be reported to the Pensions Regulator if they are likely to be of 'material significance' to the Pensions Regulator in carrying out any of their functions. Whether a breach is of 'material significance' depends on several factors:

The cause of the breach

The breach is likely to be of material significance to the Pensions 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

The effect of the breach

The Pensions Regulator considers a breach to be materially significant where the effects include any of the following:

- 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 notified 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
- Unmanaged conflicts of interests within the governing body making it prejudiced in the way it carries out the role; ineffective governance and scheme administration and/or breaches of legal requirements
- Systems of governance (where applicable) and/or internal controls are not established or operated; this leads to schemes not being run in line 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
- Accurate information about benefits and scheme administration is not being provided to scheme members and others meaning members are unable to effectively plan or make decisions about their retirement
- Records are not being maintained; this results 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
- It was caused by dishonesty, even when action has been taken to resolve the matter quickly and effectively

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 Those reporting breaches should consider general risk factors, such as the level of funding (in a defined benefit or Local Government Pension Scheme) or how well-run the scheme appears to be. Some breaches that occur in a poorly funded and/or poorly administered scheme will be more significant to the Pensions Regulator than if they had occurred in a well-funded, well-administered scheme.
- 4.3 Reporters should consider other reported and unreported breaches that they are aware of. However, reporters should use historical information with care particularly where changes have been made to address breaches already identified.
- 4.4 The Pensions Regulator will not normally regard a breach arising from an isolated incident as materially significant. For example, breaches resulting from teething problems with a new system, or from an unpredictable combination of circumstances. However, in such circumstances reporters should consider other aspects of the breach, such as the severity or the effect it has had that may make it materially significant.

4.5 Where a possible breach of the law is identified, the following steps should be taken:

1. Check what the law requires, seeking legal advice where appropriate
2. Check the facts of the potential breach with appropriate parties i.e. governing body administrator and advisers to the scheme
3. If there is reasonable cause to believe that a breach has occurred you should consider the cause, effect and wider implications to help you decide whether it is a red, amber or green breach
4. Report the breach to the Pensions Regulator
5. Where remedial activities for the breach are ongoing, ensure you monitor these closely and consider further reports to the Pensions Regulator if mitigating actions prove ineffective

4.6 Examples of Red, Amber and Green breaches:

Red

A breach is reportable as a red breach where one of the following applies:

- It was caused by dishonesty, negligence, reckless behaviour, poor scheme governance ineffective controls resulting in deficient administration or slow or inappropriate decision-making practices, poor advice or intentionally breaking the law
- Its effect and significance
- Inadequate steps are being taken to put matters right
- It has wider implications

Examples of Red breaches

1. Widespread and recurring administrative delays and errors, such as delays in providing transfer values or benefit statements and any miscalculation of benefit values within these
2. The employer stops paying contributions and is no longer corresponding with the governing body's request for information

Amber

Amber breaches do not fall obviously into either red or green classification. The decision whether or not to report will require a balanced judgement based on the cause effect and wider implications of the breach.

Previous breaches and mitigating actions may be relevant in deciding whether an amber breach is of material significance as these may indicate that the governing body lacks adequate oversight or controls. Where you have any doubt about the material significance of the matter, you should submit a breach of law to the Pensions Regulator

Examples of Amber breaches

1. Multiple green breaches in a short period of time
2. The scheme auditor discovers that benefits for some members have been miscalculated

Green

A breach is likely to be classed as a green breach where all of the following apply:

- It was not caused by dishonesty, poor scheme governance, poor advice or by deliberate contravention of the law
- Its effect is not significant
- Proper steps are being taken to put matters right
- It does not have wider implications

Examples of Green breaches:

1. The governing body obtains the auditor's statement on contributions or audited accounts two months after the seven-month deadline due to a change in adviser
2. The governing body fails to provide a small number of members with information about their benefits within the statutory timeframe due to system failure; however, they are able to provide the information a month later and introduce measures to prevent the issue recurring
3. The governing body identifies employer contributions to the scheme are overdue; they successfully implement a payment arrangement to recover contributions from the employer

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

- 5.1 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 General (Single) 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 Pension 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

- 6.1 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 Local Pension Board meeting.

7. Reporting breaches

- 7.1 Reporters should make a report using the Pension Regulator's online web form, email or by post. The Pensions Regulator does not normally accept reports by telephone.

Reports must be submitted in writing via:

- The Regulator's online system Exchange: www.tpr.gov.uk/exchange
- By post to: The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW
- By email: customersupport@thepensionsregulator.gov.uk

- 7.2 If a reporter discovers an urgent breach, which is likely to have an immediate and damaging effect for scheme members, they should notify the Pensions Regulator by telephone on 0870 6063636 before submitting the report in writing.

- 7.3 Reporters should also mark urgent reports as such and highlight any matters they believe are particularly serious.

- 7.4 Those looking to report a payment failure for a defined contribution scheme may wish to consider doing so via the Pensions Regulator's maintaining contribution portal

- 7.5 Breaches of the law must be reported to the Pensions Regulator within writing as soon as reasonably practicable. In most cases this should be within 10 working days of the breach being identified. However, reporters may use their judgement and apply 'reasonably practicable' to their own circumstances. They should consider such factors as the seriousness of the potential breach and its consequences. Where reporters decided a longer reporting time is reasonable, they should record the reason for this and any evidence in case they need to show this in future.

