

## **LOCAL PENSION BOARD – 24 JANUARY 2020**

### **THE PENSION REGULATOR’S CODE OF PRACTICE 14**

#### **Report by the Director of Finance**

#### **RECOMMENDATION**

- 1. The Board is RECOMMENDED to note the practical guidance set out in the Code of Practice 14 and determine whether they wish to make any changes to the current arrangements for this Board to ensure they are meeting the standards of conduct and practice expected.**

#### **Introduction**

2. At their last meeting, the Board asked for a report on the Pension Regulator’s Code of Practice 14. The Code of Practice, entitled “Governance and administration of public service pension schemes” was first issued by the Pension Regulator in April 2015. It provides practical guidance in exercising the regulatory functions of the Pension Scheme Committee and Pension Board and sets standards of conduct and practice expected by the Regulator.
3. Compliance with the Code of Practice is not a legal requirement. However, in examining a potential breach of the law, the courts and/or the Pension Regulator may take issues of non-compliance with the Code into account. Where deviating from the Code therefore, the Committee/Board should be clear how they are still effectively discharging their legal responsibilities under the relevant pension regulations.
4. Within the LGPS, the majority of legal responsibilities fall to the members of the Pension Fund Committee. However as noted in the Code, Board Members are responsible for assisting the Committee in securing compliance with the scheme regulations and ensuring all breaches of law are properly recorded and reported. As such, the Pension Regulator expects a high degree of knowledge of the Code amongst Board Members.
5. The Code sets out 4 key areas of scheme governance and administration that Committee and Board Members should focus on. These are governing the scheme, managing risks, administration and resolving issues. This report looks at each of these areas in turn.

#### **Governing your scheme**

6. The section within the Code on governing your scheme covers the knowledge and understanding required, conflicts of interest and publishing information

about the scheme. For each area, the Code sets out the legal requirements and provides practice guidance to support Committee and Board Members assess whether they understand their duties and obligations and are reasonably complying with them.

7. In respect of the knowledge and understanding required of Board Members, the Code states that Board Members must be conversant with the scheme rules, and policy documents, as well as knowledge and understanding of the wider laws relating to pensions. Conversant is defined as having a working knowledge so that a Board Member can effectively carry out their duties.
8. The Code states that all Schemes should develop a framework to support Board Members acquiring and retaining the knowledge and understanding required but underlines that it is the responsibility of the individual Board Member to ensure that they have the appropriate degree of knowledge and understanding to enable them to properly exercise their functions as a Board member.
9. As well as the scheme regulations, the Code includes a number of policy documents that the Regulator considers particularly pertinent, and for which Board Members should have a working knowledge. These include:
  - Conflict of interest policy
  - Record keeping policy
  - Internal disputes policy
  - Policy on reporting breaches of law
  - Risk management Policy
  - Communications Policy
  - Terms of Reference for the Pension Fund Committee and Pension Board
  - Policy on exercise of discretionary functions
  - Administration strategy
  - Investment Strategy Statement
  - Funding Strategy Statement
  - Scheme Annual Report and Accounts
  - Audit reports
10. Working knowledge is seen as sufficient to understand where the relevant regulations apply and to enable Members to challenge any failure to comply with the Regulations and the associated guidance from the Pension Regulator.
11. The level of knowledge should be sufficient to understand fully and challenge any information and advice they are given, and how the information or advice impacts on any issue or decision relevant to their responsibilities. Board Members should invest sufficient time in their learning and development, supported by the Administering Authority.
12. Board Members should undertake a personal training needs analysis and regularly review their skills, competencies and knowledge to identify gaps and weaknesses, using a personal training plan to document and address these.

The e-learning tools provided by the Pension Regulator will help meet the needs of Pension Board Members.

