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The Nottinghamshire Local Pension Board

The role and approach of the Pensions Regulator to the Local Government Pension Scheme

A paper by the Advisor to the Pension Board March 2016

Background

Section 17 and Schedule 4 of the Public Service Pensions Act 2013 extended the role of the Pensions Regulator to include public sector pension schemes including the Local Government Pension Scheme (LGPS) from 1 April 2015.

With regard to the LGPS the Pensions Regulator now has responsibilities in relation to governance and particularly administration. However, the Pensions Regulator's role has not been extended to funding and investment issues within the LGPS which remain wholly the responsibility of the Secretary of State for Communities and Local Government.

Schedule 4 of the Public Service Pensions Act 2013 requires the Pensions Regulator to issue a Code of Practice or Codes of Practice in respect of certain specified matters. In response to this requirement the Pensions Regulator in December 2013 issued Draft Code of Practice No 14 ***“Governance and administration of public service pension schemes.”*** Following consultation a slightly revised version of Draft Code No 14 came into effect as Code No 14 from 1 April 2015. This Code of Practice, which is over 60 pages long, is applicable both to the Pension Fund and the individual Employers within the Fund. A copy can be downloaded at <http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>

In June 2015 the Pensions Regulator issued (following a consultation during February and March 2015) its approach to compliance and enforcement in relation to public service pension schemes in a 23 page document entitled ***“Compliance and enforcement policy for public service pension schemes.”*** (a copy can be downloaded at <http://www.thepensionsregulator.gov.uk/doc-library/compliance-and-enforcement-policy-for-public-service-pension-schemes.aspx>). This indicates that the Pensions Regulator's primary focus will be on educating and enabling Schemes to improve standards and comply with legal requirements. However the Regulator is clear that statutory based enforcement action will be taken against Schemes if necessary.

This paper will now look in some more detail at Code of Practice No 14 and the Pensions Regulator's approach to compliance and enforcement for public service pension schemes.

Code of Practice No 14 "Governance and administration of public service pension schemes"

Code of Practice No 14 covers the following issues:

Governing your scheme

- Knowledge and understanding required by pension board members
- Conflicts of interest and representation
- Publishing information about schemes

Managing risks

- Internal Controls

Administration

- Scheme record-keeping
- Maintaining contributions
- Providing information to members

Resolving issues

- Internal dispute resolution
- Reporting breaches of the law

The issues covered and requirements of Code No 14 are extensive. Although effective record keeping, maintaining contributions, providing information to members and internal dispute resolution were already legal requirements for both LGPS Funds and Employers Code No 14 brings these requirements together in one document and also provides practical guidance and sets expected standards.

Paragraph 12 of Code of Practice No 14 states that the Code is "*particularly directed*" at Scheme Managers (which in the case of the Nottinghamshire Fund is the Pension Fund Committee and its Officers) and members of Pension Boards. Given the contents of the Code it is therefore very important that Members of the Pension Fund Committee, the Pension Board and relevant Officers are clearly aware of its contents. As Paragraph 8 of the Code states "*The regulator is required to issue one or more codes of practice covering specific matters relating to public service pension schemes. This code of practice sets out the legal requirements for public service pension schemes in respect of those specific matters. It contains practical guidance and sets out standards of conduct and practice expected of those who exercise functions in relation to those legal requirements.*"

It is also crucial that all Employers within the Nottinghamshire Fund are aware of and comply with the legal requirements and standards covered in the Code. As Paragraph 15 states *“the role and actions of employers can be critical in enabling scheme managers to meet certain legal requirements.”* For example the role of Employers in Scheme record keeping, ensuring employee and employer contributions are correctly paid to the Fund and in the Internal Dispute Resolution Procedure (IDRP) are crucial. Failures by an Employer to fulfill legal requirements and follow the expected standards within the Code may result in that Employer (rather than the Pension Fund) being subject to legal enforcement action by the Pensions Regulator. Therefore the Fund needs to bring Code No 14 to the attention of all Fund Employers.

It is a statutory requirement under Schedule 4 of the Public Service Pensions Act 2013 and Section 248A of the Pensions Act 2004 (As amended) that members of Pension Boards have “knowledge and understanding” of pensions law and be “conversant” with the Scheme Regulations and Fund documents. It is therefore necessary for members of the Pension Board to undertake and maintain appropriate training and for the Fund to be able to evidence that individual Pension Board members have attended suitable training.

Paragraphs 34 to 60 of Code of Practice No 14 cover the issue of Knowledge and Understanding required by Pension Board members in detail. The Code is clear that Pension Board members will require a broad range of “knowledge and understanding.” This includes the Scheme Regulations which in the case of the Local Government Pension Scheme (LGPS) are the various LGPS Regulations together with policies and documents within those Regulations adopted by individual Funds such risk assessment/management policies, administration policies including record-keeping, communication policies/documents, funding and investment policies. Pension Board members must also have knowledge and understanding of the wider law as it relates to pensions. Paragraphs 47 to 54 of the Code make it clear that knowledge and understanding must be of a sufficient depth to enable members to effectively carry out their role. Paragraph 60 states that *“Schemes should keep appropriate records of learning activities of individual pension board members and the board as a whole....”*

The legislative requirements regarding knowledge and understanding only apply to Pension Board members. They do not apply to members of Fund decision making committees (referred to in the Pensions Regulators Code No 14 as *“scheme managers”*), which in the case of the Nottinghamshire Fund is the Pension Fund Committee. However the regulator in Code No 14 states (Paragraph 37) that *“scheme managers should take account”* of the guidance, in the Code, relating to knowledge and understanding required by Pension Board members. Therefore the Pensions Regulator is clearly indicating that those responsible for Fund decision making (the Pension Fund Committee) should acquire and maintain a broad range of knowledge and understanding relevant to the LGPS. This is completely logical and appropriate as the members of the Pension Fund Committee are responsible for exercising, on behalf of the Council, powers and duties of the Council in relation to the Nottinghamshire Fund.

