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By email to newcodeofpractice@tpr.gov.uk

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Dear Sir,

RE: Consultation on a new Single Code for the Pensions Regulator

Surrey County Council (Surrey) welcomes the opportunity to respond consultation on a new Single Code issued by the Pensions Regulator (tPR).

Surrey is the Administering Authority for the Surrey Pension Fund (the Fund) as part of the Local Government Pension Scheme (LGPS). The Fund has assets of over £5billion and over 300 employers.

tPR's Single Code consolidates 10 of the 15 existing codes, including the Governance and Administration of Public Service Pension Schemes (Code 14), into one document that comprises of 51 topic-based modules. It is more than a simple consolidation as it implements a number of governance provisions required by the Occupational Pension Schemes (Governance)(Amendment) Regulations 2018 which, in turn, flow from the second European Pensions Directive (IORP II). It also introduces new investment provisions, which cover stewardship and climate change and a requirement to produce an annual risk assessment. Moreover, the existing codes are being revoked in their entirety and the ones that were dedicated to certain arrangements, with their own specific requirements, are being melded into a single unified code. This will inevitably lead to some duplications and conflicts within the unified

code and it is not always clear which elements are requirements, guidance or best practice for each type of scheme. Unfortunately, at least for the time being, practitioners may need to refer to overriding legislation to establish which requirements are mandatory and which are optional for their particular scheme.

It appears that tPR has developed its understanding of public sector governance and it has extended much of the wording in the Code of practice to private sector schemes. It has introduced a universal concept of a scheme governor (instead of the former public sector term “scheme manager”) with an expanded remit and additional responsibilities.

Surrey notes that the Pension Regulator (tPR) has adopted government communication principles to distinguish between legal requirements (“must”), tPR’s expectations (“should”) and, where a process is deemed to be necessary but there is no requirement or expectation, the word “need” is used. There is some ambivalence as, in one breath, TPR asserts that it will rely on its codes in legal proceedings where requirements are not met and in the next it acknowledges that they are not definitive statements of law. It would be helpful if tPR could be clearer about the impact of each module (optional, needed, expected or required) for each of the different types of scheme.

GOVERNING BODY

The code contains a long list of expectations, which are largely what we would anticipate. The key points seem to be ensuring that there is (1) an appropriate balance of knowledge and skill within the board/committee, (2) that compliance with the regulator’s expectations of the members capacity and understanding is monitored and (3) there should be a document laying out the process for conducting meetings and identifying who is responsible for setting the agenda and monitoring any standing items.

The module obliquely alludes to the seven (Nolan) principles of public life, although we did not notice a specific reference to them anywhere. The Fund believes that they have general applicability it would be helpful to refer to them specifically to advance principled behaviours.

The new designation of “governing body” is sufficiently flexible to accommodate that it might be a scheme manager, a local pension board, a committee or a composite of all three in the public sector.

In the case of the LGPS, although the body named in regulations as the administering authority is responsible for the management and administration of the scheme there will be different arrangements for how that function is exercised within the authority. Therefore, we consider that LGPS authorities should be able to determine for themselves who or what is the governing body for the purposes of this code.

Although the general expectations are broadly in line with what we would expect, the role of the chair is now more prescriptive and we note the expectation that appointment of a chair should be set out in a robust and documented process.

The module on meetings and decision making appears to be consistent with previous guidance based on section 249B of the Pensions Act 2004, which requires scheme managers of public service pension schemes *“to establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed in accordance with the scheme rules, and with the requirements of the law”*.

Schemes with more than 100 members or more should publish a remuneration policy and review it triennially. This is not ideally clear and it seems to go beyond governance to encompass all elements of pension provision including outsourced pension administration and a range of professional advisers. It is generic and the tenor of this module implies that it is not aimed at public sector pension schemes but, again, this is not absolutely clear.

