Consultation response

Maintaining contributions

The Pensions Regulator’s response to the review of:

• Code of practice no. 5: Reporting late payment of contributions to occupational pension schemes
• Code of practice no. 6: Reporting late payment of contributions to personal pension schemes

June 2013
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Executive summary

The Pensions Regulator (the regulator) is the UK regulator of work-based pension schemes and is empowered by the UK government to regulate work-based pensions.

The Pensions Act of 2004 and the corresponding Northern Ireland legislation gives us specific objectives:

- To protect the benefits of members of work-based pension schemes
- To promote, and to improve understanding of, the good administration of work-based pension schemes
- To reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund
- To maximise employer compliance with employer duties and safeguards under the Pensions Act 2008

We issue codes of practice which set out the standards and practices expected of those who must meet the minimum legal requirements of legislation.

They are approved by the Secretary of State for Work and Pensions and the Department for Social Development in Northern Ireland and laid before Parliament and the Northern Ireland Assembly. However, they are not statements of law and while trustees and managers are not required to comply with them, they must meet the underlying legal requirements of legislation.

We received 31 formal written responses to the consultation on the draft replacements to codes of practice 5 and 6 on reporting late payment of contributions to occupational pension schemes and reporting late payment of contributions to personal pension schemes.

Responses were received from pension providers, pension trustees, lawyers, trade bodies and pensions consultancies. In this document we refer to the views of a particular category of respondent where relevant. We are extremely grateful to everyone who replied. A list of organisations that responded to the consultation is at Appendix A on page 18.

continued...

1 Section 5 Pensions Act 2004 (c. 35) and the equivalent legislation in Northern Ireland.

2 Section 90(1) ibid and the equivalent legislation in Northern Ireland.

3 Section 91 ibid.

4 In this response, the term ‘trustees’ is used to refer to both trustees and managers of defined contribution (DC) occupational pension schemes and the term ‘managers’ refers to both managers and trustees of personal pension schemes.
All respondents acknowledged that with the advent of automatic enrolment a fundamental reshaping of the pensions landscape is taking place. This change will bring new challenges for providers, employers, workers and the regulator, particularly but not exclusively as smaller employers begin to stage. As such, the majority of respondents welcomed the opportunity to comment on this consultation and agreed that it was the right time for us to review these codes of practice.

The majority of respondents answered the questions we asked in the consultation document. However, many also raised a number of additional issues that fell beyond the scope of these questions.

A number commented on our overall approach to maintaining contributions, in particular our interpretation of the statutory duty on managers of personal pension schemes to monitor contributions. We have therefore responded in two sections in this document: first on ‘the regulator’s approach to maintaining contributions’; and second on the ‘consultation questions’ specifically.

Some respondents interpreted the draft codes and guidance as placing a large burden on trustees and managers, requiring them to monitor every contribution received, to duplicate the calculation procedures undertaken by payroll, and as implying a ‘one size fits all’ approach to monitoring for all schemes. This was not our intention.

Employers have primary responsibility for ensuring that the correct level of contribution is paid to the scheme in a timely manner. The employee too, bears some responsibility for checking their contributions.

If employers fail to carry out their duty we will work to maximise employer compliance and to put workers back in the position they would have been if the payment failure had not occurred and will use our enforcement powers where necessary.

We consider that trustees and managers have a fundamental role to play however. We expect that trustees and managers will assess levels of risk with regard to employers that use their schemes and have systems and controls in place to be the first line of defence in ensuring the accurate flow of contributions and remedying payment failure.

If those failures become material, trustees and managers must fulfil their legal obligations to report them to the regulator and then members. All parties have a critical role to play in the protection of member savings.

The codes and guidance have been amended in response to comments received and to clarify our intentions.
What the consultation said

The regulator, employers, pension trustees and members all play their part in making sure that an accurate flow of contributions is maintained.

With the introduction of automatic enrolment we considered that the time was right to review codes of practice 5 and 6. This will ensure that they remain appropriate for increases in the number of employers using pension schemes and the projected growth in pension scheme membership that lie ahead. The consultation proposed revised codes of practice and guidance to replace the existing codes.

