1. Regulatory action

1. The Pensions Regulator (TPR) has considered the issues, facts and circumstances contained in a Warning Notice dated 23 May 2018 (the Warning Notice) addressed to Oxfordshire County Council Pension Fund Committee (the Scheme Manager as the Directly Affected Party).

2. The Warning Notice stated that TPR considered that the Scheme Manager had failed to meet its statutory duties in respect of record keeping and the provision of Benefit Information Statements as required by sections 14 and 16 of the Public Service Pensions Act (the PSP Act), regulation 89 of the Local Government Pension Scheme Regulations 2013, regulations 3-5 of the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014, and regulation 27A of the Occupational Pensions Schemes (Preservation of Benefit) Regulations 1991.

3. It also stated that TPR was considering the exercise of its power to issue an Improvement Notice under section 13 of the Pensions Act 2004 (the Act) since it was of the opinion that the Scheme Manager had contravened one or more of the provisions of the relevant pensions legislation (that is any enactment contained in or made by virtue of those listed in section 13(7) of the Act) in circumstances that (on the balance of probabilities) made it likely that such breaches would continue or be repeated.

4. The Warning Notice specified a deadline of 8 June 2018 (a period of 16 days) for representations in response to the Warning Notice to be made by the Scheme Manager as a Directly Affected Party. The Warning Notice also stated that any request for an extension to the period for making representations should be received no later than 5 June 2018.

5. On Friday 8 June 2018 the Scheme Manager wrote to TPR. That letter included confirmation that the Scheme Manager did not wish to dispute the content or accuracy of the Warning Notice and accepted that the basis for it was the Scheme Manager’s own self-reporting of breaches of law and subsequent discussion with TPR. The Scheme Manager also confirmed that it was happy to accept the terms of the draft Improvement Notice accompanying the Warning Notice as a proportionate response to its reported breaches of law and as a means to
hold the Scheme Manager to account against the performance improvement plans it had previously submitted to TPR.

2. Directly affected parties

6. 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), TPR has considered whether any person other than the Scheme Manager is directly affected by the regulatory action under consideration or by this determination notice. It has concluded that there is not. The issuing of an improvement notice in the present circumstances is not considered to have a direct impact on the rights or obligations of any person other than the Scheme Manager. It is recognised that the consequence of this regulatory action may be of indirect effect upon the generality of the Scheme’s membership, Scheme employers and even the Local Government Pensions Board (the Local Pension Board). But none of these is considered a Directly Affected Party for current purposes.

3. Background

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

4. Determination

8. In making this determination, TPR has relied on the information and evidence disclosed by the Warning Notice and the accompanying Bundle dated 23 May 2018. It has also taken into account the representations received from Mr Sean Collins on behalf of the Scheme Manager dated 8 June 2018 (the Representations).

9. The key information is as follows.

(i) The Scheme Manager failed to satisfy statutory requirements concerning record keeping of members’ information, the issue of annual benefit information statements in three successive years and in relation to the provision of accurate information on deferred benefits to scheme leavers in 2017.

(ii) Four breach of law reports (made under section 70 of the Act) have been submitted by the Scheme Manager to TPR. The first on 28 September 2015, a second on 12 September 2016, a third on 25 September 2017, and a fourth on 27 February 2018. The first three reports concerned the Scheme Manager’s failure to provide annual Benefit Information Statements to
all relevant members before expiry of the statutory deadlines in 2015, 2016 and 2017. The fourth breach of law report concerned failure to provide information on deferred benefits to large numbers of scheme leavers in accordance with the prescribed requirements. The Scheme Manager has also been the subject of whistle blowing reports concerning failure to provide Benefit Information Statements and to respond to member queries satisfactorily.

