

Draft code of practice no. 14

Governance and administration of public service pension schemes

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The Pensions
Regulator

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Introduction

1. This code of practice is issued by The Pensions Regulator ('the regulator'), the body that regulates occupational and personal pension schemes provided through employers.
2. The regulator's statutory objectives¹ are to
 - protect the benefits of pension scheme members
 - reduce the risks of calls on the Pension Protection Fund (PPF)
 - promote, and improve understanding of, the good administration of work-based pension schemes
 - maximise compliance with the duties and safeguards of the Pensions Act 2008.
3. The regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives.
4. Codes of practice provide practical guidance on the requirements of pensions legislation and set out standards of conduct and practice expected of those who must meet the requirements².

Status of codes of practice

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them. It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant provisions of a code of practice into account³.
6. If there are grounds to issue an improvement notice⁴, the regulator may issue a notice directing a person to take, or refrain from taking, such steps as are specified in the notice. These directions may be worded by reference to a code of practice issued by the regulator⁵.

1
Section 5(1) of the Pensions Act 2004 (c.35).

2
Section 90A(1) of the Pensions Act 2004.

3
Section 90A(5) of the Pensions Act 2004.

4
Where the regulator considers that legal requirements are not being met, or have been contravened in circumstances which make it likely that the breach will continue or be repeated, it may issue an improvement notice under section 13 of the Pensions Act 2004 (as amended by paragraph 3 of Schedule 4 to the Public Service Pensions Act 2013).

5
Section 13(3) of the Pensions Act 2004.

This code of practice

7. The Public Service Pensions Act 2013 introduces the framework for the regulatory oversight of the governance and administration of public service pension schemes by the regulator, expanding its role.
8. The regulator is issuing this code of practice relating to those specific matters about which it is required to issue a code in relation to public service pension schemes⁶. This code of practice sets out the legal requirements for public service pension schemes in respect of those specific matters. It contains practical guidance and sets out standards of conduct and practice expected of those who exercise functions in relation to those legal requirements.
9. The practical guidance sections in this code are not intended to prescribe the process for every scenario. They do, however, provide principles, examples and benchmarks against which scheme managers and members of pension boards can consider whether or not they have understood their duties and obligations and are reasonably complying with them.
10. If scheme managers and the members of pension boards are, for any reason, unable to act in accordance with the guidance set out in this code, or an alternative approach that meets the underlying requirements, they should consider their statutory duty under section 70 of the Pensions Act 2004 to assess and if necessary report breaches of the law⁷. Further information can be found in the section of this code on reporting breaches of the law.

At whom is this code directed?

11. This code relates to public service pension schemes established under the Public Service Pensions Act 2013 and to other statutory pension schemes which are connected to those schemes. It does not apply to schemes in the wider public sector.
12. This code is particularly directed at scheme managers and the members of pension boards of those public service pension schemes and connected schemes who, along with responsible authorities, have certain legal functions, including management and administration responsibilities. They may delegate some of those functions to others, if the scheme regulations allow, or outsource them. However, they will not be able to delegate their accountability for a legal responsibility. Where pension boards are not directly undertaking a particular function, they remain accountable for assisting the scheme manager in securing compliance with the legal requirements relating to the governance and administration of the scheme.

⁶
Section 90A(2) of the Pensions Act 2004.

⁷
As amended by paragraph 6 of Schedule 4 to the Public Service Pensions Act 2013.

13. This code should be followed by anyone to whom legal requirements or responsibilities relating to the management or administration of a public service pension scheme apply, or have been delegated or outsourced.
14. Public service pension schemes are established primarily as defined benefit (DB) schemes. Some of these schemes also enable members to make additional voluntary contributions (AVCs) on either a DB basis or to a separate defined contribution (DC) scheme. This public service code applies to any DC scheme which is connected to a public service pension scheme (and which is therefore defined as a 'public service pension scheme').

Terms used in this code

15. **The 2013 Act** – the Public Service Pensions Act 2013, which sets out the arrangements for the creation of schemes for the payment of pensions and other benefits. It provides powers to ministers to create such schemes according to a common framework of requirements.
16. **Public service pension schemes**⁹ – these are (a) new public service pension schemes set up under section 1 of the 2013 Act including schemes which have effect as such a scheme under section 28 of the 2013 Act; (b) new public body pension schemes set up under that Act⁸; and (c) any statutory pension schemes connected with a scheme described in (a) or (b). Substantially, these are the schemes providing pension benefits for civil servants, the judiciary, local government workers, teachers, health service workers, fire and rescue workers, members of police forces and the armed forces. Except where specified otherwise, the legal requirements and practical guidance set out in this code apply to any kind of public service pension scheme, whether it is established under section 1 of the 2013 Act, a new public body scheme or a connected scheme.
17. **Connected scheme** – a scheme established under the 2013 Act and another statutory pension scheme are connected if and to the extent that the schemes make provision in relation to persons of the same description. Scheme regulations may specify exceptions¹⁰.
18. **Responsible authority** – the 2013 Act identifies secretaries of state/ ministers, each being the responsible authority for their schemes, who have power to make the scheme regulations for the relevant schemes¹¹. The responsible authority may also be the scheme manager¹². In relation to a public body pension scheme, references in the code to the responsible authority are to be read as references to the public authority which established the scheme.

8
New public body pension schemes may be set up under section 30 of the 2013 Act and are defined in that section.

9
As defined in section 318 of the Pensions Act 2004.

10
Section 4(6) and (7) of the 2013 Act.

11
Section 2 of, and Schedule 2 to, the 2013 Act.

12
Section 4(3) of the 2013 Act.

19. **Scheme regulations** – each new scheme made under section 1 of the 2013 Act has scheme regulations which set out the detail of the membership and benefits to be provided under the scheme¹³ and must provide for the identification of scheme managers, pension boards and a scheme advisory board. These regulations constitute the scheme rules¹⁴.

20. **Scheme manager** – each public service pension scheme has one or more persons responsible for managing or administering the scheme¹⁵. Public service pension schemes can have different persons acting as scheme manager for different parts of the pension scheme. For the locally-administered schemes¹⁶, the scheme managers may be the local administering authorities or a person representing an authority or police force.

21. **Pension board** – the scheme manager (or each scheme manager) for a scheme has a pension board¹⁷ with responsibility for assisting the scheme manager to comply with the scheme regulations and other legislation relating to the governance and administration of the scheme and requirements imposed by the regulator. The pension board must also assist the scheme manager with such other matters as the scheme regulations may specify. It will be for scheme regulations and the scheme manager to determine precisely what the pension board’s role entails.

22. **Scheme advisory board** – each DB public service pension scheme has a scheme advisory board¹⁸ with responsibility for providing advice on the desirability of changes to the scheme, when requested to do so by the responsible authority. Where there is more than one scheme manager the scheme regulations may also provide for the scheme advisory board to provide advice (on request or otherwise) to the scheme managers or the scheme’s pension boards on the effective and efficient administration and management of the scheme or any pension fund of the scheme.

23. **Schemes** – in this code the term ‘schemes’ is used throughout where actions to comply with a legal requirement, standard or expectation may be carried out by the scheme manager, pension board or by a specified person(s) to whom responsibilities have been delegated. The scheme manager or pension board will be ultimately accountable, depending upon to whom the legal obligation applies under the legislation.

24. **Must** – in this code the term ‘must’ is used where there is a legal requirement.

25. **Should** – in this code the term ‘should’ is used to refer to practical guidance and the standards expected by the regulator.

13
Section 3 of, and
Schedule 3 to, the 2013
Act.

14
New public body pension
schemes and some
connected schemes
are not established by
regulations. References
in the code to scheme
regulations therefore
should be read as
references to the rules
of the scheme in these
cases.

15
Section 4 of the 2013 Act.

16
Locally-administered
schemes include the
schemes for local
government and fire
and rescue workers
and members of police
forces.

17
Section 5 of the 2013 Act.

18
Section 7 of the 2013 Act.

How to use this code

26. The code is structured as a reference document to be used by scheme managers and pension boards to inform their actions in four core areas of scheme governance and administration: governing your scheme; managing risks; administering your scheme; and resolving issues.
27. Each core section includes practical guidance to help scheme managers and pension boards to discharge their legal duties. The regulator recognises that there may be alternative and justifiable actions or approaches scheme managers or pension boards may wish to adopt.
28. Schemes will need to consider and apply the practical guidance to suit their own particular characteristics and arrangements.

Territorial extent

29. The application of this code corresponds with the scope of the public service pension schemes established under the 2013 Act and other statutory pension schemes which are connected to those schemes.
30. It therefore applies in respect of public service pension schemes for England, Wales and Scotland. It also applies in Northern Ireland so far as the public service pension schemes for the armed forces and judiciary apply in Northern Ireland.

Governing your scheme

31. This part of the code covers:

- knowledge and understanding required by pension board members
- conflicts of interest
- information to be published about schemes.

Knowledge and understanding required by pension board members

Legal requirements

32. A member of the pension board of a public service pension scheme must be conversant with:

- a. the rules of the scheme, and
- b. any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme.

33. A member of a pension board must have knowledge and understanding of:

- a. the law relating to pensions, and
- b. any other matters which are prescribed in regulations.

The degree of knowledge and understanding required is that appropriate for the purposes of enabling the individual properly to exercise the functions of a member of the pension board¹⁹.

Practical guidance

34. The legislative requirements about knowledge and understanding only apply to pension board members, but scheme managers should take account of this guidance as it will support them in understanding the legal framework and enable them to help pension board members to meet their legal obligations.

35. Schemes²⁰ should establish and maintain policies and arrangements for the acquisition and retention of knowledge and understanding for their pension board members. Schemes should designate a person to take responsibility for ensuring that a framework is developed and implemented.

¹⁹
Section 248A of the Pensions Act 2004 as inserted by paragraph 19 of Schedule 4 of the 2013 Act.

²⁰
For the use of 'schemes', please refer to paragraph 23.

36. It is for individual pension board members to be satisfied that they have the appropriate degree of knowledge and understanding to enable them to properly exercise their functions as a member of the pension board.