The module on knowledge and understanding covers pension law and associated legislation, the scheme rules and regulations but specifically excludes the LGPS from the sections covering scheme funding and investments. Much of the content is generic and is not focused on statutory schemes and it would be helpful if it drew on, or cross referred to, existing knowledge and understanding benchmarks such as the Pensions Management Institute (PMI) or the Chartered Institute of Public Finance and Accountancy (CIPFA).

Under section 249B of the Pensions Act 2004, scheme managers of public service pension schemes are required to establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed in accordance with the scheme rules. The module acknowledges that the legal obligations for scheme funding, scheme investment, and environmental, social and governance concerns are different for public service pension schemes. However, one of the significant new features is the requirement for each scheme to have its own risk assessment - which is identified as best practice in the module - and, in view of the apparent conflict, it would be helpful if tPR could clarify whether it is intended to apply to the LGPS. If it is an expectation, it would also assist administrators if tPR could provide model risk assessments.

The conflicts of interest module appears to defer to section 5 of the Public Service Pensions Act 2013 for public sector schemes for Board members, which requires scheme managers of public service pension schemes to meet certain requirements relating to conflicts of interest regarding the pensions board. The scheme manager must be satisfied that a prospective member of the pension board does not have a conflict of interest and be satisfied that none of the members of the pension board has a conflict of interest. For any conflicts under 249B of the Pensions Act 2004, tPR expects scheme managers of public service pension schemes are required to establish and operate internal controls which are adequate for the purpose and record the conflicts. The module is not ideally clear because it covers 249B references at the very top and the PSPA 2013 element at the very bottom, which requires careful reading.

The module on continuity planning (disaster recovery) is identified as best practice for public sector schemes in the Single Code but, given its importance, this section would benefit from being fleshed-out and some basic examples provided.

An important new requirement is for funds to have their own risk assessment, although it does not distinguish between public sector and private schemes. LGPS funds tend to have carefully thought through risk registers and, given that the new requirement flows from IORP II via the OPP (Amendment) Regulations 2018, it would be helpful to build on that experience, by providing more detail and, ideally, model examples so that we can better understand tPR's expectations.

INVESTMENT GOVERNANCE

The provisions in this module are identified as best practice for the LGPS, presumably because the LGPS Investment Regulations 2016 already exist, individual funds are required to produce Funding Strategy Statements under regulation 58 and they participate in carefully regulated investment pools.

If LGPS Funds are expected to match their obligations to those under this code and meet code obligations in addition to their own. If the Regulator considers that scheme specific regulations and guidance are, in its view, insufficient to achieve effective monitoring then it should be clear in what way they are lacking and how they should be changed to enable LGPS authorities to better approach investment monitoring.

The investment decision making module stipulates *that “the governing bodies of trust-based pension schemes with 100 members or more must invest in a way that ensures security, quality, reasonable liquidity and profitability for the scheme as a whole....The law also requires these governing bodies to invest scheme assets predominantly in regulated markets. Unless there are exceptional circumstances, governing bodies should ensure no more than a fifth of scheme investments are held in assets not traded on regulated markets”*. The LGPS is a statutory scheme (a specific type of trust-based scheme), the term “regulated markets” is not defined term and we understand that the suggestion is only “best practice” for the LGPS. Nonetheless, although the LGPS is already tightly regulated it, arguably, could hold more than a fifth of its assets invested in non-regulated markets with consistently good results.

The stewardship module *“recommends”* that funds identify and account for the systemic risk of climate change in their decisions, engage with investment companies, policymakers and collaborative industry initiatives and *“consider”* co-operation with other institutional investors in engaging with investment companies on environment and social governance issues. Local Government is already heavily engaged in environmental, social and governance (ESG) and Taskforce for Climate Related Disclosure (TCFD) issues and Surrey believes that the single code should go further.

ADMINISTRATION

The module acknowledges that, under the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014, the LGPS is already obliged to maintain comprehensive records and, under section 249B of the Pensions Act 2004, it is required to establish and operate internal controls, which ensure that the scheme is administered and managed in accordance with the scheme rules the requirements of the law.

