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Code of practice no. 14

Governance and administration of public service pension schemes

April 2015

The Pensions Regulator

The Pensions Regulator

Code of practice no. 14

Governance and administration of public service pension schemes

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Code of practice no. 14
Governance and administration of public service pension schemes

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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 objectives[1] 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
   - minimise any adverse impact on the sustainable growth of an employer (in relation to the exercise of the regulator's functions under Part 3 of the Pensions Act 2004 only).

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 in relation to the exercise of functions under relevant pensions legislation and set out the standards of conduct and practice expected from those who exercise those functions[2].

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 account[3].

6. If there are grounds to issue an improvement notice[4], 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 regulator[5].

This code of practice

7. The Public Service Pensions Act 2013 (the 2013 Act) introduces the framework for the governance and administration of public service pension schemes and provides an extended regulatory oversight by the regulator.

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

2 Section 90A(1), ibid.

3 Section 90A(5), ibid.

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 s13 of the Pensions Act 2004.

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

8. The regulator is required to issue one or more codes of practice covering specific matters relating to public service pension schemes[6]. 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 law[7]. For further information, see 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 within the meaning of the Pensions Act 2004[8]. These are schemes established under the 2013 Act, new public body pension schemes and other statutory pension schemes which are connected to those schemes. It does not apply to schemes in the wider public sector, nor to any scheme which is excluded from being a public service pension scheme within the meaning of the Pensions Act 2004.

12. This code is particularly directed at scheme managers and the members of pension boards of public service pension schemes and connected schemes. Scheme managers must comply with various legal requirements relating to the governance, management and administration of public service pension schemes. Pension boards must also comply with certain legal requirements, including assisting scheme managers in relation to securing compliance with scheme regulations and other legislation relating to the governance and administration of the scheme, any requirements of the regulator and with any other matters specified in scheme regulations. The role, responsibilities and duties of pension boards will vary. Where pension boards are not directly responsible for undertaking particular activities, they remain accountable for assisting the scheme manager in securing compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme, any requirements of the regulator and with any other matters for which they are responsible under the scheme regulations[9].

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

7
Section 70, ibid.

8
Section 318, ibid.

9
Section 5 of the Public Service Pensions Act 2013.

13. In addition, the legal requirement to report breaches of the law under section 70 of the Pensions Act 2004 applies to other persons involved in public service pension schemes, so this code is also directed at them.

14. Scheme managers and pension boards (where relevant) may be able to delegate some activities to others, or outsource them, although they will not be able to delegate their accountability for complying with a legal requirement imposed on them. This code should therefore be followed by anyone to whom activities relating to the legal requirements covered by this code have been delegated or outsourced.

15. Employers participating in public service pension schemes will also find the code a useful source of reference. The role and actions of employers can be critical in enabling scheme managers to meet certain legal requirements[10].

16. 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. There are also some DC schemes which are offered as alternatives to the DB schemes. This code applies to any DC scheme which is a public service pension scheme within the meaning of the Pensions Act 2004.

Terms used in this code

17. **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.

18. **Public service pension schemes**[11] – these are (a) new public service pension schemes set up under section 1 of the 2013 Act (including any scheme which has effect as such a scheme[12]); (b) new public body pension schemes (within the meaning of the 2013 Act) 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 within the meaning of the Pensions Act 2004, whether it is a scheme established under section 1 of the 2013 Act, a new public body scheme or a connected scheme.

10
Employers participating in occupational public service pension schemes are under a statutory duty to report breaches of the law under s70 of the Pensions Act 2004.

11
As defined in s318 of the Pensions Act 2004. Under s318(6) of that Act, a scheme which would otherwise fall within the definition of 'public service pension scheme' in the Pensions Act 2004 does not do so if it is a scheme providing only for injury or compensation benefits (or both), or if it is specified in an order made under that section.

12
Section 28 of the 2013 Act.

19. **Connected scheme** – a scheme established under section 1 of the 2013 Act and another statutory pension scheme, or a new public body pension scheme 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 exceptions[13].

20. **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 schemes[14]. The responsible authority may also be the scheme manager[15]. 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.

21. **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 scheme[16]. The regulations must identify scheme managers and provide for the establishment of pension boards and scheme advisory boards. These regulations constitute the main rules of the scheme. In addition to the scheme regulations, the rules of a scheme include:

    - certain legislative provisions, to the extent that they override provisions of the scheme regulations, or which have effect in relation to a scheme and are not otherwise reflected in the scheme regulations, and
    - any provision which the scheme regulations do not contain but which the scheme rules must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes)[17].

    Some connected schemes and new public body pension schemes will not be established by regulations, so references in the code to scheme regulations should be read as references to the rules of the scheme in these cases.

22. **Scheme manager** – each public service pension scheme has one or more persons responsible for managing or administering the scheme[18]. Public service pension schemes can have different persons acting as scheme manager for different parts of the pension scheme. For the locally administered schemes[19], the scheme managers may be the local administering authorities or a person representing an authority or police force.

13
Section 4(6) and (7) of the 2013 Act.

14
Section 2 and Schedule 2, ibid.

15
Section 4(3), ibid.

16
Section 3 and Schedule 3, ibid.

17
Section 318(2) of the Pensions Act 2004.

18
Section 4 and s30 of the 2013 Act.

19
Locally administered schemes include the schemes for England, and Wales, and Scotland for local government workers, and England and Wales for fire and rescue workers and members of police forces.

23. **Pension board** – the scheme manager (or each scheme manager) for a scheme has a pension board[20] 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 any 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, responsibilities and duties entail.

24. **Scheme advisory board** – each DB public service pension scheme has a scheme advisory board[21] with responsibility for providing advice on the desirability of changes to the scheme, when requested to do so by the responsible authority (or otherwise, in accordance with scheme regulations). 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.

25. **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 another person(s) including those to whom activities have been delegated or outsourced. The scheme manager or pension board will be ultimately accountable, depending upon to whom the legal obligation applies under the legislation.

26. **Must** – in this code the term 'must' is used where there is a legal requirement.

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

How to use this code

28. The code is structured as a reference for scheme managers and pension boards to use to inform their actions in four core areas of scheme governance and administration: governing your scheme, managing risks, administration and resolving issues.

29. 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 that scheme managers or pension boards may wish to adopt, provided these meet the minimum legal requirements.

30. Schemes will need to consider and apply the practical guidance to suit their own particular characteristics and arrangements.

20
Section 5 and s30(1) of the 2013 Act (in the case of new public body schemes, if the scheme has more than one member).

21
Section 7, ibid. This requirement only applies to schemes set up under s1 of the 2013 Act.

Northern Ireland

31. References to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland. References to HM Treasury directions should be taken to be directions by the Department of Finance and Personnel. The responsible authority for each scheme is the relevant government department[22].

32. The appendix to this code lists the corresponding references to Northern Ireland legislation.

22
Section 2 and Schedule 2 of the Public Service Pensions Act (Northern Ireland) 2014.

Governing your scheme

33. This part of the code covers:
    - knowledge and understanding required by pension board members
    - conflicts of interest and representation, and
    - publishing information about schemes.

Knowledge and understanding required by pension board members

Legal requirements

34. A member of the pension board of a public service pension scheme must be conversant with:
    - the rules of the scheme[23], and
    - any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme.
35. A member of a pension board must have knowledge and understanding of:
    - the law relating to pensions, and
    - any other matters which are prescribed in regulations.
36. The degree of knowledge and understanding required is that appropriate for the purposes of enabling the individual to properly exercise the functions of a member of the pension board[24].

Practical guidance

37. The legislative requirements about knowledge and understanding only apply to pension board members. However, 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.
38. Schemes[25] should establish and maintain policies and arrangements for acquiring and retaining knowledge and understanding to support their pension board members. Schemes should designate a person to take responsibility for ensuring that a framework is developed and implemented.
39. However, it is the responsibility of individual pension board members to ensure 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.

23
See paragraph 21 for the definition of the 'rules of the scheme'.

24
Section 248A of the Pensions Act 2004.

25
See paragraph 25 for the definition of 'schemes'.

Areas of knowledge and understanding required

40. Pension board members must be conversant with their scheme rules, which are primarily found in the scheme regulations[26], and documented administration policies currently in force for their pension scheme[27]. Being 'conversant' means having a working knowledge of the scheme regulations and policies, so that pension board members can use them effectively when carrying out their duties.

