1. Regulatory action

The Pensions Regulator (the “Regulator”) has considered the issues, facts and circumstances contained in a Warning Notice dated 5 December 2017 (the “Warning Notice”) and addressed to the Scottish Ministers (Scottish Public Pensions Agency), (the “Scheme Manager”), and to the Scottish Teachers Pension Board (the “Pension Board”) (together, the “Directly Affected Parties”).

The Warning Notice stated that the Regulator was considering the exercise of its powers contained in section 13 of the Pensions Act 2004 (the “Act”) to issue an improvement notice in respect of the Scheme Manager’s failure to comply with their obligations set out in section 14 of the Public Service Pensions Act 2013 (the “PSP Act”) to issue Benefit Information Statements to members of the Scheme annually.

The Warning Notice also specified a period of 14 days for representations to be made by Directly Affected Parties. On 19 December 2017 the Regulator received by email a representation from Penelope Cooper (CEO, Scottish Public Pensions Agency) on behalf of the Pension Board.

2. Directly affected parties

In accordance with its Staff Determinations Procedure made under section 93 of the Act, which provides for the application of the standard procedure (as required by section 95 and defined and set out in section 96 of the Act) the Regulator considered whether there were any persons other than the Scheme Manager and the Pension Board who were directly affected by the regulatory action under consideration and determined that there were none.

3. Background

The Warning Notice set out a summary of the Scheme’s details, relevant legislation and guidance, the Regulator’s procedure applicable to a determination of the case, as well as the matters and facts relied upon by the Regulator in deciding whether or not to take regulatory action.
4. Determination

In making this determination, the Regulator has relied not only on the information set out in the Warning Notice dated 5 December 2017 but also that information contained in the representations received from Penelope Cooper on behalf of the Pension Board dated 19 December 2017 (the “Representations”).

The key information contained in the Warning Notice and the facts and circumstances set out in the Representations are as follows:

Warning Notice

a) A breach of law report pertaining to the failure to issue Benefit Information Statements to active members of the Scheme was received on 31 August 2017.

b) The breach of law was continuing at the date of issue of the Warning Notice such that it was appropriate to issue an improvement notice under section 13 of the Act (“Improvement Notice”) to the Scheme Manager to remedy the breach.

c) Such Improvement Notice should provide for the breach to be remedied by no later than 31 March 2018 and it was noted that the Scheme Manager anticipates being able resolve the breach of law by this date.

Representations:

a) In its response to the Regulator the Pension Board did not oppose the Regulator’s proposed exercise of its power to issue the Improvement Notice.

b) The response did comment and clarify that figures quoted for outstanding Benefit Information Statements for the Scheme should be corrected to state that 12,545 Benefit Information Statements were outstanding as at 15 November 2017, with the Scheme Manager anticipating 8,683 to be outstanding as at 31 December 2017, and that outstanding Benefit Information Statements are expected to be provided to Scheme members by 31 March 2018.

c) The response also noted that they continued to work in line with their recovery plan submitted on 30 August 2017 and that, as at 14 December 2017, their data showed 57,397 active members Benefit Information Statements as due, with 46,776 Statements issued and 10,621 outstanding; meaning that Benefit Information Statements had been issued to 81.5% of active members.

d) No other Representations were received.

Having considered the relevant factors it must consider when deciding whether it would be reasonable to take regulatory action, the Regulator has determined to issue an Improvement Notice
to the Scheme Manager under section 13 of the Act (the “Notice”) to secure compliance with the Scheme Manager’s obligations as set out in section 14 of the PSP Act.

