Draft code of practice no. 6
and accompanying guidance

Reporting late payment of contributions to personal pension schemes

June 2013

The Pensions Regulator

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Draft code of practice no. 6
and accompanying guidance

Reporting late payment of contributions to personal pension schemes

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6 June 2013

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Contents

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
   - promote, and improve understanding of, the good administration of work-based pension schemes, and
   - maximise compliance with the duties and safeguards in the Pensions Act 2008.

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 guidelines on the requirements of pension legislation and set out standards of conduct and practice expected of those who must meet these requirements[2].

Northern Ireland

5. In this code, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland. Appendix A to this code lists the corresponding references.

Status of codes of practice

6. 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].

7. If there are grounds to issue an improvement notice, 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[4].

1
Section 5(1) Pensions Act 2004 (c. 35).

2
Section 90(1) ibid.

3
Section 90(5) ibid.

4
Section 13(3) ibid.

This code of practice

8. The regulator is required to issue a code on:

   - the duty of trustees or managers to report material failures to pay contributions timeously, and
   - what constitutes a 'reasonable period' within which to report to the regulator and members[5].

9. This version of the code fulfils both requirements and replaces the current version of the **Code of practice no. 6 – Reporting late payment of contributions to personal pensions**.

10. The regulator may choose to issue a code containing practical guidance in relation to the exercise of functions under pensions legislation and regarding the standards of conduct and practice expected from those who exercise those functions[6]. This code of practice therefore provides practical guidelines on the set up of the scheme, and the monitoring of contributions under direct payment arrangements, in so far as it relates to the trustees' or managers' duty to report material failures to pay.

To whom is this code directed?

11. The code applies to trustees and managers of personal pension schemes (including stakeholder plans and Self Invested Pension Plans (SIPPs)) where there are direct payment arrangements. This includes any personal pension scheme used by an employer to fulfil their automatic enrolment duties.

Other relevant codes of practice

12. This code complements **Code of practice no.1 – Reporting breaches of the law**.

5
Section 90(2)(a) and (j) Pensions Act 2004.

6
Section 90(1) ibid.

Terms used in this code

13. The term ‘payment failure’ refers to a contribution payable under the direct payment arrangements which has not been paid in full on or before its due date. The term ‘material payment failure’ refers to a payment failure which is likely to be of material significance to the regulator in the exercise of its functions.

14. The term ‘member’ includes both members and prospective members of a personal pension scheme.

15. As the majority of personal pension schemes are run by managers rather than trustees, ‘managers’ is used throughout the code of practice and supporting guidance. References to ‘managers’ includes trustees of trust-based personal pension schemes.

16. In this code and guidance, the term ‘managers’ refers to one or more of the following:

    - the personal pension scheme operator or provider, namely the person responsible to members for managing and administering the assets and income of, and the benefits payable under the scheme in accordance with pensions and tax legislation, the scheme’s provisions and the regulatory system. Typically, but not always, this is the appointed scheme administrator.
    - trustees operating a scheme jointly with the scheme administrator due to their responsibilities under the scheme trust deed for administering and managing the assets
    - other parties liable as scheme administrator, and
    - the persons responsible for the management of the scheme (other than a scheme established under trust).

17. References to ‘days’ means all days. References to ‘working days’ do not include Saturdays, Sundays or Bank Holidays.

18. In this code, legislative requirements are indicated by ‘must’ and code guidelines by ‘should’.

The code of practice

19. This code and supporting guidance sets out how managers of personal pension schemes should meet their obligations and duties to:

    - monitor the payment of contributions to be paid under direct payment arrangements
    - provide the necessary information to enable members to check contributions, and
    - report material payment failures to the regulator and to members within a reasonable period.

20. The code and supporting guidance are not intended to prescribe the process for every scenario, they do however provide principles, examples and benchmarks against which managers can consider whether or not they are reasonably complying with and have understood their duties and obligations.

21. Managers running personal pension schemes should ensure they have in place commercially viable, proportionate and risk-based processes which enable identification of material payment failures, through effective monitoring of contributions that fall to be paid under direct payment arrangements. Where payment failures have been identified they should also take steps to resolve the failure and any disputes that arise about contributions.

22. To support increased engagement with members, managers should provide payment information that will enable the member to understand what has been paid to the scheme and by whom, and to identify whether contributions that fall to be paid to the scheme under the direct payment arrangement have been received by the scheme. This will enable members to take steps to resolve any payment problems with the employer at the earliest opportunity.

