PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION

TPR CONSULTATION: DRAFT DB FUNDING CODE

PLSA RESPONSE

24 MARCH 2023

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ABOUT THE PENSIONS AND LIFETIME SAVINGS ASSOCIATION

The Pensions and Lifetime Savings Association (PLSA) is the voice of workplace pensions and savings. We represent pension schemes that together provide a retirement income to more than 30 million savers in the UK and invest more than £1.3 trillion in the UK and abroad. Our members also include asset managers, consultants, law firms, fintechs, and others who play an influential role in people's financial futures. We aim to help everyone achieve a better income in retirement.

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EXECUTIVE SUMMARY

- The PLSA welcomes the release of the draft DB Funding Code and believe there is much in the new funding regime that will help protect scheme members. We are particularly **pleased that there is a lot more flexibility in the code** (as compared to the previous code consultation in 2020 and the current draft regulations) and the pragmatic approach that TPR has tried to take in many instances, which we believe is helpful.
- However, while the flexibility in the code is welcome, it has resulted in a **disconnect between TPR's interpretations in the code and the requirements in the regulations** which, in their current form, are more prescriptive in a number of areas. Where such inconsistencies exist, we believe the regulations should be amended wherever possible to reflect the (more flexible) code.
- With the consultation on the draft code taking place without having settled regulations (which is a major concern of our members), we believe there is an argument to **push back the 1 October 2023 implementation date to 1 April 2024** due to the lack of regulatory certainty and the fact that there are a still number of requirements of the code that we believe remain unclear (including those raised in this submission). We believe more time is needed by the industry to consider all the implications of the new funding regime, and for trustees to work with employers to determine how best to comply with the new requirements. Given the importance of ensuring such an important new regime is implemented with minimal unintended consequences, it would be prudent not to rush its commencement.
- It is important to point out that not all DB schemes are the same or are at the same stage in their journey to maturity (in terms of duration, how you measure risk etc). For **open schemes**, the main feedback from our members is that:
  - The degree of **flexibility in the code around the level of allowable risk is helpful**, particularly for open schemes which are not expected to mature for some time. However, with this flexibility in the code, there is now a lack of clarity and consistency between it and the draft regulations in terms of the level of allowable risk, which will need to be clarified.
  - We support the position articulated in the code that **open schemes could make an allowance for future accrual** – thereby funding at a lower level – without necessarily undermining the principle that security should be consistent with that of a closed scheme.
  - It would be helpful if all the requirements that are relevant to them were packaged together in their own **separate section within the code**. Doing so would recognise the particular characteristics/features of open schemes and provide a single point of reference to trustees, stakeholders, advisors and TPR. Stripping out and separating the requirements that are specific to open schemes may also have the added advantage of providing greater clarity for closed schemes.
- For all schemes, one of the major questions our members have is, what happens in **situations where trustees are not intending (or are unable) to adopt low dependency funding and investment allocation** from the relevant date? The draft regulations do not seem to cater for scenarios where the trustee, in fact, has to take on additional risk, which potentially makes the funding & investment strategy (FIS) document artificial if it has to reflect how the scheme's assets should be invested from the relevant date rather than how the scheme's assets are actually invested. As it stands, this risks trustees creating **two separate journey plans and Statements of**

Strategy – one set of documents for short-term regulatory requirements and another for longer term practical purposes – which would be a very inefficient outcome.

- The majority of PLSA members (80% of those recently surveyed) feel that **duration alone should not be the sole determinant of a scheme's maturity**, but rather one of many factors to be considered by trustees (eg. covenant strength, the scheme's liability profile, funding position, asset allocation, flow of new entrants, scheme mortality rates and whether the scheme is open or closed).

  There is also a **question of whether a duration of 12 years is the right answer**. The vast majority of PLSA members (93% of those recently surveyed) feel that duration can move significantly as interest rates change and the current requirements give very little room for flexibility, with 73% of surveyed members concerned that having a fixed 12 years potentially creates an arbitrary cliff edge.

- There is general agreement (85% of PLSA surveyed members) that **not all covenants are the same**, and covenant strength is not determined by the same factors for all schemes. Therefore it would be inappropriate to simply have a narrow set of factors (such as profitability, cash generation, balance sheet strength etc) to cover all circumstances. If trustees cannot reflect other factors even where they exist, this could result in artificial pressure on them to move towards lower risk approaches, which will likely have consequences for the funding of the scheme and potentially its future. There therefore needs to be **flexibility for trustees to undertake a covenant assessment that is specific to their scheme**, and which is proportionate to the level of risk. There is strong support across our membership (77% of those recently surveyed) that guidance should be provided to trustees on assessing employer covenant strength.

- On the **journey plan**, we support TPR's position that allows more immature schemes to assume higher levels of funding volatility and accept slightly more risk; and also that open schemes can take a different approach if trustees believe it is appropriate. That said, a **number of issues have been raised** with us which are discussed in paragraphs 41 – 44 of our response.

- On the **Statement of Strategy (SoS)**, the vast majority of PLSA members (88% of those recently surveyed) support the need for **TPR to produce a template or checklist** showing the types of information to be included in the SoS, given the amount of information required to be provided.

- For **multi-employer schemes**, we note that:
  - Our members believe it would be helpful if all the requirements that are relevant to them were packaged together in their own **separate section within the code**.
  - It will likely be difficult and costly for trustees to come up with a **single view of covenant reliability** with any degree of accuracy (see paragraph 38 below for further details).
  - On the **covenant horizon** and bespoke approach, greater consideration is needed in relation to how trustees of multi-employer schemes deal with **different sections of their scheme** (refer to paragraph 40 below for further details).

