

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**

SINGLE CODE OF PRACTICE: TPR CONSULTATION

MAY 2021



CONTENTS

EXECUTIVE SUMMARY	3
RESPONSE FORM 1	5
WE WELCOME ANY OBSERVATIONS ABOUT A POSSIBLE REGULAR PROCESS FOR ISSUING UPDATES TO THE NEW CODE. FOR EXAMPLE, SHOULD UPDATES BE ANNUAL, OR AT LONGER INTERVALS? PLEASE ADVISE US OF ANY CONCERNS ABOUT REGULAR UPDATES. WE WOULD ALSO BE INTERESTED TO HEAR ABOUT ANY TOPICS THAT WE SHOULD PRIORITISE FOR INCLUSION IN THE NEW CODE.	5
WHICH PIECES OF GUIDANCE, OR TOPIC AREAS, SHOULD BE PRIORITISED FOR UPDATES FOLLOWING THE INTRODUCTION OF THE NEW CODE?	5
DO USERS UNDERSTAND THE TERM “GOVERNING BODY”? WOULD ANOTHER TERM WORK BETTER?	6
WE WOULD BE INTERESTED TO UNDERSTAND IF THERE ARE ANY ASPECTS OF OUR EXPECTATIONS USERS THINK WOULD DISCRIMINATE AGAINST, DISADVANTAGE OR PRESENT AN ADDITIONAL OR EXCEPTIONAL CHALLENGE TO ANYONE WITH A PROTECTED CHARACTERISTIC.	7
PLEASE USE THIS PAGE FOR ANY FURTHER COMMENTS YOU HAVE.	7
RESPONSE FORM 2	9
RECRUITING TO THE GOVERNING BODY (TGB014)	9
REMUNERATION POLICY (TGB016)	9
OWN RISK ASSESSMENT (TGB045)	10
RESPONSE FORM 3	13
INVESTMENT DECISION-MAKING (FAI003)	13
DISCLAIMER	15

EXECUTIVE SUMMARY

- ▶ We welcome the intent of the Single Code and the consolidation of Codes. Amongst our members there are high levels of support for the Single Code of Practice, with 72% supportive of it, and only 2% opposed (and 26% neither supporting nor opposing the new Code).
- ▶ However, it is essential to have more clarity on what aspects of the Code are new and open for challenge and where there have been changes from existing guidance. TPR should make it clear where they have made changes to requirements – or added new ones – and make sure there is not undue work creation, especially for smaller schemes, to work out where they are in comparison to these new expectations.
- ▶ It is also not always clear when there is a requirement placed on certain types of schemes and where “good practice, but not a requirement” is. For example, it is not clear whether master trusts are required to carry out an Own Risk Assessment or whether that is considered only good practice. Similarly, for the LGPS throughout the Code it is not always clear where it applies to them. Additional guidance on where the Code applies to the LGPS is crucial.
- ▶ One of the key areas of concern across our membership is the introduction of new phrasing that interprets the legal requirement to invest predominantly in regulated markets to be 80%. This is problematic, given that this legal reading is arbitrary, and many schemes could easily already be beyond 20% in holdings of illiquid assets, which is important for wider policy objectives related to responsible investing, climate change and infrastructure.
- ▶ There are differing views within the PLSA membership over how often the Code should be updated. However, a combination of as and when legislation pressures arise and a scheduled review period were supported.
- ▶ Aside from the frequency of updates, we have concerns over how updates would be identified and the audit process for tracking updates over time. We therefore ask for it to be made clear where changes have been made, to what areas and when those changes were made. PLSA also asks that previous versions should still be made available at the very least, as a reference point, while the new single Code is embedding in.
- ▶ Following the introduction of the Code, additional guidance on the Own Risk Assessment and updates to the Trustee Toolkit should be prioritised to help trustees become familiar with the Code.
- ▶ Most (62%) of our members surveyed agree that it is appropriate to group together a number of different parties under the term “governing bodies”. However, within the LGPS the term “governing bodies” is confusing. If TPR wish to group entities under the Governing Body, the Code needs to be very explicit which Governing Body it relates to in each section of the Code.

For instance, the Code sometimes blurs the boundaries between the LGPS Local Pensions Board and the Pensions Committee.

- ▶ On specific modules we would ask for:
 - ▶ Examples of remuneration policies and how they vary depending on size (for example, in the level of detail required) and for the requirement for including remuneration of individuals in outsourced organisations to be clarified.
 - ▶ Further detail on the Own Risk Assessment as noted above and a longer review process. Clarification of the purpose of the Own Risk Assessment as well as how it is meant to be different to the risk register will be important.
 - ▶ The retaining of the existing wording of the law which requires governing bodies to invest scheme assets predominately in regulated markets and remove the reference to ‘no more than a fifth of scheme investments’ to be held in non-regulated markets in the Investment Decision-Making module.
 - ▶ A Welsh translation of the Code to be made for Welsh Local Authorities.