Provide clarity about the areas of knowledge and understanding required for pension board members

37. Being 'conversant' means having a working knowledge (ie a sufficient level of familiarity) of the scheme rules (which for most public service pension schemes are set out in the scheme regulations) and documents recording policy about the administration of the scheme, so that pension board members can use them effectively when carrying out their duties.
38. Specific documents recording policy about the administration of the scheme will vary from scheme to scheme. However, the following are some examples of administration policies which the regulator considers to be particularly pertinent and would expect to be documented where applicable, and with which pension board members should therefore be conversant. This list is not exhaustive and other documented policies may fall into this category:
- Any scheme approved policies and procedures including documentation relating to:
 - a. conflicts of interest
 - b. record-keeping
 - c. internal dispute resolution
 - d. reporting breaches
 - e. maintaining contributions to the scheme
 - f. the appointment of pension board members.
 - The risk assessment/management policy(ies) for the scheme
 - Scheme booklets, announcements and other key member and employer communications, which describe scheme policies and procedures
 - Terms of reference, structure and operational procedures of the pension board and/or any sub-committee
 - The roles and responsibilities of the scheme manager, pension board and individual pension board members
 - Statements of policy about the exercise of discretionary functions

- Statements of policy about communications with members and scheme employers
 - Accounting requirements relevant to the scheme
 - The pension administration strategy, or equivalent²¹ and
 - Any admission agreement information, or equivalent.
39. For pension board members of funded pension schemes, documents which record policy about the administration of the scheme will include those relating to investment governance. For example, where relevant they should be familiar with the statement of investment principles and the funding strategy statement.
40. Pension board members should also be familiar with other types of documents and information related to the governance and administration of the scheme. For example, where relevant they should be familiar with:
- the register of interests
 - the risk register
 - details of the contributions payable by employers participating in the scheme
 - statements of assurance (for example, assurance reports on governance arrangements)
 - third party contracts and service level agreements
 - regular stewardship reports from outsourced service providers (for example, those performing outsourced functions such as scheme administration), including about compliance issues
 - scheme annual reports and accounts
 - audit reports, including audit reports from outsourced service providers and
 - other scheme-specific governance documents.
41. Where public service pension schemes offer DC/AVC options to their members, pension board members should also be familiar with the requirements for the payment of member contributions to DC/AVC providers, the principles relating to the operation of DC/AVC arrangements, the choice of investments to be offered to members, the providers' investment and fund performance report and the payment schedule for DC/AVC arrangements.
42. Schemes should prepare and keep an updated list of the documents with which they consider pension board members need to be conversant to effectively carry out their role and make sure that both the list and the documents are accessible.

21
For the Local Government Pension Scheme, this might include information about the setting of performance targets, making agreements about levels of performance etc.

Provide clarity about the degree of knowledge and understanding required for pension board members

43. Pension board members should understand their scheme rules and documented administration policies in enough detail to know where they are relevant to an issue and where a particular provision or policy may apply.
44. Pension board members should be aware of the range and extent of pensions law which applies to public service pension schemes and have sufficient understanding of the content and effect of that law to recognise when and how it impacts on their responsibilities.
45. Schemes should assist individual pension board members to determine the degree of knowledge and understanding that is appropriate for the purpose of enabling the individual to exercise their functions. A pension board member's knowledge and understanding should be sufficient for them to effectively carry out their role.
46. Pension board members should be able to challenge any failure to comply with the scheme rules and legislation relating to the governance and administration of the scheme and/or any failure to meet the standards and expectations set out in any relevant codes of practice issued by the regulator.
47. The roles and responsibilities of pension boards and their individual members will vary between pension schemes. Pension board members' breadth of knowledge and understanding should be sufficient to allow them to understand fully any advice they are given. Pension board members should be able to challenge any information or advice they are given and understand how that information or advice impacts on any decision for which they are legally responsible.
48. Pension board members of funded pension schemes should ensure that they have the appropriate degree of knowledge and understanding of funding and investment governance matters relating to their scheme to enable them to effectively carry out their role.

Acquiring, reviewing and updating knowledge and understanding

49. Schemes should ensure that pension board members invest sufficient time in their learning and development alongside their other duties. Training is an important part of the individual's role and will help to ensure that they have the necessary knowledge and understanding to effectively meet their legal obligations.
50. Pension board members must be aware that their legal responsibilities begin from the date they take up their post, so they should immediately start to familiarise themselves with the scheme regulations, documents recording policy about the administration of the scheme and relevant pensions law. Schemes should offer pre-appointment training or arrange for mentoring by existing pension board members. This can also ensure that historical and scheme specific knowledge is retained when pension board members change.
51. Schemes should recognise that newly appointed pension board members are likely to need additional support and training in the first few months, in order to help them attain the appropriate level of knowledge and understanding to competently carry out their responsibilities.
52. Pension board members should undertake a personal training needs analysis and regularly review their skills, competencies and knowledge to identify gaps or weaknesses. A personalised training plan should be used to document and address these promptly.
53. Learning programmes should be flexible, allowing pension board members to access specific modules, when necessary. This will enable them to update particular areas of learning where required and acquire new areas of knowledge in the event of any change. For example, pension board members who take on new responsibilities will need to have knowledge and understanding which is relevant to carry out those new responsibilities.
54. The regulator provides an e-learning programme²² which has been developed to meet the needs of all pension board members, whether or not they have access to other learning. If schemes choose alternative learning programmes they should assure themselves that those programmes cover the type and degree of knowledge and understanding that is required, that they reflect the legal requirements and that programmes are delivered within an appropriate timescale.

²²
The e-learning programme is planned to be available from autumn 2014.

Demonstrate knowledge and understanding

55. Schemes should keep appropriate records of the learning activities of individual pension board members and the board as a whole. This will assist pension board members in demonstrating their compliance, if necessary, with legal requirements and how they have mitigated risks associated with knowledge gaps. A good external learning programme will maintain records of the learning activities of individuals on the programme or of group activities, if these have taken place.
56. Pension board members who are appointed for their specific expertise and skills should be able to demonstrate to the scheme manager and to their fellow pension board members that they have the appropriate knowledge and understanding, including any relevant qualifications, from the date of their appointment to the pension board.

Conflicts of interest

Legal requirements

57. A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the pension board. It does not include a financial or other interest arising merely by virtue of that person being a member of the scheme or any connected scheme for which the board is established²³.
58. In relation to the pension board, scheme regulations must include provision requiring the scheme manager to:
 - a. be satisfied that a person to be appointed as a member of the pension board does not have a conflict of interest and
 - b. be satisfied from time to time that none of the members of the pension board has a conflict of interest²⁴.
59. The regulations must also require each member of a pension board, or a person proposed to be appointed as a member of a pension board, to provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of meeting the requirements referred to above²⁵.
60. Scheme regulations must include provision requiring the pension board to include employer representatives and member representatives in equal numbers²⁶.

23
Section 5(5) of the 2013 Act defines a conflict of interest in relation to pension board members and section 7(5) of that Act in relation to scheme advisory board members.

24
Section 5(4)(a) of the 2013 Act.

25
Section 5(4)(b) of the 2013 Act.

26
Section 5(4)(c) of the 2013 Act.

61. In relation to the scheme advisory board, the regulations must also include provision requiring the responsible authority to:
 - a. be satisfied that a person to be appointed as a member of the scheme advisory board does not have a conflict of interest, and
 - b. to be satisfied from time to time that none of the members of the scheme advisory board has a conflict of interest²⁷.

Practical guidance

62. This guidance is to assist scheme managers in meeting their legal duty to be satisfied that pension board members do not have any conflicts of interest. The same requirements apply to responsible authorities in relation to scheme advisory boards, but the regulator does not have specific responsibility for oversight of scheme advisory boards.
63. Actual conflicts of interest, which are interests likely to prejudice a pension board member's exercise of their functions, are prohibited by the 2013 Act. They cannot be managed. Only potential conflicts of interest can be managed.
64. A conflict of interest may arise when pension board members:
 - a. must fulfil their legal duty to assist the scheme manager in securing compliance with the scheme regulations, other legislation relating to governance and administration of the scheme and the requirements of the regulator or any other matter for which they are responsible, and
 - b. at the same time they have either:
 - i. a separate personal interest (financial or otherwise), or
 - ii. another responsibility in relation to that decision, giving rise to a possible conflict with their first responsibility.
65. Some, if not all of the Seven Principles of Public Life (formerly known as the Nolan Principles)²⁸ will already apply to people carrying out roles in public service pension schemes, for example by virtue of the Ministerial Code, Civil Service Code or other codes of conduct. These principles should be applied to all pension board members in the exercise of their functions as they require the highest standards of conduct. Schemes should incorporate the Seven Principles into any codes of conduct (and across their policies and processes) and other internal standards for pension boards.

²⁷
Section 7(4)(a) of the 2013 Act.

²⁸
The Committee on Standards in Public Life has set out seven principles of public life which apply to anyone who works as a public office-holder or in other sectors delivering public services: www.public-standards.gov.uk/wp-content/uploads/2013/01/Standards_Matter.pdf.

66. There are other legal requirements relating to conflicts of interest which may apply to pension board members, scheme advisory board members or others involved in the management or administration of public service pension schemes, including scheme managers²⁹. The regulator may not have specific responsibility for enforcing all such legal requirements, but it does have a particular role in relation to pension board members and conflicts of interest. Whilst pension board members may be subject to other legal requirements, when exercising functions as a member of a pension board the regulator expects the requirements which specifically apply by virtue of the 2013 Act to be met and the standards of conduct and practice set out in this code to be satisfied.
67. It is highly likely that pension board members will have dual interests and responsibilities. For example, a finance officer appointed as a pension board member can offer their knowledge and make substantial contributions to the operational effectiveness of the scheme, but they may, from time to time, be required to take or scrutinise a decision which may be, or appear to be, in opposition to another interest or responsibility. For example, they may be required to take or scrutinise a decision which involves the use of departmental resources to improve scheme administration, whilst at the same time being tasked, by virtue of their employment, with reducing departmental spending. A finance officer may not be prevented from being a member of a pension board, but the scheme manager must be satisfied that his/her dual interests and responsibilities would not prejudice the pension board member in the exercise of any particular function.
68. Clear guidance on the roles, responsibilities and duties of pension boards and the members of those boards should be set out in scheme regulations or in other scheme documentation which records policy and processes about the administration of the scheme. This should cover, for example, whether they have responsibility for administering or monitoring the administration of the scheme; developing or delivering governance and/or administration policies; and taking or scrutinising decisions relating to governance and/or administration. Regardless of their remit, potential conflicts of interest affecting pension board members need to be identified, monitored and managed effectively.
69. Schemes should consider potential conflicts of interest in relation to the roles, responsibilities and full scope of duties owed by pension board members. It is recommended that all those involved in the management or administration of public service pension schemes take professional legal advice when considering issues to do with conflicts of interest.