INTRODUCTION / GENERAL COMMENTS

1. The PLSA welcomes the opportunity to provide this response to the draft DB Funding Code (the code) released for consultation on 16 December 2022. In general, the PLSA and our members believe that there is **much in the code that is welcome** and we are pleased that the new regime is now developing and taking shape. There is broad agreement from our members that there is a lot in the draft code that will help protect scheme members, with 52% of PLSA members recently surveyed suggesting that the code will particularly benefit members of schemes with fewer or less established resources.

2. We welcome the fact that there is a lot **more flexibility built into the draft code**, which we believe is helpful – particularly around the investment strategies which schemes can adopt and concepts of reasonable affordability. The general view of our members is that the industry is in a better place with the current draft code than with just the regulations.

3. However, while the flexibility in the code is welcome, there is general concern that this flexibility has resulted in **a disconnect between TPR's interpretations in the code and the requirements in the regulations** which, in their current form, are still more prescriptive (eg. around trustees having to adopt a low dependency investment allocation on/after the relevant date). A number of PLSA members (40% of those recently surveyed) believe this disconnect between the code and the regulations is particularly problematic. It is important that there is consistency between the requirements within the code and the regulations, to give trustees certainty about how to implement the reforms (while still retaining the flexibility in the code). As it stands, the requirements in the draft regulations risk being interpreted more rigidly (either in the courts, or potentially from a change of position/interpretation by TPR in future) – eg. the requirement to be broadly cashflow matched within the definition of a low dependency investment allocation. Therefore, where such inconsistencies exist, in our view the **regulations should be amended wherever possible** to reflect the (more flexible) code requirements.

4. We note that throughout the code, TPR sets out its interpretation of how it expects trustees to comply with relevant legislative requirements. In particular, the code uses:

    a) the word **'must'** when referencing legal duties;

    b) the word **'should'**, **'expect'** or **refers to its expectations** to indicate TPR's view of good practice, rather than an express legal duty; and

    c) the word **'need'** where the process is necessary to allow a scheme to operate even though there is no expectation or legal requirement in place.

    Based on advice from PLSA members of law firms, there are a number of instances throughout the code where a legal duty/regulatory expectation/guidance have been incorrectly categorised. Included at **Appendix A** is a table outlining examples where, in our view, the wrong term has been used in the draft code (eg. the word 'must' has been used where no legal duty exists, or the terms 'should' or 'expect' have been used where we believe a legal duty does exist) or where the description of a legal duty or a regulatory expectation goes beyond what is, or what should be, required.

5. There is also general concern from our members (60% of PLSA members recently surveyed) about the **code consultation taking place without having settled regulations in place**, which makes it very difficult for the industry to determine how some of the final requirements will end up and therefore adds extra challenges for trustees to try to prepare for these reforms. As things stand, there is concern that compliance with the draft code may not necessarily result in compliance with the regulations.

6. Some of our members also raised concerns about the **1 October 2023 implementation date** potentially being unrealistic – not just because of all the recent changes at TPR, but also from a Parliamentary timetabling perspective. In particular:

    a) There is an argument that the **start date should be pushed back to 1 April 2024** to give the regulator enough time to consult – i.e. to properly consider all the responses received and work with DWP on the best way forward, particularly where greater harmonisation between the code requirements and the regulations is required. It is also worth noting that the consultation on the revised covenant guidance, which is another important component of the DB funding regime, is not expected to be released until after the consultation on the Code has concluded.

    b) From a practical perspective, the 1 October 2023 start date could also be potentially problematic for schemes with a valuation date very shortly after this date (eg. schemes with a 31 December 2023 valuation date), as the gap between the code/regulations being settled and when schemes have to start meeting the new requirements could be very small. Many of the requirements (particularly the more prescriptive ones in the regulations) will require significant time for trustees, their advisers and employers to understand and implement. Also, in some cases, portfolios may need to be restructured in order to meet the Fast Track requirements.

7. Some of our members feel that the **LDI-specific requirements should be delayed** until the industry has had more time to consider all the implications from the crisis last year, and noting that the Work and Pensions Select Committee (WPSC) recently established a call for evidence to look at this. It could be argued that an extension to the implementation date is warranted given the WPSC's ongoing focus on the impact of LDIs and the fact that the Committee had previously asked TPR to postpone its consultation on the code. Some members have also suggested that it might be helpful for the **LDI stress testing guidance** issued by TPR last November to be **incorporated into the code**, given it is an inherent part of the investment strategy and investment risk.

8. In terms of the impact of the code and the regulations, there is likely to be an **extra compliance burden** on schemes. For example, the new funding regime would require further documentation to describe and monitor de-risking plans. The question remains whether the impact will be to drive better risk management practices, or whether it will simply interfere with the established processes that many well-run schemes already have in place. It is worth noting that, in a recent webinar survey conducted by Aon on the DB Funding Code consultation, 42% of respondents indicated that they thought the new funding regime would have either a moderate or a significant impact, with a further 48% suggesting it would have some impact (and only 10% thought it would have little or no impact).

9. We note that, when TPR published its consultation documents in December 2022, an estimate was included that the **overall cost to the industry of the new rules** could be up to £34bn. This extra compliance burden might seem acceptable on an overall cost-benefit basis, particularly if the introduction of the code brings average schemes closer to well-run schemes. However, until both the code and regulations are finalised (and the full requirements are known), the exact burden on schemes will be difficult to accurately quantify.

10. For open schemes, one of the main concerns articulated to us is that the code assumes most schemes are closed and moving to end-game in the not-too-distant future. As a result, the various **requirements that relate to open schemes** are spread throughout the whole code. Based on feedback from PLSA members (60% of those recently surveyed), it would be very helpful for open schemes if all the requirements that are relevant to them were **packaged together in one section/chapter within the code**. The same applies to the requirements for **multi-employer schemes**.

11. There are 17 references to "proportionate" or "proportionality" within the code in relation to specific aspects/requirements. We believe that it would be simpler and less confusing for trustees to have an **overarching statement** that says that all the requirements in the code should be implemented with **some degree of proportionality**, rather than specifically calling it out in the different parts of the code. This could possibly be inserted into Chapter 1 under the heading 'Terms used in this code'.