Part one – Monitoring contributions

23. Managers must report material payment failures to the regulator[7]. To be able to comply with this duty managers must have processes in place to check that contributions that fall to be paid under the direct payment arrangements to the scheme are actually paid by the due date. This can be a risk-based process.

24. To do this, the managers will need access to information such as:

- what contributions are due to be paid by the employer and on behalf of the member
- the pensionable pay that contributions are based upon (where this is the case), and
- the due date for payment of contributions.

25. Setting up the scheme correctly, understanding the documentation that details the contributions due to be paid, and putting in place processes to facilitate the transparent movement of payment information between the employer, managers and member, will enable the effective monitoring of contributions.

Scheme set up

26. Direct payment arrangements are arrangements between the member and the employer under which contributions fall to be paid by the employer towards the scheme:

- on the employer's own account (but in respect of the member), or
- on behalf of the member (if the member is making any contributions) out of deductions from the member's pay[8].

27. Essentially, direct payment arrangements exist where:

- the employer arranges to make employer contributions to a personal pension scheme (under the arrangements), and/or
- the employer arranges to deduct the member's contributions from pay and to pay them across to the pension scheme for the member.

continued...

7
Section 111A(7A) Pension Schemes Act 1993 (c. 48).

8
Section 111A(2) ibid.

Scheme set up continued...

28. Direct payment arrangements should be in writing but may not be limited to one single document or agreement. They may be evidenced by a combination of the written and verbal agreements that exist between the managers of the pension scheme, the employer, and the member. This may include the scheme terms and conditions, policy documents, and any qualifying agreements entered into between the managers and employer, and the managers and jobholder for the purposes of automatic enrolment.

29. As part of setting up the scheme, the managers and employer should be clear about the contributions to be paid and the components of pensionable pay from which the contribution is to be calculated (if this is the case). They should also agree the due date(s) for the payment of contributions and agree how any changes which affect the amount of contribution due will be notified to the managers. Documentation that sets out these elements may be used to reflect the direct payment arrangements.

30. These discussions between the managers and employer will ensure that both parties fully understand what is due to be paid and by when and it will allow managers to track and, where necessary, check contributions to identify where contributions are not paid in full on or before the due date.

31. Employer contributions must be paid by the due date set out under the direct payment arrangements for paying them to the pension scheme. Member contributions deducted from pay must be paid to the pension scheme by the 22nd day (or 19th day if the payment is by cheque) of the month following deduction[9]. There are special rules for the first deduction of contributions on automatic enrolment under the Pensions Act 2008. The monitoring processes that managers set up should be able to easily identify the appropriate due dates and track contributions against these. This will assist in identifying contributions which are not paid in full by the due date.

9 Section 111A(15)(b) Pension Schemes Act 1993, see also regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000 (SI 2000/2692).

Monitoring the payment of contributions

32. Managers must have processes in place to meet their duty to monitor the payment of contributions into the scheme so that they can identify underpayments or overpayments as well as non-payments. This can be a risk-based process. The guidance supporting this code contains some practical suggestions for monitoring although ultimately it is up to the managers to set up and operate appropriate procedures.

33. Employers will often provide the payment information managers need to monitor contributions at the same time as they send the contributions to the scheme. This will be as part of the normal administrative arrangements of the scheme between employer and managers which should be agreed at set up. Payment information may include:

    - pensionable earnings, and
    - documentation reflecting the scheme provisions about contributions.

34. Where the necessary payment information is not supplied by the employer, and managers decide they need it to carry out risk-based monitoring, they should request the additional information they need from the employer[10]. Managers do not need to obtain payment information as a matter of course, only where it is needed for effective monitoring.

35. The regulator considers that a reasonable period for employers to provide managers with payment information will be within seven working days of the date of the managers' request.

36. Managers must report to the regulator where payment information requested is not supplied by the employer within this reasonable period and this failure to comply means that the managers are unable to meet their monitoring obligation[11]. The regulator considers that a reasonable period for managers to report non-receipt of this payment information will be within 14 days of the date of the request.

10
Section 111A(4) Pension Schemes Act 1993.

11
Section 111A(7) ibid.

Taking action to resolve overdue contributions

37. Where a payment failure occurs managers should contact the employer promptly to alert them to the failure and to seek to resolve the overdue payment. Where reasonable, managers should try to find out and record the causes and circumstances of the payment failure.