41. They must also have knowledge and understanding of the law relating to pensions (and any other matters prescribed in legislation) to the degree appropriate for them to be able to carry out their role, responsibilities and duties.

42. In terms of documented administration policies, specific documents recording policy about administration will vary from scheme to scheme. However, the following are examples of administration policies which the regulator considers to be particularly pertinent and would expect to be documented where relevant to a pension scheme, and with which pension board members must therefore be conversant where applicable[28]. This list is not exhaustive and other documented policies may fall into this category:

    - any scheme-approved policies relating to:
        - conflicts of interest and the register of interests
        - record-keeping
        - internal dispute resolution
        - reporting breaches
        - maintaining contributions to the scheme
        - the appointment of pension board members
    - risk assessments/management and risk register policies for the scheme
    - scheme booklets, announcements and other key member and employer communications, which describe scheme policies and procedures
    - the roles, responsibilities and duties of the scheme manager, pension board and individual pension board members
    - terms of reference, structure and operational policies of the pension board and/or any sub-committee
    - statements of policy about the exercise of discretionary functions

26 See paragraph 21 for the definition of the 'rules of the scheme'.

27 Section 248A(2) of the Pensions Act 2004.

28 Section 248A(2)(b) of the Pensions Act 2004.

- statements of policy about communications with members and scheme employers
- the pension administration strategy, or equivalent[29], and
- any admission body (or equivalent) policies.

43. For pension board members of funded pension schemes, documents which record policy about the administration of the scheme will include those relating to funding and investment matters. For example, where relevant they must be conversant with the statement of investment principles and the funding strategy statement[30].

44. Pension board members must also be conversant with any other documented policies relating to the administration of the scheme. For example, where applicable, they must be conversant with policies relating to:

    - the contribution rate or amount (or the range/variability where there is no one single rate or amount) payable by employers participating in the scheme
    - statements of assurance (for example, assurance reports from administrators)
    - third party contracts and service level agreements
    - stewardship reports from outsourced service providers (for example, those performing outsourced activities such as scheme administration), including about compliance issues
    - scheme annual reports and accounts
    - accounting requirements relevant to the scheme
    - audit reports, including from outsourced service providers, and
    - other scheme-specific governance documents.

45. Where DC or DC AVC options are offered, pension board members should also be familiar with the requirements for the payment of member contributions to the providers, the principles relating to the operation of those arrangements, the choice of investments to be offered to members, the provider's investment and fund performance report and the payment schedule for such arrangements.

46. Schemes should prepare and keep an updated list of the documents with which they consider pension board members need to be conversant. This will enable them to effectively carry out their role. They should make sure that both the list and the documents are available in accessible formats.

29
For the local government pension schemes, this might include information about the setting of performance targets or making agreements about levels of performance.

30
Section 248A(2)(b) of the Pensions Act 2004.

Degree of knowledge and understanding required

47. The roles, responsibilities and duties of pension boards and their individual members will vary between pension schemes. Matters for which the pension board is responsible will be set out in scheme regulations[31]. Clear guidance on the roles, responsibilities and duties of pension boards and the members of those boards should be set out in scheme documentation.

48. Schemes should assist individual pension board members to determine the degree of knowledge and understanding that is sufficient for them to effectively carry out their role, responsibilities and duties as a pension board member.

49. Pension board members must have a working knowledge of their scheme regulations and documented administration policies. They should understand their scheme regulations and policies in enough detail to know where they are relevant to an issue and where a particular provision or policy may apply.

50. Pension board members must have knowledge and understanding of the law relating to pensions (and any other prescribed matters) sufficient for them to exercise the functions of their role. Pension board members should be aware of the range and extent of the law relating to pensions which applies to their scheme, and have sufficient understanding of the content and effect of that law to recognise when and how it impacts on their responsibilities and duties.

51. Pension board members should be able to identify and where relevant challenge any failure to comply with:

    - the scheme regulations
    - other legislation relating to the governance and administration of the scheme
    - any requirements imposed by the regulator, or
    - any failure to meet the standards and expectations set out in any relevant codes of practice issued by the regulator.

52. Pension board members' breadth of knowledge and understanding should be sufficient to allow them to understand fully and challenge any information or advice they are given. They should understand how that information or advice impacts on any issue or decision relevant to their responsibilities and duties.

31
Section 5(2) of the 2013 Act.

53. Pension board members of funded pension schemes should ensure that they have the appropriate degree of knowledge and understanding of funding and investment matters relating to their scheme to enable them to effectively carry out their role. This includes having a working knowledge of provisions in their scheme regulations and administration policies that relate to funding and investment, as well as knowledge and understanding of relevant law relating to pensions.

54. All board members should attain appropriate knowledge so that they are able to understand the relevant law in relation to their scheme and role. The degree of knowledge and understanding required of pension board members may vary according to the role of the board member, as well as the expertise of the board member. For example, a board member who is also a pensions law expert (for instance, as a result of their day job) should have a greater level of knowledge than that considered appropriate for board members without this background.

Acquiring, reviewing and updating knowledge and understanding

55. Pension board members should invest sufficient time in their learning and development alongside their other responsibilities and duties. Schemes should provide pension board members with the relevant training and support that they require. 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.

56. Newly appointed pension board members should be aware that their responsibilities and duties as a pension board member begin from the date they take up their post. Therefore, 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.

57. Pension board members should undertake a personal training needs analysis and regularly review their skills, competencies and knowledge to identify gaps or weaknesses. They should use a personalised training plan to document and address these promptly.

58. Learning programmes should be flexible, allowing pension board members to update particular areas of learning where required and to acquire new areas of knowledge in the event of any change. For example, pension board members who take on new responsibilities will need to ensure that they gain appropriate knowledge and understanding relevant to carrying out those new responsibilities.

59. The regulator will provide an e-learning programme to help meet the needs of pension board members, whether or not they have access to other learning. If schemes choose alternative learning programmes they should be confident that those programmes:

- cover the type and degree of knowledge and understanding required
- reflect the legal requirements, and
- are delivered within an appropriate timescale.

Demonstrating knowledge and understanding

60. Schemes should keep appropriate records of the learning activities of individual pension board members and the board as a whole. This will help pension board members to demonstrate steps they have taken to comply 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.

Conflicts of interest and representation

Legal requirements

61. A conflict of interest is 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 established[32].

62. In relation to the pension board, scheme regulations must include provision requiring the scheme manager to be satisfied:

- that a person to be appointed as a member of the pension board does not have a conflict of interest and
- from time to time, that none of the members of the pension board has a conflict of interest[33].

32 Section 5(5) of the 2013 Act defines a conflict of interest in relation to pension board members and s7(5) of that Act in relation to scheme advisory board members.

33 Section 5(4)(a), ibid.

63. Scheme regulations must require each member or proposed 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 above[34].

64. Scheme regulations must include provision requiring the pension board to include employer representatives and member representatives in equal numbers[35].

65. In relation to the scheme advisory board, the regulations must also include provision requiring the responsible authority to be satisfied:

    - that a person to be appointed as a member of the scheme advisory board does not have a conflict of interest and
    - from time to time, that none of the members of the scheme advisory board has a conflict of interest[36].

66. Scheme regulations must require each member of a scheme advisory board to provide the responsible authority with such information as the responsible authority reasonably requires for the purposes of meeting the requirements referred to above[37].

Practical guidance

67. This guidance is to help scheme managers to meet the legal requirement 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, (apart from the requirement regarding employer and member representatives), but the regulator does not have specific responsibility for oversight of scheme advisory boards.

68. Actual conflicts of interest are prohibited by the 2013 Act and cannot, therefore, be managed. Only potential conflicts of interest can be managed.

69. A conflict of interest may arise when pension board members:

    - must fulfil their statutory role[38] of assisting the scheme manager in securing compliance with the scheme regulations, other legislation relating to the governance and administration of the scheme and any requirements imposed by the regulator or with any other matter for which they are responsible, whilst
    - having a separate personal interest (financial or otherwise), the nature of which gives rise to a possible conflict with their statutory role.