12. In addition to the general comments discussed above, we have provided further comments on the specific aspects of the draft code, including **responses to the various consultation questions**, as well as a number of issues identified in the draft regulations that we believe need to be addressed (which will require TPR and DWP to work together to resolve). Some of our members still have specific and strong concerns about how the code might apply in their own circumstances and how the code will be implemented in practice. We understand that these PLSA members will also be providing their own responses to this consultation, but we have nevertheless captured those concerns here. These are discussed in the next section of this submission.

COMMENTS ON SPECIFIC ASPECTS OF THE CODE

CHAPTER 2: THE FUNDING REGIME

Consultation questions:

1. Are there any areas of the summary you disagree with or would like more/less detail? If yes, what areas and why?

13. Further to the general comments in the previous section in relation to the disconnect between the draft regulations and the code, there is a specific issue regarding what constitutes 'broadly matched' cash flow. In our view, the code seems to interpret into the regulations some elasticity that is not necessarily there. The regulations are much more restrictive in relation to investment allocations for schemes at or close to significant maturity. In contrast, TPR's interpretation in the code on what constitutes cash flow 'broadly matching' liabilities is encouraging – i.e. the flexibility around what constitutes a 'broadly matched' asset is welcome and provides sensible latitude. We believe the regulations should be amended to reflect the greater flexibility in the code of what is considered 'broadly cashflow matched'.

14. There is also a degree of concern from PLSA members (41% of those recently surveyed) about the introduction of the 1-in-6 value at risk (VaR) test. Many of our members feel it is somewhat arbitrary (albeit it is consistent with PPF's stress testing) and from a practical perspective it introduces a new test that very few, if any, schemes currently do (unlike, say, a 1-in-20 test). Although on face value introducing such a stress test might seem reasonable, we question the need for introducing an additional concept of allowable risk over and above what already exists, which will result in extra work for schemes (with arguably limited benefits). It may be helpful to introduce some flexibility in this area, whereby trustees can do the 1-in-6 VaR test if they wish, or another test that they feel is more appropriate. This is discussed further under Chapter 3.

15. The degree of flexibility in the code around the level of allowable risk is definitely helpful, particularly for open schemes which are not expected to mature for some time. However, two-thirds (67%) of PLSA members recently surveyed feel that, with the flexibility introduced into the code, there is now a lack of clarity and consistency between it and the draft regulations in terms of the level of allowable risk, which is problematic. We believe the flexibility within the draft code should be retained, with the regulations clarified and made consistent with the code.

16. We recognise that, in drafting the code, the intention is for trustees to adopt low dependency funding and investment allocation from the relevant date. However, this begs the question – what if schemes cannot do so (eg. they have a weak sponsor and are never going to achieve low dependency from that date)? Similarly, what happens in the scenario where a scheme is funded above low dependency but is targeting buyout and therefore wanting to generate higher returns than is available under a low dependency investment allocation? The draft regulations do not seem to cater for such scenarios. This makes the funding & investment strategy (FIS) document potentially artificial in the above situations where the trustee, for good reasons, does not intend to adopt a low dependency investment strategy from the relevant date. We believe these types of scenarios need to be addressed within the final regulations, with a view to providing greater clarity on this.

CHAPTER 3: LOW DEPENDENCY ASSET ALLOCATION

Consultation questions:

2. Do you agree with the principles for defining a matching asset that i) the income and capital payments are stable and predictable; and ii) they provide either fixed cash flows or cash flows linked-to inflationary indices? If not, why not and what do you think is a more appropriate definition?
3. Do you agree with our approach for defining broad cash flow matching? If not, why not and what would you prefer?
4. Do you think the draft adequately describes the process of assessing cashflow matching? What else would be appropriate to include in the code on this aspect?
5. Should the code set out a list of the categories of investments into which assets can be grouped for the purposes of the FIS? If so, what would you suggest as being appropriate?
6. Do you agree that 90% is a reasonable benchmark for the sensitivity of the assets to the interest rate and inflation risk of the liabilities?
7. Should we, and how would we, make this approach to broad cash flow matching more proportionate to different scheme circumstances (e.g. large vs small)?

17. As stated in the response to consultation Q1 above, we believe the definition of what is a cash flow matching asset and the flexibility around what constitutes a 'broadly matched' asset is welcome and provides sensible latitude. However, there are still inconsistencies with the legislation that need to be addressed. The code seems to attempt to interpret into the regulations some elasticity that is not necessarily there.

18. Also, unlike the rest of this section of the code which provides a fair degree of (welcome) flexibility around broadly matching assets, TPR's expectation in paragraph 71 of the code that schemes should seek to have a minimum level of interest rate and inflation hedging of at least 90% for the purposes of their low dependency investment allocation seems somewhat arbitrary and unnecessarily prescriptive. Consideration should be given to providing trustees with reasonable flexibility in setting its minimum level of interest rate and inflation hedging, with a view to being able to justify their approach if necessary.

19. There is general support for making the approach to broad cash flow matching more proportionate to different scheme circumstances (eg. large vs small).

Consultation questions:

8. Do you agree with our approach that a stress test is the most reasonable way to assess high resilience?
9. Do you agree that setting the limit of a 4.5% maximum stress based on a one year 1-in-6 approach is reasonable? If not, why not and what would you suggest as an alternative?
10. Do you agree that we should not set specifications for the stress test but leave this to trustees to justify their approach? If not, what would you suggest as an alternative?