- 7.6 The report should include:

- Full scheme name
- Description of breach or breaches including any relevant dates
- Name of the employer (in the case of an occupational scheme) or scheme manager (in the case of public service pension schemes)
- Name, position and contact details of the reporter
- Role of the reporter in the scheme
- Reason the reporter believes the breach is of material significance to the Pensions Regulator
- Address of the scheme
- Type of scheme
- Name and contact details of the governing body (if different to the scheme address)
- Pension scheme registry (PSR) number if known
- Address of the employer

- 7.7 There are other requirements placed on those running pension schemes to report to other bodies. Where the duty to report to another body coincides with the duty to report to the Pensions Regulator, the report to the Pensions Regulator should include details of the other bodies the matter has been reported to.

- 7.8 The Pensions Regulator will acknowledge all reports within five working days of receipt. If reporters have not received an acknowledgement from the Pensions Regulator within five days, they should contact them.
- 7.9 Due to legal restrictions on the information the Pensions Regulator can disclose, the Pensions Regulator will not keep reporters informed of the steps they are taking to deal with the report, but they may contact the reporter for more information.
- 7.10 If a scheme or an individual is at risk, for example where there has been dishonesty the reporter should not take any action that might alert those implicated that a report has been made. Similarly, reporters should not delay their report to the Pensions Regulator, to check whether any proposed solutions will be effective.

8. Multiple Reporters

- 8.1 More than one person may be responsible for reporting the same breach. Those who have a duty to report should be aware this is not automatically discharged by another party reporting the breach.
- 8.2 Reporters should avoid making duplicate reports where possible. Once the Pensions Regulator becomes aware of a breach, they do not typically regard that breach as materially significant for the purpose of making a further report. However, an exception to this is when another reporter has additional information or different information about the breach, or the circumstances related to it.
- 8.3 Where multiple reporters wish to submit a collective report, the reporting procedures should allow for the evaluation of breaches as described above. The report should be made as soon as reasonably practicable.

9. Reporting payment failures

- 9.1 Duty to Report
Where payments are not paid on time and the governing body or another party with a duty to report has reasonable cause to believe that the payment failure is likely to be of material significance to the Pensions Regulator, they should send the Pensions Regulator a written report of the matter.
- 9.2 The legal requirement to report late payments of employee and employer contributions into certain occupational and personal pensions is imposed on the 'trustees and managers' of the scheme. In addition, the legal requirement to report late payments of employer contributions into public service pension schemes is imposed on the 'scheme manager'.
- 9.3 Reports should be made to the Pensions Regulator within 14 days of the trustees having reasonable cause to believe that a material payment failure exists. Members should be notified within 30 days of the report to the Pensions Regulator. When reporting to members, governing bodies should provide payment information that will enable them to understand what has been paid by the scheme and by whom.
- 9.4 Governing bodies should also identify where contributions due to be paid under the payment schedule have been received by the scheme. Members can then make steps to resolve any payment problems with their employers at the earliest opportunity.

9.5 Material significant payment failures

Payment failures that are likely to be of material significance include:

- Where governing bodies have reasonable cause to believe that the employer is neither willing nor able to pay contributions
- Where there is a payment failure involving possible dishonesty or a misuse of assets or contributions
- Where the information available to the governing body indicates that the employer is knowingly concerned with fraudulently evading their obligations to pay employee contributions
- Where the governing body becomes aware that the employer does not have adequate procedures or systems in place to ensure the correct and timely payment of contributions due and the employer does not appear to be taking adequate steps to remedy the situation
- Any event where contributions have been outstanding for 90 days from the due date

9.5 Payment failures which are not likely to be of material significance include:

- Where a payment arrangement is being met by an employer for the recovery of outstanding contributions
- Where a claim has been submitted to the redundancy payments office national insurance fund or the Northern Ireland redundancy payments service
- Where there are infrequent one-off payment failures or administrative errors such as where employees leave or join the scheme, and those occasional failures or errors have been corrected within 90 days of the due date
- Where payments are made in excess of the contributions due under the payment schedule
- Where contributions are paid late but in full within 90 days of the due date

10. Recording breaches

- 10.1 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](#).

11. Whistleblowing and confidentiality

- 11.1 The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing report to the Pensions Regulator. If individuals that are employed by firms with a duty to report, disagree with a decision not to report, they may have protection under the ERA if they make an individual report in good faith.
- 11.2 The Pensions Regulator will take reasonable steps to protect a reporter's identity and maintain confidentiality, when a report is made in confidence. They will not disclose any information except where lawfully required.
- 11.3 In all cases, reporters should act conscientiously and honestly, and to take account of expert or professional advice where appropriate.

12. Training

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

13. Contacts

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

Joanne Griffiths	-	Pension Manager
Email	-	joanne.griffiths@torfaen.gov.uk
Telephone	-	(01495) 766280

14. Review

- 14.1 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
October 2024

www.gwentpensionfund.co.uk

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