Although defined benefit (DB) schemes may be used for automatic enrolment, we anticipate that the vast majority of employers will use new and existing defined contribution (DC) arrangements for this purpose and so did not include Code of practice no. 3 – Funding defined benefits in the review. The consultation documents explained existing statutory duties and our intent to build on existing good practice to ensure the accurate and timely flow of contributions into schemes.

The codes of practice and supporting guidance:

- set out our expectations on the employer and scheme trustees or managers in relation to scheme set up
- provided practical guidance on the legal duties for setting up pension schemes
- gave an explanation of the legal duty on managers of personal pension schemes to monitor contributions that fall to be paid under direct payment arrangements, as well as the expectations on trustees of occupational pension schemes to monitor contributions that are due under payment schedules
- set out our expectations as to the flow of information between the employer and scheme that will be needed to comply with those duties and expectations; and, finally,
- set out how and when trustees and managers should report material payment failures to the regulator.

A series of consultation questions were asked in relation to each code, focusing on timely reporting, trustees’ and scheme managers’ good practice and the clarity of the split between codes and guidance. A list of consultation questions can be found in Appendix B at page 19.
Responses to the consultation

The regulator’s approach to maintaining contributions

Most of the responses, in every category of respondent, welcomed the opportunity to comment on the maintaining contributions consultation and agreed that it was the right time for us to revisit these codes. However, some pension providers and pension trustees raised additional points beyond the scope of the questions, challenging our interpretation of relevant legislation with regard to obligations on the trustees or managers to monitor contributions. A number of others from this group accepted the intent but had some concerns on the issue of ‘effective monitoring’.

Many respondents raised some concerns about the possible additional cost on managers and trustees, with the challenge that there may not be significant added value in the proposals. Some respondents also said that they felt that we were putting too much emphasis on their role and had not sufficiently accounted for our own role or that of employees or of employers.

A significant number (18 out of 31 respondents) either asked that a cost-benefit analysis or impact assessment be conducted, or questioned the cost of a blanket approach to monitoring, interpreting the draft guidance and codes as requiring a level of due diligence that was unnecessary, difficult, costly and intrusive.

This was emphasised in a number of responses in relation to master trust schemes and legacy schemes specifically and with reference to obtaining pensionable pay from employers. This latter point also prompted some respondents to ask if the requirements were compliant with the Data Protection Act 1998.

Many respondents asked that we specify what an effective monitoring process might look like. Some respondents, particularly providers, proposed an ‘alternative’ proportionate approach to monitoring, where it was appropriate to ensure that a level of detailed sampling was in place as a move towards more effective monitoring and reconciliation.

In this model, random checks could be undertaken where informed by a sensible risk framework. Three providers went into some detail on this point, arguing that this would remove the need for intrusive monitoring and reduce cost, while providing us with a high threshold of assurance.

A number of legal firms, consultants, trade bodies and schemes welcomed the shift in emphasis of the draft codes and supporting guidance put out at consultation, judging it appropriate that we set out our expectations under law for a radically different pensions climate. They agreed that in order to meet the statutory objective to maximise employer compliance and support the protection of pensions savings, we must be robust, work in the interests of the member and set out good practice for all relevant parties.

continued...
Requests for more flexibility, or that activity in the codes and guidance be less prescriptive, for example on telephone monitoring, were also received. This issue was also raised in respect of some of the consultation questions and these specifics are dealt with in the consultation questions section.

The majority of respondents asked that the requirement to report ‘nil’ returns should be removed and a significant number asked that we explain how judgements of materiality, in respect of what is a material payment failure, are to be made.

Four respondents asked us to clarify whether schemes with fewer than five members were excluded from the codes as was the case in the existing codes of practice 5 and 6.

There was also a call for information on our proposed enforcement approach to employer payment failure. This was rooted in a general concern that we were not putting sufficient emphasis on employers complying with their duty to calculate, deduct and pay over contributions correctly. Many respondents requested that we give details of what we will do when a report of a material payment failure is received.

The Pensions Regulator’s response

Legal framework

We have carefully considered the responses made in relation to our interpretation of the legal obligations to monitor contributions on trustees and managers. In relation to managers of personal pension schemes, we do not agree with the respondents who suggest that the manager’s legal obligations are limited to monitoring the fact and timing of contributions received.