20. There is broad support for the overall approach that a stress test is the most reasonable way to assess high resilience. However, as stated in our response to consultation Q1, there is a degree of concern from our members (41% of those recently surveyed) about the 1-in-6 value at risk (VaR) test being somewhat arbitrary and, from a practical perspective, it introduces a new test that very few schemes currently do. We question the need for introducing an additional concept of

allowable risk over and above what already exists, which will result in additional work for schemes (with arguably limited benefits). Possible alternatives worth considering include:

a) Setting the maximum stress based on a 1-in-10 or 1-in-20 approach; or

b) Allowing trustees to set the VaR test that best suits their particular situation.

There is general support from PLSA members for providing flexibility around the stress test (i.e. the latter approach), such that TPR would not set the specifications for the stress test but rather leave it up to trustees to justify their approach.

> **Consultation questions:**
> 11. Do you agree with our approach for not expecting a detailed assessment of liquidity for the LDIA since we have set out detailed expectations in relation to schemes' actual asset portfolios?

21. The PLSA is comfortable with the approach taken by TPR not to require trustees to undertake a detailed assessment of liquidity for the low dependency investment allocation (LDIA), on the basis that it is not proportionate for trustees to carry out a detailed assessment of a scheme's planned portfolio. We also support the principle that, for schemes that have a long period of time before they reach their relevant date, they can take a more approximate approach towards their plan for the LDIA (with more granularity expected as schemes get closer to their relevant date).

CHAPTER 4: LOW DEPENDENCY FUNDING BASIS

> **Consultation questions:**
> 12. Do you agree with our approach for not expecting a stochastic analysis for each assumption to demonstrate that further employer contributions would not be expected to be required for accrued rights, but rather focussing on them being chosen prudently? If not, what would you suggest as an alternative?
> 13. Do you agree that the two approaches we have set out for the discount rate for the LDFB are the main ones most schemes will adopt? Should we expand or amend these descriptions, if so, how?
> 14. Should we provide guidance for any other methodologies?
> 15. Do you agree with the guidance and principles set out in Appendix 3 and 4? Are there any specific assumptions here you would prefer a different approach? If so, which ones, why and how would you prefer we approached it?

22. The PLSA supports the greater flexibility and latitude provided to trustees by the code, including in this area. In particular, we support the proposal that stochastic analysis for each assumption should not be required in order to demonstrate that further employer contributions would not be expected. It would not be practical for very small schemes to do stochastic analysis. We believe it is sensible to allow the assumptions to be selected prudently by trustees, and for the requirements to be proportionate to scheme size and the level of resources.

23. The concept of 'reasonable foreseeability' (i.e. the likelihood that no further contributions will be needed under reasonably foreseeable circumstances going forward) is, in our view, not addressed in great detail in the code. Feedback from members is that there needs to be guidance provided to trustees around what circumstances they should be considering and how probable these circumstances need to be. For example, the word 'foreseeable' potentially sets the bar very high, and is quite different to saying 'prudent' or 'expected'.

24. We note that the code states that, in some circumstances, the employer is required to have an expense reserve within the scheme and therefore factored into the low dependency funding basis. However, this is not reflected in the draft regulations, so it is unclear if this would be legally required or not, with over half of PLSA members surveyed (54%) believing there is uncertainty as to whether having an expense reserve is a legal requirement. However, to the extent it is required, the view of our members is that there should be flexibility to be able to have the expense reserve outside the scheme (eg. in an escrow account, which already exists for DC master trusts) to reduce the potential risk of a 'trapped' surplus in the scheme. We note that TPR are aware of this issue and are working with the DWP on ways to increase flexibility within the regulations. It will be important to ensure that any changes to the code or the regulations should not act as an additional barrier to trustees and employers managing how to approach dealing with scheme surpluses or exacerbate the risk of trapped surpluses.

25. Appendix 4 of the code outlines the principles and expectations in relation to allowing for expenses in low dependency liabilities where: (1) there is no requirement under the scheme rules for the employer to pay expenses, and (2) where such a requirement under the scheme rules exists. Under scenario (2) where there is a requirement under the schemes rules for the employer to pay expenses, the code states that trustees are still encouraged to consider an expense reserve. However, what if there is a contractual obligation for the employer to cover expenses that sits outside the scheme rules (i.e. in a contract/agreement between the employer and the trustee)? Our view is that, where such a legal obligation is in place for the employer to cover the scheme's expenses, that should be sufficient to avoid the need to pre-fund expenses (even if the obligation sits outside the scheme's rules).

26. For multi-employer schemes, there is an issue around shared costs (which is not discussed in Fast Track nor as part of the recovery plan).

27. There is also an issue with respect to multi-employer schemes with vastly different covenant horizons in their various (co-mingled) scheme sections. It is unclear how shared costs for multi-employer schemes would operate within the framework of the code. We understand that the regulator is actively considering this issue, however our view that greater clarity is called for bears noting.

CHAPTER 5: RELEVANT DATE AND SIGNIFICANT MATURITY

Consultation questions:

16. Do you agree that a simplified approach to calculating duration for small schemes is appropriate?
17. Do you think setting an earlier point for significant maturity within Fast Track as compared to the code (as described in option 3 in this section of the consultation document) would be helpful for managing the volatility risk of using duration? If yes, where would you set it and why?

28. The vast majority of PLSA members (80% of those recently surveyed) believe that duration alone should not be the sole determinant of a scheme's maturity, but rather one of many factors to be considered by trustees (such as covenant strength, the scheme's liability profile, funding position, asset allocation, flow of new entrants, scheme mortality rates, whether the scheme is open or closed etc). We understand that this issue remains a live topic of discussion between TPR and DWP.

29. Duration is highly sensitive to market conditions, meaning schemes targeting a certain date for their low-risk strategy could find that date having to be suddenly brought forward (or pushed back) by many years if long term yields in bond markets change. While it could be argued that the movement in yields over 2022 was somewhat unprecedented, this illustrates the challenges that can be expected to arise from using this measure of maturity.