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For example, local government legislation applicable to English local authorities contains legal requirements in relation to certain people about standards of conduct, conflicts of interest and disclosure of certain interests (eg see the Localism Act 2011 and section 117 of the Local Government Act 1972).

A three-stage approach to managing potential conflicts of interest

70. Conflicts of interest can inhibit open discussions and/or result in decisions, actions or inactions which could result in the ineffective governance and administration of the scheme. They may result in pension boards acting improperly, or lead to a perception that they have acted improperly. It is therefore essential that any dual interests and responsibilities, which have the potential to become conflicts of interest and/or to be perceived as conflicts of interest, are identified and that potential conflicts of interest (whether perceived or otherwise) are monitored and managed effectively.
71. Schemes should ensure that there is an agreed and documented conflicts policy and procedure, which includes the identification, monitoring and management of potential conflicts of interest. They should keep this under regular review. Policies and procedures should include examples of scenarios giving rise to conflicts of interest, how a conflict might arise specifically in relation to a pension board member and the process to be followed by pension board members and scheme managers to address a situation where board members are subject to a potential or actual conflict of interest.
72. Broadly, when considering potential conflicts of interest, this should be done in three stages:
 - a. identification
 - b. monitoring
 - c. managing

Identifying potential conflicts

73. Schemes should cultivate a culture of openness and transparency. The need for continual consideration of conflicts should be recognised. Disclosure of dual interests and responsibilities, which have the potential to become conflicts of interest, should not be ignored. Pension board members should have a clear understanding of their role and the circumstances in which they may find themselves in a position of conflict of interest and know how potential conflicts should be managed.
74. Pension board members and people who are proposed to be appointed to a pension board must provide scheme managers with information reasonably required by the scheme manager to enable the scheme manager to be satisfied that pension board members and proposed members do not have a conflict of interest.

75. Schemes should ensure that pension board members are appointed under procedures that require them to disclose any dual interests or responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed.
76. All terms of engagement (for example appointment letters and any contracts for services) should include a clause requiring disclosure of all dual interests and responsibilities which have the potential to become conflicts of interest, as soon as they arise. All interests and responsibilities disclosed should be recorded (see the section on 'monitoring potential conflicts').
77. Schemes should take time to consider what key decisions are likely to be made during, for example, the year ahead and identify and consider any conflicts of interest that may arise in the future. Other pension board members should be notified as soon as practically possible and mitigations should be put in place to avoid these conflicts from materialising.

Monitoring potential conflicts

78. As part of their risk assessment process, schemes should identify, evaluate and manage dual interests and responsibilities which have the potential to become conflicts of interest and pose a risk to the scheme and possibly members, if they are not mitigated. Schemes should evaluate the nature of any dual interests and responsibilities and assess the impact on scheme operations were a conflict of interest to materialise.
79. A register of interests should provide a simple and effective means of recording and monitoring dual interests and responsibilities. Schemes should also capture decisions about how potential conflicts of interest should be managed – in their risk registers or elsewhere. The register of interests and other relevant documents should be circulated to the pension board for ongoing review and published, for example on a scheme's website.
80. Conflicts of interest should be included as an opening agenda item at board meetings and revisited during the meeting, where necessary. This provides an opportunity for those present, including non-board members, to declare any dual interests and responsibilities, which have the potential to become conflicts of interest and minute discussions about how they will be managed to prevent an actual conflict arising.

Managing potential conflicts

81. Schemes should establish and operate procedures which ensure that pension boards are not compromised by a potentially conflicted member(s). They should consider and determine the roles and responsibilities of pension boards and individual board members carefully to ensure that conflicts of interest do not arise, nor are perceived to have arisen.
82. A perceived conflict of interest can be as damaging to the reputation of a scheme as an actual conflict of interest. It could result in scheme members and interested parties losing confidence in the way a scheme is managed. Schemes should be open and transparent about the way they manage potential conflicts of interest.
83. When seeking to prevent a potential conflict of interest becoming detrimental to the conduct or decisions of the pension board, schemes should consider obtaining professional legal advice when assessing any option.

Examples of conflicts of interest

84. Below are some examples of conflicts of interest which could arise, or be perceived to have arisen, in relation to public service pension schemes. The examples provided are for illustrative purposes only and are not exhaustive. They should not be relied upon as a substitute for the exercise of judgement based on the principles set out in this code and any advice considered appropriate, on a case by case basis.
 - a. **Investing to improve scheme administration vs. saving money:**

An employer representative, who may be a Permanent Secretary, finance officer or local councillor, is aware that system X would help to improve standards of record-keeping, but it would be costly to implement. The department or local authority would need to meet the costs of the new system at a time when there is internal and external pressure to keep costs down. In order to meet the costs of the new system, the department or local authority would need to find money, perhaps by using a budget that was intended for another purpose. This decision could prove unpopular with the wider public/taxpayers. A conflict of interest could arise where the scheme employer representative was likely to be prejudiced in the exercise of their functions by virtue of their dual interests and responsibilities.

- b. **Outsourcing a function vs. keeping a function in-house:**
In an extension of this example, a member representative, who is also an employee of a participating employer, is aware that system X would help to improve standards of record-keeping, but it would mean outsourcing a function that is currently being undertaken in-house. The member representative could be conflicted if they were likely to be prejudiced in the exercise of their functions by virtue of their employment.
- c. **Representing the breadth of membership vs. representing narrow interests:**
A member representative, who is also a trade union representative, appointed to the pension board to represent the entirety of a public service pension scheme's membership, could be conflicted if they only serve to act in the interests of their union and union membership, which does not include all the professionals/staff who are in the scheme.
- d. **Assisting the scheme manager vs. furthering personal interests:**
- i. A pension board member may own shares in a company and be conflicted where they are involved in taking or scrutinising investment-related decisions
 - ii. A pension board member, who is also a scheme adviser, may recommend the services or products of a related party, for which they might derive some form of financial (or non-financial) benefit, resulting in them not providing, or not being seen to provide, independent advice or services
 - iii. A pension board member who is involved in procuring or tendering for services for a scheme administrator, and who can influence the award of a contract, may be conflicted where they have an interest in a particular supplier
- e. **Sharing information with the pension board vs. a duty of confidentiality to an employer:**
An employer representative has access to information by virtue of their employment, which could influence or inform the decisions or actions of the pension board. They have to consider whether to share this information with the pension board in light of their duty of confidentiality to their employer. If their decision to withhold this information is likely to prejudice their ability to carry out their functions as a member of the pension board, this would constitute a conflict of interest.

Information to be published about schemes

Legal requirements

85. The scheme manager for a public service scheme must publish information about the pension board for the scheme(s) and keep that information up-to-date³⁰.
86. That information must include information about:
 - a. who the members of the pension board are
 - b. representation on the board of members of the scheme and
 - c. the matters falling within the pension board's responsibility³¹.

Practical guidance

Publication of pension board information

87. Scheme members and interested parties will want to know that their scheme is being efficiently and effectively managed. Public service pension schemes should have a properly constituted, trained and competent pension board, which is responsible for assisting the scheme manager to comply with the scheme regulations and other legislation relating to the governance and administration of the scheme and requirements imposed by the regulator.
88. Scheme managers must publish the information required about the pension board and keep that information up-to-date to ensure that scheme members can easily access information about who the pension board members are, how pension scheme members are represented on the pension board and the responsibilities of the board as a whole.
89. Schemes³² should also publish information such as:
 - the full terms of reference for the pension board, including details of how they will operate
 - the pension board appointment process
 - who each individual pension board member represents and
 - any specific roles and responsibilities of individual pension board members.

30
Section 6(1) of the 2013 Act.

31
Section 6(2) of the 2013 Act.

32
For the use of 'schemes', please refer to paragraph 23.

90. Schemes should publish additional information about the pension board, for example board papers, agendas and minutes of meetings (redacted to the extent that they contain confidential information and/or data covered by the Data Protection Act 1998) and consider any requests for additional information to be published, to encourage scheme member engagement and promote a culture of transparency.
91. Schemes must ensure that information published about the pension board is kept up-to-date. Schemes should have in place policies and processes to ensure that all data is monitored on an ongoing basis to ensure its accuracy and completeness.

Other legal requirements

92. Schemes will need to comply with any other legal requirements relating to the publication of information about governance and administration. In particular, HM Treasury directions may require the scheme manager or responsible authority of a public service pension scheme to publish scheme information, including information about scheme administration and governance and may specify how and when information is to be published³³.

33
Section 15 of the 2013
Act.

Managing risks

93. This part of the code covers the requirement for scheme managers to establish and operate adequate internal controls.

Internal controls

Legal requirements

94. The scheme manager of a public service pension scheme must establish and operate internal controls, which are adequate for the purpose of securing that the scheme is administered and managed in accordance with the scheme rules and in accordance with the requirements of the law.

For these purposes 'internal controls' means:

- a. arrangements and procedures to be followed in the administration and management of the scheme
- b. systems and arrangements for monitoring that administration and management and
- c. arrangements and procedures to be followed for the safe custody and security of the assets of the scheme³⁴.

Practical guidance

95. Internal controls are systems, arrangements and procedures that are put in place to ensure that pension schemes are being run in accordance with the scheme rules (which for most public service pension schemes are set out in the scheme regulations) and other law. They should include a clear separation of duties, processes for escalation and sign-off/decision making and documented procedures for assessing and managing risk, reviewing breaches of law and managing contributions to the scheme.

96. Good internal controls are a key characteristic of a well-run scheme and a key component of the scheme manager's role in securing the effective governance and administration of the scheme. Internal controls can help protect pension schemes from adverse risks, which could be detrimental to the scheme and members if they are not mitigated.

97. Scheme managers must establish and operate internal controls which address significant risks which are likely to have a material impact on the scheme. They should employ a risk-based approach and ensure that sufficient time and attention is invested in identifying, evaluating and managing risks and developing and monitoring appropriate controls. They should seek advice, as necessary.

³⁴ Section 249B of the Pensions Act 2004 as inserted by paragraph 21 of Schedule 4 to the 2013 Act.