RESPONSE FORM 1

WE WELCOME ANY OBSERVATIONS ABOUT A POSSIBLE REGULAR PROCESS FOR ISSUING UPDATES TO THE NEW CODE. FOR EXAMPLE, SHOULD UPDATES BE ANNUAL, OR AT LONGER INTERVALS? PLEASE ADVISE US OF ANY CONCERNS ABOUT REGULAR UPDATES. WE WOULD ALSO BE INTERESTED TO HEAR ABOUT ANY TOPICS THAT WE SHOULD PRIORITISE FOR INCLUSION IN THE NEW CODE.

1. There are differing views within the PLSA membership over how often the Code should be updated. However, a combination of *as and when* to reflect legislative changes or guidance updates and a scheduled review period were supported. A third said that the Code should be reviewed annually (32%), a fifth (20%) every two years and three in ten only on an ad hoc basis (29%). A survey of 43 schemes was conducted between the 4th and 12th May 2021.
2. Aside from the frequency of updates, we have concerns over how updates would be identified and the audit process for tracking updates over time. It is useful to have the Code online and be more accessible to trustees, however, there needs to be a way to be able to track changes over time and to see how the Code is evolving, as well as which provisions were in place when decisions were made. We therefore ask for it to be made clear where and when changes have been made to the online Code. PLSA also asks that previous versions should still be made available at the very least, as a reference point, while the new single Code is embedding in.

WHICH PIECES OF GUIDANCE, OR TOPIC AREAS, SHOULD BE PRIORITISED FOR UPDATES FOLLOWING THE INTRODUCTION OF THE NEW CODE?

3. The majority of our members feel that requirements in the Single Code have been communicated in a clear and comprehensible way. However, one in five disagree (19%) and a further fifth of members surveyed did not feel that the consultation helps them to clearly understand what requirements are new (21%). Indeed, seven in ten would like to have additional specific guidance telling them what the new requirements are (70%). Further guidance and information on where there has been consolidation of existing Codes and where new information has been added would be valuable. There are also common concerns that the consultation did not always adequately distinguish between the consolidation of existing guidance and the introduction of new material, in particular, where there are new requirements.
4. There are concerns over the length of the new Code and the burden this places on trustees, particularly on new trustees and their recruitment. The length of the Code and the way requirements have been laid out as a four-page bullet point list under the Working Knowledge of Pensions module could be overwhelming for new trustees. Almost two-thirds (63%) of surveyed schemes thought that the Trustee Toolkit should be prioritised for producing guidance following the update to a Single Code of Practice. For the LGPS,

training requirements are being considered by the LGPS SAB under the Good Governance project and TPR should seek to align with this.

5. There is also a concern over the additional burden the Single Code places on smaller schemes, particularly where new requirements or updates have been made to the previous Codes, and the need for additional support. TPR could support smaller schemes by providing examples of how the Code works in practice, with a focus on smaller schemes and what would be proportionate for them. Case studies of smaller schemes would be particularly helpful to focus on areas that should be prioritised.
6. In some modules, examples have been removed which schemes previously found helpful. Linking to these examples either in the Code or through additional guidance would be beneficial.
7. Additional guidance on the Own Risk Assessment (ORA) should also be prioritised. The module does lay out the areas that the Regulator would like to see included in an ORA. However, there is confusion over:
 - ▶ what the document should look like and how it should be structured;
 - ▶ whether it should include references to the risk register and how much overlap there is in content; and
 - ▶ how far the ORA can build on and use existing materials that schemes already hold on this topic.
8. In a survey of our members, almost two-thirds said they would like an ORA template (63%), while over half would like additional guidance (57%). It would assist schemes if TPR shared some contextualised examples of what is "enough" and what is in or out of scope and how the ORA differs from existing risk management processes that schemes have in place.

DO USERS UNDERSTAND THE TERM "GOVERNING BODY"? WOULD ANOTHER TERM WORK BETTER?

9. Most (62%) of our members surveyed agree that it is appropriate to group together a number of different parties under the term "governing bodies".
10. However, within the LGPS the term "governing bodies" is confusing. In our survey, over half of LGPS respondents (55%), believe it means pensions committees, pension boards and scheme managers, while a quarter believe it refers only to pension committees (27%) and one in five that it refers only to pension boards (18%) and only to scheme managers (18%).
11. If TPR wish to group entities under the Governing Body, the Code needs to be very explicit which Governing Body it relates to in each section of the Code. Allowing funds to interpret the term "governing body" for themselves is not helpful. For some sections for the LGPS, it can be both the Pensions Committee and Local Pensions Board, but for other responsibilities, it is one or the other. It should also be made clear what is expected and from which entity within the LGPS. For instance, the Code sometimes blurs the boundaries between the Board and the Committee.