    In our view, it is unhelpful to measure maturity using a duration that is sensitive to market conditions if the end point (significant maturity) is fixed and not linked to market conditions. In order to achieve the desired outcome, one of two solutions should be considered:

    a) The measure of maturity and duration (which represents significant maturity) are both set independent of market conditions (eg. using a 0% yield or a chosen yield which remains fixed over time); or

    b) The measure of maturity and duration (which represents significant maturity) both remain sensitive to market conditions over time.

    Given the DWP's draft regulations require TPR to specify a "*date [the scheme] reaches the duration of liabilities in years*", the former approach would seem like the preferred method, to avoid TPR having to re-issue an appropriate duration of liabilities for the point of significant maturity on a regular basis, and the lack of transparency and uncertainty that this could introduce for schemes. The former is also consistent with option 1 in the consultation document.

30. In terms of the 3 approaches that TPR expect trustees to take when setting the low dependency discount rate (risk free rate+, dynamic discount rate or a combination of both approaches), feedback from our members indicates a preference for having a fixed yield in order to avoid a lot of volatility over time, which could require inter-year changes to the guidance. That said, we welcome the flexibility and latitude provided to trustees in setting the discount rate.

31. However, one potential issue in relation to the setting of the discount rate is that, for the low dependency funding basis, the regulations and the code require the discount rate to be set with reference to expected returns of the low dependency investment allocation. This is a reasonable approach if that is what the trustee is targeting, but if it is not, then we believe it would make sense for the discount rate to reflect the actual investment strategy being pursued by the trustee.

32. There is also a question of whether a duration of 12 years is the right answer. Currently, schemes are required to reach a low dependency investment strategy when the duration of liabilities is 12 years. However, the vast majority of PLSA members (93% of those recently surveyed) feel that duration can move significantly as interest rates change and the current requirements give very little room for flexibility. This has the potential to impact a number of schemes and, as such, we believe the regulations should be amended to provide greater flexibility. For example, trustees could be allowed to extend the end date to make their journey plan work. It could be argued that such a 'corridor approach' would be sensible and should be on the table for consideration, with 73% of surveyed PLSA members of the view that having a fixed 12 years potentially creates an arbitrary cliff edge.

33. In addition, we note that the third of three possible alternative approaches discussed in TPR's consultation document for reducing the volatility (if duration is retained as the maturity measure for all schemes), is to set the point of significant maturity at a lower duration of 10 years, whereas for Fast Track it would be 12 years. We do not support this proposal of having different fixed

durations for Fast Track and bespoke, as this could potentially cause confusion across the industry, particularly as the draft regulations state that the timeframe is as per what is set in the code.

34. We have been advised by our members that a number of open schemes are in the process of undertaking some preliminary analysis/impact assessment (with the assistance of their advisors) on the implications of a duration of less than 12 years. In particular, these schemes are keen to ensure that the shift in duration (reducing the 12 years) does not make it harder for open schemes to comply with Fast Track (i.e. open schemes with large/strong employers behind them should be able to stay open without having to deal with any unintended pressures).

CHAPTER 6: EMPLOYER COVENANT

Consultation questions:

18. Do you agree with the definitions for visibility, reliability, and longevity? If not, what would you suggest as an alternative?
19. Do you agree with the approach we have set out for assessing the sponsors cash flow? If not, what would you suggest as an alternative?
20. Do you agree with the approach we have set out for assessing the sponsors prospects? If not, what would you suggest as an alternative?
21. Do you agree with the principles we have set out for contingent assets (i.e. that i) it is legally enforceable and ii) it will be sufficient to provide that level of support when required)? If not, what would you suggest as an alternative?
22. Do you agree with the approach we have set out for valuing security arrangements? If not, what would you suggest as an alternative?
23. Do you agree with the approach we have set out for valuing guarantees? If not, what would you suggest as an alternative?
24. Do you agree with the approach we have set out for multi-employer schemes? If not, what would you suggest as an alternative?
25. Do you agree with the approach we have set out for not-for-profit covenant assessments? If not, what would you suggest as an alternative?

35. There are a number of new concepts (eg. Visibility, Reliability, Longevity) and re-framed ideas (eg. cash, contingent assets and prospects) within the code, many of which have merit and some of which are already part of best practice. However, we believe there is scope to improve the way in which these concepts are brought together to clearly demonstrate how they should drive trustee decision-making regarding funding and investment decisions across both long-term journey planning and then with respect to triennial valuations. Whether in the code itself or the covenant guidance, further detail on the practical application (as well as setting out more qualitative factors that might be overlooked) would be really useful, particularly for those smaller schemes where the approach to, and interaction of, these concepts might not be so evident as a matter of course.

36. There is a lot more focus in the draft code on schemes of all types having to take into account visibility over the employer's forecasts (over the short term), the reliability of the cash flow from the employer and the longevity of the covenant. However, the overwhelming view of our members (85% of those recently surveyed) is that, without the guidance, it makes it difficult to respond to all the above questions at this stage. Furthermore, there is general agreement (also representing 85% of surveyed members) that not all covenants are the same, and covenant strength is not determined by the same factors for all schemes. Therefore it would be inappropriate to simply

have a narrow set of factors (such as profitability, cash generation, balance sheet strength etc) to cover all circumstances. If trustees cannot reflect additional factors even where they exist, this could result in artificial pressure on them to move towards lower risk approaches, which will likely have consequences for the funding of the scheme and potentially its future (which includes the value it provides to the employers and the sectors in which they operate). There therefore needs to be flexibility for trustees to undertake a covenant assessment that is specific to their scheme, and which is proportionate to the level of risk. It will therefore be very important to provide appropriate guidance to trustees on assessing employer covenant strength, with 77% of surveyed PLSA members supporting this view.