In our view, it is quite clear in legislation\(^5\) that the manager’s responsibility must go beyond that and should be based on an understanding of what falls to be paid to the scheme under direct payment arrangements\(^6\). Managers should have a process in place where they can identify when contributions are not being paid in accordance with direct payment arrangements – in other words – they should be able to identify underpayments or overpayments.

\(^{continued...}\)

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5 Section 111A(3) Pensions Act 1993 (c. 48) and the equivalent legislation in Northern Ireland.

6 Direct payment arrangements should be in writing but may not be limited to one single document or agreement. They may be evidenced by a combination of the written and verbal agreements that exist between the provider or managers of the pension scheme, the employer, and the member.
This is not a new obligation on managers of personal pension schemes. The duty to monitor contributions and report payment failures was introduced in 2001\textsuperscript{7}. These duties were relaxed in 2006\textsuperscript{8} to give more flexibility in relation to how contributions were monitored and to reduce the burden of reporting.

Since the 2006 changes were introduced managers have only been required to notify the regulator about payment failures which are likely to be of material significance to us in the exercise of our functions. These are referred to in this response and the codes and guidance as material payment failures.

Trustees of occupational pension schemes have a similar duty to report payment failures to us\textsuperscript{9} and put in place internal controls to ensure the scheme is administered and managed in accordance with the scheme rules and requirements of the law.\textsuperscript{10}

In addition they have a fiduciary duty to chase missing assets of the scheme where it is in the interests of members as a whole.

Effective monitoring therefore remains fundamental to enabling both trustees and managers to fulfil their duty to identify and report material payment failures to us.

We have no authority to impose new duties on trustees and managers in a code of practice or in guidance. We can simply set out how trustees and managers are expected to comply with the underlying law. As such, our codes of practice and guidance do not go beyond what the law requires.

\textsuperscript{7} Section 9 Welfare Reform and Pension Act 1999 inserted section 111A Pension Schemes Act 1993, equivalent legislation was introduced in Northern Ireland.

\textsuperscript{8} Section 268(2) Pensions Act 2004 made amendments to section 111A of the Pension Schemes Act 1993, equivalent legislation was introduced in Northern Ireland.

\textsuperscript{9} Sections 49(9) and 88(1) Pensions Act 1995 (c. 26), and the equivalent legislation in Northern Ireland.

\textsuperscript{10} Section 249A Pensions Act 2004, and the equivalent legislation in Northern Ireland.
Impact assessment

We have considered the arguments for an impact assessment carefully.

We would like to acknowledge that the draft codes and guidance could have been clearer and this may have led to a misunderstanding of our interpretation of the relevant legislation with regard to the extent of the obligations on the trustees or managers to monitor contributions. We consider that the calls for an impact assessment were based on this misunderstanding as some of the respondents stated that the consultation was imposing new duties on trustees and managers.

We want to make clear that the draft codes, as consulted on, advocate a risk-based approach to fulfilling the duty to monitor, and do not impose new duties on trustees and managers.

We acknowledge that trustees and managers must assess the effectiveness of any process they put in place as a result of meeting the standards set down in the codes. Trustees and managers have their own business specific processes and risk frameworks as well as different relationships with different employers, so we are not seeking to dictate a particular process that must be followed.

It is worth reiterating that the codes are not statements of law and while setting standards that trustees and managers are expected to achieve, the test of compliance or of impact is a test against the law.

We are not asking trustees or managers to make specific administrative changes nor to adopt a single approach to fulfil their duties and therefore, we are not able to assess whether there would be costs for all schemes. We are aware that some trustees and managers are already meeting their obligations in full while others will develop different ways of complying with their duties in light of the expectations set out in these codes and guidance.

We therefore consider that an impact assessment is neither required nor useful.
A risk-based approach to monitoring

Many respondents interpreted the draft codes and guidance as requiring trustees and managers to monitor every contribution received, to duplicate the calculation procedures undertaken by payroll, and as implying a ‘one size fits all’ approach to monitoring for all schemes. This was not our intention.

Employers have primary responsibility for ensuring that the correct level of contribution is paid to the scheme but we consider that trustees and managers also have a fundamental role to play.

We believe that an effective monitoring system should be proportionate and risk-based, with the level of checking undertaken by the trustees or managers being dependent on the circumstances of the employer and scheme. It is up to the trustees or managers to decide on the most effective monitoring processes.