Identifying risks

98. Before implementing an internal controls framework, schemes³⁵ should carry out a risk assessment. They should begin by:
- setting the objectives of the scheme
 - determining the various functions and activities carried out in the running of the scheme
 - identifying the key risks associated with those objectives, functions and activities.
99. An effective risk assessment process will assist schemes in identifying a wide range of both internal and external risks, which are critical to the scheme and members. Schemes should refer to relevant sources of information, such as records of internal disputes and legislative breaches, the register of interests, internal and external audit reports and service contracts, when identifying risks.
100. Once schemes have identified risks, they should be recorded in a risk register and reviewed regularly. Schemes should keep appropriate records to assist them in demonstrating their compliance, if necessary, with legal requirements.

Evaluating risks and establishing adequate internal controls

101. Not all risks will have the same potential impact on scheme operations and members or the same likelihood of materialising. Schemes should consider both these areas when determining the order of priority for managing risks and focus on those areas where the impact and likelihood of a risk materialising is high.
102. Many pension schemes will already have adequate internal controls in place, some of which may apply to a variety of the functions of the administering authority. Schemes should review their existing arrangements and procedures to determine whether they can prevent and detect errors in scheme operations and help mitigate pension scheme-related risks.
103. Schemes should consider what internal controls are appropriate to mitigate the key risks they have identified and how best to monitor them. For example, the scheme manager(s) for a funded scheme should establish and operate internal controls that regularly assess the effectiveness of investment-related decision making. Scheme managers for all pension schemes should establish and operate internal controls that regularly assess the effectiveness of data management and record-keeping.

35
For the use of 'schemes', please refer to paragraph 23.

Managing risks by operating internal controls

104. Schemes should consider a number of issues when designing internal controls to manage risks. The examples provided are for illustrative purposes only and are not exhaustive. They should not be relied upon as a substitute for the exercise of judgement, based on the principles set out in this code and any advice considered appropriate, particularly in light of any problems experienced in the past.

- a. **How the control is to be implemented and the skills of the person performing the control:**
For example, schemes should ensure that member data is correct and where employers are supplying incorrect data, schemes should ensure that the employer identifies the cause of the error and takes appropriate action to avoid recurrence (for example, remedying a systemic error)
- b. **The level of reliance that can be placed on information technology solutions where processes are automated:**
For example, where public service pension schemes' administration processes use an automated system, internal or external auditors could audit the system on an annual basis to assess whether it is capable of performing a required function and report any issues that are identified
- c. **Whether or not a control is capable of preventing future recurrence or merely detecting an event that has already happened:**
For example, schemes should establish and operate systems which support the maintenance and retention of good member records and implement procedures which identify where the system is not fit for purpose, there are gaps in the data, the data is of a poor quality or there has been a loss of data
- d. **The frequency and timeliness of a control process:**
For example, schemes should ensure that data is complete and should undertake a data-cleansing or member-tracing exercise and review this on a regular basis (at least annually or at more regular intervals that they consider appropriate for the scheme)
- e. **How the control will ensure that data is managed securely:**
For example, schemes should ensure that all staff, including temporary or contract staff, complete data security/information management training before access to sensitive data is permitted
- f. **The process or reporting mechanism for flagging errors or control failures:**
For example, schemes should ensure that member communications are of a high standard and that they are regularly reviewed and, if necessary, redrafted.

Effectively monitoring controls

105. Risk assessment is a continuous process and must take account of a changing environment and new and emerging risks, including significant changes in or affecting the scheme and employers who participate in the scheme.
106. For example, where relevant, schemes should put in place systems and processes for making an objective assessment of the strength of an employer's covenant (which should include analysis of their financial position, prospects and ability to continue to fund the scheme's benefits).
107. An effective risk assessment process will provide a mechanism to detect weaknesses at an early stage. Schemes should periodically review the adequacy of internal controls in mitigating risks, supporting longer-term strategic aims (eg relating to investments), identifying success (or otherwise) in achieving agreed objectives and providing a framework against which compliance with the scheme regulations and legislation can be monitored.
108. Internal or external audits and/or quality assurance processes should ensure that adequate internal controls are in place and being operated effectively. Reviews should take place if/when substantial changes take place, such as changes to pension scheme personnel, or the procurement/implementation of new administration systems or processes, or where a control has been found to be inadequate.
109. A persistent failure to put in place adequate internal controls may be a contributory cause of an administrative breach. Where the effect and wider implications of not having in place adequate internal controls are likely to be 'materially significant', the regulator would expect to receive a report, commonly referred to as a 'whistleblowing' report, outlining relevant information in relation to the breach. Detailed guidance on reporting breaches of the law can be found in this code.
110. Ultimately, the legal responsibility for establishing and operating adequate internal controls rests with the scheme manager. Scheme regulations or other documents may delegate responsibilities to pension board members or others – for example identifying, evaluating and managing risks, developing and maintaining appropriate controls and providing assurance to the scheme manager about any controls in place. However, accountability for those controls and the governance of policies, procedures and processes will reside with the scheme manager.

Outsourcing services

111. The legal requirements relating to internal controls apply equally where schemes outsource services connected with the running of the scheme and providers should be required to demonstrate, in their tenders for delivering services, how they will meet these requirements and these should be incorporated in the terms of engagement. Outsourced services may include all aspects of scheme administration, including the maintenance of records and data and calculation of benefits. Where services are outsourced, scheme managers should be satisfied that internal controls associated with those services are adequate and effective.
112. An increasing number of service providers are obtaining independent assurance reports to help demonstrate their ability to deliver quality administration services. Schemes should ask their service providers to demonstrate how they comply with the legal standard of adequate internal controls for the services they provide.

Administration

113. This part of the code covers:

- scheme record-keeping
- maintaining contributions
- information to be provided to members.

Scheme record-keeping

Legal requirements

114. Scheme managers must keep records of information relating to:

- member information³⁶
- transactions³⁷ and
- pension board meetings³⁸.

115. The legal requirements are set out in the draft Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations ('the draft Record-keeping Regulations'). These include the period for which records must be retained³⁹.

Practical guidance

116. Failure to maintain complete and accurate records and put in place effective internal controls to achieve this can affect the ability of schemes⁴⁰ to carry out basic functions. Poor record-keeping can result in schemes failing to pay benefits in accordance with scheme rules, processing incorrect transactions and ultimately paying members incorrect benefits. For funded schemes, it may lead to schemes managing investment risks ineffectively. There is also the potential for the maladministration of members' contributions and failure to identify any misappropriation of assets. Schemes must be able to demonstrate to the regulator, where required, that they keep accurate, up-to-date and enduring (for the periods prescribed in the regulations) records to be able to govern and administer their pension scheme efficiently.

117. Scheme managers must establish and operate adequate internal controls⁴¹, which should include processes and systems to support record-keeping requirements and ensure that they are effective at all times.

36
Regulation 3 of the draft Record-keeping Regulations.

37
Regulation 4, *ibid.*

38
Regulation 5, *ibid.*

39
Regulation 6, *ibid.*

40
For the use of 'schemes', please refer to paragraph 23.

41
Section 249B of the Pensions Act 2004 (as inserted by paragraph 21 of Schedule 4 to the 2013 Act).

Records of member information

118. Schemes must ensure that member data across all membership categories for the scheme is complete and accurate. Member data should be subject to regular data evaluation to enable schemes to pay the right benefits to the right person (including all beneficiaries) at the right time.
119. The requirement for good ongoing record-keeping is important for schemes, particularly with the establishment of career average re-valued earnings (CARE) schemes, so that they are able to provide a member with accurate information regarding their pension benefits (accrued benefits to date and their future projected entitlements) as required and on a timely basis.
120. For schemes to meet these requirements, they must hold specific data to be able to uniquely identify a scheme member and calculate the benefits correctly⁴².
121. Schemes should require participating employers to provide them with timely and accurate data in order to fulfil their legal obligations. Schemes must ensure that processes are established by employers which enable the transmission of complete and accurate data from the outset. Processes will vary from scheme to scheme, depending on factors such as employee turnover, pay periods, scheme size and the timing and number of payroll processing systems.
122. Schemes should seek to ensure that employers understand the key events which require information about members to be passed from the employer to the scheme, such as when an employee joins or leaves the scheme, changes their rate of contributions, changes their name, address or salary, or changes their member status.
123. Schemes should ensure that appropriate procedures and timescales are in place for scheme employers to provide updated information when member data changes, for checking scheme data against employer data and for receiving information which may affect the profile of the scheme. If an employer fails to act in accordance with the procedures set out above, schemes (and others under a duty to report) should consider their statutory duty under section 70 of the Pensions Act 2004 to report breaches of the law and assess whether there has been a relevant breach.

42
Regulation 3 of the
draft Record-keeping
Regulations.

Records of transactions

124. Schemes should be able to trace the flow of funds into and out of the scheme and reconcile these against expected contributions and scheme costs. In doing so, they will have clear oversight of the core scheme transactions and should be able to mitigate risks swiftly.
125. Schemes must keep, and be able to demonstrate that they keep, records of transactions made to and from the scheme⁴³.

Records of pension board meetings

126. Schemes must keep records of pension board meetings including any decisions made⁴⁴. Schemes should also keep records of key discussions, which may include topics such as compliance with policies in relation to the administration of the scheme, where appropriate.
127. The records of pension board meetings must also include whether since the previous meeting there has been any occasion when any decisions have been taken by the pension board and, if so, the date, time, and place of the decision and the names of members participating in that decision. Schemes must keep records of all decisions made by the pension board to ensure that there is a clear and transparent audit trail of the decisions made.

Retention of scheme records

128. Schemes must retain records for the periods prescribed in the draft Record-keeping Regulations⁴⁵. Member records must be kept for six years after any entitlement to benefits has ceased for DB arrangements and for six years after the member's funds have been converted into retirement income for DC arrangements. Other records must be retained for at least six years from the end of the scheme year to which they relate.

Ongoing monitoring of data

129. Schemes should have in place policies and processes to ensure that data is monitored on an ongoing basis to ensure its accuracy and completeness, regardless of the volume of scheme transactions. This should be in relation to all membership categories, including pensioner member data where queries may arise once the pension is in payment.
130. Schemes should adopt a proportionate and risk-based approach to monitoring, based on any known or historical issues that may have occurred in relation to the scheme's administration. This is particularly important in relation to the effective administration of CARE pension schemes, which require schemes to hold significantly more data.

