

Regulatory code of practice no. 5

Reporting late payment of contributions to occupational money purchase schemes

Code of practice

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Introduction

- i. Codes of practice are issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes and certain aspects of stakeholder and other personal pensions).
- ii. The Pensions Regulator's statutory objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund, and to promote the good administration of work-based pension schemes.
- iii. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet these objectives. The Pensions Regulator will target its resources on those areas where members' benefits are at greatest risk.
- iv. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in the codes are consistent with how a well-run pension scheme would choose to meet its legal requirements.

The status of codes of practice

- v. 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 account.

Other relevant codes of practice

- vi. The code of practice on reporting breaches of the law sets out what is expected of trustees (and others) in reporting matters of material significance to the Pensions Regulator. This code of practice on reporting late payments complements the reporting breaches code by giving specific guidelines to those involved with money purchase schemes in relation to reporting late payments.
- vii. The code of practice on internal controls will give practical guidelines to trustees on their duty to establish and operate adequate internal controls.

- viii. The code of practice on funding defined benefits sets out what is expected of trustees in reporting late payments to schemes which are subject to Part 3 of the Pensions Act 2004.

The code at a glance

The code sets out the Pensions Regulator's view of what constitute reasonable periods within which trustees must report late payments of contributions:

- to the Pensions Regulator where they are likely to be of material significance to the Regulator in the exercise of its functions; and
- to members.

The code also provides examples of circumstances in which trustees should normally make a report to the Pensions Regulator and to members, and circumstances where it would not normally be necessary.

The code of practice

In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland; an annex lists the corresponding references.

Purpose of this code of practice

1. The purpose of this code of practice is to give guidelines to trustees of occupational money purchase schemes on reporting the late payment of contributions to the Pensions Regulator and to members. Trustees are only required to report late payment of contributions where the late payment is likely to be of material significance to the Pensions Regulator. The code provides examples of when trustees should or should not report.

To whom is this code directed?

2. The code is directed at trustees of those occupational money purchase pension schemes which are required to prepare and maintain a payment schedule.¹

Terminology

3. As the majority of occupational money purchase schemes are run by trustees rather than managers, 'trustees' is used throughout this document, but references to 'trustees' also include managers of schemes not set up under trust.
4. The legislation requires trustees to make reports of late payments which are likely to be of material significance to the Pensions Regulator in the exercise of its functions. In this document, these payments are referred to as 'material' or 'material late payments'.
5. The term 'late payment' describes circumstances where:
 - i the payment is not received at all;
 - ii the payment is received but not on time; or
 - iii the payment is not received in full.

¹ The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (Statutory Instrument 1996/1715) as amended.

Payments higher than expected but received on time are not late payments.

6. References to 'member contributions' are to contributions the employer deducts from a member's pay.
7. References to 'days' mean all days. References to 'working days' do not include Saturdays, Sundays or bank holidays.

Reporting late payments: the legal requirement

8. Trustees must² report to the Pensions Regulator and members within a reasonable period after the due date (see 9 below) if:
 - i. member contributions and/or employer contributions are not paid on time; and
 - ii. the trustees have reasonable cause to believe that the late payment of contributions is material.
9. Employers must make payments so that the trustees receive:
 - i. all the pension contributions due to the scheme on, or before, the date(s) specified in the payment schedule;
 - ii. members' pension contributions within 19 days from the end of the calendar month when they were deducted from pay.
10. Trustees are not required to include additional voluntary contributions (AVCs) in the payment schedule, but, if they do include AVCs in that schedule, they must report material late payments of AVCs in the same way as any other contributions.

Action on non-receipt of contributions

11. Where trustees identify a late payment, they should take action to obtain any contributions that are still outstanding. They should do this by raising the matter with the employer as soon as practicable.

How sure trustees need to be before reporting

12. Trustees must report to the Pensions Regulator when they have 'reasonable cause to believe' that a late payment is likely to be of material significance to the Pensions Regulator in the exercise of its functions. 'Reasonable cause to believe' means more than an unsubstantiated suspicion. Trustees should therefore satisfy themselves that a late payment of contributions has occurred and that it is material.

² Sections 49 and 88, Pensions Act 1995, as amended by section 269, Pensions Act 2004.

Deciding whether to report

13. Trustees should use their judgement to assess whether they need to report to the Pensions Regulator and members, taking account of the points in 14 to 16 below.

The following section sets out which late payments are likely to be considered material.

Late payments which trustees should report

14. Trustees must report material late payments to the Pensions Regulator and scheme members. Circumstances which are likely to be material and which trustees should report include:
- i. where contributions remain unpaid 90 days after the due date (unless it is a one-off or infrequent administration error, which is discovered after the 90 days, and which is corrected when found or is thereafter corrected as soon as practicable);
 - ii. where there is a late payment involving possible dishonesty or a misuse of assets or contributions. For example, trustees may have concerns that the employer is using the contributions to alleviate cashflow difficulties;
 - iii. where there is a failure to pay contributions which carries a criminal penalty. For example, where the employer is knowingly concerned in the fraudulent evasion of the obligation to pay member contributions;
 - iv. where the trustees 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 appears not to be taking adequate steps to remedy the situation;
 - v. where there is no early prospect of outstanding contributions being paid, for example because of the financial circumstances of the employer or for any other reason.