13. The Administering Authority should keep a central record of the learning activities of the individual Board Members as well as the Board as a whole.
14. In terms of conflicts of interest, the Code defines a conflict as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the Pension Board. This excludes any conflict solely arising from being a scheme member or employer of the scheme for which the Board is established.
15. The Scheme Manager is required under the Regulations to ensure that no person appointed to the Pension Board has a conflict of interest which would prevent them from carrying out their role. Board Members are required under the Regulations to provide the Scheme Manager with any information they may reasonably require in carrying out this assessment.
16. Members of the Pension Board should comply with the Seven Principles of Public Life (previously known as the Nolan Principles). Compliance with these Principles should ensure that Members operate with the highest standards of conduct.
17. The Regulations prohibit a Board Member having an Actual Conflict of Interest but allow for Potential Conflicts of Interest to be recorded and managed. These potential conflicts should be recorded in a separate register and policy and procedures agreed as to how these potential conflicts will be managed. The register of potential conflicts should be regularly reviewed and updated as necessary. The register of potential conflicts should be publicly available e.g. on the Scheme's website to ensure full transparency.
18. In managing conflicts of interests, Boards should ensure perceived conflicts of interest are also addressed, as these can be as damaging as actual conflicts, and lead to a loss in confidence in the ability of the Board to undertake its responsibilities.
19. The Code identifies possible conflicts of interest in situations involving:
  - Discussions on increasing expenditure on the administration of the scheme, to be funded by scheme employers
  - Discussions on potential outsourcing of activities in areas represented by scheme member representatives
  - Representatives sticking to the narrow interests of their employer/union etc rather than the wider employer/scheme membership
  - Third party contracts where a Board Member has a personal interest in a potential supplier
  - Sharing of information provided confidentially in role as an employer/union representative with the Board.
20. The third aspect of Governing Your Scheme covers publishing information about your scheme. The legal requirements set out in the Code under this

section are in respect of the Scheme Manager's responsibilities to publish information about the Board, to include who are the members of the Board, which parties these members represent and the matters falling with the pension board's responsibility.

21. The Code suggests that the published information should also include information on the employment and job title of Board Members, the appointment process for new members of the Board, the terms of reference for the Board and any specific roles and responsibilities of individual Board Members.
22. Further suggestions within the Code are that the Scheme should publish the Board Papers and agendas alongside dates of meetings, as well as any further information which supports scheme member engagement and promotes a culture of transparency.

### **Managing Risks**

23. The Pension Committee as Scheme Manager is responsible for establishing internal control arrangements to ensure the Scheme is managed and administered within the regulations. Internal control in this sense means the systems, arrangements and procedures in place for running the scheme and monitoring effective performance.
24. These arrangements should include clear separation of duties, clear escalation processes, and documented procedures for assessing and managing risk, reviewing breaches of the law, and managing contributions to the scheme. The level of internal control should be proportionate to the materiality of the risks.
25. Risks should be identified in the context of the objectives of the scheme and should be formally recorded in a risk register. Once recorded, all risks should be reviewed regularly, and actions taken to mitigate any risks appropriately recorded. The review process should also be looking to identify all new risks as circumstances change including changes in scheme personnel, the implementation of changes to the administration systems or where previous controls have been found to be inadequate.
26. Risks should be assessed both in terms of their likelihood and the impact if the risk materialises. Schemes should regularly test their internal control arrangements to gain assurance about the effectiveness of the arrangements. These tests should look at both the arrangements themselves and the skills of those individuals tasked with operating the internal control. Appropriate tests should also be undertaken where part of the internal control processes are automated to ensure the system is performing as expected.
27. Schemes should ensure that the arrangements where an internal control detects an issue are sufficiently robust, and that the issues are resolved or properly escalated.
28. A persistent failure to put in place adequate internal controls is likely to lead to administrative breaches. The Pension Board should continuously review the

position and where they believe that the effect and wider implications of not having adequate internal control arrangements in place could be materially significant, they should report the matter to the Pension Regulator.