The Code provides practical guidance and sets expected standards of practice in relation to legal requirements. The practical guidance sections of the Code are not intended to prescribe the process for every scenario. They do however provide principles, examples and benchmarks against which the Pension Fund and individual Employers can consider whether or not they are reasonably complying with their duties and obligations. For example, as illustrated below, the Code sets out clear expectations in respect of Managing Risks/Internal Control and Scheme record keeping.

Code of Practice No 14 is clear as to the necessity for both an effective Risk assessment and management approach and for the establishment and operation of effective Internal Controls (Paragraphs 100 to 120). The Code states (Paragraph 106) that *“Before implementing an internal control framework, schemes should carry out a risk assessment.”* and (Paragraph 108) *“Once schemes have identified risks, they should record them in a risk register and review them regularly.”* Internal Controls are defined at Paragraph 102 as

- *arrangements and procedures to be followed in the administration and management of the scheme*
- *systems and arrangements for monitoring that administration and management, and*
- *arrangements and procedures to be followed for the safe custody and security of the assets of the scheme*

As Paragraph 104 states *“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.”*

The maintenance of complete and accurate records is a major concern of the Pensions Regulator as demonstrated by Paragraphs 122 to 146 of Code of Practice No 14. For example Paragraph 124 states *“Failure to maintain complete and accurate records and put in place effective internal controls to achieve this can affect the ability of schemes to carry out basic functions.”* Paragraph 138 states *“Schemes should continually review their data and carry out a data review exercise at least annually. This should include an assessment of the accuracy and completeness of the member information data held.”* Employers as well as the Fund have a crucial role in ensuring the accuracy of member records (see for example Paragraphs 128,129 and 130) and *“Schemes should ensure that member records are reconciled with information held by the employer....”* (Paragraph 142).

Employers must pay both employer and employee contributions to the Fund in accordance with the Law and Regulations. The Fund must monitor payments and investigate any payment failures by Employers. Ultimately as stated in Paragraph 173 the Fund must report *“payment failures which are likely to be of material significance to the regulator....”* (see Paragraphs 147 to 186 for guidance on collecting employee and employer contributions). Guidance on the provision of information to individual members, including time limits, is covered in Paragraphs 187 to 211 of Code of Practice No 14. In the LGPS both individual Employers and the Fund have a role in Internal Dispute Resolution. This crucial issue is covered in Sections 213 to 240 of the Code.

Although adhering to the Code is not a statutory requirement it does set out many legal requirements and should the Pensions Regulator identify or become aware of a situation where requirements are being breached it will use the Code as a reference document when determining what action to take. Furthermore under Section 90(5) of the Pensions Act 2004 Codes of Practice issued by the Pensions Regulator are admissible in evidence in any legal proceedings *“and must be taken into account”* in its determination if the court or tribunal considers it relevant to any issue arising in the proceedings. Section 90(6) states that *“legal proceedings”* includes cases considered by the Pensions Ombudsman. This is important as the final appeal against an administrative decision of either the Fund or an individual Employer is normally to the Pensions Ombudsman.

Compliance and enforcement policy for public service pension schemes

The ***“Compliance and enforcement policy for public service pension schemes.”*** issued in June 2015 sets out the Regulator’s proposed approach to compliance and enforcement in relation to public service pension schemes. In this document the Regulator states that its primary focus will be on educating and enabling Schemes to improve standards and comply with legal requirements. The Regulator indicates that initially they will focus on:

- Promoting Code of Practice No 14 and educational tools
- Undertaking surveys to understand the extent to which expected standards and practices are been met
- Undertaking thematic reviews, focusing on key risk areas
- Engaging with Schemes to understand how they are addressing poor standards and non-compliance through the development of improvement plans.

Although the Pensions Regulator is clear that education and enabling is core to their approach it *“regards failures to address poor standards and non-compliance with the law as unacceptable.”* Should a Fund or Employer materially fail to comply with their legal obligations the Regulator may take enforcement action. This may range from statutory compliance notices and monetary penalties, to criminal prosecution.

The Pensions Regulator will apply a risk based approach to compliance and has indicated that it will focus on risks in the following areas:

- Knowledge and Understanding
- Conflicts of interest
- Internal Controls (which includes Risk Management)
- Records
- Member communication
- Dealing with internal disputes

As will be observed the areas the Pensions Regulator has indicated it will focus on correspond to issues covered in Code of Practice No 14. This further highlights the need for the Fund and all Employers to be aware of and adhere to the requirements and guidance within Code No 14.

Conclusion

Code of Practice No14 “***Governance and administration of public service pension schemes***” and the Pensions Regulator’s policy regarding its approach to compliance and enforcement in relation to public service pension schemes demonstrate the importance of and high standards of practice required from both LGPS Pension Funds and individual Employers.

It is therefore vital that all those involved in the governance and administration of the Pension Fund, in any capacity, are clearly aware of Code of Practice No 14 and the Pensions Regulator’s approach to compliance and enforcement, including legal enforcement action if education and enabling should prove ineffective.

Both the Nottinghamshire Fund and individual Employers must ensure they adhere to their legal obligations and the expected standards the Pensions Regulator has set out.

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