We accept that these processes must be commercially viable but they must also be in the interests of the members and be fit for the purpose of seeking to identify material payment failures. To aid trustees and managers the codes and guidance have been amended following the consultation to include more information on effective monitoring processes along with our view on higher risk situations which may require greater intervention.

Before concluding our response to the consultation, we met with a number of respondents to ensure that we had fully understood their responses on this particular issue and to clarify our proposals.

Trustees and managers have flexibility around how they set up their monitoring processes so long as they fulfil the requirement of allowing them to identify material payment failures.

This requirement is a central pillar in the protection of member benefits, whereby trustees and managers attempt to resolve payment failures that they have identified through monitoring and report appropriate payment failures to us to take action against employers.
Balance of responsibility

We understand the concern expressed that this approach shifts the balance of responsibility for ensuring correct contributions are paid from employers to trustees and managers, and that we are passing some of our own regulatory responsibility to trustees and managers. However, this is not the case.

We fully acknowledge that employers, members and the regulator itself all have a critical and distinct role to play in maintaining contributions. If the scheme is being used to comply with its employer duties, it is clearly the employer who has the duty to put in place a scheme that can be used for automatic enrolment and having done so, they must pay contributions in accordance with the rules or governing documentation of the scheme.

We will issue employer guidance alongside the amended codes and guidance and this will cover the employer’s responsibility to understand what is due to be paid to the scheme and by when, and how to calculate, deduct and pay over contributions to the scheme.

Scheme members, of course, also have a large responsibility for satisfying themselves that the contributions to which they are entitled are actually paid to the scheme. If they are concerned they can contact the employer to find out why contributions have not been paid and they can whistle blow to the regulator. But they can only do this if the trustees or managers and employer provide them with sufficient information to allow them to understand the contributions due and received.

We are also clear about our own responsibilities as set out in our statutory objectives. Key amongst those is that we must maximise compliance with the employer duties while ensuring that we protect the benefits of existing members.

This means that we must educate and enable employers to comply with their duties, and take action where we see deliberate, intentional or repeated non-compliance.

However, in terms of the recovery of unpaid contributions, we believe that those best placed to try and resolve payment failures are, in the first instance, the trustees and managers who understand the basis of the scheme they have set up and who are closest to the employer.

Where unpaid contributions cannot be recovered by the trustees and managers, we will consider the use of our enforcement powers. The trustees’ and managers’ duty to report material payment failures enables the regulator to deal with failures that we would not otherwise be able to identify.

All parties have their role to play in maintaining the flow of contributions but essential to this is a proportionate but effective monitoring regime by trustees and managers.
Establishing materiality

Trustees and managers must only report to the regulator where they ‘have reasonable cause to believe’ that a payment failure is of ‘material significance in the exercise by the regulator of any of its functions’11.

Reasonable cause to believe is more than an unsubstantiated suspicion. It means that trustees and managers must use their judgement to assess materiality. While we do not expect trustees and managers will need to investigate in detail the payment failure, they should seek to establish the cause and circumstance of the failure.

As a first step, trustees and managers may reasonably accept the reliability of information provided to them by employers and others unless they believe it to be incorrect. They may make reasonable assumptions about materiality based on an employer’s behaviour, for example if an employer fails to respond to multiple contacts, the trustees or managers may infer that the employer is unwilling to pay the outstanding contributions.

Trustees and managers should seek to resolve the payment failures they identify, the majority of which are likely to be caused by administrative errors. The guidance accompanying the code of practice has been amended since the consultation ended to include more practical guidance on what is expected from trustees and managers in terms of resolving payment failures.

Obtaining pensionable pay data from employers

Trustees and managers must be able to access up to date payment information if they are to monitor the payment of contributions effectively. We expect that employers should supply this information to trustees and managers as part of the normal administrative procedures of the scheme. The process for this should be agreed at scheme set up.

Trustees and managers may take payment information received at face value unless they have reason to believe it to be incorrect. The trustees or managers are not expected to carry out regular detailed examinations of pay data, such as to examine whether the elements of pay which are pensionable under the scheme rules are actually being taken into account in the calculation of contributions.