### **Administration**

29. The Administration section of the Code of practice covers three areas, being scheme record keeping, maintaining contributions and providing information to members.
30. In respect of scheme record keeping, the Code covers member information, transactions and Pension Committee/Board meetings and decisions. Any failure to maintain complete and accurate records can affect the ability to meet the legal responsibilities of the Scheme, including the accurate and timely payment of pension benefits, and the requirement to effectively manage the schemes investments to ensure sufficient resources to meet the pension benefits as they fall due.
31. Ultimately, a failure to maintain proper records can lead to findings of mal-administration by the Pensions Ombudsman on individual scheme member cases, or wider breach of law reports to the Pension Regulator.
32. The requirements in respect of member information are set out in the Record Keeping Regulations. In summary, the requirements are to maintain sufficient data to uniquely identify each scheme member and to calculate their benefits correctly. Schemes have a legal responsibility to provide scheme members regular information on the current level of their benefits, as well as accurately pay these benefits to the right person at the right time.
33. The Scheme Manager should require all participating scheme employers to provide them with timely and accurate data in order for them to fulfil their legal obligations. This information must include data on new starters and leavers to the scheme, any changes in their rates of contributions, changes in name, address and salary, changes in member status and any transfers of employment.
34. The Board should assess whether the Scheme has appropriate arrangements in place for the collection of all required data, and for monitoring compliance with such arrangements. Where there are gaps in the arrangements or in the data, the Board should assess any failure to meet legal requirements and the materiality of such failures and report any breaches of law to the Pension Regulator as appropriate.
35. Scheme Managers should be able to demonstrate an audit trail associated with all transactions. Schemes should be able to trace the flow of funds into and out of the fund and reconcile these with the expected contributions and scheme costs.

36. Scheme Managers should operate appropriate data retention policies to ensure data is properly retained and maintained for as long as it is required to fulfil the legal obligations of the scheme.
37. Scheme Managers should have policies and procedures in place to ensure the on-going monitoring of scheme data to assess its completeness and accuracy. There should be a full review of data held at least annually.
38. Where issues with scheme data are identified, the Scheme Manager should put a data improvement plan in place to resolve these issues and strengthen the internal control arrangements to prevent re-occurrence of the issues.
39. All member data must be managed in accordance with the requirements of the General Data Protection Regulations (GDPR). This includes ensuring the security of all data held and protecting the rights of the scheme member to review and correct their data.
40. The Regulations set out the legal requirements in respect of maintaining contributions, including the requirement on scheme employers to make the appropriate deductions from pay and pass them across to the Scheme on or before the due date each month, which is the 19<sup>th</sup> day of the month following the deduction. Failure to pay contributions over in line with the statutory timescales should be reviewed to determine whether it is likely to be of material significance and therefore reported to the Pension Regulator as a breach of law.
41. Scheme Managers should ensure they maintain adequate arrangements for recording all contributions due to the scheme, and for monitoring the timely receipt of these contributions. The Scheme Manager should also maintain a policy to cover the escalation process where contributions are not received or received late, and in what circumstances interest would be chargeable of late payments.
42. Where a Scheme Manager identifies a payment failure they should liaise with the relevant scheme employer to resolve the particular failure and to ensure the scheme employer puts in place arrangements to prevent further failures. The Scheme Manager should maintain a record of their investigation to demonstrate that they themselves have met their legal responsibilities in respect of establishing and maintaining adequate internal control arrangements. The record should also be reviewed in determining whether there is a requirement to report the payment failure as a breach of law to the Pension Regulator.
43. The Pension Regulator recognises within the Code that the Scheme Manager will not always be able to detect deliberate underpayment or non-payment of contributions by a scheme employer, where the Scheme Manager is also dependent on the scheme employer to provide the management information required to support the payment e.g. non declaration of new starters. Scheme Managers should review their arrangements to seek to identify situations where such fraud could have occurred.