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

35 Section 5(4)(c), ibid.

36 Section 7(4)(a), ibid.

37 Section 7(4)(b), ibid.

38 Section 5(2), ibid.

70. Some, if not all, of the 'Seven principles of public life' (formerly known as the 'Nolan principles')[39] will already apply to people carrying out roles in public service pension schemes, for example through 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 principles into any codes of conduct (and across their policies and processes) and other internal standards for pension boards.

71. Other legal requirements relating to conflicts of interest may apply to pension board members and/or scheme advisory board members[40]. 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. While pension board members may be subject to other legal requirements, when exercising functions as a member of a pension board they must meet the specific requirements of the 2013 Act and are expected to satisfy the standards of conduct and practice set out in this code.

72. It is likely that some pension board members will have dual interests, which may include other responsibilities. Scheme managers and pension board members will need to consider all other interests, financial or otherwise, when considering interests which may give rise to a potential or actual conflict. 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 from time to time they may be involved in a decision or matter which may be, or appear to be, in opposition to another interest. For instance, the pension board may be required to take or scrutinise a decision which involves the use of departmental resources to improve scheme administration, while the finance officer is at the same time tasked, by virtue of their employment, with reducing departmental spending. A finance officer might not be prevented from being a member of a pension board, but the scheme manager must be satisfied that their dual interests are not likely to prejudice the pension board member in the exercise of any particular function.

39
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.gov.uk/government/publications/the-7-principles-of-public-life**.

40
For example, local government legislation applicable to English local authorities contains legal requirements relating to certain people about standards of conduct, conflicts of interest and disclosure of certain interests.

73. Scheme regulations will set out matters for which the pension board is responsible[41]. Schemes[42] should set out clear guidance on the roles, responsibilities and duties of pension boards and the members of those boards in scheme documentation. This should cover, for example, whether they have responsibility for administering or monitoring the administration of the scheme; developing, delivering or overseeing compliance with requirements for 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.

74. Schemes should consider potential conflicts of interest in relation to the full scope of roles, responsibilities and duties of 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.

A three-stage approach to managing potential conflicts of interest

75. Conflicts of interest can inhibit open discussions and result in decisions, actions or inactions which could lead to 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 interests, which have the potential to become conflicts of interest or be perceived as conflicts of interest, are identified and that potential conflicts of interest (including perceived conflicts) are monitored and managed effectively.

76. Schemes should ensure that there is an agreed and documented conflicts policy and procedure, which includes identifying, monitoring and managing 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 that pension board members and scheme managers should follow to address a situation where board members are subject to a potential or actual conflict of interest.

41
Section 5(2) of the 2013 Act.

42
See paragraph 25 for the definition of 'schemes'.

77. Broadly, schemes should consider potential conflicts of interest in three stages:
    - identifying
    - monitoring, and
    - managing.

Identifying potential conflicts

78. Schemes should cultivate a culture of openness and transparency. They should recognise the need for continual consideration of potential conflicts. Disclosure of interests 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. They should know how to manage potential conflicts.

79. Pension board members, and people who are proposed to be appointed to a pension board, must provide scheme managers with information that they reasonably require to be satisfied that pension board members and proposed members do not have a conflict of interest[43].

80. Schemes should ensure that pension board members are appointed under procedures that require them to disclose any interests, including other responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed.

81. All terms of engagement, for example appointment letters, should include a clause requiring disclosure of all interests, including any other responsibilities, which have the potential to become conflicts of interest, as soon as they arise. All interests disclosed should be recorded. See the section of this code on 'Monitoring potential conflicts'.

82. Schemes should take time to consider what important matters or decisions are likely to be considered during, for example, the year ahead and identify and consider any potential or actual conflicts of interest that may arise in the future. Pension board members should be notified as soon as practically possible and mitigations should be put in place to prevent these conflicts from materialising.

43 Section 5(4)(b) of the 2013 Act and scheme regulations.

Monitoring potential conflicts

83. As part of their risk assessment process, schemes should identify, evaluate and manage dual interests 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 assess the likely consequences were a conflict of interest to materialise.

84. 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 to manage potential conflicts of interest 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.

85. 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 to declare any interests, including other responsibilities, which have the potential to become conflicts of interest, and to minute discussions about how they will be managed to prevent an actual conflict arising.

Managing potential conflicts

86. Schemes should establish and operate procedures which ensure that pension boards are not compromised by potentially conflicted members. 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.

87. 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 governed and administered. Schemes should be open and transparent about the way they manage potential conflicts of interest.

88. 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

89. Below are some examples of potential or actual conflicts of interest which could arise, or be perceived to arise, in relation to public service pension schemes. These will depend on the precise role, responsibilities and duties of a pension board. 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 legal advice considered appropriate, on a case-by-case basis.

a. Investing to improve scheme administration versus 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 in the scheme, but it would be costly to implement. The scheme manager, for instance a central government department or local administering 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 scheme manager would need to find money, perhaps by using a budget that was intended for another purpose. This decision could prove unpopular with taxpayers. A conflict of interest could arise where the employer representative was likely to be prejudiced in the exercise of their functions by virtue of their dual interests.

b. Outsourcing an activity versus keeping an activity in-house

In an extension of the previous 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 in the scheme, but it would mean outsourcing an activity that is currently being undertaken in-house by their employer. 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 employers or membership versus representing narrow interests

An employer representative who happens to be employed by the administering authority and is appointed to the pension board to represent employers generally could be conflicted if they only serve to act in the interests of the administering authority, rather than those of all participating employers. Equally, a member representative, who is also a trade union representative, appointed to the pension board to represent the entire scheme membership could be conflicted if they only act in the interests of their union and union membership, rather than all scheme members.

d. Assisting the scheme manager versus furthering personal interests

i. 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 benefit, resulting in them not providing, or not being seen to provide, independent advice or services

ii. 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, for example, a family member works there.

e) Sharing information with the pension board versus 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 considerations or decisions 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. Their knowledge of this information will put them in a position of conflict if it is likely to prejudice their ability to carry out their functions as a member of the pension board.

Representation on pension boards

90. While scheme regulations must require pension boards to have an equal number of employer and member representatives[44], there is flexibility to design arrangements which best suit each scheme.

91. Arrangements should be designed with regard to the principles of proportionality, fairness and transparency, and with the aim of ensuring that a pension board has the right balance of skills, experience and representation (for example, of membership categories and categories of employers participating in the scheme). Those responsible for appointing members to a pension board should also consider the mix of skills and experience needed on the pension board in order for the board to operate effectively in light of its particular role, responsibilities and duties.

44
Section 5(4)(c) of the 2013 Act.

Publishing information about schemes

Legal requirements

92. 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-date[45].

93. The information must include:

- who the members of the pension board are
- representation on the board of members of the scheme(s), and
- the matters falling within the pension board's responsibility[46].

Practical guidance

Publication of pension board information

94. Scheme members 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.

95. Scheme managers must publish the information required about the pension board and keep that information up-to-date[47]. This will 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.

96. When publishing information about the identity of pension board members, the representation of scheme members and matters for which the board is responsible, schemes[48] should also publish useful related information about the pension board such as:

- the employment and job title (where relevant) and any other relevant position held by each board member
- the pension board appointment process
- who each pension board member represents
- the full terms of reference for the pension board, including details of how it will operate, and
- any specific roles and responsibilities of individual pension board members.

45
Section 6(1) of the 2013 Act.

46
Section 6(2), ibid.

47
Section 6(1), ibid.

48
See paragraph 25 for the definition of 'schemes'.

97. Schemes should also consider publishing information about pension board business, 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). They should consider any requests for additional information to be published, to encourage scheme member engagement and promote a culture of transparency.

98. Scheme managers must ensure that information published about the pension board is kept up-to-date[49]. Schemes should have policies and processes to monitor all published data on an ongoing basis to ensure it is accurate and complete.

Other legal requirements

99. Scheme managers (or any other person specified in legislation) must 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 published[50].

49
Section 6(1) of the 2013 Act.

50
Section 15, ibid.

Managing risks

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

Internal controls

Legal requirements

101. The scheme manager of a public service pension scheme must establish and operate internal controls. These must be 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.