However, they should have a process in place that will flag when prima facie errors or omissions occur and which suggest more detailed examination and intervention should be carried out by the scheme.

Where the trustees’ or managers’ risk process indicates that they need to undertake a more detailed assessment, they should obtain the relevant payment information from the employer if they do not already have it.

Both trustees of occupational schemes and managers of personal pension schemes have the power to require this information from employers12. The law requires employers to supply this information to managers within a reasonable period of the request.

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11 Sections 49(9) and 88(1) Pensions Act 1995 and section 111A(7A) Pension Schemes Act 1993 and the equivalent legislation in Northern Ireland.

Nil returns

We accept the comments made by many respondents that requiring nil returns would be unnecessarily onerous and we will not take forward this requirement.

Multi-employer schemes and legacy schemes

In the amended supporting guidance we have given some examples of an effective monitoring approach. However, we would reinforce that we are not proposing a one size fits all process and that it is for the trustees and managers to decide the approach that is appropriate for their scheme. This may take into account the need to support high levels of automation, the size of the employer and the number of members in the scheme etc. An effective process should generally seek to direct energy towards those employers deemed to be most at risk.

Schemes with fewer than five active members

The codes and guidance apply to all defined contribution personal pension and occupational pension schemes, regardless of the number of members. This is a change from the existing code because the new employer duties apply to all employers, however small their workforce.

Enforcement

Respondents asked for more detail on how we will deal with the reports of payment failures we receive.

We have been clear that employers have primary responsibility for the calculation and payment of the correct level of contributions to the scheme in a timely manner. If employers fail to carry out this duty our aim is to try and ensure that workers are put back in the position they would have been in if the payment failure had not occurred and as quickly as possible. We therefore expect that the trustees or managers will take appropriate action to remedy the situation before reporting the payment failure to us.

Where reports of material payment failures are received we will adopt a risk-based approach to tackling non-compliance and we will target our resources where they are likely to have the most impact in fulfilling our statutory objectives of maximising compliance and protecting member interests.

In line with this approach, for schemes being used for automatic enrolment, we will usually in the first instance issue an unpaid contributions notice to the employer requiring them to pay any employer and/or member contributions that are outstanding and will allow a reasonable amount of time to restore those contributions.

Generally, we would be receptive to an employer proposing a payment arrangement with the trustees or managers to pay the outstanding contributions in instalments. This is a matter for the trustees or managers to agree with the employer directly.

13 Section 37, Pensions Act 2008 and the equivalent legislation in Northern Ireland.
If the non-compliance continues we may impose monetary penalties, firstly a fixed penalty of £400 and, where the employer still fails to comply, we may issue an escalating penalty which has a daily accrual rate. In addition, we will also investigate employers if we suspect they are fraudulently evading their duties under the Pensions Act 2008.

But, trustees and managers also play a vital role in reporting material payment failures. Our ability to take prompt and effective enforcement action is dependent on receiving comprehensive, accurate and timely data from trustees and managers.

Where we find that trustees or managers have not been carrying out their reporting duty in accordance with the law, we will work with them to put things right. While our primary focus will be to maximise employer compliance, we may also carry out investigations into the activity of trustees or managers that continually fail to report in accordance with the codes of practice. This could lead to an improvement notice or a financial penalty being imposed.

Reporting

We recognise that some managers and trustees may need to adjust systems as their business increases with the advent of automatic enrolment and with the codes clarifying the requirements in law. We will also need to adjust our systems and will put in place a standardised reporting mechanism which will become operational in 2014.

An on-line system for submission will support a standard content and format for reports; enhancing our ability to enforce effectively and take appropriate action in responding to the challenge of maximising employer compliance.

We will continue to discuss the usability of the standardised reporting template with industry as well seeking feedback on transition plans and how users should best migrate to using the new system.

This dialogue will also include a discussion with trustees and managers on the transition from current reporting methods to a new online reporting solution. We recognise that some users will be able to transition to the new system for reporting sooner than others, but we expect that all users will be reporting against the codes via the new online reporting system by March 2015.
Responses to the consultation

Consultation questions and The Pensions Regulator’s response

We asked a total of 18 questions. Nine of these related to code 5 and the same number in equivalent areas to code 6. In nearly all cases where respondents answered the questions they asked us to take their answers for code 5 as good for code 6, or replicated their answers in answering the second set of questions. Some chose only to answer one set of questions – the code that specifically applied to them eg individual trustee groups.