43
Regulation 4 of the
draft Record-keeping
Regulations.

44
Regulation 5, *ibid.*

45
Regulation 6, *ibid.*

Data review exercise

131. Schemes should continually review their data and carry out a full data review exercise at least annually. This should include an assessment of the accuracy and completeness of the member information data held.
132. Where the management of scheme data has been outsourced, it is vital that schemes understand and are satisfied that the controls in place will ensure the integrity of scheme member data. They should ensure that the administrator has assessed the risks that poor or deficient member records may present to the scheme and has taken the necessary steps to mitigate them, where applicable.
133. Where there has been a change of administrator or the administration system/platform, schemes should review and cleanse data records and satisfy themselves that all data is complete and accurate.

Data improvement plan

134. Where schemes identify poor quality data or missing data, they should have in place a data improvement plan to address these issues. The plan should have specific data improvement measures which can be monitored and tracked and a defined end date within a reasonable timeframe to have complete and accurate data for the scheme.

Reconciliation of member records

135. Schemes should ensure that member records are reconciled with information held by the employer, for example postal or electronic address changes and new starters. Schemes should also ensure that the numbers of scheme members is as expected based on the number of leavers and joiners since the last reconciliation. Schemes should be able to determine those members who are approaching retirement, those who are active members and those who are deferred members.

Data protection and internal controls

136. Schemes must ensure that processes that are created in respect of scheme member data meet the requirements of the Data Protection Act 1998 and the data protection principles.

137. Schemes should understand the following in relation to data management:

- their obligations as data controllers and who the data processors are in relation to the scheme
- the difference between personal data and sensitive personal data (as defined in the Data Protection Act 1998)
- how data is held and how they should respond to data requests from different parties
- the systems which need to be in place to store, move and destroy data
- how data protection affects member communications.

Other legal requirements

138. There are various legal requirements for records to be kept in relation to public service pension schemes, in addition to the requirements set out in the draft Record-keeping Regulations. Those requirements apply variously to managers, administrators and employers. Not all requirements apply to all public service pension schemes, but some of the key requirements are set out under the following legislation:

- a. The Pensions Act 1995 and 2004
- b. The Pensions Act 2008 and the Employers' Duties (Registration and Compliance) Regulations 2010⁴⁶
- c. The Occupational Pension Schemes (Scheme Administration) Regulations 1996
- d. The Registered Pension Schemes (Provision of Information) Regulations 2006
- e. The Data Protection Act 1998.

139. Where applicable⁴⁷, schemes should be able to demonstrate that they are keeping records in accordance with these and any other relevant legal requirements. Schemes should read the relevant pensions legislation and any guidance in conjunction with this code where applicable.

46

See the regulator's guidance **Detailed guidance no. 9 – Keeping records** for more information about record-keeping requirements under this legislation.

47

Not all legal requirements will apply to all public service schemes.

Maintaining contributions

Legal requirements

140. Employer contributions must be paid to the scheme on or before the 'due date' (the date on which contributions are due under the scheme). Where employer contributions are not paid on or before the date they are due under the scheme and the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the regulator in the exercise of any of its functions, the scheme manager must give a written report of the matter to the regulator as soon as reasonably practicable⁴⁸.
141. Where employee contributions are deducted from a member's pay, the amount deducted is to be paid to the managers of the scheme within 19 days beginning on the day after the deduction is made, or within 22 days if paid electronically (the 'prescribed period')⁴⁹.
142. Where employee contributions are not paid within the prescribed period, if the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the regulator in the exercise of any of its functions, they must, except in prescribed circumstances, give written notice of the failure to the regulator and the member within a reasonable period after the end of the prescribed period⁵⁰.

48
Section 70A of the Pensions Act 2004 as inserted by paragraph 7 of Schedule 4 to the 2013 Act. The main objectives of the regulator in exercising its functions are set out in section 5 of that Act.

49
Section 49(8) of the Pensions Act 1995 and regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996. References to 'days' means all days (Monday to Sunday). References to 'working days' do not include Saturdays, Sundays or Bank Holidays.

Practical guidance

143. As part of their duty to establish and operate adequate internal controls, scheme managers should ensure that there are effective procedures and processes in place to identify late payments of contributions that are – and are not – of material significance to the regulator. Schemes⁵¹ should monitor pension contributions, resolve payment issues and report payment failures, as appropriate, so that the scheme is administered and managed in accordance with the scheme regulations and the law.
144. Adequate procedures and processes are likely to involve:
- developing a record to monitor the payment of contributions
 - monitoring the payment of contributions
 - managing overdue contributions
 - reporting materially significant payment failures.

50
Section 49(8) and (9) of the Pensions Act 2004 and regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (as amended by regulation 7 of the draft Record-keeping Regulations).

This guidance will help scheme managers to meet their duty to report late payment of contributions to the regulator, as well as ensuring the effective management of scheme contributions and payment of the right pension.

51
For the use of 'schemes', please refer to paragraph 23.

Developing a record for monitoring the payment of contributions

145. Managers of DC public service schemes must prepare, maintain and revise from time to time if necessary, a scheme payment schedule⁵² showing:

- the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme
- such other amounts payable towards the scheme as may be prescribed and
- due date(s) on or before which payment of contributions and other amounts are to be made⁵³.

146. Contribution rates and other matters to be included in the schedule must reflect the rules of the scheme (which for most public service pension schemes will be set out in the scheme regulations) and overriding legislation. Schemes should prepare the schedule in consultation with the employer.

147. Even for those public service pension schemes which are not legally required to prepare and maintain a payment schedule (or schedule of contributions), developing a record for monitoring the payment of contributions to the scheme (a 'contributions monitoring record') will enable schemes to check whether contributions have been paid on time and in full and if not, provide a trigger for escalation for investigation and consideration of whether they need to report to the regulator and, where relevant, members.

148. A contributions monitoring record should include the following information:

- contribution rates
- the date(s) on or before which payment of employer contributions are to be made to the scheme
- the date by when or period within which the payment of employee contributions are to be made to the scheme and
- the rate or amount of interest payable where the payment of contributions is late.

149. The date by when employer contributions must be paid is the date on which they are due under the scheme. The date will usually be set out in the scheme rules or other scheme documentation. Schemes should assess the timing of payments against the date specified.

52

Section 87(2) Pensions Act 1995. This requirement does not apply to schemes falling within a prescribed class or description (section 87(1) of that Act). Schemes which are provided for, or by, or under an enactment and which are guaranteed by a minister of the Crown or other public authority are a prescribed class for those purposes (regulation 17 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996).

53

Section 87(2) of the Pensions Act 1995 (c. 26), see also regulations 18 and 19 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996).

150. In relation to employee contributions, while there is a legal requirement for these to be paid to the scheme within 19 days beginning on the day after the deduction is made, or within 22 days if paid electronically, this does not override any earlier time periods set out in the scheme rules or other scheme documentation. There are special rules for the first deduction of contributions on automatic enrolment under the Pensions Act 2008⁵⁴.
151. A contributions monitoring record should help schemes to identify any employers who are not paying contributions on time and/or in full and support schemes in ensuring that contributions are paid and that new processes are developed and implemented by employers, as appropriate. The contributions monitoring record should provide schemes with information to maintain records of money received and will be useful for schemes to ensure that their member records are kept up-to-date.

Monitoring the payment of contributions

152. Schemes should monitor contributions on an ongoing basis and in relation to all the membership categories within the scheme. Schemes should regularly check payments due against the contributions monitoring record.
153. Schemes should apply a risk-based approach that will help identify situations which present a higher risk of late payments occurring and which are likely to be of material significance and require the intervention of the scheme manager.
154. Scheme managers should be aware of what is to be paid in accordance with the contributions monitoring record or other scheme documentation which may be used by the pension scheme. Schemes should have in place a process to identify where payments are late or have been under or overpaid, or not paid at all.
155. For schemes to effectively monitor contributions they will require access to certain information. Employers will often provide the payment information schemes need to monitor contributions at the same time as they send the contributions to the scheme - this may be required under the scheme regulations. Payment information may include:
- the contributions due to be paid by the employer and on behalf of the member, which should be specified in the scheme rules and/or other scheme documentation
 - the pensionable pay that contributions are based upon (where required)
 - what contributions are due to be deducted from the earnings of a member.

54
Regulation 16 of the
Occupational Pension
Schemes (Scheme
Administration)
Regulations 1996.

156. Schemes should record and retain information on transactions, including any employer and employee contributions received and payments of pensions and benefits⁵⁵, which will support them in their administration and monitoring responsibilities. They should have adequate internal controls in place to monitor the sharing of payment information between the employer, pension scheme and member.
157. Where the necessary payment information is not automatically available or provided by employers, schemes should request the additional information they need. Schemes may not need to obtain payment information as a matter of course, only where it is required for effective monitoring.
158. Where the administration of scheme contributions is outsourced to a service provider, schemes should ensure that there is a process in place to obtain regular information on the payment of contributions to the scheme and a clear procedure in place to enable them to identify and resolve payment failures which may occur.

Managing overdue contributions

159. When a problem is identified or where they receive notification of a problem, schemes should assess whether a late payment has occurred before taking steps to resolve or, if necessary, report. During their assessment, schemes should take into account:
- legitimate agreed payments made directly by the employer for scheme purposes ie where the scheme has agreed that a contributions payment can be made late due to exceptional circumstances
 - legitimate agreed payment arrangements made between the employee and the employer ie where the employer has agreed that a contribution payment can be made late due to exceptional circumstances
 - contributions paid directly to a pension provider, scheme administrator or investment manager and
 - any AVCs included with the employer's overall payment.