102. For these purposes 'internal controls' means:

- arrangements and procedures to be followed in the administration and management of the scheme
- systems and arrangements for monitoring that administration and management, and
- arrangements and procedures to be followed for the safe custody and security of the assets of the scheme[51].

Practical guidance

103. 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 decision making and documented procedures for assessing and managing risk, reviewing breaches of law and managing contributions to the scheme.

104. Good internal controls are an important characteristic of a well-run scheme and one of the main components 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.

105. Scheme managers must establish and operate internal controls[52]. These should address significant risks which are likely to have a material impact on the scheme. Scheme managers should employ a risk-based approach and ensure that sufficient time and attention is spent on identifying, evaluating and managing risks and developing and monitoring appropriate controls. They should seek advice, as necessary.

51
Section 249A(5) and s249B of the Pensions Act 2004.

52
Section 249B, ibid.

Identifying risks

106. Before implementing an internal controls framework, schemes[53] 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, and
- identifying the main risks associated with those objectives, functions and activities.

107. An effective risk assessment process will help schemes to identify a wide range of internal and external risks, which are critical to the scheme and members. When identifying risks, 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.

108. Once schemes have identified risks, they should record them in a risk register and review them regularly. Schemes should keep appropriate records to help scheme managers demonstrate steps they have taken to comply, if necessary, with legal requirements.

Evaluating risks and establishing adequate internal controls

109. 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.

110. 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. For example, schemes could obtain assurance about their existing controls through direct testing or by obtaining reports on controls. Any such review should be appropriate to the outcome of the risk evaluation.

111. Schemes should consider what internal controls are appropriate to mitigate the main 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.

53
See paragraph 25 for the definition of 'schemes'.

Managing risks by operating internal controls

112. 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 new employers participating in the scheme understand what member data are required and the process for supplying it. Where employers fail to supply the correct data or do not follow the correct process, schemes should ensure that the employer identifies the cause of the error and that appropriate action is taken to avoid recurrence, for example remedying a systemic error or providing the relevant training.

b. The level of reliance that can be placed on information technology solutions where processes are automated
For example, where scheme 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 a control is capable of preventing future recurrence or merely detecting an event that has already happened
For example, schemes should ensure that their systems support the maintenance and retention of good member records. This includes implementing procedures and controls which identify where systems are not fit for purpose, there are gaps in the data, the data are of a poor quality and/or there has been a loss of data.

d. The frequency and timeliness of a control process
For example, schemes should ensure that data are complete. They should undertake a data-cleansing or member-tracing exercise and review this on a regular basis (at least annually or at regular intervals that they consider appropriate for the scheme).

e. How the control will ensure that data are managed securely
For example, schemes should ensure that all staff, including temporary or contract staff, complete information management training before they are given access to sensitive data.

f. The process for flagging errors or control failures, and approval and authorisation controls
For example, schemes should ensure that member communications such as member information booklets are reviewed regularly, particularly where there are changes to the scheme. All relevant parties should be aware of how they should flag errors and the authorisation required before any changes are made to the communications.

Monitoring controls effectively

113. Risk assessment is a continual process and should 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.

114. 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 pay the necessary employer contributions).

115. 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, for example 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.

116. 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 when substantial changes take place, such as changes to pension scheme personnel, implementation of new administration systems or processes, or where a control has been found to be inadequate.

117. 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 whistleblowing report that outlines relevant information relating to the breach. For more information, see the 'Reporting breaches of the law' section of this code.

118. Ultimately, the legal responsibility for establishing and operating adequate internal controls rests with the scheme manager[54]. 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

119. The legal requirements relating to internal controls apply equally where schemes outsource services connected with the running of the scheme. Providers should be required to demonstrate that they will have adequate internal controls in their tenders for delivering services. The requirements should be incorporated in the terms of engagement and contract between the scheme and service provider. Outsourced services may include, for example, the maintenance of records and data, calculation of benefits and investment management services. Where services are outsourced, scheme managers should be satisfied that internal controls associated with those services are adequate and effective.

120. 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 that they have adequate internal controls relating to the services they provide. It is vital that schemes ensure they receive sufficient assurance from service providers. For example, the information from providers should be sufficiently detailed and comprehensive and the service level agreements should cover all services that are outsourced. Schemes should also consider including provisions in contracts for outsourced services requiring compliance with appropriate standards. This should help to ensure effective administration.

54
Section 249B of the Pensions Act 2004.

Administration

121. This part of the code covers:

- scheme record-keeping
- maintaining contributions, and
- providing information to members.

Scheme record-keeping

Legal requirements

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

- member information[55]
- transactions[56], and
- pension board meetings and decisions[57].

123. The legal requirements are set out in the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 ('the Record Keeping Regulations').

Practical guidance

124. Failure to maintain complete and accurate records and put in place effective internal controls to achieve this can affect the ability of schemes[58] to carry out basic functions. Poor record-keeping can result in schemes failing to pay benefits in accordance with scheme regulations, 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 should be able to demonstrate to the regulator, where required, that they keep accurate, up-to-date and enduring records to be able to govern and administer their pension scheme efficiently.

125. Scheme managers must establish and operate adequate internal controls[59], which should include processes and systems to support record-keeping requirements and ensure that they are effective at all times.

55 Regulation 4 of the Record Keeping Regulations.

56 Regulation 5, ibid.

57 Regulation 6, ibid.

58 See paragraph 25 for the definition of 'schemes'.

59 Section 249B of the Pensions Act 2004.

Records of member information

126. Scheme managers must ensure that member data across all membership categories specified in the Record Keeping Regulations is complete and accurate[60]. Member data should be subject to regular data evaluation.

127. Scheme managers must keep specific member data[61], which will enable them to uniquely identify a scheme member and calculate benefits correctly. This is particularly important with the establishment of career average revalued earnings (CARE) schemes. Scheme managers must be able to provide members with accurate information regarding their pension benefits (accrued benefits to date and their future projected entitlements) in accordance with legislative requirements[62], as well as pay the right benefits to the right person (including all beneficiaries) at the right time.

128. Schemes should require participating employers to provide them with timely and accurate data in order for the scheme manager to be able to fulfil their legal obligations. Schemes should seek to ensure that processes are established by employers which enable the transmission of complete and accurate data from the outset. Processes will vary from employer to employer, depending on factors such as employee turnover, pay periods, number of employees who are members and the timing and number of payroll processing systems.

129. Schemes should seek to ensure that employers understand the main events which require information about members to be passed from the employer to the scheme and/or another employer, such as when an employee:

- joins or leaves the scheme
- changes their rate of contributions
- changes their name, address or salary
- changes their member status, and
- transfers employment between scheme employers.

130. 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 according to the procedures set out above, meaning that they and/or scheme managers may not be complying with legal requirements, those under a statutory duty to report breaches of the law to the regulator under section 70 of the Pensions Act 2004 should assess whether there has been a relevant breach and take action as necessary.

60
Section 16 and s30 of the 2013 Act. Regulation 4 of the Record Keeping Regulations specifies member records which must be kept. The Data Protection Act 1998 requires personal data to be accurate and up-to-date.

61
Regulation 4 of the Record Keeping Regulations.

62
Legislative requirements include s14 of the 2013 Act, HM Treasury directions made under that section, and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

Records of transactions

131. 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.

132. Scheme managers must keep records of transactions made to and from the scheme and any amount due to the scheme which has been written off[63]. They should be able to demonstrate that they do so.

Records of pension board meetings and decisions

133. Scheme managers must keep records of pension board meetings including any decisions made[64]. Schemes should also keep records of key discussions, which may include topics such as compliance with policies relating to administration of the scheme.

134. Scheme managers must also keep records relating to any decision taken by members of the pension board other than at a pension board meeting, or taken by a committee/sub-committee, which has not been ratified by the pension board. The records must include the date, time and place of the decision and the names of board members participating in that decision[65]. This will ensure that there is a clear and transparent audit trail of the decisions made in relation to the scheme.

Retention of scheme records

135. Schemes should retain records for as long as they are needed. It is likely that data will need to be held for long periods of time and schemes will need to retain some records for a member even after that individual has retired, ensuring that pension benefits can be properly administered over the lifetime of the member and their beneficiaries. Schemes should have in place adequate systems and processes to enable the retention of records for the necessary time periods.