37. In addition, around two-thirds of PLSA members (65%) believe the role of the employer covenant in the period beyond significant maturity is unclear. It is expected that, upon reaching significant maturity, trustees will not have to consider the strength of the employer covenant (presumably because there is an assumption that the scheme will reach a buyout arrangement at that point). However, for mature schemes with strong employer covenants, this leads to a perverse scenario where they are essentially forced to ignore the strength of their covenant when they reach significant maturity and act as if the covenant is not in place (and therefore have to start de-risking). In our view, this seems an unreasonable and impractical outcome and potentially conflicts with trustees' fiduciary duty – i.e. forcing them to ignore covenant strength and de-risk. Indeed, a number of our members have questioned why trustees should not be able to assume that there would be no reduction in covenant strength after the period of reliability.

38. Many of our members (76% of those recently surveyed) also believe that two of the metrics in the code for determining visibility, reliability and longevity (namely covenant reliability and maximum affordable contributions) are subjective and very difficult to assess with any degree of accuracy. And yet trustees are required to assign to them a quantified value. While we do not necessarily disagree with the metrics themselves, we note that for trustees to come up with values for both the covenant reliability and the maximum affordable contributions will require strong collaboration with the employer. Furthermore, we note that the code is explicit in stating that it expects employers to provide this information, and if they cannot do so, it expects employers to work with trustees to come up with a suitable proxy. This will likely involve a significant amount of work, especially for smaller schemes. It will also not be straightforward (nor inexpensive) for multi-employer schemes to come up with a single view of covenant reliability with any degree of accuracy.

39. Paragraph 151 of the code states that: *"To understand whether a contingent asset will provide a particular level of support when required, trustees must identify the following:*

- *The scenario in which the contingent asset is likely (or able) to be called upon (for example in the event of insolvency of the employer).*
- *An appropriate method to assess the expected realisable value of the contingent asset. This will primarily be driven by the type of contingent asset, ie whether it is a security arrangement (for example security over an asset, cash in escrow, letter of credit) or a group or parental guarantee."*

Furthermore, paragraph 150 of the code states that: "*Common types of contingent asset are:*

- *guarantees from third parties, such as parent and group companies*
- *securities over cash, real estate and securities*
- *letters of credit* and bank guarantees."

We believe that contingent assets are another area where a principles-based approach would be helpful, given the many forms in terms of support provided and triggers; and a focus on quantitative valuation would be at the expense of more nuanced, situation specific considerations. This could either lead trustees placing too much reliance on contingent assets, or too little (which loses the incentive for the sponsor, making provision of potentially valuable contingent assets less likely). Consideration should therefore be given to including the requirements regarding contingent assets in the covenant guidance rather than in the code itself. However, if it is to be retained in the code, we believe paragraph 151 should be amended to state that trustees 'should' identify these matters rather than 'must' (refer to the relevant entry in the table at Appendix A).

40. On the covenant horizon and bespoke approach, greater consideration is needed in relation to how trustees of multi-employer schemes deal with different sections of their scheme. For instance, some sections of the scheme might be closed and ready to buy-out, however other sections might still be open and potentially have a duration of another 30 years, so their pathways will look very different. It is not entirely clear how trustees of multi-employer schemes should deal with this. As such, we believe greater guidance is needed for such schemes.

CHAPTER 7: JOURNEY PLANNING

Consultation questions:

26. Do you agree with how we approached how maturity has been factored into the code? If not, what would you suggest as an alternative in particular with reference to the draft regulations?
27. Do you agree with the way in which we have split the journey plan between the period of covenant reliability and after the period of covenant reliability? If not, what would you suggest as an alternative?

For the period of covenant reliability:

28. Do you agree that trustees should, as a minimum, look at a one year 1-in-6 stress test and assess this against the sponsors ability to support that risk?
29. Do you agree that if trustees are relying on the employer to make future payments to the scheme to mitigate these risks, then the trustees should assess the employer's available cash after deducting DRCs to the scheme and other DB schemes the employer sponsors?
30. Do you agree that this approach is reasonable for assessing the maximum risk that trustees should take during the period of covenant reliability?

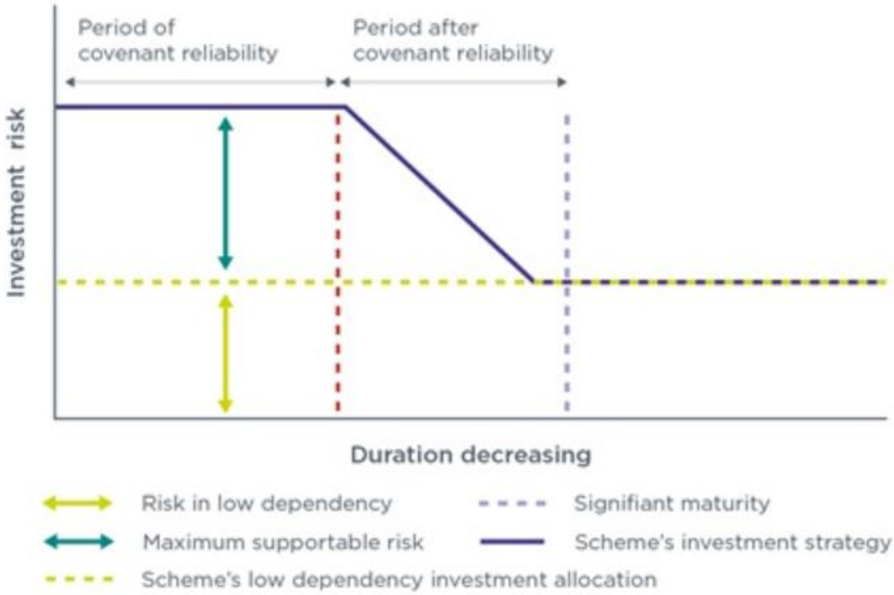
For the period after covenant reliability:

31. Do you agree with the considerations we have set out regarding de-risking after the period of covenant reliability?
32. Do you agree with TPR not being prescriptive regarding the journey plan shape?
33. Do you agree with our approach that the maximum risk trustees should assume in their journey plan is a linear de-risking approach where they are taking the maximum risk for the period of covenant reliability?