55
Regulation 4 of the
draft Record-keeping
Regulations.

160. Where schemes identify the late payment of contributions, they should follow a process to resolve issues quickly. This should normally involve the following steps:
- a. Investigate any apparent employer failure to make payments in accordance with the contributions monitoring record or legal requirements with regards to employer/employee contributions
 - b. Contact the employer promptly to alert them to the late payment and to seek to resolve the overdue payment
 - c. Discuss it with the employer as soon as practicable with a view to finding out the cause and circumstances of the late payment
 - d. Rectify any underpayment and take steps to avoid a recurrence in the future.
161. Schemes should maintain a record of their investigation and communications between themselves and the employer. Recording this information will help to provide evidence of schemes' effective monitoring processes and could help to demonstrate that the scheme manager has met the legal requirement to establish and operate adequate internal controls. It will also feed into the consideration of whether or not to report a late payment to the regulator and, where relevant, members.
162. The regulator recognises that a monitoring process based on information provided by the employer may not be able to confirm deliberate underpayment or non-payment, or fraudulent behaviour by the employer. Schemes should develop a process which is able to detect situations where fraud may be more likely to occur and where additional checks may be appropriate.
163. Ultimately, schemes have flexibility to design their own procedures so that they can obtain overdue payments and rectify administrative errors in the most effective and efficient way for their particular scheme.

Reporting payment failures which are likely to be of material significance to the regulator as soon as reasonably practicable

164. A 'late payment' is where contribution payments and other amounts are not paid to the scheme by the due date(s), or within the prescribed period. Attempts to recover contributions should be made within 90 days from the due date or prescribed period having passed without full payment of the contribution.
165. While schemes are not expected to undertake a full investigation to establish materiality or investigate whether an employer has behaved fraudulently, schemes should seek to enquire of the employer:
- a. The cause and circumstances of the payment failure
 - b. What action has been taken by the employer as a result of the payment failure
 - c. The wider implications or impact of the payment failure.

When reaching a decision about whether to report, schemes should consider these points together and establish whether they have reasonable cause to report.

166. Having 'reasonable cause' means more than merely having a suspicion that cannot be substantiated. Schemes should investigate the late payment of contributions and use their judgement when deciding whether to report to the regulator.
167. Schemes may choose to take an employer's response to their enquiries at face value if they have no reason to believe it to be untrue or where their risk-based process indicates that there is a low risk of continuing payment failure. Where no response is received, schemes may infer that an employer is unwilling to pay the contributions due.

168. Examples of late payments which are likely to be of material significance to the regulator include:

- where schemes have reasonable cause to believe that the employer is neither willing nor able to pay contributions, for example in the event of a business failure or where an employer becomes insolvent and is unable to make pension payments
- where there is a payment failure involving possible dishonesty or a misuse of assets or contributions. For example, where schemes have concerns that an employer is retaining and using contributions to manage cash flow difficulties or where schemes have become aware that the employer has transferred contributions elsewhere other than to the pension scheme, which may be misappropriation
- where the information available to schemes may indicate that the employer is knowingly concerned with the fraudulent evasion of the obligation to pay employee contributions
- where schemes become 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 appears not to be taking adequate steps to remedy the situation, for example where there are repetitive and regular payment failures
- in any event where contributions have been outstanding for 90 days from the due date (unless the payment failure was a one-off or infrequent administrative error, which had already been corrected on discovery or is thereafter corrected as soon as possible).

169. Examples of late payments which are not likely to be of material significance to the regulator include:

- where a payment arrangement is being met by an employer for the recovery of outstanding contributions
- 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.

170. Schemes should identify and alert the regulator, as appropriate, to any late payments that taken individually may not be of material significance, but which could indicate a systemic problem. For example, a consistent failure of an employer to pay contributions by the due date or within the prescribed period, but to pay within 90 days, may be due to inefficient scheme systems and processes. Schemes may also need to report where late payments occur repeatedly and could be materially significant to the regulator.
171. Reporting late payments of employer contributions as soon as 'reasonably practicable' means as soon as the scheme manager has reasonable cause to believe that the late payment is likely to be of material significance to the regulator. Schemes should also consider whether it may be appropriate to report a late payment of employer contributions to scheme members.
172. A reasonable period for reporting would be within ten working days, depending upon the seriousness of the late payment and impact on the scheme. A written report should be preceded by a telephone call, if appropriate.
173. In the case of an employer's failure to pay employee contributions to the pension scheme, if the scheme manager has reasonable cause to believe that the late payment is likely to be of material significance to the regulator, the failure must be reported to the regulator and members within a reasonable period after the end of the prescribed period. A reasonable period for reporting to the regulator will be within ten working days and to members within thirty days of having reported to the regulator.
174. Reports in relation to the late payment of employer contributions must be made in writing (preferably electronically). In exceptional circumstances the scheme manager could make a telephone report.
175. The regulator has standardised reporting procedures and expectations regarding content, format and channel. Further information can be found in the section of this code on reporting breaches of the law.

Information to be provided to members

Legal requirements

176. The law requires schemes⁵⁶ to disclose information about benefits and scheme administration to scheme members and others. This section summarises the legal requirements relating to benefit statements and other certain information which must be provided and should be read alongside the requirements in the 2013 Act, any related Treasury directions and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 ('the Disclosure Regulations 2013')⁵⁷.

Benefit statements

Benefit statements for active members of DB schemes under the 2013 Act

177. Scheme regulations must require scheme managers to provide an annual benefit information statement to each active member of a DB scheme established under the 2013 Act⁵⁸. The statement must include a description of the benefits earned by a member in respect of their pensionable service⁵⁹.

178. The first statement must be provided no later than 17 months after the scheme regulations establishing the scheme come into force. Subsequent statements must be provided at least annually after that date⁶⁰.

179. Statements must also comply with any Treasury directions in terms of any other information which must be included and must be provided to members in any manner specified by Treasury directions.

Benefit statements for active, deferred or pension credit members of any DB public service pension scheme

180. Schemes must also provide a benefit statement following a request by an active, deferred or pension credit member of a DB scheme if the information has not been provided to that member on request in the previous 12 months before that request⁶¹.

181. These benefit statements must include a description of the benefits earned by a scheme member in respect of their pensionable service. The full details are dependent on the type of member making the request.

182. The information must be given as soon as practicable but no more than two months after the date the request is made⁶².

56

For the use of 'schemes', please refer to paragraph 23.

57

In addition to duties arising under the 2013 Act and Disclosure Regulations 2013, there are other legal requirements relating to the provision of information to members under other legislation not covered in this section.

58

Section 14(1) of the 2013 Act.

59

Section 14(2)(a) of the 2013 Act.

60

Section 14(4) and (5) of the 2013 Act.

61

Regulation 16 of the Disclosure Regulations 2013.

62

Regulation 16(3), *ibid.*

Benefit statements for members of a DC public service pension scheme

183. Schemes must provide a benefit statement to a member of a DC public service pension scheme who is not an 'excluded person', within 12 months of the end of the scheme year⁶³. An 'excluded person' is a member or beneficiary whose present postal address and electronic address is not known to the scheme because the correspondence has been returned (in the case of postal correspondence) or has not been delivered (in the case of electronic correspondence)⁶⁴.

184. The information which must be provided includes the amount of contributions (before any deductions are made) credited to the member during the immediately preceding scheme year⁶⁵, the value of the member's accrued rights under the scheme at a date specified by the managers of the scheme⁶⁶ and a statutory money purchase illustration ie an illustration of what the member's pension may be at retirement⁶⁷. The full detail of the information which must be provided is set out in the Disclosure Regulations 2013.

Other information about scheme administration

185. The Disclosure Regulations 2013 require other information to be provided to members and others in certain circumstances (including on request), where relevant, including:

- a. basic scheme information
- b. information about the scheme that has materially altered
- c. information about the constitution of the scheme
- d. annual report
- e. information about funding principles, actuarial valuations and payment schedules
- f. information about transfer credits
- g. information about lifestyling
- h. information about accessing benefits and
- i. information about benefits in payment.

63
Regulation 17 of the Disclosure Regulations 2013.

64
Regulation 2, *ibid.*

65
'Scheme year' is defined in regulation 2 of the Disclosure Regulations 2013.

66
Regulation 17 of, and Schedule 6 to, the Disclosure Regulations 2013.

67
Paragraph 6 of Schedule 6, *ibid.* There are certain exceptions to the requirements to provide this information.

Who is entitled to information

186. The Disclosure Regulations 2013 make provision for scheme members and others to receive information that is relevant to their pension rights and entitlements under the scheme and specifies the type of member and others who are entitled to receive the specified information:

- active members
- deferred members
- pensioner members
- prospective members
- spouses or civil partners of members
- beneficiaries
- recognised trade unions.

187. Schemes must ensure that scheme members and others are given information in accordance with the requirements specified in the Disclosure Regulations 2013, unless they fall within the definition of an 'excluded person', as previously defined.

What information needs to be provided

188. The information that must be provided to scheme members is set out in the Disclosure Regulations 2013. Schemes must provide the required information, along with confirmation that members may request further information if required and the type of information that is available.

When the basic scheme information must be provided

189. Schemes must disclose certain basic information about the scheme and the benefits it provides to a prospective member (if practicable to do so) or a new member⁶⁸. The timescales for providing this information depend on whether the managers of the scheme have received jobholder information⁶⁹ for the member. Where they have, the information must be given within a month of the jobholder information being received⁷⁰. Where they have not received jobholder information for that member the information must be given within two months of the date the person became an active member of the scheme⁷¹. The information must also be provided on request, within two months of the request being made, except where the same information was provided to the same person or trade union in the 12 months prior to the request⁷².

68
Regulation 6 of the
Disclosure Regulations
2013

69
'Jobholder information'
means the information
specified in regulation
3 of the Occupational
and Personal Pension
Schemes (Automatic
Enrolment) Regulations
2010.

70
Regulation 6(5) of the
Disclosure Regulations
2013.

71
Regulation 6(6), *ibid.*

72
Regulations 6(4) and (7),
ibid.

What information must be disclosed on request

190. Pension scheme members and others, in some circumstances, are entitled to request certain scheme information or scheme documents including:

- information about the constitution of the pension scheme
- information about transfer credits
- the latest scheme actuarial valuation (if appropriate)
- the latest statement of investment principles (if appropriate) and
- information about the rights and options of deferred members.

How benefit statements and other information must be provided

191. Generally, schemes may choose how they provide information to scheme members, including by post, electronically (by email or by making it available on a website) or by such other means as may be permitted by the law. For benefit statements issued under the 2013 Act, Treasury directions may specify how the information must be provided. Where schemes wish to provide information required under the Disclosure Regulations 2013 electronically there are important steps and safeguards that must first be met⁷³.