On the evidence before it, the reasons for the Regulator’s Determination are:

- The Regulator has reached the opinion that the Scheme Manager has contravened the provisions of section 14 of the PSP Act, by failing to issue benefit information statements to members annually as required, and that the contravention would be likely to continue or be repeated;

- The Regulator has reached the opinion because the Scheme Manager has informed the Regulator it has breached section 14 of the PSP Act and was unable to rectify the breach by 31 December 2017. Additionally the breach of law affected 14,436 members, being at that time 24.07% of all active members of the Scheme;

- The Regulator has taken account of the Representations made on behalf of the Pension Board, noting that it does not object to the issue of the proposed Improvement Notice, nor the date provided of 31 March 2018 to remedy the breach and full compliance with section 14 of the PSP Act to be achieved;

- The Regulator also notes and agrees with the factual corrections provided in the Representations and agrees to amend the figures initially quoted in the Warning Notice. It has also noted the updated figures provided, which show that progress made as at 14 December 2017 was to improve the proportion of Benefit Information Statements issued to active members to 81.5% of the total due;

- In particular, the Regulator has considered the possible adverse effect of issuing the Notice, but has balanced this against the importance of securing full compliance with the legislative requirements within a reasonable time, in the interests of those members of the Scheme who are yet to receive their benefit information statements; and

- The Regulator considers that the terms of Notice are reasonable and proportionate in the circumstances and are directed towards securing compliance with section 14 of the PSP Act by no later than 31 March 2018.

In reaching its decision, as well as considering the interests of persons who appear to be directly affected by the exercise of the function, the Regulator also considered its statutory objectives and had regard to the interests of the generality of the Scheme’s members, in accordance with sections 5 and 100 of the Act.

As the exercise of the function in section 13 of the Act would be directed towards securing compliance with section 14 of the PSP Act, which serves members’ interests by ensuring they are provided with information in relation to their pension benefits at least annually, it is the Regulator’s opinion that issue of the Notice is, accordingly, consistent with the interests of the generality of the
5. Important Notice

This determination notice is issued pursuant to the Regulator’s standard procedure in accordance with sections 95 and 96(2)(d) and with reference to sections 13 of the Act.

The Regulator reserves the right to vary or revoke this determination under section 101 of the Act.

You have the right to refer the determination which is the subject-matter of this determination notice to the Tax and Chancery Chamber of the Upper Tribunal (the “Tribunal”) in accordance with article 96(3) of the Act.

Under paragraph 2(2) of schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules (SI 2008/2698) (the “Tribunal Rules”), you have 28 days from the date this determination notice is given to you to refer the matter to the Tribunal.

A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this determination notice.

The Tribunal’s address is:

Upper Tribunal (Tax and Chancery Chamber)

Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL
Email: uttc@hmcts.gsi.gov.uk
Telephone: 0207 612 9730

The detailed procedure for making a reference to the Tribunal is contained in the Tribunal Rules. A guidance booklet and a form in which to make the reference can be found on the Government’s website: www.gov.uk/tax-upper-tribunal.

You should note that the Tribunal Rules provide that, at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to the Regulator. Any copy reference notice should be sent to:

The Pensions Regulator
Napier House
Trafalgar Place
Brighton
6. Information to recipients of this Determination Notice

Disclosure

Information in this Determination Notice is disclosed to you for the purposes of sections 95 and 96 of the Act. This information may be "restricted" as defined in section 82 of the Act and therefore subject to the restrictions on its further use and disclosure set out in that section. Your attention is drawn in particular to the provisions of articles sections 82(1)(b) and 82(5) of the Act.

Onward disclosure of restricted information, other than in accordance with the Order, is a criminal offence. In any event, you should not use or disclose the information in this Determination Notice for any purposes other than those for which it has been supplied without first consulting the Regulator.

Data protection

Information in the Determination Notice that is 'personal data' for the purposes of the Data Protection Act 1998 ("DPA"), is disclosed to you for the purposes of sections 95 and 96 of the Act and the extent necessary for the performance of the Regulator's statutory functions.

The Regulator is a data controller for the purposes of the DPA. We hold and process personal data in accordance with the principles set out in the DPA in carrying out our statutory functions/duties.

Publication

Please also note that under section 89 of the Act, the Regulator may, if it considers it appropriate to do so, publish a report of the consideration given by it to the exercise of its functions and the results of that consideration.

Signed on behalf of the Pensions Regulator:

<table>
<thead>
<tr>
<th>Name</th>
<th>NICOLO PARAISH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Position</td>
<td>Executive Director of Frontline Regulation</td>
</tr>
<tr>
<td>Signature</td>
<td>[Signature]</td>
</tr>
<tr>
<td>Date</td>
<td>11th January 2018</td>
</tr>
</tbody>
</table>