41. In relation to the two distinct periods covered by the code – the period of visible covenant reliability and the period after that – 60% of PLSA members recently surveyed indicated that they are supportive of the positions in the code, which allow more immature schemes to assume higher levels of funding and accept slightly more risk; and also that open schemes can take a different approach if trustees believe it is appropriate. That said, two issues have been raised with us:

a) If schemes have a very strong employer covenant, a significant number of PLSA members (42% of those recently surveyed) believe that such schemes should be able to invest in a slightly riskier investment strategy (i.e. above the maximum risk threshold) at various points in time if required.

b) Under the code, it is expected that the de-risking path has to be a straight line as per the diagram represented below (from paragraph 227 of the draft code) rather than something more sophisticated. However, half (50%) of PLSA members surveyed expressed concern that the de-risking path has to be a straight line and does not allow for a more sophisticated journey plan.



42. Another concern raised by our members is that the journey plan is clearly designed around schemes that are on track to hit low dependency, where the employer can support the risk, but it does not cater for any circumstances outside of that. It also assumes that on or after the relevant date schemes will be invested in a low dependency investment allocation. However, it is unclear what happens where this is not the case and the trustee, in fact, has to take on additional risk. In such circumstances, the following questions arise:

a) Should the journey plan be a hypothetical journey plan (i.e. with low dependency investment allocation) or should it reflect what the trustee is actually intending to invest in? In other words, should the journey plan in such circumstances be hypothetical or should it reflect reality? It would be very inefficient for trustees to have to have two journey plans – one that is used for regulatory purposes (but is essentially unused by the trustee) and another journey plan for practical purposes.

b) Where the trustee has to take on additional risk, these are required to be 'supportable risks'. However if the trustee's risks are unsupported, it is unclear what shape of journey plan the trustee can have in this scenario.

43. There is an argument that the maximum risk equation set out in the code is a helpful illustration but is too simplistic to be considered a prescriptive tool for use by all schemes. As such, it should arguably be included in the covenant guidance rather than in the code, in order to illustrate the complexities in covenant driven journey planning as well as the importance of considering covenant over the full period of covenant reliance (eg. until buyout). In other words, factoring covenant into journey planning should be principles-based rather than via a one-size-fits-all equation in order to avoid unintended consequences. For example, such a one size fits all approach could, from a covenant perspective, result in too much focus on near-term de-risking, thereby driving extended reliance on covenant (and ultimately putting members' benefits at risk).

44. There is a disjoint between how businesses plan (usually for only up to 3 years) and how trustees of pension schemes plan. The journey plan requirements push trustees to only be able to rely on their employer covenant for about 5 years. However if the scheme's sponsoring employer is likely to continue operating and be around for more than 5 years, it is unclear whether the trustee is required to keep changing their journey plan or have a rolling 5-year plan. For younger, relatively immature schemes, this uncertainty around journey planning is exacerbated.

CHAPTER 8: STATEMENT OF STRATEGY (SoS)

Consultation questions:

34. Do you agree with our explanation of the Statement of Strategy and are there areas it would be helpful for us to expand on in this section?

45. As part of the previous consultation, a number of our members noted the need for TPR to produce a template (or at the very least a checklist) to assist schemes in preparing the Statement of Strategy (SoS). Given the amount of information that will have to be included in these documents, and the desire for a level of consistency across the industry, we believe a template/checklist from TPR providing guidance on the types of information the regulator is looking for trustees to provide would be very helpful, particularly for some smaller schemes. The vast majority of PLSA members (88% of those recently surveyed) support the need for TPR to produce a template/checklist showing the types of information the regulator is looking for in the SoS.

46. A number of our members also raised concerns about the language used around trustees potentially needing to "involve" employers/sponsors in investment decisions (i.e. signing off the FIS and SoS). In particular, there were concerns that this could cause a fundamental shift in how schemes currently operate and could give disproportionate weight to employers' preferences, which may not be aligned with trustees' objectives or the best interests of savers (particularly in the current economic climate). The PLSA's fundamental view is that the regulations should not require trustees to invest in any particular way (i.e. they should not cut across trustees' fiduciary role).

47. That said, the code seems to reflect a much more practical way of doing things, and we note that TPR have stated that they recognise the industry's concerns. That is, while the code requires trustees and employers to agree a plan, TPR representatives have acknowledged at various forums during the consultation period that there might be circumstances where the trustee deviates from the plan (i.e. the code does not unduly reduce trustees' authority or restrict their ability to make investment decisions). We welcome this position and call on TPR to work closely with DWP to ensure similar flexibility is reflected in the regulations, which the vast majority of our members (88% of those recently surveyed) support.

48. In terms of the content of the SoS, we note that there could potentially be some nervousness from employers about trustees producing a document that comments on the employer's strength, longevity, reliability etc. Depending on the level of detail required in the SoS (and despite TPR having an obligation to treat such information confidentially), many of our members (59% of those recently surveyed) expressed concern, on behalf of employers, about who else would see the information in the SoS. This uneasiness on the part of employers could lead to prolonged negotiations between trustees and employers about how the covenant assessment is described in the SoS, leading to potential delays (and increased costs) in producing the SoS, thereby impacting the ability of trustees to provide the SoS to TPR in a timely manner.

49. Similarly, there is some concern that, although employers may want to target buyout, it is unlikely that they would want to put that in writing in the journey plan or a formalised Statement of Strategy, which they would then be required to adhere to. This reluctance on the part of employers could potentially lead to trustees feeling like they have to develop two separate journey plans or two Statements of Strategy – one that they provide to the regulator and another that they retain for internal/practical purposes – which would not be an efficient outcome.