44. In determining whether a payment failure is likely to be of material significance and therefore should be reported to the Pension Regulator, the Code suggests the Scheme Manager should consider whether the scheme employer is unwilling or unable to pay over the contributions, where the failure is a result of dishonesty or misappropriation of the sums due by the scheme employer, whether there is evidence of fraud, whether the scheme employer has failed to put in place adequate internal control arrangements to ensure the timely payment and continues to address the issue, and whether any sums have been outstanding for longer than 90 days.
45. Infrequent, one-off payment failures which are addressed by the scheme employer should not normally be identified as of material significance. However, if there is a re-occurring pattern of failure which suggests a systemic problem, then the Scheme Manager should consider this as materially significant, and report to the Pension Regulator as appropriate.
46. Scheme Managers should also consider whether they report any materially significant breaches of law in regard to pension failures to the scheme members of the relevant employer.
47. The final area of this section of the Code relates to providing information to members. The requirements in this area are covered by a number of separate legal documents.
48. A key requirement is the provision of an annual benefit statement to all active scheme members. This Statement must cover the pensionable benefits earned by the member in the year, and the total benefits within the scheme. The basis of the calculation of these benefits must also be disclosed. For the LGPS, this statement must be provided by 31 August following the year to which the statement relates.
49. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 set out a range of other data and the circumstances on which it must be provided to scheme members. This information covers that which is relevant to an individual's pension rights and entitlements under the scheme.
50. The Code specifies that information can be disclosed electronically to the scheme member, but that each member must retain the right to opt out of receiving information electronically. Where provided electronically, the Scheme Manager must be satisfied that the scheme member can access the information and print or store it for future reference. Where information is provided via publication to a website e.g. around the scheme rules, benefit entitlements etc, all members must receive an initial communication other than by the website to inform them of the website address, the information to be held there and how to access it.

### **Resolving Issues**

51. The fourth key section of the code covers resolving issues, which in turn covers internal dispute resolution and reporting breaches of the law.

52. Within the LGPS, internal disputes resolution is through the adjudication of disputes procedure as set out in the Scheme Regulations and facilitates the resolution of disputes between a scheme member and their employer or the Administering Authority. The procedure is a two stage process with stage one heard by the specified person for the relevant scheme employer or the Administering Authority, and stage 2 by the individual specified by the Scheme Manager. The scheme member has the right to refer their dispute to the Pensions Ombudsman following completion of Stage 2.
53. The Regulations set out the timescales under which a dispute must be first raised and responded to at stage 1, and then again for any referral and response at stage 2. Disputes can be accepted outside these timeframes at the discretion of the scheme employer or Administering Authority as appropriate. Delays in resolving a dispute can be escalated to the next stage of the process, where the Pension Ombudsman can rule that unjustified delay amounts to mal-administration.
54. Scheme Managers must publish the disputes procedure and how scheme members can start the process. This must include the name and contact details of the person to contact to initiate the procedure. Scheme Members should also be informed of how to contact the Pension Advisory Service who can support the member in resolving their dispute. Contact details for the Pensions Ombudsman should also be provided at the completion of stage 2.
55. The last section of the Code covers the issue of reporting breaches of law to the Pension Regulator. The Code sets out that certain people are required to report breaches of the law to the Pension Regulator where they believe a legal duty has not been or is not being complied with, and the failure is likely to be materially significant to the Regulator in respect of their functions.
56. The code lists those people as subject to the reporting requirements as the Scheme Manager, members of the Pension Board, any person otherwise involved in the administration of a public sector scheme, scheme employers, professional advisers and anyone else involved in advising the Scheme Manager.
57. Any report must be made in writing, and as soon as reasonably practicable following the identification of the breach. Those responsible for reporting a breach should receive sufficient training on the legal requirements and the procedures and processes for reporting.
58. Procedures should set out the process for obtaining clarification around the law relating to a potential breach, the process for clarifying facts associated with the potential breach, the process for considering the materiality of the breach and for escalating the issue, the expected timescales involved in dealing with a potential breach, a system for recording all breaches even if they are not reported to the Regulator.