(iii) Following correspondence and dialogue with TPR, the Scheme Manager has identified a number of contributory factors and causes of these failures. These relate to staffing and resourcing difficulties and receipt of poor quality and/or delayed data from employers. The Scheme Manager has instituted several initiatives to tackle these problems including the recruitment and retention of staff and the engagement of service providers, the implementation of project plans to address record keeping and data quality issues and the adoption and implementation of an Administration Strategy intended to cultivate improved engagement from employers and the deterrence of poor performance via sanctions (such as the issue of penalty fines and the formal reporting of failures via breach of law reports to TPR). The Scheme Manager has sought and obtained the endorsement of the Local Pension Board in pursuing its plans and both bodies believe these are feasible.

(iv) The most recent update provided by the Scheme Manager on 13 April 2018 indicated that:

- in relation to work to address the backlog of scheme leaver information approximately 2,777 (ie. a third) of 8,000 records had been cleared;

- 2.5% (466) of the 2016/17 annual benefit statements were outstanding as at 31 March 2018;

- the vast majority of employers had provided monthly returns throughout the 2017/18 period and the Scheme Manager was confident that it would be able to issue Benefit Information Statements in order to meet the 2017/18 statutory deadline;

- returns from two employers concerning a total of 48 members were outstanding and consideration was being given to the issuing of a breach of law report.

The Scheme Manager also relayed progress in staff recruitment and in the remedial work underway to improve data quality and coverage. It remained confident that in accordance with its own project plans it would be able to clear the historic backlog of scheme leaver information by the end of June 2018; that the steps taken to address data quality would result in meeting the desired levels of completeness and accuracy by the end of August 2018; and that its plans to issue by 31 August 2018 Benefit Information Statements outstanding for 2016/17 and for 2017/18 were realistic.

10. Having considered the relevant factors it must consider when deciding whether it would be
reasonable to take regulatory action, TPR has determined to issue an Improvement Notice to the Scheme Manager under section 13 of the Act (the Improvement Notice). This is in order to secure compliance with the Scheme Manager’s obligations relating to record keeping and the provision of Benefit Information Statements as required by sections 14 and 16 of the PSP Act, regulation 89 of the Local Government Pension Scheme Regulations 2013, regulations 3-5 of the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014, and regulation 27A of the Occupational Pensions Schemes (Preservation of Benefit) Regulations 1991 (the relevant pensions legislation).

11. On the evidence before it, the reasons for TPR’s determination are as follows:

(i) TPR is satisfied to the required standard of proof (that is on the balance of probabilities) that the Scheme Manager has failed to issue accurate and timely benefit information to members as required by the relevant pensions legislation. The four breach of law reports, the whistle blower reporting and the Scheme Manager’s most recent progress updates evidence significant breaches have occurred and persist.

(ii) TPR is also satisfied to the required standard of proof that against that background and notwithstanding the progress the Scheme Manager has been made and its high degree of confidence in successful delivery of its improvement plans on time it is likely that breaches of the relevant legislation will continue or be repeated.

(iii) While progress has evidently been made to identify and to tackle the various problems causing and contributing to non-compliance, TPR considers that the presence and nature of the risks (acknowledged by the Scheme Manager) makes continuing or repeated contravention of the relevant pensions legislation likely. As indicated above, the Scheme Manager plans to satisfy the outstanding statutory requirements via timely delivery of its improvement and project plans and to meet the statutory deadline for issuing benefit information statements for 2017/18 by the same date (31 August 2018). However, the uncertainty and disruption connected with the recruitment and retention of staff and with disengaged or non-compliant employers is considered by TPR to be at a level sufficient to present an ongoing threat to timely delivery of existing improvement plans and future performance in maintaining records and data of sufficient quality to ensure Scheme members receive accurate and timely benefit information. Although the Scheme Manager maintains a high degree of confidence that such risks will not materialise or will be overcome, TPR is of the view that it remains probable that by 31 August 2018 existing breaches will not have been remedied and/or that there will be further breaches in respect of 2017/18.