The LGPS is a multi-employer scheme, which means that there may be financial interactions with hundreds of employing authorities, but the Single Code financial transactions and IT governance sections appear to be written from the perspective of a single employer.

The scheme manager may not have oversight of all the IT systems used in financial transactions in a multi-employer fund and it may only be able to ensure that its own systems meet the *“anticipated physical system requirements”*.

Many LGPS Funds do not have the scale to justify having their own dedicated IT teams and they are entirely reliant on the resources of the authority hosting the administering authority. It would be helpful to have more detail about the evidence that tPR would like us to provide in order to measure our performance.

LGPS Funds with multiple employers may be conducting financial transactions with numerous entities and it is entirely reliant on employers fulfilling their statutory duties promptly and accurately. Unfortunately, the LGPS Fund may not be able to identify errors until the contributions are reconciled at the year end.

In the LGPS, the Fund relies on the statutory requirements in the Pensions Act 1995 and the obligations set out in its Administration Strategy to ensure that tardy employers meet the statutory/policy requirements and take remedial action if necessary.

The module on pension transfers replicates general requirements that are set out more prescriptively in the Pension Schemes Act 1993 and other overriding legislation. The expectation to keep records for six years seems too short for all the potential problems to come to light and many LGPS Funds have a policy of retaining material documents for 75 to 100 years, subject to the requirements of GDPR and the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014.

COMMUNICATIONS AND DISCLOSURE

The module on statutory financial statements for public sector schemes is less prescriptive than the scheme regulations, which requires the LGPS to provide an annual benefit statement to deferred members automatically, instead of upon request. The public sector section also requires schemes to provide defined contribution statements annually, presumably in respect of AVC schemes.

The timescales for short-service refunds are (understandably) generic and the LGPS allows periods of up to three months, as opposed to 30 days, to be refunded through the payroll. We note that some of the other timescales in the module conflict with those in the Occupational and Personal Pensions (Disclosure of Information) Regulations 2013.

Surrey notes that recent Pension Ombudsman determinations go further than the aspirations in the section on scams and DWP has recently launched a consultation on “Pension Scams: Empowering Trustees and Protecting Members” consultation.

The disputes resolution procedure module appears to be generic and suggests timescales that do not agree with those in the Local Government Pension Scheme Regulations 2013, although the requirement to give a determination within two months or to write to the member to explain the delay is consistent. The scheme regulations impose a deadline of (normally) six months from the date of the decision or omission affecting the member rather than ceasing to have an interest in the scheme. However, in some respects this observation is academic given that the Pension Ombudsman’s deadline is (usually) three years.

GENERAL OBSERVATIONS

Surrey understands that tPR is trying to reconcile a host of competing legislation, but we would ask it to consider the unique qualities of the LGPS. The LGPS is funded scheme where the administering authorities are almost all precepting bodies (they have the power to levy rates) and, therefore, it is quite distinct from the other (unfunded) public sector schemes. It is a tightly regulated, well governed and innovative scheme and it would be helpful if the funding modules could continue to only be regarded as “best practice” for the LGPS.

Some of the wording is (understandably) generic although the code does try to distinguish between the various types of pension scheme. It would be helpful if the different types of scheme (e.g. public sector, occupational, defined benefit, defined contribution etcetera) could be considered in a fixed order using a consistent terminology. Where a module/section is not identified as applying to a specific type of scheme it would be helpful if it could be flagged as an expectation, guidance or best practice in each of the scheme categories.

The single code is a major piece of work that tries to consolidate ten of the existing fifteen dedicated codes. It is a serious attempt to reconcile the different perspectives on pension regulation - but it is likely to elicit differing views and initiate an ongoing process of refinement and revision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. D'Alessandro', written in a cursive style.

Anna D'Alessandro
Director of Corporate Finance