



Local Government  
Pension Scheme



# Dyfed Pension Fund

Breaches Policy

March 2025



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## Legal Requirements

The Pension Act 2004 sets out the legal duty to report breaches of the law. In the Code of Practice, published by the Pensions Regulator practical guidance in relation to this legal requirement is provided including in the following areas:

- implementing adequate procedures to consider and record breaches
- judging whether a breach must be reported
- submitting a report to The Pensions Regulator
- whistleblowing protection and confidentiality

Certain people are required to report breaches of the law to the regulator where they have 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
- failure to comply is likely to be of material significance to the regulator in the exercise of any of its functions.

## Who does the requirement to report apply to?

People who are subject to the reporting requirements (reporters) are:

- Scheme Manager (Carmarthenshire County Council)
- Pension Board
- Scheme Employers
- Professional Advisers (including auditors, actuaries, professional advisers and fund managers)

## Decision to Report

There are two key judgements required:

- First, does the reporter have reasonable cause to believe there has been a breach of the law?
- If so, then, secondly, does the reporter believe the breach is likely to be of material significance to the Pensions Regulator?

Having a 'reasonable cause to believe' that a breach has occurred means more than merely having a suspicion that cannot be substantiated. Checks should be carried out to establish whether or not a breach has in fact occurred.

In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Pensions Regulator would require before taking legal action. A delay in reporting may exacerbate or increase the risk of the breach.

Not all identified breaches need to be reported to the Pensions Regulator however they must all be recorded in the breaches log.

All breaches must be referred to the Section 151 Officer of Carmarthenshire County Council prior to reporting to the Pensions Regulator.

## Material Significance

Breaches likely to be of material significance must be reported. What makes the breach of material significance depends on:

- The cause of the breach
- The effect of the breach
- The reaction to the breach
- The wider implications of the breach

When reaching a decision whether to report, the reporter should consider these points together. Each of these aspects is considered in more detail below.

## The Cause of the Breach

Where the breach was caused by:

- dishonesty
- poor governance or administration
- slow or inappropriate decision making practices
- incomplete or inaccurate advice
- acting (or failing to act) in deliberate contravention of the law.

When deciding whether a breach is of material significance, those responsible should consider other reported and unreported breaches of which they are aware. However, historical information should be considered with care, particularly if changes have been made to address previously identified problems.

A breach will not normally be considered materially significant if it has arisen from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances. But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had and to be aware that persistent isolated breaches could be indicative of wider scheme issues.

## The Effect of the Breach

Reporters need to consider the effects of any breach, but with the Regulator's role in relation to public service pension schemes and its statutory objectives in mind, the following matters in particular should be considered likely to be of material significance to the Regulator:

- Pension Board members not having the appropriate degree of knowledge and understanding, which may result in pension boards not fulfilling their roles, the

fund not being properly governed and administered and/or scheme managers breaching other legal requirements

- Pension Board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role
- adequate internal controls not being established and operated, which may lead to the fund not being run in accordance with the scheme's regulations and other legal requirements, risks not being properly identified and managed and/or the right money not being paid to or by the fund at the right time
- accurate information about benefits and scheme administration not being provided to scheme members and others, which may result in members not being able to effectively plan or make decisions about their retirement
- appropriate records not being maintained, which may result in member benefits being calculated incorrectly and/or not being paid to the right person at the right time
- anyone involved with the administration or management of the Fund misappropriating any of its assets, or being likely to do so, which may result in assets not being safeguarded, and
- any other breach which may result in the fund being poorly governed, managed or administered.

Reporters need to take care to consider the effects of the breach, including any other breaches occurring as a result of the initial breach and the effects of those resulting breaches.

## The Reaction to the Breach

Where prompt and effective action is taken to investigate and correct the breach and its causes and, where appropriate, notify any affected members, the Regulator will not normally consider this to be materially significant.

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

- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence
- are not pursuing corrective action to a proper conclusion, or
- fail to notify affected scheme members where it would have been appropriate to do so.

## The Wider Implications of the Breach

Reporters should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to the Regulator. For example, 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. This may be due to the

scheme manager or pension board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities or where other pension schemes may be affected.



For instance, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

## Reporting Process

A breaches log is maintained by the Pensions Manager and the Treasury & Pension Investments Manager for all material and non-material breaches.

All material and non-material breaches will be recorded on the breaches log as a record of past breaches may be relevant in deciding whether to report future breaches.

This log is reviewed quarterly on an on-going basis to determine any trends that may indicate any serious failings or fraudulent behaviour.

The following table shows the timescale and actions required for reporting different categories of breaches:-

| Type of Breach          | To be reported to Pension Regulator | Timescale for Reporting | Internal Actions   |
|-------------------------|-------------------------------------|-------------------------|--|
| Urgent and Material     | Yes                                 | Immediate               | Refer to Section 151 officer.<br>Update breaches log and investigate options to prevent further occurrence.<br>Full report to be made and submitted at next pension board meeting. |
| Non urgent and Material | Yes                                 | Within 30 days          | Refer to Section 151 officer.<br>Update breaches log and investigate options to prevent further occurrence.  |
| Immaterial              | No                                  | N/A                     | Update breaches log and investigate options to prevent further occurrence.   |

Examples of potential breaches under each category:

### Urgent and Material

- Fraud
- Dishonesty

### Non-Urgent and Material

- Repeated late payment of employer contributions
- Annual Benefit Statements not sent out on time
- Several calculation errors with a significant combined value
- Late notification of retirement benefits amounts and payment of tax-free cash sums

## Immaterial

- One off late payment of employer contributions
- Failure to repay refunds within timescale
- Investments outside statutory limits
- One off calculation errors

Employer contributions - Any failure of a scheme employer to pass over employee and/or employer contributions that are considered to be of material significance must be reported to the Pensions Regulator immediately.

