PENSION REGULATOR CODE OF PRACTICE 14 - COMPLIANCE ANALYSIS

Powys Pension Fund

		Action Required	Current Position
22	Scheme manager - each public service pension scheme has one or more persons responsible for manging or administering the scheme. Public service pension schemes can have different persons acting as scheme manager for different parts of the pension scheme. For the locally administered schemes, the scheme managers may be the local administering authorities or a person representing an authority or police force.		*The Administering Authority is designated scheme manager under the regulations.*
23	Pension board – the scheme manager (or each scheme manager) for a scheme has a pension board 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.		*A Local Pension Board has been established and operates under a prescribed Terms of Reference. The Board was established on*

Managing Risks

Jun-22

		Action Required	Current Position
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.		Discussed at each Board meeting
105	**Scheme managers must establish and operate internal controls. 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.**		Discussed at each Board meeting
106	Before implementing an internal controls framework, **schemes 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.		Discussed at each Board meeting
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.		Discussed at each Board meeting
108	Once schemes have identified risks, they **should record them in a risk register and review them regularly. Schemes should keep appropriate record**s to help scheme managers demonstrate steps they have taken to comply, if necessary, with legal requirements.		Discussed at each Board meeting
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 area**s 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.		Discussed at each Board meeting

110	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.**		Discussed at each Board meeting
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.		Discussed at each Board meeting
113	Risk assessment is a c**ontinual process and should take account of a changing environme**nt and new and emerging risks, including significant changes in or affecting the scheme and employers who participate in the scheme.		Discussed at each Board meeting
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).		In Place - exercise to be undertaken to co-ordinate with Funding Strategy Statement review and Valuation. Initial results received and work continuing. Will form part of 2022 Valuation work
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.		Discussed at Board meeting accordingly.
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.		Annual Wales Audit Office reviews. Internal Audit of Administration due in 2022.
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 f**or delivering services. T**he 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.**		Annual Assurances from providers saught.

120	An increasing number of service providers are obtaining independent assurance reports to help demonstrate their abilit 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 standard**s. This should help to ensure effective administration.		Annual Assurances from providers saught.
Maintaining Contributions			
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.		Breaches Log and procedure in place. Ongoing risk requiring monitoring
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'), 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.		Breaches Log and procedure in place. Ongoing risk requiring monitoring
149	**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. 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.		Breaches Log and procedure in place.
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.		Breaches Log and Policy in place
151	Schemes **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.		Breaches Log and procedure in place. Ongoing risk requiring monitoring
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.		Breaches Log and Policy in place

Jun-22

155	Public service pension schemes which meet these exemptions **should nonetheless develop a record for monitoring the payment of contributions to the scheme (**a contribution monitoring record, which must reflect any requirements in scheme regulations where relevant). **Schemes should prepare thecontributions monitoring record in consultation with employees**.		Procedure in place, but looking to develop using software for reconciliation and monitoring.
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.		Procedure in place, but looking to develop using software for reconciliation and monitoring to help
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.		Noted.
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.		
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.**		
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.		Procedure in place within the Finance Section but looking to develop by using software
166	Scheme managers must record and retain information on transactions, including any employer and employee contributions received and payments of pensions and benefits, which will support them in their administration and monitoring responsibilities.		Procedure in place within the Finance Section
167	Where the a**dministration 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.		Procedures and policy in place

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.		Procedures and policy in place
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. 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.		Breaches Log and procedure in place.
Reporting Breaches of the Law			
244	Schemes 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.		Reporting Breaches Policy produced and available on Fund website
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.		Reporting Breaches Policy produced and available on Fund website. Traffic light system included for determining seriousness

Jun-22

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.		Reporting Breaches Policy produced and available on Fund website. Traffic light system included for determining seriousness. Breaches Log kept and updated rebularly.
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.		
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.		
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.		Detailed in Breaches Policy
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.		
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.		Detailed in Breaches Policy
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.		
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.		
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	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.		

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.		
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.		
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.		Detailed in Breaches Policy