These include:

- a. schemes providing scheme members and beneficiaries with the option to opt-out of receiving information electronically by giving written notice to the scheme
- b. schemes being satisfied that the electronic communications have been designed:
 - so that the person will be able to access and either store or print the relevant information and
 - taking into account the requirements of disabled people
- c. that members and beneficiaries who were a member or beneficiary of the public service pension scheme on 1 December 2010 (where the scheme had not provided information electronically prior to that date) have been sent a written notice (other than via email or website), informing them that:
 - it is proposed to provide information electronically in future and
 - scheme members and beneficiaries may opt-out of receiving information electronically by sending written notice.

73
Regulation 26 of the
Disclosure Regulations
2013.

192. Before making information or a document available on a website for the first time, schemes must give a notice (other than via a website) to the recipient⁷⁴. They must ensure that the notice includes:

- a statement advising that the information is available on the website
- the website address
- details of where on the website the information or document can be read and
- an explanation of how the information or document may be read on the website.

193. Before making any subsequent information available on a website, the scheme must give a notice (other than via a website) to recipients informing them that the information is available on the website. This notice will not be required where⁷⁵:

- at least two documents have been given to the recipient by hand or sent to the recipient's last known postal address, and
- each of those letters asks the recipient to give their electronic address to the scheme and informs the recipient of their right to request (in writing) that information or documents are not to be provided electronically, and
- a third letter has been given to the recipient by hand or sent to the recipient's last known postal address and includes a statement that further information will be available to read on the website and that no further notifications will be sent to the recipient, and
- the scheme does not know the recipient's email address and has not received a written request that information or documents are not to be provided to the recipient electronically.

194. In some cases, the Disclosure Regulations 2013 specify that information must be made available by one of the following methods⁷⁶:

- available to view free of charge, at a place that is reasonable having regard to the request
- published on a website (in which cases the procedure to be followed before making information available on a website does not apply, except that the person or trade union must be notified of certain details)
- given for a charge that does not exceed the expense incurred in preparing, posting and packing the information or
- publicly available elsewhere.

74
Regulations 27 of the Disclosure Regulations 2013.

75
Regulation 28, *ibid.*

76
Regulation 29, *ibid.*

Practical guidance

195. Communications to scheme members should be designed and delivered in a way that ensures members are able to engage with their pension provision. Information should be clear and simple to understand as well as being accurate and easily accessible. It is important that members are able to understand their pension arrangements and make informed decisions where required.
196. Schemes should attempt to make contact with their scheme members and where contact is not possible, schemes should consider carrying out a tracing exercise to locate the member and ensure that their member data is up-to-date.
197. For the provision of information, a member's postal address may be their last known home address or their place of work.
198. Alongside the information that must be provided to scheme members as set out in the Disclosure Regulations 2013, schemes should ensure that members are given the address and contact details for the individual(s) responsible for dealing with information requests.
199. Where a person has made a request for information, schemes should provide them with an acknowledgement of receipt if they are unable to provide the information at that stage. Schemes may encounter situations where the time period for providing information takes longer than anticipated. In these circumstances the person should be notified and their expectations managed in relation to when they will receive the information.
200. As a matter of good practice and to promote transparency, scheme managers should make information readily available at all times to ensure that prospective and existing members are able to access information when required. Schemes must also advise members that further information⁷⁷ is available on request and provide details of how requests can be made.

77

Further information includes, for example, information about annuities given before retirement and information about benefits at retirement.

Other legal requirements

201. There are other legal requirements for information to be provided to members of public service pension schemes in certain circumstances. Not all requirements apply to all public service pension schemes and some may only arise in limited circumstances. Some of the requirements of which schemes may need to be aware are set out in or under the following legislation⁷⁸:

- the Occupational Pension Schemes (Contracting-out) Regulations 1996
- the Occupational Pension Schemes (Transfer Values) Regulations 1996
- the Occupational Pension Schemes (Winding up etc) Regulations 2005 and
- the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 (the requirements of these Regulations are covered in the section on internal dispute resolution).

78

The legislation identified in this list is made under section 113 of the Pension Schemes Act 1993. There are other requirements relating to the provision of information to members which arise under other legislation, and which may be relevant to public service pension schemes.

Resolving issues

202. This part covers:

- internal dispute resolution
- reporting breaches of the law.

Internal dispute resolution

Legal requirements

203. Scheme managers are required to make and implement dispute resolution arrangements⁷⁹, which comply with the requirements of the law and support the resolution of pensions disputes⁸⁰ between the scheme manager and a person with an interest in the scheme.

204. There are certain 'exempted disputes' to which the internal dispute resolution procedure does not apply (section 50(9) of the Pensions Act 1995). 'Exempted disputes' include those where proceedings in respect of the dispute have been commenced in any court or tribunal, or where the Pensions Ombudsman has commenced an investigation in respect of it. Certain other prescribed disputes, for instance medical-related disputes, which may arise in relation to police and fire and rescue workers for example, are also 'exempted disputes'⁸¹.

205. A person has an interest in the scheme if:

- a. they are a member or beneficiary of the scheme
- b. they are a prospective member of the scheme
- c. they have ceased to be a member or beneficiary or prospective member
- d. they claim to be in one of the categories mentioned above and the dispute relates to whether they are such a person.

206. Dispute resolution arrangements may require people with an interest in the scheme to first refer matters in dispute to a 'specified person' in order for that person to consider and give their decision on those matters. The specified person's decision may then be confirmed or replaced by the decision taken by the scheme manager⁸².

207. Scheme managers and specified persons (if used as part of a scheme's procedure) must take the decision required on the matters in dispute within a reasonable period of the receipt of the application by them and notify the applicant of the decision within a reasonable period of it having been taken⁸³.

79
Section 50 of the
Pensions Act 1995

80
A 'pension dispute'
is a dispute which is
between the managers
of a scheme and one
or more people with an
interest in the scheme
(see section 50A of the
Pensions Act 1995),
about matters relating to
the scheme and which
is not an 'exempted
dispute' (section 50(3) of
that Act).

81
Regulation 4 of
the Occupational
Pension Schemes
(Internal Dispute
Resolution Procedures
Consequential
and Miscellaneous
Amendments)
Regulations 2008.

82
Section 50(4A) of the
Pensions Act 1995.

83
Section 50(5) of the
Pensions Act 1995.

208. Internal dispute resolution procedures must state the manner in which an application for the resolution of a pension dispute is to be made, the particulars which must be included in such an application and the manner in which any decisions required in relation to such an application are to be reached and given⁸⁴.

Practical guidance

209. Scheme members expect their pension scheme to be managed effectively. Where a person with an interest in the scheme is not satisfied with any decision made affecting them, they have the right to ask for that decision to be reviewed.

210. Internal dispute resolution arrangements provide formal procedures and processes for pension scheme disputes to be investigated and decided upon quickly and effectively. They play a key role in the effective governance and administration of a scheme.

Determining your internal dispute resolution procedure

211. The law allows schemes⁸⁵ to operate a two-stage procedure with a 'specified person' undertaking the first-stage decision. Alternatively, they may adopt a single-stage procedure if they consider that is more appropriate for their scheme.

212. With the exception of certain matters outlined below, the law does not prescribe the detail of the dispute resolution procedure. Schemes should decide on this and ensure it is fit for purpose.

Determining your internal dispute resolution processes

When applications should be submitted

213. Schemes may choose to specify time limits within which an application for the resolution of a dispute must be made by the following people:

- a. A scheme member
- b. A widow, widower, surviving civil partner or surviving dependant of a deceased scheme member
- c. A surviving non-dependant beneficiary of a deceased scheme member or
- d. A prospective scheme member.

84
Section 50B(4) of the Pensions Act 1995.

85
For the use of 'schemes', please refer to paragraph 23.

214. If a decision is made to specify time limits, schemes should publish and make those time limits readily available to ensure that those with an interest in the scheme are aware that they must submit an application within a prescribed time limit.
215. Schemes must specify a reasonable period within which applications must be made by the following people:
- a. a person who has ceased to be within the categories in paragraph 213 above, and
 - b. a person who claims that they were a person within the categories in paragraph 213 above and have ceased to be such a person, and the dispute relates to whether they are such a person
216. A reasonable period would be six months beginning immediately after the date on which the person ceased to be, or claims they ceased to be, a person with an interest in the scheme. However, schemes have the flexibility to exercise their judgment and take an application outside of a specified time period, if appropriate.

When decisions should be taken

217. Scheme managers and specified persons (where applicable) should make a decision on a dispute within four months of receiving the application. Where a dispute is referred to scheme managers for a second-stage decision, the reasonable period for making a decision begins when the managers receive the referral. However, there may be cases where it will be possible to process an application sooner than the reasonable time given. Where this is the case, there should not be a delay in taking the decision.
218. There may be exceptional circumstances of a particular dispute which may prevent the process being completed within the reasonable time period stated above. For instance, where the dispute involves unusually complex and labour intensive calculations or research, or delays occur that are outside the control of the scheme manager (or 'specified person'), or because they need to obtain independent evidence.
219. The regulator recognises that the circumstances of each dispute are different and decision times may vary. Schemes should be satisfied that the time taken to provide a decision is appropriate to the situation and that the necessary action has been taken to operate arrangements within the reasonable time period and be able to demonstrate this, if necessary.

When applicants should be informed of a decision

220. Applicants must be notified of the decision made by a scheme manager or specified person (where applicable) within a reasonable time period following the decision being made. Schemes should usually notify applicants of the decision no later than 15 working days after the decision has been made. However, there may be cases where it will be possible to notify an applicant sooner than the reasonable time given. Where this is the case, there should not be a delay in notifying them of the decision.
221. Schemes should provide the person who has made an application for a matter in dispute with regular updates on the progress of their investigation. The person should be notified where the time period for a decision is anticipated to be shorter or longer than the reasonable time period and their expectations managed in relation to when they will receive an outcome.

Implementing your procedure and processes

222. Schemes should focus on educating and raising awareness of their internal dispute resolution arrangements and ensuring that they are followed. Once implemented, schemes should ensure that the effectiveness of the arrangements is assessed regularly and be satisfied that those adopting the process are complying with the requirements set, which includes effective decision making. This is particularly important where the arrangements require employers participating in the pension scheme to carry out duties as part of the process.
223. Scheme rules (which for most public service pension schemes will usually be set out in regulations) or other documents recording policy about the administration of the scheme, should specify internal dispute resolution arrangements and confirm and communicate those arrangements to members – for example, in the joining booklet. They should make their arrangements accessible to potential applicants – for example, by publishing them on a scheme website.
224. If appropriate, schemes should ensure that scheme employers are implementing procedures, for example where schemes have implemented the two-stage procedure and employers are acting as the ‘specified person’ for the first stage.