38. Supporting guidance suggests an approach to resolving payment failures but ultimately managers have flexibility to design their own processes so that they can obtain overdue payments from the employer and rectify administrative errors in the most effective and efficient way for their particular scheme.

Part two – Providing information to members

39. Managers have to provide a significant amount of information to the member both at the start of membership and on an ongoing basis while membership continues. This includes providing the member with the terms and conditions of the scheme and certain key pieces of information, such as the value of any contributions payable by the member[12].

40. Managers must also provide members with an annual statement within 12 months of the end of the scheme year showing contributions credited (before deductions) to the member in the preceding scheme year[13].

41. Managers should present contributions information to members in an accessible, transparent form so that the member is able to check that they are receiving the contributions they are due. This may include information on:

    - contributions received by the scheme after tax relief
    - the percentage of pensionable pay due for both employer and member contributions together with pensionable pay information where held
    - the dates contributions were due and the dates paid, and
    - charges or commission taken before or after payment to the scheme.

42. Managers may decide how best to provide this information. Our research shows that best practice amongst many managers is to provide members with access to online contribution and payments information that is regularly updated and that this is effective in aiding the member to monitor scheme contributions.

12
Section 113 Pension Schemes Act 1993, see also regulation 4 of the Personal Pension Schemes (Disclosure of Information) Regulations 1987, (SI 1987/1110).

13
Regulation 5 ibid.

Part three – Reporting material payment failures

Reporting material payment failures to the regulator

43. Managers must report material payment failures to the regulator and members within a reasonable period. A material payment failure is where:

- contribution payments payable under direct payment arrangements are not paid to the scheme by the due date(s), and
- there is 'reasonable cause to believe' that this failure is likely to be of material significance to the regulator in the exercise of its functions[14].

44. Having 'reasonable cause to believe' means more than an unsubstantiated suspicion. Managers should make enquiries and use their judgement when deciding whether to report to the regulator. While they are not expected to undertake a full investigation to establish materiality or investigate whether an employer has committed fraudulent behaviour, the managers should seek to enquire of the employer:

- the cause and circumstances of the payment failure
- what action has been taken by the employer as a result of the payment failure, and
- the wider implications or impact of the payment failure, for example on member benefits.

45. The managers 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 no response has been received, managers may infer that an employer is unwilling to pay the contributions due.

46. Below we set out the circumstances which are likely to be of material significance to the regulator. This list is for illustrative purposes only and is not exhaustive.

14
Section 111A(7A) Pension Schemes Act 1993.

Material payment failures that need reporting

47. Managers must report material payment failures to the regulator and members within a reasonable period of a material payment failure arising after the due date[15]. Circumstances which are likely to be material and which the managers should report include:

    - where managers have reasonable cause to believe that the employer is not willing to pay the outstanding contributions. Where the managers' reminder and recovery process has been exhausted without response from the employer or without them having obtained the outstanding payment they may assume this indicates an employer's unwillingness to pay
    - where there is a payment failure involving possible dishonesty or a misuse of assets or contributions. For example, managers may have concerns that the employer is retaining and using contributions to assist cash flow difficulties or where managers have become aware that the employer has transferred contributions elsewhere other than to the scheme
    - where there is a failure to pay contributions which carries a criminal penalty. For example, information available to the managers may indicate that the employer is knowingly concerned in the fraudulent evasion of the obligation to pay employee contributions
    - where the managers 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 appears not to be taking adequate steps to remedy the situation, for example where there are repetitive and regular payment failures, and
    - in any event where contributions have been outstanding for 90 days from the due date.

continued...

15 Section 111A(7A) Pension Schemes Act 1993.

48. Managers should not normally report to the regulator where one of the following circumstances applies:

    - where managers have entered into a payment arrangement with the employer for the recovery of the outstanding contributions and the employer is paying in accordance with that arrangement
    - where a claim has been submitted to the Redundancy Payments Office National Insurance Fund or the Northern Ireland Redundancy Payments Service
    - where there are infrequent one-off payment failures or administrative errors resulting from, for example employees leaving the scheme or employment, new employees joining, or changes in salary not being notified promptly to the managers, and those occasional failures or errors have been corrected within 90 days of the due date
    - where payments are made in excess of the contributions due under the direct payment arrangements, and
    - where contributions are paid late but in full and within 90 days of the due date.