There is no requirement or expectation that trustees should actively search for circumstances such as those noted in points ii to v above. However, if trustees become aware of any such circumstances they should be reported.

The above list is illustrative only and is not exhaustive.

Late payments which trustees should not normally report

15. Trustees should not normally report to the Pensions Regulator where one of the following circumstances applies, even if contributions remain unpaid 90 days after the due date:

- i. where there are infrequent late payments and the overdue contributions have now been paid, or arrangements are being put in place for the prompt payment of the overdue amount, for example, an administrative error which is corrected as soon as reasonably practicable and where reasonable steps are being taken to avoid recurrence;
- ii. where there is a late payment and there are four or fewer active members in the scheme for whom there are contributions payable under the payment schedule, unless the situations in 14 ii and/or 14 iii above apply;
- iii. where there are short periods of lateness of contributions resulting from, for example, members leaving, new members joining, or changes in salary not being notified to trustees;
- iv. where a claim has been submitted to the Redundancy Payments Service of the Department of Trade and Industry for the outstanding contributions.

The above list is illustrative only and is not exhaustive.

16. Trustees may need to report, however, where more than one of the circumstances in 15 above applies, as a combination of minor factors may mean that the late payments become materially significant to the Pensions Regulator.

Reasonable period for reporting to the Pensions Regulator
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17. This section sets out what the Pensions Regulator considers to be a reasonable period for trustees to report to the Pensions Regulator. Trustees must make a report within a reasonable period after the due date. The more serious the risk of contributions remaining unpaid, the shorter the reasonable period becomes.
18. The Pensions Regulator considers that a reasonable period for trustees to send reports (electronic or paper-based) of late payments will normally be within 10 working days of identifying that a late payment is material. For example, in the case of non-payment of contributions 90 days after the due date, trustees should report at the latest within 10 working days after the end of the 90 day period, ie 90 days after the due date plus 10 working days.
19. Exceptionally, where there is a current or imminent danger to members' and/or employers' payments unless immediate preventative action is taken, trustees should report by telephone as soon as they become aware of the occurrence. The trustees should then confirm telephone reports in writing, for example by letter or email, as soon as reasonably practicable and in any event within 10 working days.

Reasonable period for notifying members

20. If trustees make a late payment report to the Pensions Regulator, they must also report to members within a reasonable period after the due date. If the trustees do not need to report to the Pensions Regulator, they are not required to report to members. The Pensions Regulator expects trustees to notify only those members in respect of whom contributions are late. Trustees may also notify other members if they choose to.
21. Where trustees make an urgent telephone report to the Pensions Regulator as in 19 above, they should also report the material late payment to the members as soon as reasonably practicable afterwards (unless they have already done so: see 23 below). The Pensions Regulator expects that a reasonable period for trustees to make such a report will be within 30 days of the telephone call at the latest and, where practicable, reports should be made earlier.
22. In other circumstances requiring a report to members, the Pensions Regulator expects trustees to report as soon as reasonably practicable and in any event within 30 days. For example, as noted above, one of the circumstances in which trustees should report to the Pensions Regulator is where contributions are outstanding 90 days after the due date (unless a late payment is deemed material before this point). In this situation the Pensions Regulator considers that a reasonable period within which it expects trustees to make such a report to members (unless they have already done so) will be within 30 days following the end of the 90 day period, ie 120 days after the due date. This is the maximum period normally expected and, where practicable, reports should be made earlier.
23. Trustees can of course report late payment to members earlier than 90 days after the due date if they wish to, whether or not they consider it to be material. This is likely to be their favoured option if, for example, they consider that it may cause the employer to rectify the situation more quickly. If trustees make an early report to members there will be no need for them to make a further report to members within 30 days of the 90 days, although they may wish to keep members informed. They should still make a report to the Pensions Regulator after 90 days unless they have already done so.

Annex (corresponding Northern Ireland legislation)

GB Legislation	NI Legislation
Sections 49 and 88, Pensions Act 1995 as amended by Section 269 of the Pensions Act 2004	Articles 49 and 86 of the Pensions (Northern Ireland) Order (SI 1995/3213 (NI 22)) as amended by Article 246 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1))
Section 90(2)(a), (g), (i) of the Pensions Act 2004	Article 85(2)(a),(g) and (i) of the Pensions (Northern Ireland) Order 2005
Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715) as amended by the Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (SI 2005/2426)	The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 (SR 1997 No 94) as amended by the Occupational Pension Schemes (Administration and Audited Accounts) Regulations (Northern Ireland) 2005 (SR 2005 No. 421)