59. The Code provides guidance on determining whether a breach has occurred and whether it needs to be reported. It makes it clear that having reasonable cause to believe a breach has occurred cannot be based solely on unsubstantiated suspicion. Instead those charged with reporting the breach should undertake sufficient investigation into the facts of the case to substantiate that a breach has in fact occurred. Where there is suspicion of theft, fraud or other similar offence where further investigation could alert the potential perpetrator or impede future police investigations, the breach should be reported to the Pension Regulator immediately, as an agreed exception to the normal guidance.
60. In determining whether the breach is of material significance to the Pension Regulator, the Code suggests a review of the cause, effect, reaction to and the wider implications of the breach.
61. The breach is likely to be of material significance if the cause of the breach was either dishonesty, poor governance or administration, slow or inappropriate decision-making practices, incomplete or inaccurate advice or an act in deliberate contravention of the law. It is unlikely to be deemed of material significance if it is an isolated issue.
62. In terms of effect of a breach, the Code suggests the following matters are likely to be of material significance to the Pension Regulator – a lack of skills and knowledge amongst Board Members, poor governance or administration of the Scheme, Board Members having a conflict of interest which leads to poor governance, a failure to establish adequate internal controls, a failure to provide accurate and timely information to scheme members which in turn limits their ability to make decisions about their retirement, inadequate records which results in errors in the calculation of member benefits and the misappropriation of scheme assets.
63. Where the reaction to the breach is prompt and addresses the immediate issue and its causes, the Pension Regulator would not normally regard the breach to be materially significant.
64. In terms of wider implications, the Code suggests that a breach would be seen as materially significant if there is evidence that further breaches are more likely to follow e.g. the incident was caused by a weakness in internal control which suggests the wider system of internal controls is likely to be inadequate.
65. Finally, the Code sets out the format for the reporting of any material breach, setting out the scheme details, the details of the breach and why it was determined that it would be materially significant to the Pension Regulator.
66. The Code makes it clear that the statutory duty to report a breach overrides other considerations including the disclosure of confidential information. It does not however override the legal privilege attached to professional legal advice, which therefore does not have to be disclosed.

**Current Position**

67. In respect of the guidance on governing the Scheme, it is considered by the Officers that Oxfordshire is broadly compliant with the Code. In terms of the skills and knowledge of Board Members, there is arrangements in place to provide training on the skills and knowledge required. However, Board Members have not been asked to complete a personal training needs assessment and no formal training plan has been produced for Board Members. Whilst training undertaken by Board Members is recorded, there is a lack of transparency as the training register is not published
68. There are also gaps relative to the guidance contained in the Code in respect of conflicts of interest. The Board does not have its own specific Conflict of Interest Policy relying on that agreed for the County Council as a whole. Nor do we publish a separate register of any conflicts of interests declared by Board Members.
69. Officers have not identified any material gaps against the guidance in respect of publishing information about the scheme, with all required information published on the Council's website.
70. It is also believed that we now have robust arrangements in place for the management of risks, with both the Pension Committee and the Pension Board reviewing the risk register at every quarterly meeting. The findings of any audit reports are made available to the Pension Fund Committee through the Administration Report, which will be a regular item on the future agendas of the Pension Board.
71. In respect of record keeping, the Pension Committee and Pension Board have been provided with an assessment of the quality of data within the scheme as measured by the Common Data and Scheme Specific data quality scores annually reported to the Pension Regulator. Where these reports identified weaknesses in the past, the Committee and Board were presented with a data improvement plan, and regular monitoring reports on the delivery of the plan.
72. There are gaps in the reporting of the position on the maintaining contributions. Whilst there is a full record kept monitoring the contributions received, there is no performance reporting from this record to either the Pension Fund Committee or the Pension Board.
73. In respect of the monitoring of the provision of information to Members, both the Committee and the Board receive reports setting out the numbers of Annual Benefit Statements sent out to scheme members. There is also performance information within the quarterly Administration Report on the key tasks undertaken by Pension Services including the provision of benefit information to scheme members and employers.
74. In respect of resolving issues, the Administration Report contains a record of the number and nature of disputes made to the Administering Authority. Whilst the information would allow the Committee and/or Board to identify any areas

of persistent dispute which in turn may suggest weaknesses in the internal controls and governance arrangements, the current numbers are small enough to indicate no specific trends.

75. Finally, the Pension Committee and the Pension Board annually review the Scheme's Policy on Reporting Breaches of Law to the Pension Regulator. They have also received reports on the occasions where breaches have been reported to the Pension Regulator having been determined to be materially significant. Neither the Committee of the Board have received a copy of the Register of Breach Reports setting out those breaches identified but not reported as they were not deemed to be materially significant.

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January 2020