225. Scheme managers must provide information about the procedure and processes the scheme has in place for the internal resolution of disputes to certain people in certain circumstances⁸⁶:

- a. Prospective members, if it is practicable to do so
- b. Any scheme members who have not already been given the information
- c. Certain people who request the information and who have not been given that information in the previous 12 months and
- d. Members or prospective members when schemes receive jobholder information, or when a jobholder becomes an active member, in connection with automatic enrolment.

The postal/electronic address and job title of the person to be contacted must also be provided.

226. In addition, schemes must provide information about The Pensions Advisory Service (TPAS) and the Pensions Ombudsman at certain stages⁸⁷. Upon receipt of an application for the resolution of a pension dispute, schemes (or the specified person, as the case may be) must make the applicant aware (as soon as reasonably practicable) that TPAS is available to assist members and beneficiaries of the scheme and provide contact details for TPAS. When notifying the applicant of the decision, schemes must also notify the applicant that the Pensions Ombudsman is available to investigate and determine complaints or disputes of fact or law, in relation to a public service pension scheme, and provide the Pension Ombudsman's contact details.

227. Schemes should ensure the following information is made available to applicants:

- The procedure and processes for making an application for the resolution of a dispute
- The information which must be included in an application
- The process by which any decisions required are to be reached and
- An acknowledgement sent to the applicant once an application has been received.

228. The law does not stipulate what information schemes should request from applicants to enable them to reach a decision on a disputed matter. The legislation provides flexibility for scheme managers to decide what is appropriate and how applications should be submitted.

86
Regulation 6 of, and Part 1 of Schedule 2 to, Disclosure Regulations 2013.

87
Regulation 2 of the Occupational Pension Schemes (Internal Dispute Resolution Procedures) (Consequential and Miscellaneous Amendments) Regulations 2008.

229. When reviewing an application, scheme managers or a specified person should be satisfied that they have taken the necessary time to take a decision which is appropriate to the situation and that the necessary action has been taken to meet the reasonable time period. Scheme managers should ensure that they have all the appropriate information to make an informed decision and if required, request further information.

Reporting breaches of the law

Legal requirements

230. Certain people are required to report breaches of the law to the regulator where they have reasonable cause to believe that:

- a legal duty⁸⁸ which is relevant to the administration of the scheme has not been, or is not being, complied with and
- the failure to comply is likely to be of material significance to the regulator in the exercise of any of its functions⁸⁹.

231. The people who are subject to the reporting requirement in the context of public service pension schemes are as follows:

- a. scheme managers
- b. members of pension boards
- c. any person who is otherwise involved in the administration of a public service pension scheme
- d. employers⁹⁰. In the case of a multiemployer scheme, any participating employer who becomes aware of a breach should consider their duty to report, regardless of whether the breach relates to, or affects, members who are its employees or those of other employers
- e. professional advisers⁹¹ including auditors, actuaries, legal advisers and fund managers. Not all public service pension schemes are subject to the same legal requirements to appoint professional advisers, but nonetheless the regulator expects that all schemes will have professional advisers either resulting from other legal requirements or simply as a matter of practice
- f. any person who is otherwise involved in advising the scheme manager in relation to the scheme⁹².

232. The report must be made in writing and should be given as soon as reasonably practicable⁹³.

88

The reference to a legal duty is to a duty imposed by, or by virtue of, an enactment or rule of law (section 70(2)(a) of the Pensions Act 2004).

89

Section 70(2) of the Pensions Act 2004. The main objectives of the regulator in exercising its functions are set out in section 5 of that Act.

90

As defined in section 318 of the Pensions Act 2004.

91

As defined in section 47 of the Pensions Act 1995.

92

Section 70(1) of the Pensions Act 2004 (as amended by paragraph 6 of Schedule 4 to the 2013 Act).

93

Section 70(2) of the Pensions Act 2004.

Practical guidance

233. This guidance is designed to assist those under a duty to report breaches of the law to the regulator to meet their legal obligations. Schemes⁹⁴ should be satisfied that those responsible for reporting breaches are made aware of the legal requirements and this guidance. Schemes should provide training for scheme managers and pension board members. All others under the duty to report should ensure they have a sufficient level of knowledge and understanding to fulfil that duty. This means having sufficient familiarity of the legal requirements and procedures and processes for reporting.

Implementing adequate procedures

234. Identifying and assessing a breach of the law is important in reducing risk and providing an early warning of possible malpractice in public service pension schemes. Those people with a responsibility to report breaches, including scheme managers and pension board members should establish and operate appropriate and effective procedures to ensure that they are able to meet their legal obligations. Procedures should enable people to raise concerns and facilitate the objective consideration of those matters. It is important that procedures allow reporters to make a judgement within an appropriate timescale as to whether a breach must be reported. Reliance cannot be placed on waiting for others to report.

235. Procedures should include the following features:

- Obtaining clarification of the law where it is not clear to those responsible for reporting
- Clarifying the facts around the suspected breach where they are not known
- Consideration of the material significance of the breach taking into account its cause, effect, the reaction to it, and its wider implications, including where appropriate, dialogue with the scheme manager or pension board
- A clear process for referral to the appropriate level of seniority at which decisions can be made on whether to report to the regulator
- An established procedure for dealing with difficult cases
- A timeframe for the procedure to take place that is appropriate to the breach and allows the report to be made as soon as reasonably practicable
- A system to record breaches even if they are not reported to the regulator (the principal reason for this is that the record of past breaches may be relevant in deciding whether to report future breaches, for example it may reveal a systemic issue) and
- A process for identifying promptly any breaches that are so serious they must always be reported.

94
For the use of 'schemes', please refer to paragraph 23.

Judging whether a breach must be reported

236. Breaches can occur in relation to a wide variety of the tasks normally associated with the administrative function of a scheme such as keeping records, internal controls, calculating benefits and, for funded pension schemes, making investment or investment-related decisions.

Judging whether there is 'reasonable cause'

237. Having 'reasonable cause' to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

238. Reporters must ensure that where a breach is suspected, they carry out checks to establish whether or not a breach has in fact occurred. For example, a member of a funded pension scheme may allege that there has been a misappropriation of scheme assets where they have seen in the annual accounts that the scheme's assets have fallen. However, the real reason for the apparent loss in value of scheme assets may be due to the behaviour of the stock market over the period. This would mean that there is not reasonable cause to believe that a breach has occurred.

239. Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with the pension board or scheme manager or with others who are in a position to confirm what has happened. It would not be appropriate to check with the pension board or scheme manager or others in cases of theft, or suspected fraud or if other serious offences might have been committed and where discussions might alert those implicated or impede the actions of the police or a regulatory authority. Under these circumstances a reporter should alert the regulator without delay.

240. If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.

241. 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 regulator may require before taking legal action. A delay in reporting may exacerbate or increase the risk of the breach.

Judging what is of 'material significance' to the regulator

242. Deciding whether a breach is likely to be of 'material significance' to the regulator requires those with a duty to report to consider the following:

- a. The cause of the breach
- b. The effect of the breach
- c. The reaction to the breach
- d. The wider implications of the breach.

243. When reaching a decision about whether to report, those responsible should consider these points together. Reporters should take into account expert or professional advice, where appropriate, when deciding whether the breach is likely to be of material significance to the regulator. Each of these aspects is considered in more detail, below.

The cause of the breach

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

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

245. 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.

246. A breach will not normally be regarded as 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

247. With the regulator's role in relation to public service pension schemes and its statutory objectives in mind, evidence in relation to any of the following matters is particularly important and likely to be of material significance to the regulator:

- Pension board members not having the appropriate degree of knowledge and understanding
- Pension board members having a conflict of interest
- Adequate internal controls not being established and operated
- The right money not being paid to the scheme at the right time
- Internal dispute resolution procedures not having been made and/or implemented
- Information about benefits and other information about scheme administration not being disclosed to scheme members and others
- Information about pension boards not being published
- Public service pension schemes not being administered properly
- Appropriate records not being maintained
- Pension board members having misappropriated any assets of the scheme or being likely to do so
- Repeated miscalculations or incorrect payment of benefits which have a detrimental impact on scheme members.

The reaction to the breach

248. 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.

249. 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

250. The wider implications of a breach should be considered when assessing 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 example, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

Submitting a report to the regulator

251. Reports must be submitted in writing and can be sent by post or electronically, including by email or by fax. Reporters should wherever practicable use the standard format available on the regulator's website.

252. The report should be dated and should include as a minimum:

- Full name of the scheme
- 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 scheme.

253. Additional information that would be helpful to the regulator:

- The reason the breach is thought to be of material significance to the regulator
- The address of the scheme
- The contact details of the scheme manager (if different to the scheme address)
- The pension scheme's registry number (if available)
- Whether the concern has been reported before.

254. Urgent reports should be marked as such and attention should be drawn to matters considered particularly serious by the reporter. A written report can be preceded by a telephone call, if appropriate.

255. A reporter should ensure they receive an acknowledgement in respect of any report they send to the regulator. Only when an acknowledgement of receipt is received by the reporter can they be confident that the regulator has received their report.
256. 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.
257. Further information or reports of further breaches should, however, be provided by the reporter, if this may assist the regulator in exercising its functions. The regulator may make contact to request further information.
258. Breaches should be reported as soon as reasonably practicable. What is reasonably practicable depends on the circumstances. In particular, the time taken should reflect the seriousness of the suspected breach.
259. In cases of immediate risk to the scheme 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 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 use the quickest means possible to alert the regulator to the breach.

Whistleblowing protection and confidentiality

260. The Pensions Act 2004 makes clear that the 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.
261. The duty to report does not, however, override 'legal privilege'⁹⁵. What this means is that communications (oral and written) between a professional legal adviser and their client, or a person representing that client, whilst obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

95
See section 311 of the
Pensions Act 2004.

262. 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 ie the regulator is ordered by a court to disclose it.
263. The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the regulator. Consequently, where individuals employed by firms or another organisation having a duty to report disagree with a decision not to report to the regulator, they may have protection under the ERA if they make an individual report in good faith. The regulator expects such individual reports to be rare and confined to the most serious cases.

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