12. The Scheme Manager has previously suggested that individual employers may have materially contributed to delay and disruption but no detail has been provided by the Scheme Manager either in response to the Warning Notice or more generally. It has been suggested by the
Scheme Manager that in order to meet its duty to report breaches of law under section 70 of the Act it was actively considering and might submit breach of law reports in relation to up to two employers. Although these have been anticipated for some time (and have been the subject of further enquiry by TPR) none has been provided to date. In the absence of any specific evidence this is not regarded as a relevant consideration in determining whether to issue an Improvement Notice to the Scheme Manager and has no bearing upon the decision to issue an Improvement Notice or its terms.

13. TPR has taken account of all the representations made on behalf of the Scheme Manager. Significantly, the content and accuracy of the Warning Notice are not disputed, and the proposed directions in the Improvement Notice are not contested and have been positively endorsed by the Scheme Manager.

14. TPR has also considered the possible adverse effect of issuing the Improvement Notice (breach of which exposes the Scheme Manager to potential liability for a penalty fine), but has balanced this against the importance of securing compliance with the relevant pensions legislation within a reasonable time, the interests of those members of the Scheme who are yet to receive benefit information statements for previous years or (in the case of scheme leavers) accurate information on deferred benefits, and in ensuring the maintenance of accurate and comprehensive data (which is imperative in calculating pension benefits correctly and of special importance for the effective administration of Career Average Related Earnings pension schemes in particular).

15. In the particular circumstances of this case, TPR considers that the terms of the Improvement Notice are reasonable and proportionate and are directed towards securing compliance with the relevant pensions legislation by no later than 31 August 2018. Significantly, the Scheme Manager agrees that the imposition of the Improvement Notice, its terms and the applicable timetable is appropriate as a means to hold it to account.

16. In reaching its decision, as well as considering the interests of persons who appear to be directly affected by the exercise of the power (in this instance the Scheme Manager alone), TPR has also considered its statutory objectives and (in accordance with sections 5 and 100 of the Act) had regard to the interests of the generality of the Scheme’s members. The use of the power in section 13 of the Act will be directed towards securing compliance with the relevant pensions legislation. This serves members’ interests by ensuring they are provided with information in relation to their pension benefits, and ensuring that the administration and governance of the Scheme is (and remains) fit for purpose and satisfies the relevant statutory requirements. It is TPR’s opinion that issuing of the Improvement Notice is in the interests of the generality of the Scheme’s members and the Scheme Manager as a directly affected person.
5. Important Notice

17. 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 section 13 of the Act.

18. TPR reserves the right to vary or revoke this determination under section 101 of the Act.

19. 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 section 96(3) of the Act.

20. 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

21. 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.

22. 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 quoting our case reference C90932842 to:

   **The Pensions Regulator**
   Napier House
   Trafalgar Place
   Brighton
   BN1 4DW
   Telephone: 01273 662 061
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 Act, 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 TPR.

Data protection

Information in the Determination Notice that is 'personal data' for the purposes of the Data Protection Act 2018 (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 TPR’s statutory functions.

TPR is a data controller for the purposes of the DPA and from 25 May 2018 the EU General Data Protection Regulation (GDPR). We hold and process personal data in accordance with the principles set out in the DPA and the GDPR in carrying out our statutory functions/duties. For further information about how we process personal data, please see our privacy notice at www.thepensionsregulator.gov.uk/fair-processing-notice.pdf

Publication

Please also note that under section 89 of the Act, TPR 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. Before making such a report in relation to a public service pension scheme TPR will notify the Scheme Manager.

Signed on behalf of the Pensions Regulator:

<table>
<thead>
<tr>
<th>Name</th>
<th>John Bartlett</th>
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<tbody>
<tr>
<td>Position</td>
<td>Head of Case Management</td>
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<tr>
<td>Signature</td>
<td>[Signature]</td>
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<tr>
<td>Date</td>
<td>26 June 2018</td>
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