WE WOULD BE INTERESTED TO UNDERSTAND IF THERE ARE ANY ASPECTS OF OUR EXPECTATIONS USERS THINK WOULD DISCRIMINATE AGAINST, DISADVANTAGE OR PRESENT AN ADDITIONAL OR EXCEPTIONAL CHALLENGE TO ANYONE WITH A PROTECTED CHARACTERISTIC.

12. It will be important to provide a Welsh translation of the Code for Welsh Local Authorities.

PLEASE USE THIS PAGE FOR ANY FURTHER COMMENTS YOU HAVE.

13. We welcome the intent of the Single Code and the consolidation of the Codes. Amongst our members there are high levels of support for the Single Code of Practice, with 72% supportive of it, and only 2% opposed (and 26% neither supporting nor opposing the new Code).
14. However, the length of the consultation was a serious undertaking with a large number of documents and content to review. This has been difficult to do within the set time period for the submission of responses. Once the Code has been implemented, further changes might be needed as issues arise once it is working in practice.
15. It is essential for more clarity on what aspects of the Code are new and open for challenge and where there have been changes from existing guidance. As noted in the previous question, there are worries over where the Code has introduced new requirements and this hasn't been made clear i.e. the 20% investment in non-regulated markets and the remuneration policy. TPR should make it clear where they have made changes to requirements and make sure there is not undue work creation, especially for smaller schemes, to work out where they are in comparison. It is important for trustees/sponsors to know where there are new requirements so they can prioritise their work, focus requests for advice/work from their consultants and hence manage fees, and to avoid accidentally missing something that TPR expects from them.
16. It is not always clear when there is a requirement placed on certain types of schemes and where is considered "good practice, but not a requirement"; and therefore whether the Regulator could hold a scheme to account later for something that was "good practice"/"should" rather than "must"/"a requirement". For example, it is not clear in the Code whether it is a requirement for master trusts to follow the effective system of governance (ESOG) and Own Risk Assessment (ORA) requirements or if that is considered good practice.
17. There will be a cost to schemes to comply with the new governance requirements (including the ORA) if TPR does not provide schemes with templates and guidance to support them in implementing the new requirements.
18. More generally it is not always clear where the Code applies to the LGPS. A separate filter or additional guidance on where the Code applies to the LGPS is crucial. This is needed to make it easier for the LGPS to understand and interpret the Code. TPR need to be careful not to conflate statutory schemes and trust-based schemes.

19. It will be really important as well to be specific about which entity is being held accountable for which responsibilities. For instance, under the requirements for cyber security, it is not clear whether it is the LGPS fund's responsibility to ensure this, or, if it is that of the IT department of its local authority.
20. The length of the document is concerning, especially as there are still more Codes to consolidate and existing guidance to come, which will increase the document further. In part due to the length, the Code can be overwhelming to new trustees and is not easy for Pension Board members in LGPS funds to use. It is difficult for users to *drop in* and understand whose responsibility certain areas are and where the Code applies to them.
21. There are some concerns amongst our membership over compliance. Just under half are concerned about how the new single Code will be monitored for compliance (44%). However, over a third are neutral (38%), while one in ten are not concerned (12%). Further clarity on how compliance with the Code will be monitored would be useful.
22. The Code could usefully seek to recognise areas where LGPS funds and non-associated multi-employer pension schemes have dependencies on employers for information that is not in their direct remit or control to acquire, and highlight the importance for employers on providing information to enable LGPS funds and non-associated multi-employer pension schemes to fulfil their statutory obligations.

RESPONSE FORM 2

RECRUITING TO THE GOVERNING BODY (TGB014)

REQ5: Do you have any further comments on the module that have not been covered by the previous questions?

23. It is important to note that LGPS funds are not in control of the appointment of members to its pension committees, as these are elected roles. There are currently no statutory obligations for members of pension committees to attend any training or to meet any standardised levels of skills or knowledge in order to participate in the committees; administering authorities can delegate some of its responsibilities to pension committees, including investment decisions.

REMUNERATION POLICY (TGB016)

RMQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

24. The title of the module is a fair description of the content provided within it.

RMQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

25. The expectations are clearly set out; however, it is not clear how the policy should be adapted to be proportionate to the scheme, in terms of appropriate length and detail.

RMQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

26. Examples of policies and how they vary depending on size (for example, in the level of detail required) would be helpful for schemes. This would help schemes to understand the level of detail and expectations to meet the requirements as laid out in the module.

RMQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

27. The scope of the module and expectations are too wide. Outsourced providers are included and it is not always within the gift of trustees to control the remuneration of individuals in

outsourced organisations who work for the scheme. It is possible that some of the information being asked for may be commercially sensitive, and it is not particularly clear what purpose the information gathered will be used for. There is also a lack of acknowledgement within the module of value for money, with the focus heavily on cost.