Ongoing monitoring of data

136. Schemes should have policies and processes that monitor data on an ongoing basis to ensure it is accurate and complete, 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 being paid.

137. 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 for the effective administration of CARE pension schemes, which requires schemes to hold significantly more data than needed for final salary schemes.

63 Regulation 5 of the Record Keeping Regulations.

64 Regulation 6, ibid.

65 Ibid.

Data review exercise

138. Schemes should continually review their data and carry out a data review exercise at least annually. This should include an assessment of the accuracy and completeness of the member information data held. Schemes should decide the frequency and nature of the review in light of factors such as the level of data quality, any issues identified and key scheme events.

139. 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.

140. 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 are complete and accurate.

Data improvement plan

141. Where schemes identify poor quality or missing data, they should put a data improvement plan in place to address these issues. The plan should have specific data improvement measures which schemes can monitor and a defined end date within a reasonable timeframe when the scheme will have complete and accurate data.

Reconciliation of member records

142. Schemes should ensure that member records are reconciled with information held by the employer, for example postal address or electronic address (email 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

143. Schemes must ensure that processes that are created to manage scheme member data meet the requirements of the Data Protection Act 1998 and the data protection principles.

144. Schemes should understand:

- 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 are 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, and
- how data protection affects member communications.

Other legal requirements

145. In addition to the requirements set out in the Record Keeping Regulations, there are various other legal requirements that relate to record-keeping in public service pension schemes. 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:

- Pensions Act 1995 and 2004
- Pensions Act 2008 and the Employers' Duties (Registration and Compliance) Regulations 2010[66]
- Occupational Pension Schemes (Scheme Administration) Regulations 1996
- Registered Pension Schemes (Provision of Information) Regulations 2006
- Data Protection Act 1998, and
- Freedom of Information Act 2000.

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

66 See the regulator's guidance about automatic enrolment for more information about record-keeping requirements under this legislation.

Maintaining contributions

Legal requirements

147. Employer contributions must be paid to the scheme in accordance with any requirements in the scheme regulations. 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 practicable[67].

148. Where employee contributions are deducted from a member's pay, the amount deducted must be paid to the managers of the scheme at the latest by the 19th day of the month following the deduction, or by the 22nd day if paid electronically (the 'prescribed period')[68], or earlier if required by scheme regulations. References to 'days' means all days. References to 'working days' do not include Saturdays, Sundays or Bank Holidays.

149. Where employee contributions are not paid within the prescribed period, if the scheme manager[69] 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 give notice of the failure to the regulator and the member within a reasonable period after the end of the prescribed period[70]. Where there is a failure to pay employee contributions on an earlier date in accordance with scheme regulations, schemes should also consider their statutory duty under section 70 of the Pensions Act 2004 to assess and if necessary report breaches of the law. For more information about reporting breaches of the law, see this section of the code.

Practical guidance

150. As part of the requirement to establish and operate adequate internal controls, scheme managers should ensure that there are effective procedures and processes in place to identify payment failures that are – and are not – of material significance to the regulator. A 'payment failure' is where contribution payments are not paid to the scheme by the due date(s), or within the prescribed period and a 'materially significant payment failure' refers to a payment failure which is likely to be of material significance to the regulator in the exercise of its functions.

151. Schemes[71] 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 other legal requirements.

67
Section 70A of the Pensions Act 2004.

68
Section 49(8) of the Pensions Act 1995 and regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

69
The legal requirement to report late payments of employee contributions is imposed on the 'managers' of a scheme, which the regulator generally takes to be the 'scheme manager' identified in scheme regulations in accordance with the 2013 Act.

70
Section 49(9) of the Pensions Act 1995.

71
See paragraph 25 for the definition of 'schemes'.

152. 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, and
- reporting materially significant payment failures.

153. These procedures and processes should help scheme managers to meet their statutory duty to report materially significant payment failures to the regulator, as well as ensuring the effective management of scheme contributions and payment of the right pension.

Developing a record for monitoring the payment of contributions

154. There are legislative requirements for managers of DB schemes to keep a schedule of contributions; and for DC schemes, a payment schedule, which allows managers to monitor contributions to their scheme. There are various exemptions from these requirements including for DB and DC schemes which are established by or under an enactment and which are guaranteed by a Minister of the Crown or other public authority, and for DB schemes which are pay-as-you-go schemes[72].

155. Public service pension schemes which meet these exemptions should nonetheless develop a record for monitoring the payment of contributions to the scheme (a contributions monitoring record, which must reflect any requirements in scheme regulations where relevant). Schemes should prepare the contributions monitoring record in consultation with employers.

156. A contributions monitoring record will enable schemes to check whether contributions have been paid on time and in full, and, if they have not, provide a trigger for escalation for schemes to investigate the payment failure and consideration of whether scheme managers need to report to the regulator and, where relevant, members.

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

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

72 Exemptions from the requirement to secure a schedule of contributions in respect of DB schemes under s227 of the Pensions Act 2004 are in regulation 17 of the Occupational Pension Schemes (Scheme Funding) Regulations 2005. Exemptions from the requirement to secure a payment schedule in respect of DC schemes under s87 of the Pensions Act 1995 is in regulation 17 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

158. The date when employer contributions must be paid is the date on or before which they are due under the scheme in accordance with the scheme regulations (or other scheme documentation). Schemes should assess the timing of payments against the date specified.

159. While there is a legal requirement for employee contributions to be paid to the scheme by the 19th day of the month following deduction, or by the 22nd day if paid electronically, this does not override any earlier time periods required by the scheme regulations. There are special rules for the first deduction of contributions on automatic enrolment under the Pensions Act 2008[73].

160. A contributions monitoring record should help schemes to identify any employers who are not paying contributions on time and/or in full, support schemes to ensure that contributions are paid and employers to develop and implement new processes, 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

161. Schemes should monitor contributions on an ongoing basis for all the membership categories within the scheme. Schemes should regularly check payments due against the contributions monitoring record.

162. Schemes should apply a risk-based and proportionate approach to help identify employers and situations which present a higher risk of payment failures occurring and which are likely to be of material significance and require the scheme manager to intervene.

163. Schemes 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 also have a process in place to identify where payments are late or have been underpaid, overpaid or not paid at all.

164. For schemes to effectively monitor contributions they will require access to certain information. Employers will often provide the payment information that schemes need to monitor contributions at the same time as they send the contributions to the scheme, which may be required under the scheme regulations. Payment information may include:

- the employer and employee contributions due to be paid, which should be specified in the scheme regulations and/or other scheme documentation
- the pensionable pay that contributions are based upon (where required), and
- due date(s) on or before which payment of contributions and other amounts are to be made.

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

165. Schemes should have adequate internal controls in place to monitor the sharing of payment information between the employer, pension scheme and member. 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.

166. Scheme managers must record and retain information on transactions, including any employer and employee contributions received and payments of pensions and benefits[74], which will support them in their administration and monitoring responsibilities.

167. 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

168. When schemes identify or are notified of a problem, they should assess whether a payment failure has occurred before taking steps to resolve and, if necessary, report it. During their assessment, schemes should take into account:

- legitimate agreed payments made directly by an 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 an employee and 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
- any AVCs included with an employer's overall payment.

169. Where schemes identify a payment failure, they should follow a process to resolve issues quickly. This should normally involve the following steps:

a. Investigate any apparent employer failure to pay contributions in accordance with the contributions monitoring record or legal requirements.

b. Contact the employer promptly to alert them to the payment failure and to seek to resolve the overdue payment.

74 Regulation 5 of the Record Keeping Regulations.

c. Discuss it further with the employer as soon as practicable to find out the cause and circumstances of the payment failure.

d. Ask the employer to resolve the payment failure and take steps to avoid a recurrence in the future.

170. 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 form part of the decision of whether or not to report a payment failure to the regulator and, where relevant, members.

171. The regulator recognises that a monitoring process based on information provided by employers may not be able to confirm deliberate underpayment or non-payment, or fraudulent behaviour by an employer. Schemes should review current processes or develop a new process which is able to detect situations where fraud may be more likely to occur and where additional checks may be appropriate.

172. 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

173. Scheme managers must report payment failures which are likely to be of material significance to the regulator within a reasonable period, in the case of employee contributions; and as soon as reasonably practicable in the case of employer contributions[75].