Reasonable period for reporting to the regulator

49. A reasonable period for reporting to the regulator will be within ten working days of the managers having reasonable cause to believe that a material payment failure exists. For example, the regulator should receive a report within ten working days of the managers having received verbal or written confirmation from an employer that they do not intend to pay.

50. Exceptionally, where there is a current or imminent danger to members' and/or the employer's payments unless immediate preventative action is taken, managers should report the failure to the regulator by telephone as soon as they become aware of the occurrence. The managers should confirm telephone reports in writing, for example by letter or email, as soon as reasonably practicable and in any event within ten working days.

Reasonable period for reporting to members

51. Where managers have reasonable cause to believe that a material payment failure exists they should report to members within 30 days of having reported to the regulator.

52. The regulator believes that members should be made aware of outstanding payments and have the opportunity to discuss these with their employer at an early opportunity, as this may assist in the resolution and recovery of overdue payments. For this reason, managers should consider reporting to the affected members around the same time as their initial contacts with the employer to pursue outstanding payments. If the managers have already notified the member at an earlier point in their contacts with the employer they may choose whether to notify the member again at the point of reporting to the regulator.

Method of reporting to the regulator

53. Reports should be made in writing (preferably electronically) except where a telephone report is made in the exceptional circumstances set out in paragraph 50 above.

54. The regulator has standardised reporting for material payment failures in terms of content, format and channel and managers should refer to separate guidance for more details including the data standards which managers should comply with.

Appendix A

Corresponding Northern Ireland legislation

GB legislation	Northern Ireland (N.I.) legislation
The Pension Schemes Act 1993 (c. 48) – Section 111A – Section 113	The Pension Schemes (Northern Ireland) Act 1993 (c. 49) – Section 107A – Section 109
The Pensions Act 2004 (c. 35) – Section 5 – Section 13 – Section 90	The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) – Article 4 – Article 9 – Article 85
The Pensions Act 2008 (c. 30)	The Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))
The Pensions Act 2008 (c. 30)	The Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))
The Personal Pension Schemes (Disclosure of Information) Regulations 1987 (S.I. 1987/1110) – Regulation 4 – Regulation 5	The Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 288) – Regulation 4 – Regulation 5
The Personal Pension Schemes (Payments by Employers) Regulations 2000 (S.I. 2000/2692) – Regulation 5	The Personal Pension Schemes (Payments by Employers) Regulations (Northern Ireland) 2000 (S.R. 2000 No. 349) – Regulation 5

Accompanying guidance

to draft code of practice no. 6:
Reporting late payment of contributions
to personal pension schemes

Appendix B

Code-related guidance accompanying code of practice no. 6

A guide for managers of personal pension schemes

Introduction

This guidance is designed to complement **Code of practice no. 6 – Reporting late payment of contributions to personal pension schemes** and should be read in conjunction with that code. It provides further practical guidance on some of the matters dealt with in the code, such as:

- the monitoring of contributions, and
- example processes for the recovery of outstanding contributions.

Each section of the guidance is referenced and linked to the appropriate code paragraph.

Guidance for specific paragraphs of the code

Code paragraphs 32 to 36 (about monitoring the payment of contributions)

Managers should have a monitoring process in place to identify whether the contributions that fall to be paid under the direct payment arrangements are paid in full and on time.

It is for the managers to decide what process to put in place. However, it should be fit for the purpose of identifying payment failures so that the managers can fulfil their legal duty to report material payment failures to the regulator and to members. Ideally the process and policies that the managers will adopt for monitoring will be documented in writing.

The process used need not require the checking of every contribution received. It may be a risk-based process, allowing the managers to identify situations which present a higher risk of material payment failures occurring that require the managers' intervention. The process needs to enable the managers to comply with their reporting duties, but the regulator recognises that it must be commercially viable for the managers and proportionate so that it is in the interests of the scheme membership as a whole.

continued...

To be able to identify payment failures the process should be capable of checking more than the fact and timing of a contribution. Where a higher risk situation occurs, the managers' processes should enable them to check the accuracy of the contribution due. This could involve checking the calculation of a contribution which is expressed as a percentage of pensionable pay under the direct payment arrangements.