In order to determine whether failure to pay over employee and/or employer contributions is materially significant or not the following information must be obtained from the employer:

- the cause and circumstances of the payment failure
- what action the employer has taken as a result of the payment failure, and
- the wider implications or impact of the payment failure.

If a payment plan is agreed with the employer to recover outstanding contributions and it is being adhered to or there are circumstances of infrequent one-off late payments or administrative failures, the late payment will not be considered to be of material significance.

All incidences resulting from the unwillingness or inability of the employer to pay over the employee and/or employer contributions, dishonesty, fraudulent behaviour or misuse of employee and/or employer contributions, poor administrative procedures or the failure to pay over employee and/or employer contributions within 90 days from the due date will be considered to be of material significance and reported to the Pensions Regulator.

If a judgement has been reached that there is reasonable cause to believe that a breach has occurred, and that it is of material significance to the Pensions Regulator, it must be reported as soon as reasonably practicable. It is important that procedures are in place to allow reporters to make a judgement within an appropriate timescale as to whether a breach must be reported.

What is reasonably practicable depends on the circumstances. In any event the time taken to reach the judgements on reasonable cause to believe and on material significance should be consistent with the speed implied by 'as soon as reasonably practicable'. In particular, the time taken should reflect the seriousness of the suspected breach. In cases of immediate risk to scheme assets, the payment of members' benefits, or where there is any indication of dishonesty, the Pensions Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies but only to make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently these necessary checks should be made. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases reporters should consider contacting the Pensions Regulator by the quickest means possible to alert the regulator to the breach.

## Reporting to Pension Committee and Pension Board

A report will be presented to the pension committee and pension board at each meeting setting out:

- all breaches, including those reported to The Pensions Regulator and those not reported, 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
- new breaches which have arisen since the previous meeting

## Submitting Reports

Reports must be submitted in writing and can be sent by post or electronically, wherever possible reporters should use the standard format available via the Exchange online service on the regulator's website.

The report should be dated and include as a minimum:

- full name of the fund
- description of the breach or breaches
- any relevant dates
- name of the employer or scheme manager (where known)
- name, position and contact details of the reporter, and
- role of the reporter in relation to the fund

Additional information that would assist the Regulator includes:

- the reason the breach is thought to be of material significance to the regulator
- the address of the fund
- the pension scheme's registry number, and
- whether the concern has been reported before.

Reporters should mark urgent reports as such and draw attention to matters they consider particularly serious. They can precede a written report with a telephone call, if appropriate.

Reporters should ensure they receive an acknowledgement for any report they send to the regulator. Only when they receive an acknowledgement can the reporter be confident that the regulator has received their report.

The Regulator will acknowledge all reports within five working days of receipt, however it will not generally keep a reporter informed of the steps taken in response to a report of a breach as there are restrictions on the information it can disclose.

The reporter should provide further information or reports of further breaches if this may help the regulator to exercise its functions. The regulator may make contact to request further information.



Breaches should be reported as soon as reasonably practicable which will depend on the circumstances. In particular, the time taken should reflect the seriousness of the suspected breach.

In cases of immediate risk to the fund, for instance, where there is any indication of dishonesty, the regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies. They should only make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently reporters should make these necessary checks. In cases of potential dishonesty the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should use the quickest means possible to alert the Regulator to the breach.

## Failure to Report

Failure to comply with the obligation imposed by the requirement to report breaches of the law without 'reasonable excuse' is a civil offence. To decide whether the reporter has a reasonable excuse for not reporting as required, or for reporting a breach later than the regulator would have expected, the regulator will look at:

- the legislation, case law, this code of practice and any guidance issued by the Pensions Regulator
- the role of the reporter in relation to the scheme
- the training provided to the individual or staff, and the level of knowledge it would be reasonable to expect that individual or those staff to have
- the procedures put in place to identify and evaluate breaches and whether these procedures had been followed
- the seriousness of the breach and therefore how important it was to report this to the Pensions Regulator without delay
- any reasons for the delay in reporting
- any other relevant considerations relating to the case in question

If the Pensions Regulator is considering imposing a civil penalty, or exercising one of its functions, directly affected parties will receive a warning notice identifying the alleged breach and specifying the relevant function. Further details can be found in the regulator's guidance on determination procedures.

The Pensions Regulator may, in addition, where it considers it appropriate to do so, make a complaint to the reporter's professional or other governing body.

## Whistleblowing Protection and Confidentiality

The Pensions Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report. The regulator understands the potential impact of a report on relationships, for example, between an employee and their employer.

The statutory duty to report does not, however, override 'legal privilege'. This means that oral and written communications between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

The regulator will do its best to protect a reporter's identity (if desired) and will not disclose the information except where lawfully required to do so. It will take all reasonable steps to maintain confidentiality, but it cannot give any categorical assurances as the circumstances may mean that disclosure of the reporter's identity becomes unavoidable in law. This includes circumstances where the regulator is ordered by a court to disclose it.

## Review of the Breaches Policy

This policy will be formally reviewed and updated at least every three years. The next review is due in 2028 unless matters arise which require the policy to be reviewed earlier.

## Contact Information

For further information or enquiries regarding our Breaches Policy, members are encouraged to contact us via:

|           |  |
|-----------|--|
| Email     | <a href="mailto:pensions@carmarthenshire.gov.uk">pensions@carmarthenshire.gov.uk</a> |
| Telephone | 01267 224 893  |
| Post      | Carmarthenshire County Council<br>County Hall<br>Carmarthen<br>SA31 1JP              |