174. Where schemes identify a payment failure, they should attempt to recover contributions within 90 days from the due date or prescribed period having passed without full payment of the contribution.

175. While schemes are not expected to undertake a full investigation to establish materiality or investigate whether an employer has behaved fraudulently, schemes should ask the employer:

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

75 Section 49(9)(b) of the Pensions Act 1995 and s70A of the Pensions Act 2004.

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

177. Having reasonable cause means more than merely having a suspicion that cannot be substantiated. Schemes should investigate the payment failure and use their judgement when deciding whether to report to the regulator.

178. 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 they receive no response, schemes may infer that an employer is unwilling to pay the contributions due.

179. Examples of payment failures that 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 fraudulently evading their 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 does not appear to be taking adequate steps to remedy the situation, for example where there are repetitive and regular payment failures, or
- 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 that had already been corrected on discovery or is thereafter corrected as soon as possible.

180. Examples of payment failures 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, or
- 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.

181. Schemes should identify and report to the regulator, as appropriate, any payment failures that may not be of material significance taken individually, but which could indicate a systemic problem. For example, an employer consistently failing to pay contributions by the due date or within the prescribed period, but paying within 90 days, may be due to inefficient scheme systems and processes. Schemes may also need to report payment failures that occur repeatedly and are likely to be materially significant to the regulator, depending on the circumstances.

182. Reporting payment failures of employer contributions as soon as 'reasonably practicable' means within a reasonable period from the scheme manager having reasonable cause to believe that the payment failure is likely to be of material significance to the regulator. Schemes should also consider whether it may be appropriate to report a payment failure of employer contributions to scheme members.

183. A reasonable period for reporting would be within ten working days from having reasonable cause to believe that the payment failure is likely to be of material significance. This will depend upon the seriousness of the payment failure and impact on the scheme. A written report should be preceded by a telephone call, if appropriate.

184. In the case of an employer failing to pay employee contributions to the pension scheme, if the scheme manager has reasonable cause to believe that the payment failure is likely to be of material significance to the regulator, the failure must be reported to the regulator[76] and members within a reasonable period after the end of the prescribed period[77]. A reasonable period for reporting to the regulator would be within ten working days and to members within 30 days of having reported to the regulator.

185. Reports relating to payment failures of employer contributions must be made in writing (preferably using our Exchange online service)[78]. In exceptional circumstances the scheme manager could make a telephone report.

76
Reporting to the regulator does not affect any responsibility to report to another person or organisation.

77
S49(8) and (9) of the Pensions Act 1995 and regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996. Where there is a failure to pay employee contributions on an earlier date in accordance with scheme regulations, schemes should also consider their statutory duty under s70 of the Pensions Act 2004 to assess and if necessary report breaches of the law.

78
Section 70A of the Pensions Act 2004.

186. The regulator has standardised reporting procedures and expectations regarding content, format and channel. For more information, see the section of this code on 'Reporting breaches of the law'.

Providing information to members

Legal requirements

187. The law requires schemes[79] to disclose information about benefits and scheme administration to scheme members and others. This section summarises the legal requirements relating to benefit statements and certain other information which must be provided and should be read alongside the requirements in the 2013 Act, HM Treasury directions[80] and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 ('the Disclosure Regulations 2013'). In addition to these duties, there are other legal requirements relating to the provision of information to members and others under other legislation. See paragraph 211 for further details.

Benefit statements

For active members of DB schemes under the 2013 Act

188. 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 Act or new public body scheme[81]. The statement must include a description of the benefits earned by a member in respect of their pensionable service[82].

189. 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 date[83].

190. Statements must also comply with HM Treasury directions in terms of any other information which must be included and the manner in which they must be provided to members[84].

For active, deferred or pension credit members of any DB public service pension scheme under the Disclosure Regulations 2013

191. Managers[85] of a scheme 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 in the previous 12 months before that request[86].

79
See paragraph 25 for the definition of 'schemes'.

80
Section 14 of the 2013 Act.

81
Section 14(1) and s30(1) of the 2013 Act.

82
Section 14(2)(a), ibid.

83
Section 14(4) and (5), ibid.

84
Section 14(2)(b) and (6), ibid.

85
The Occupational Pension Schemes (Managers) Regulations 1986 specify who is to be treated as the 'manager' (in certain occupational public service pension schemes) for the purpose of providing information under specified legislation, including the Disclosure Regulations 2013, which may differ from the person who is the 'scheme manager'.

86
Regulation 16 of the Disclosure Regulations 2013.

192. These benefit statements must include information about the amount of benefits by reference to a particular date and how they are calculated[87]. The full details depend on the type of member making the request.

193. The information must be given as soon as practicable but no more than two months after the date the request is made[88].

For members of a DC public service pension scheme under the Disclosure Regulations 2013

194. Managers of a scheme 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 year[89]. An 'excluded person' is a member or beneficiary whose present postal address and email 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)[90].

195. 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 year[91], the value of the member's accrued rights under the scheme at a date specified by the managers of the scheme[92] and a statutory money purchase illustration[93]. The full detail of the information that must be provided is set out in the Disclosure Regulations 2013.

Other information about scheme administration

196. Under the Disclosure Regulations 2013, managers of a scheme must provide other information to members and others in certain circumstances (for example, on request). The Regulations set out the information which must be given, the timescales for providing such information and the methods that may be used. Not all information must be provided in respect of all public service pension schemes (there are some exemptions for specified public service schemes or according to the type of benefit offered), but information which scheme managers may need to provide includes:

- basic scheme information
- information about the scheme that has materially altered
- information about the constitution of the scheme
- annual report (this requirement will generally not apply to unfunded DB public service pension schemes and DB schemes for local government workers[94])

87 Regulation 16 and Schedule 5 of the Disclosure Regulations 2013.

88 Regulation 16(3), ibid.

89 Regulation 17, ibid.

90 Regulation 2, ibid.

91 'Scheme year' is defined in Regulation 2, ibid.

92 Regulation 17 and Schedule 6, ibid.

93 Paragraph 6 and Schedule 6, ibid. There are certain exceptions to the requirements to provide this information.

94 Regulation 4, ibid.

- information about funding principles, actuarial valuations and payment schedules (these requirements will generally not apply to unfunded DB public service pension schemes and DB schemes for local government workers[95])
- information about transfer credits
- information about lifestyling (this requirement will not apply in respect of DB benefits in public service pension schemes[96])
- information about accessing benefits, and
- information about benefits in payment.

197. The detail of the information that must be provided to scheme members and others and any exemptions are set out in the Disclosure Regulations 2013. Managers must provide the required information, along with confirmation that members may request further information and the postal and email addresses to which a person should send those requests and enquiries[97].

Who is entitled to information

198. Managers of a scheme must ensure that scheme members and others are given information in accordance with the Disclosure Regulations 2013, unless they are an 'excluded person' (as defined above).

199. 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. The categories of people who are entitled to receive information vary according to the different types of information, and there are exemptions where information has already been provided in a specified period. The detail of who is entitled to any particular type of information is set out in the Disclosure Regulations 2013 but may include any of the following ('a relevant person'):

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

95 Regulation 4 of the Disclosure Regulations 2013.

96 Regulation 18(1), ibid.

97 Regulation 4(7), ibid.

When basic scheme information must be provided

200. Managers 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 member[98]. Where the manager has received jobholder information[99] for the member or prospective member they must provide the information within a month of the jobholder information being received[100]. Where they have not received jobholder information, they must provide the information within two months of the date the person became an active member of the scheme[101].

201. Managers must also provide the information on request to a relevant person 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 before the request[102].

What information must be disclosed on request

202. In addition to the basic scheme information, pension scheme members and other relevant persons are entitled to request certain scheme information or scheme documents including:

- information about the constitution of the pension scheme, and
- information about transfer credits[103].