8 out of the 31 respondents chose to not to answer the specific questions but to provide general views on the consultation documents.

There was broad support across all categories of respondent for the majority of the questions, with little or no comment in a number of areas. However the majority of respondents wished to also comment on the legal underpinning of the consultation and chose to provide additional information which has been dealt with in ‘The regulator’s approach to maintaining contributions’ section of this response.

We have considered responses to the consultation questions seriously and we are grateful for the careful argument, operational insights and points relating to the de-risking of members that we received. This has informed the revised codes and guidance.

On questions 1 and 9, relating to clarity around direct pay arrangements, only one respondent said that the information was not clear. Two others qualified their response arguing that the question was predicated on duties with which they disagreed. 10 respondents did not answer the question. On this basis we will proceed as indicated at consultation.

On the questions 2 and 10, and 6 and 15, relating to reporting timeframes (7 days for reporting of information from the employer to managers/trustees and 10 days for the reporting of a material payment failure to us) just 2 respondents disagreed in each case.

The majority of respondents qualified their support however, asking that these be ‘working days’ and that bank holidays be taken into account. A number also said that these may be insufficient periods if information relating to a large number of members and asked for more flexibility.

Questions 3 and 12 related to greater member access to information including the promotion of online access. All respondents agreed with the intention behind the question, with many stating that this was already good practice or practice being established by them at present. Some argued that we should not be too prescriptive and that information should continue to be provided via the channel that gave the member most access.

continued...
We have given a great deal of thought to comments on ‘flexibility’ with regard to questions 2, 3 and 6 (and 10, 12 and 15) i.e. in relation to reporting time frames and greater take up of online access. We agree that flexibility is important. ‘Working days’ has therefore been used in the codes and guidance where we consider it appropriate and in light of consultation responses.

Questions 4 and 13 asked whether our proposal to move the deadline for reporting material payment failure to us should be changed from 90 to 120 days. A significant minority disagreed with this proposal.

Of those who agreed there was very little comment other than to simply agree, or to argue that small employers would have more time to adapt to processes and that this extension of the period may help employers in financial difficulty which may in turn be better for members. However, those against gave very detailed arguments for why this reporting length should not be changed. It was argued that 120 days might become the default position and that likely or suspected fraud, or a more general unwillingness to pay, would be apparent within the existing time frame to those working at the operational end. Though we had tried to emphasise that 120 days was the longest period trustees and managers should wait before a material payment failure should be reported, we agree that the retention of 90 days may prevent any unintended impacts on members and so will not carry forward this proposal.

Questions 5 and 14 asked about situations that were unlikely to be materially significant and whether there were other circumstances that should be included. 10 respondents did not answer this question with the remainder agreeing that the suggestions looked sensible. There were suggestions that two additional examples be considered for inclusion but these were points on what represented material payment failure rather than situations that were unlikely to be materially significant.

As such, we have retained the content set out at consultation. The list is not exhaustive and again flexibility and judgement are important in the practicalities of day-to-day business.

Questions 7 and 15 related to simultaneous reporting of material payment failure to the regulator and member. There was a great deal of disagreement on this question. 42% were against the proposal.

In each category of respondent the majority were against this proposal, bar those representing specific schemes.

We have been persuaded by the arguments that 120 days may become the default position and that likely or suspected fraud, or a more general unwillingness to pay, would be apparent within the existing time frame to those working at the operational end. Though we had tried to emphasise that 120 days was the longest period trustees and managers should wait before a material payment failure should be reported, we agree that the retention of 90 days may prevent any unintended impacts on members and so will not carry forward this proposal.

We have considered these responses very carefully. While a small majority of those who expressed a preference agreed with the proposed change, it was clear from a segmentation analysis that trade bodies (including unions), consultants and a number of legal firms fundamentally disagreed. In addition, nearly 50% of providers and schemes did not express a view on this issue.

continued...
Much of the argument centred on situations where issues with employers could be cleared up once they knew they had been reported to us, or where there were simple misunderstandings. Many also asked for more flexibility on this point and that good practice, i.e. that which represented the best interests of the member may not always be served in this way. Others raised issues of practicality – there may be an intention to alert members as soon as possible but ‘simultaneous’ reporting may be very difficult if large numbers are affected.