To assist managers in establishing a risk-based process, the regulator believes the type of situation or characteristic that may indicate higher risk includes:

- employers who have demonstrated a past history of errors or repeated late or underpayment of contributions
- employers who use manual payroll processes or a payroll provider that has supplied inaccurate pension contributions or pensionable pay data in the past
- employers who provide manual payment information to the managers, or who have not provided accurate and timely payment information in the past, and
- unexpected fluctuations in the level of contribution where the managers would normally expect contribution levels to be consistent, for example where the managers have not previously seen fluctuating contributions from the employer and contributions received suddenly drop without warning. If the managers are used to seeing fluctuating contributions across pay periods (for example because they are aware that workers have fluctuating levels of pensionable pay) regular changes to contributions may not give the managers any cause for concern.

Where a higher risk situation is identified managers should carry out checks to ascertain whether contributions are being paid in accordance with the direct payment arrangements. The type of checking required will depend on the risk identified and the circumstances of the case but appropriate checks may range from random contribution sampling to a full audit of contributions.

For example, an employer has provided late, manual, payment information to the managers multiple times in a year. The managers undertake an initial sampling of contributions to establish whether payment failures have occurred and this indicates the likelihood of systemic failure. The managers therefore decide to carry out a full analysis of all contributions received in order to be able to understand the extent of the problem before being able to seek to resolve the payment issues.

continued...

Guidance for specific parts of the code continued...

Where only lower risk situations are identified, the managers may simply decide to carry out occasional spot checks of the contributions received from employers. This will allow them, for example, to satisfy themselves that the basis on which contributions are being paid aligns with the direct payment arrangements. It will also help to assure the managers that they have set their risk indicators correctly and that their risk-based monitoring process is working effectively.

There is no need for managers to systematically duplicate the contribution calculation process undertaken by the employer's payroll system. However, they should carry out periodic checks across employers to ensure that the percentages used by payroll in the calculation of contributions are consistent with those set out in the direct payment arrangement. This will help managers ensure that their control framework is working and their monitoring processes are able to spot where obvious anomalies exist in the pensionable pay information provided by the employer.

The regulator accepts that a monitoring process based on information provided by the employer may not be able to confirm deliberate underpayment or non-payment, or fraudulent behaviour by the employer (as the employer may try to manipulate payment information to disguise their actions). But it should be able to detect situations where fraud may be more likely to occur and where additional checks may be appropriate.

To be able to monitor contributions, the managers may from time to time require payment information from the employer including pensionable pay details where contributions are expressed as a percentage of pay. How this is provided by the employer should be established at the set up of the scheme. Where payment information is not provided regularly by the employer and it is necessary to carry out risk-based monitoring, the managers should request it from the employer. If the employer refuses to provide it, the managers may report this to the regulator. The managers may accept the payment information provided by the employer at face value unless they have reason to believe it to be incorrect.

The managers are not expected to carry out detailed examinations of pay data, such as to examine whether the elements of pay which are pensionable under the scheme rules are actually being taken into account in the calculation of contributions. However, the managers' processes should be able to identify when clear errors or omissions arise, for example, if payments were to suddenly fall by a certain percentage or more from period to period.

continued...

A suitable monitoring process should be established for all schemes regardless of whether the scheme is being used by an employer for automatic enrolment purposes after their staging date.

The regulator recognises that older legacy schemes may not currently have a suitable process in place and it may take time for managers to establish one. When considering a risk-based process for this type of arrangement the recent history of payment failures by employers using the legacy schemes may be a factor to be taken into account.

Code paragraphs 37 to 38 (about taking action to resolve overdue contributions)

Where there is a payment failure, the regulator considers that managers should attempt to contact the employer to resolve the overdue contributions. The regulator considers that managers should make at least three attempts to contact the employer within 90 days of the due date having passed without full payment of the contribution. Managers should, in making contact, alert the employer to the failure, request payment of any outstanding amounts and seek an explanation of the cause and circumstances of the payment failure.

The regulator believes that telephone contact is the best method for encouraging employers to comply and therefore recommends that at least one of the three contact attempts should be by phone. However, it is for the managers to decide the most effective way to resolve payment failures and how contact should be made, taking into account their own circumstances as well as those of their employers. The regulator acknowledges that telephone contact is not practicable for all schemes or in all circumstances.

Managers should record the communication attempts made to contact the employer and to record the cause and circumstances of the payment failure where this can be established. Recording this information will help to evidence effective monitoring by the managers.

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