How benefit statements and other information must be provided

203. 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 any other means permitted by the law. For benefit statements issued under the 2013 Act, HM Treasury directions may specify how the information must be provided. Where schemes wish to provide information required under the Disclosure Regulations 2013 by electronic means there are important steps and safeguards that must first be met[104]. These include:

- scheme members and beneficiaries being provided with the option to opt out of receiving information electronically by giving written notice to the scheme
- managers 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

98 Regulation 6 of the Disclosure Regulations 2013.

99 Specified in regulation 3 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

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

101 Regulation 6(6), ibid.

102 Regulation 6(4) and (7), ibid.

103 Regulations 11, 14 and Parts 1 and 4 of Schedule 3, ibid.

104 Regulation 26, ibid.

- ensuring that members and beneficiaries who were members or beneficiaries of the public service pension scheme on 1 December 2010 (where the scheme had not provided information electronically prior to that date) has been sent a written notice (other than via email or website), informing them that:
  - it is proposed to provide information electronically in the future and
  - scheme members and beneficiaries may opt out of receiving information electronically by sending written notice.

204. Where schemes make information or a document available on a website for the first time, they must give notice (other than via a website) to the recipient[105]. 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[106].

205. When any subsequent information is made available on a website, managers of a scheme must give a notice (other than via a website) to recipients informing them that the information is available on the website[107]. This notice will not be required where[108]:

- at least two documents have been given to the recipient by hand or sent to the recipient's last known postal address
- each of those letters asks the recipient to give their electronic (email) 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
- 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 managers of the scheme do not know the recipient's email address and have not received a written request that information or documents are not to be provided to the recipient electronically.

105 Regulation 27(1) and (5) of the Disclosure Regulations 2013.

106 Regulation 27(2), ibid.

107 Regulation 27(3) and (5), ibid.

108 Regulation 28, ibid.

206. In some cases, the Disclosure Regulations 2013 specify that information must be made available by one of the following methods[109]:

- available to view free of charge, at a place that is reasonable having regard to the request
- published on a website (in which case 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.

Practical guidance

207. Schemes should design and deliver communications to scheme members in a way that ensures they 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.

208. Schemes should attempt to make contact with their scheme members and, where contact is not possible, schemes should carry out a tracing exercise to locate the member and ensure that their member data are up-to-date.

209. Where a person has made a request for information, schemes should acknowledge 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 expected. In these circumstances, schemes should notify the person and let them know when they are likely to receive the information. Scheme managers and managers (where different) must provide information in accordance with the time periods specified in the 2013 Act and Disclosure Regulations 2013.

210. To promote transparency, schemes should make information readily available at all times to ensure that prospective and existing members are able to access information when they require it.

Other legal requirements

211. Managers (or any other person specified in legislation) must comply with other legislation requiring 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.

109 Regulation 29 of the Disclosure Regulations 2013.

Some of the requirements that schemes may need to be aware of are set out in or under the following legislation[110]:

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

110
The legislation identified in this list is made under section 113 of the Pension Schemes Act 1993. There are other requirements that relate to providing information to members which arise under other legislation and which may be relevant to public service pension schemes (for example, under legislation relating to automatic enrolment and early leavers).

Resolving issues

212. This part covers:

- internal dispute resolution, and
- reporting breaches of the law.

Internal dispute resolution

Legal requirements

213. Scheme managers[111] must make and implement dispute resolution arrangements that comply with the requirements of the law and help resolve pensions disputes between the scheme manager and a person with an interest in the scheme. 'Pension disputes'[112] cover matters relating to the scheme between the managers and one or more people with an interest in the scheme. These exclude 'exempted disputes'.

214. There are certain 'exempted disputes' to which the internal dispute resolution procedure will not apply[113]. This includes disputes where proceedings have commenced in any court or tribunal, or where the Pensions Ombudsman has commenced an investigation into it. Certain other prescribed disputes, for instance medical-related disputes that may arise in relation to police and fire and rescue workers, are also 'exempted disputes'[114].

215. A person has an interest in the scheme if they:

- are a member or surviving non-dependant beneficiary of a deceased member of the scheme
- are a widow, widower, surviving civil partner or surviving dependant of a deceased member of the scheme
- are a prospective member of the scheme
- have ceased to be a member, beneficiary or prospective member or
- claim to be in one of the categories mentioned above and the dispute relates to whether they are such a person.

216. 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 manager after reconsideration of the matters[115].

111 Legal requirements relating to the internal dispute resolution provisions are imposed on the 'managers' of a scheme, which the regulator generally takes to be the 'scheme manager' identified in scheme regulations in accordance with the 2013 Act.

112 Section 50(3) of the Pensions Act 1995.

113 Section 50(9), ibid.

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

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

217. 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 receiving the application. They must notify the applicant of the decision within a reasonable period of having taken it[116].

218. 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 given[117]. The procedure must specify a reasonable period within which applications must be made by certain people[118].

219. Scheme managers must provide information about the scheme's dispute resolution procedure as well as information about The Pensions Advisory Service (TPAS) and the Pensions Ombudsman to certain people at certain stages[119].

Practical guidance

220. Scheme members expect their pension scheme to be managed effectively. Where a person with an interest in the scheme is not satisfied with any matter relating to the scheme (for example a decision which affects them), they have the right to ask for that matter to be reviewed.

221. 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.

222. Schemes[120] can 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.

223. 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.

116
Section 50(5) of the Pensions Act 1995.

117
Section 50B(4), ibid.

118
Section 50B(3)(a), ibid.

119
Regulation 6 of, and Part 1 of Schedule 2 to, the Disclosure Regulations 2013 and regulation 2 of the Occupational Pension Schemes (Internal Dispute Resolution Procedures) (Consequential and Miscellaneous Amendments) Regulations 2008.

120
See paragraph 25 for the definition of 'schemes'.

When applications should be submitted

224. Schemes may choose to specify time limits within which the following people must apply for a dispute to be resolved[121]:

- scheme members
- widows, widowers, surviving civil partners or surviving dependants of deceased scheme members
- surviving non-dependant beneficiaries of deceased scheme members, and
- prospective scheme members.

225. If schemes decide to specify time limits, they 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.

226. Scheme managers must ensure their scheme's procedure specifies a reasonable period within which applications by the following people must be made[122]:

- a person who has ceased to be within the categories in paragraph 224 above
- a person who claims that they were a person within the categories in paragraph 224 above and has ceased to be such a person, and the dispute relates to whether they are such a person.

227. 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 judgement and take an application outside a specified time period, if appropriate.

When decisions should be taken

228. Managers and specified persons (where applicable) must decide the matter in dispute within a reasonable period of receiving the application. A reasonable period is within four months of receiving the application. In the case of a two-stage dispute resolution procedure, the reasonable period applies to each stage separately. Where a dispute is referred to scheme managers for a second-stage decision, the reasonable period 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.

121 Section 50B(3)(b) of the Pensions Act 1995.

122 Section 50B(3)(a) of the Pensions Act 1995.

229. 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.

230. 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 reach a decision is appropriate to the situation and be able to demonstrate this, if necessary.

When applicants should be informed of a decision

231. Applicants must be notified of the decision made by a scheme manager and specified person (where applicable) within a reasonable time period after the decision has been made[123]. 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 is 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.

232. Schemes should provide the applicant with regular updates on the progress of their investigation. They should notify the applicant where the time period for a decision is expected to be shorter or longer than the reasonable time period and let them know when they are likely to receive an outcome.

Implementing the procedure and processes

233. Scheme regulations or other documents recording policy about the administration of the scheme should specify internal dispute resolution arrangements. Schemes should focus on educating and raising awareness of their internal dispute resolution arrangements and ensuring that they are implemented.

234. Schemes should ensure that the effectiveness of the arrangements is assessed regularly and be satisfied that those following 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, for example where schemes have implemented the two-stage procedure and employers are acting as the specified person for the first stage.

235. Schemes should confirm and communicate their arrangements to members, for example, in the joining booklet. Schemes should make their arrangements accessible to potential applicants, for example by publishing them on a scheme website.

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

236. Scheme managers must provide the following information about the procedure and processes the scheme has in place for the internal resolution of disputes to certain people in certain circumstances[124]:

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

237. Scheme managers must also provide the postal or email address and job title of the person to contact in order to make use of the internal dispute arrangements.

238. In addition, scheme managers must provide information about TPAS and the Pensions Ombudsman at certain stages[125]. Upon receiving an application for the resolution of a pension dispute, scheme managers (or the specified person) 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, scheme managers must also inform the applicant that the Pensions Ombudsman is available to investigate and determine complaints or disputes of fact or law relating to a public service pension scheme and provide the Pension Ombudsman's contact details.