We accept the operational judgement of respondents and the codes and guidance have been revised. The new proposals on simultaneous reporting have been removed and replaced with reporting to the member within 30 days of reporting to us in line with the previous codes and guidance.

However, we hold that where possible the member should be alerted as soon as is practicable and that trustees and managers should operate in this regard with due consideration to the member’s welfare.

Questions 8 and 17 asked about the split between code and guidance. 8 respondents did not express a preference with 22% of the remaining 23 respondents, almost exclusively from the provider community, asking that more of the detail should be moved to the guidance from the code.

We are content, based on our own judgement and that of the majority of respondents, that the split between codes and guidance is clear and appropriate.

Questions 9 and 18 have been dealt with in ‘The regulator’s approach to maintaining contributions’ section of this response.
Appendix A

List of respondents to the consultation

ABI
Actuarial Profession
AEGON
Aviva
AXA
B&CE
CAPITA
Friend’s Life
ICAEW
ICAS
ILAG
Legal & General
Law Debenture
Law Society of Scotland
Mayer Brown
Mercer
MTA
NAPF
NEST
The Pensions Trust
PMI
Prudential
Royal Mail
RPMI
Sackers
Scottish Widows
Scottish Life Royal London
SPC
Standard Life
Towers Watson
TUC
Appendix B

List of consultation questions

Draft code of practice no 5 – maintaining contributions and reporting payment failures to the regulator for occupational defined contribution pension schemes

Part 1: Monitoring contributions
1. Does the code clearly explain the payment schedule requirements and due dates?
2. Do you agree that a reasonable period for the provision of information to trustees by the employer, where trustees have to rely on the power under pensions legislation to request information from the date of request is seven days?

Part 2: Providing information to members
3. Do you support the importance of providing accurate and timely member information and will you promote greater take up by members of online account access?

Part 3: Reporting to the regulator and the member
4. The regulator proposes to replace the pure time based filter with one based on identification of an employer who is not willing to pay, or where a contribution has been outstanding for 120 days. Do you agree with this approach of identifying defaulting employers for whom enforcement action may be appropriate?
5. A list of examples of what is unlikely to be materially significant is provided. Are there any further examples of payment failures which may be resolved between the employer and scheme as a matter of course that should be included?
6. Do you agree that a reasonable period for reporting once a material payment failure has been identified is ten days?
7. Do you agree that a reasonable period for reporting to the member is at the same point as reporting to the regulator i.e. when a material payment failure has been identified?

Draft code-related guidance for code of practice no 5
8. Do you agree with the divide between the code and guidance?
9. Are there any further clarifications or explanation you would like to see included in the guidance?

continued...
Draft code of practice no 6 – Maintaining contributions and reporting payment failures to the regulator for personal pension schemes

Part 1: Monitoring contributions
10. Does the code clearly explain how to recognise direct payment arrangements?
11. Do you agree that a reasonable period for the provision of information to managers by the employer, where managers have to rely on the power under pensions legislation to request information from the date of request is seven days?

Part 2: Providing information to members
12. Do you support the importance of providing accurate and timely member information and will you promote greater take up by members of online account access?

Part 3: Reporting to the regulator and the member
13. The regulator proposes to replace the pure time based filter with one based on identification of an employer who is not willing to pay, or where a contribution has been outstanding for 120 days. Do you agree with this approach of identifying defaulting employers for whom enforcement action may be appropriate?
14. A list of examples of what is unlikely to be materially significant is provided. Are there any further examples of payment failures which may be resolved between the employer and scheme as a matter of course that should be included?
15. Do you agree that a reasonable period for reporting once a material payment failure has been identified is ten days?
16. Do you agree that a reasonable period for reporting to the member is at the same point as reporting to the regulator ie when a material payment failure has been identified?

Draft code-related guidance accompanying code of practice no 6
17. Do you agree with the divide between the code and guidance?
18. Are there any further clarifications or explanations you would like to see included in the guidance?
Consultation response

Maintaining contributions – The Pensions Regulator’s response to the review of Code of practice no. 5 and Code of practice no. 6

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