RMQ5: Do you have any further comments on the module that have not been covered by the previous questions?

28. No additional comments.

OWN RISK ASSESSMENT (TGB045)

OWQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

29. The title is a fair reflection of the content provided within it.

OWQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

30. The module does lay out the areas that the Regulator would like to see included in an ORA. However, there is confusion over:

- ▶ what the document should look like and how it should be structured;
- ▶ whether it should include references to the risk register and how much overlap there is in content; and
- ▶ how far the ORA can build on and use existing materials that schemes already hold on this topic.

31. It is also not clear how schemes should carry out the policy in a proportionate way to their scheme, especially since TPR will not be reviewing it. Without guidance there is a risk that lots of schemes will adopt different approaches. It is important that TPR recognise that this is a significant requirement for schemes to comply with and will be a substantial piece of work, and so further guidance on its ultimate purpose and differentiation from the risk register is needed.

32. It is not clear in this module what the expectations are for master trusts and whether the ORA is a requirement or good practice.

OWQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

33. In a survey of our members, almost two-thirds said they would like an ORA template (63%), while over half would like additional guidance (57%). It would assist schemes if TPR shared some contextualised examples of what is considered proportionate for different schemes and what is in or out of scope would be helpful in assisting governing bodies.
34. As outlined above, there is some confusion within schemes over what the structure of the document should be. Guidance and examples of what certain key pieces of information around risk management are expected to be included in the ORA would be useful.

OWQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

35. There are concerns about non-essential work creation and time spent evidencing the ORA which could detract from the strategic focus of running the scheme. Most of our members feel the ORA will pose an additional administrative burden (59%), with many saying that it is unnecessary duplication, as it is too similar to the existing risk register (44%). Currently the ORA does not recognise existing risk management structures that schemes may already have in place. Further clarity and guidance on the ORA, as outlined in the previous question, would be helpful to understand expectations and prevent replicating efforts.
36. Members expressed concern about the risk of unintended consequences. For example, whether the inclusion of the requirement would result in new audit requirements or obligations, which may be disproportionate to the intent or create additional, unnecessary work. Additionally, as the purpose of the ORA is unclear and there is not a form of validation, it is not evidentially more useful than existing risk registers and practices that schemes have in place.

OWQ5: Do you have any further comments on the module that have not been covered by the previous questions?

37. No further comments.

OWQ6: Are there any improvements that we could make to our suggested ORA that would make it more valuable for governing bodies? Is the cycle suggested for the review and update of the ORA appropriate given the subjects that it covers?

38. There were mixed views on the period of time in which schemes should have to review their ORA, with two in five saying that reviews should only take place whenever there is a material change in the risks facing the scheme or its governance processes. Given the significant amount of work which is likely to be needed, an annual requirement to review the ORA would be too onerous to be practical. A three-yearly review process, in line with

the timelines outlined in other modules for other ESOG requirements, may be more appropriate. This would give more time for the ORA to be tested and would be more useful to schemes in the long-term.

RESPONSE FORM 3

INVESTMENT DECISION-MAKING (FAI003)

IVQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

39. The title is a fair reflection of the content.

IVQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

40. The module makes clear the expectations on the governing bodies. Please see response to IVQ4 for more detail.

IVQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

41. Please see response to IVQ4.

IVQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

42. The requirement to ensure that 'no more than a fifth of scheme investments are held in assets not traded on regulated markets' is not reasonable. We believe that this represents a major step change in the interpretation and implementation of 2005 Investment Regulations.

43. A survey of our members found that over half felt that the 20% threshold for non-regulated market assets was too arbitrary (55%), while a third were concerned about the interpretation, as many schemes could easily be beyond 20% in holdings of illiquid assets (33%). A quarter feel it would be more appropriate to interpret "predominantly" as over 50%. Having a specific percentage threshold can cause issues when market fluctuations occur. For example, if regulated markets fall significantly, even modest holdings in non-regulated assets could unexpectedly increase to above 20%. Under this scenario, schemes may accidentally breach the threshold set by TPR. The Regulator would need to provide guidance on whether schemes are able to wait for markets to correct or take action. Guidance on what investments are counted as regulated assets would also be helpful, for example, are buy-in insurance policies considered to be non-regulated.

44. There is also a disconnect with this interpretation and wider policy objectives, including the desire for pension funds to facilitate the “green recovery” and support investment in UK infrastructure projects. We would ask TPR to remove the reference to ‘no more than a fifth of scheme investments’ to be held in non-regulated markets.

IVQ5: Do you have any further comments on the module that have not been covered by the previous questions?

45. No further comments.

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