239. Schemes can decide what information they need from applicants to reach a decision on a disputed matter and how applications should be submitted. Schemes should ensure they make the following information available to applicants:

- the procedure and processes to apply for a dispute to be resolved
- the information that an applicant must include
- the process by which any decisions are reached, and
- an acknowledgement once an application has been received.

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

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

240. When reviewing an application, scheme managers and specified persons (where relevant) should ensure that they have all the appropriate information to make an informed decision. They should request further information if required. Scheme managers and specified persons should be satisfied that the times taken to reach a decision and notify the applicant are appropriate to the situation and that they have taken the necessary action to meet the reasonable time periods. Scheme managers should be able to demonstrate this to the regulator if required.

Reporting breaches of the law

Legal requirements

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

- a legal duty[126] which is relevant to the administration of the scheme has not been, or is not being, complied with
- the failure to comply is likely to be of material significance to the regulator in the exercise of any of its functions[127].

For further information about reporting late payments of employee or employer contributions, see the section of this code on 'Maintaining contributions'.

242. People who are subject to the reporting requirement ('reporters') for public service pension schemes are:

- scheme managers[128]
- members of pension boards
- any person who is otherwise involved in the administration of a public service pension scheme
- employers[129]: in the case of a multi-employer scheme, any participating employer who becomes aware of a breach should consider their statutory duty to report, regardless of whether the breach relates to, or affects, members who are its employees or those of other employers
- professional advisers[130] 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
- any person who is otherwise involved in advising the managers of the scheme in relation to the scheme[131].

243. The report must be made in writing as soon as reasonably practicable[132]. See paragraph 263 for further information about how to report breaches.

126 The reference to a legal duty is to a duty imposed by, or by virtue of, an enactment or rule of law (s70(2)(a) of the Pensions Act 2004).

127 Section 70(2) of the Pensions Act 2004.

128 The legal requirement to report breaches of the law under section 70(1)(a) is imposed on the 'managers' of a scheme, which the regulator generally takes to be the 'scheme manager' identified in scheme regulations in accordance with the 2013 Act.

129 As defined in s318 of the Pensions Act 2004.

130 As defined in s47 of the Pensions Act 1995.

131 Section 70(1) of the Pensions Act 2004.

132 Section 70(2), ibid.

Practical guidance

244. Schemes[133] 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 statutory duty to report should ensure they have a sufficient level of knowledge and understanding to fulfil that duty. This means having sufficient familiarity with the legal requirements and procedures and processes for reporting.

Implementing adequate procedures

245. 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 decide within an appropriate timescale whether they must report a breach. Reporters should not rely on waiting for others to report.

246. Procedures should include the following features:

- a process for obtaining clarification of the law around the suspected breach where needed
- a process for clarifying the facts around the suspected breach where they are not known
- a process for consideration of the material significance of the breach by 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 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.

133 See paragraph 25 for the definition of 'schemes'.

Judging whether a breach must be reported

247. 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'

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

249. Reporters should 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.

250. 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 in cases of theft, suspected fraud or other serious offences where discussions might alert those implicated or impede the actions of the police or a regulatory authority. Under these circumstances the reporter should alert the regulator without delay.

251. 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.

252. 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

253. In deciding whether a breach is likely to be of 'material significance' to the regulator. It would be advisable for those with a statutory duty to report to consider the:

- cause of the breach
- effect of the breach
- reaction to the breach, and
- wider implications of the breach.

254. When deciding 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.

Cause of the breach

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

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

256. 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.

257. A breach will not normally be 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.

Effect of the breach

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

- pension board members not having the appropriate degree of knowledge and understanding, which may result in pension boards not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements
- pension board members having a conflict of interest, which may result in them being prejudiced in the way that they carry out their role, ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements
- adequate internal controls not being established and operated, which may lead to schemes not being run in accordance with their scheme regulations and other legal requirements, risks not being properly identified and managed and/or the right money not being paid to or by the scheme at the right time
- accurate information about benefits and scheme administration not being provided to scheme members and others, which may result in members not being able to effectively plan or make decisions about their retirement
- appropriate records not being maintained, which may result in member benefits being calculated incorrectly and/or not being paid to the right person at the right time
- pension board members misappropriating any assets of the scheme or being likely to do so, which may result in scheme assets not being safeguarded, and
- any other breach which may result in the scheme being poorly governed, managed or administered.

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

Reaction to the breach

260. 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.

261. 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.

Wider implications of the breach

262. Reporters should consider the wider implications of a breach when they assess which breaches are likely to be materially significant to the regulator. For example, a breach is likely to be of material significance where the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future. This may be due to the scheme manager or pension board members having a lack of appropriate knowledge and understanding to fulfil their responsibilities or where other pension schemes may be affected. For instance, public service pension schemes administered by the same organisation may be detrimentally affected where a system failure has caused the breach to occur.

Submitting a report to the regulator

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

264. The report should be dated and 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.

265. Additional information that would help the regulator includes:

- 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), and
- whether the concern has been reported before.

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

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

268. 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.

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

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

271. 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 reporters should make these necessary checks. In cases of potential dishonesty the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should use the quickest means possible to alert the regulator to the breach.

Whistleblowing protection and confidentiality

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

273. The statutory duty to report does not, however, override 'legal privilege'[134]. This means that oral and written communications between a professional legal adviser and their client, or a person representing that client, while obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

134 Section 311 of the Pensions Act 2004.

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

275. 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 statutory 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.

Appendix

Corresponding Northern Ireland legislation

GB legislation	NI legislation
Pension Schemes Act 1993 (c. 48) - Chapter 1 of Part 4 - section 113	Pension Schemes (Northern Ireland) Act 1993 (c. 49) - Chapter 1 of Part 4 - section 109
Pensions Act 1995 (c. 26) - section 47 - section 49 - section 50 - section 50B - section 87	Pensions (Northern Ireland) Order 1995 (SI 1995/3213 (NI 22)) - Article 47 - Article 49 - Article 50 - Article 50B - Article 85
Employment Rights Act 1996 (c. 18)	Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16))
Data Protection Act 1998 (c. 29)	Data Protection Act 1998 (c. 29)
Freedom of Information Act 2000 (c.36)	Freedom of Information Act 2000 (c.36)
Pensions Act 2004 (c. 35) - section 5 - section 13 - section 70 - section 70A - section 90A - Part 3 - section 227 - section 248 - section 248A - section 249A - section 249B - section 311 - section 318	Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) - Article 4 - Article 9 - Article 65 - Article 65A - Article 85A - Part 4 - Article 206 - Article 225 - Article 225A - Article 226A - Article 226B - Article 283 - Article 2
Pensions Act 2008 (c. 30)	Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)

GB legislation	NI legislation
Public Service Pensions Act 2013 (c. 25) - section 1 - section 2 - section 3 - section 4 - section 5 - section 6 - section 7 - section 14 - section 15 - section 16 - section 28 - section 30 - Schedule 2 - Schedule 3	Public Service Pensions Act (Northern Ireland) 2014 (c. 2) - section 1 - section 2 - section 3 - section 4 - section 5 - section 6 - section 7 - section 14 - section 15 - section 16 - section 28 - section 31 - Schedule 2 - Schedule 3
Occupational Pension Schemes (Managers) Regulations 1986 (SI 1986/1718)	Occupational Pension Schemes (Managers) Regulations (Northern Ireland) 1986 (SR 1986 No. 320)
Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172)	Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (SR 1996 No. 493)
Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715)	Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 (SR 1997 No. 94)
Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847)	Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 (SR 1996 No. 619)
Occupational Pension Schemes (Winding up etc.) Regulations 2005 (SI 2005/706)	Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005 (SR 2005 No. 171)
Occupational Pension Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377)	Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005 (SR 2005 No. 568)
Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006/567)	Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006/567)

GB legislation	NI legislation
Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 (SI 2008/649)	Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2008 (SR 2008 No. 116)
Employers' Duties (Registration and Compliance) Regulations 2010 (SI 2010/5)	Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010 (SR 2010 No. 186)
Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (SI 2010/772)	Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (SR 2010 No. 122)
Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734)	Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (SR 2014 No. 79)
Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014	Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations (Northern Ireland) 2014

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