CHAPTER 9: TECHNICAL PROVISIONS (TPs)

Consultation questions:

35. Do you agree with how we have described the consistency of the TPs with the FIS? If not, why not and what would you suggest as an alternative?
36. Do you agree that open schemes could make an allowance for future accrual – thereby funding at a lower level - without undermining the principle that security should be consistent with that of a closed scheme?
37. Do you agree that this should normally be restricted to the period of covenant reliability? If not, why not and what you suggest as an alternative?
38. Do you agree with our principled based approach to future service costs? If not, why not and what you suggest as an alternative?

50. The code consultation document outlines TPR's general expectation that yield curves should be used for economic assumptions (particularly before the relevant date, where the journey plan expects gradual de-risking over time, and this is reflected in the discount rates). However, we note that a number of schemes do not use yield curves/gilt yields in the way set out in the consultation document and that their use is often not particularly relevant for open, immature schemes with a long time horizon. The yield curve approach is only appropriate for mature schemes and those maturing over time, that will eventually get to a pensioner-only position. A number of our open scheme members have advised that they are still undertaking analysis in this area, to ensure that having to use gilt yields does not prove to be overly restrictive or create unnecessary obstacles for open schemes. We will provide more information on the outcome of these analyses as and when provided to us by our members.

51. Paragraph 266 of the code lists the individual economic assumptions that may be included in the Technical Provisions (TPs). And paragraph 267 states that the economic assumptions <u>must</u> be set consistently with each other, which indicates a legal requirement whose legislative/regulatory source is unclear. While we do not disagree with the overall principle of consistency in setting the assumptions, we believe the use of the word 'must' in this case is unnecessarily prescriptive and should instead be softened to an expectation on trustees (refer to the relevant entry at Appendix A).

52. We agree with the position articulated in the code that open schemes could make an allowance for future accrual – thereby funding at a lower level – without necessarily undermining the principle that security should be consistent with that of a closed scheme. However, there are some concerns with paragraph 273 which says: "*In setting the TPs, the trustees should comply with the principle that past service in an open scheme should have the same level of security as an equivalent closed scheme. However, this does not mean that the same level of TPs is needed for an open and equivalent closed scheme*". Our members feel that the reference to 'past service' in paragraph 273 is somewhat confusing and, as such, we recommend that the wording in this paragraph be reviewed.

53. There is a statement in the code around trustees having to "*robustly consider the extent to which it is reasonable to make allowance for this continued accrual and new entrants when projecting the development of the scheme's duration*" (paragraph 277). While we do not have an issue with this proposal and appreciate there might be some welcome flexibility in this area, we note that this requirement will involve a significant amount work on the part of open schemes, in order to demonstrate that all the relevant factors have been 'robustly considered' in setting the scheme's duration. We would therefore call upon TPR to take a pragmatic, risk-based approach to enforcing this and other principles in the code.

54. It is also worth pointing out the specific scenario of open schemes where the quality of future service benefit provision is of strategic importance to business prospects and even the prospects of the sector/industry within which the sponsors operate. In those cases, there is concern that the focus on de-risking could inadvertently lead to the premature closure of the scheme, potentially significantly damaging the sector. As stated in paragraph 10 of this response, we recommend that consideration be given to packaging all the requirements that are relevant to open schemes in one place/section within the code.

CHAPTER 10: RECOVERY PLANS

Consultation questions:

39. Do agree with our approach to defining Reasonable Alternative Uses? If not, why not and what you suggest as an alternative?
40. Do you agree with the description in the draft Code of the interaction between the principle that funding deficits must be recovered as soon as the employer can reasonably afford and the matters that must be taken into account in regulation 8(2) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005?
41. Do you agree that reliability of employer's available cash should be factored in when determining a scheme's recovery plan length?
42. Do you agree with the principles we set out when considering alternative uses of cash? If not, which ones do you not agree with and why? What other principles or examples would it be helpful for us to include?
43. Do you agree with our approach to post valuation experience? If not, why not and what you suggest as an alternative?
44. Do you agree with our approach to investment outperformance? If not, why not and what you suggest as an alternative?
45. Should we set out more specifics around what we would expect by way of security to protect against the additional risks?

55. Paragraph 286 lists the five factors that trustees must take into account when establishing a recovery plan. As it is currently drafted, one could take this to be an exhaustive list – i.e. that there are no other factors that would be relevant for the trustee to consider. However, for open schemes with shared costs, it is not solely employer affordability that is important – member affordability is also a critical factor that could lead to longer-than-average recovery plan lengths. The vast majority of our members (84% of those recently surveyed) feel that the wording in this paragraph should be amended to make it clear that the 5 factors listed in paragraph 286 are not exhaustive, and that trustees can in fact take into account other relevant factors.

56. There is also some concern amongst our membership that the concept of 'reasonable affordability' (i.e. the likelihood that no further contributions will be needed) is not well defined. We acknowledge the difficulty involved in tightly defining such a concept, however we believe that reasonable affordability should be tested against short, medium and long term cash requirements, with stronger tests applied for cash requirements in the more immediate future.

57. Paragraph 287 talks about reasonable affordability being an 'overriding principle' – i.e. "*Although these matters must always be considered, trustees may apply different weights to the various factors depending on the scheme's circumstances. They are subject to the overriding principle that deficits must be recovered as soon as the employer can reasonably afford.*" Many of our members believe that this notion of reasonable affordability being an 'overriding principle' is not based on any legislative or regulatory requirement[1]. Furthermore, many PLSA members (59% of those recently surveyed) believe that the two sentences above are at odds with each other – i.e. trustees should certainly take into account and balance these various factors, however in doing so it is unclear how this then aligns with the 'overriding principle'.

58. Indeed, it could be argued that, if reasonable affordability were to be an overriding principle, this would represent a shift in the balance of powers between trustees and employers. Whereas previously trustees might look at other factors, now these factors might no longer be relevant in the context of reasonable affordability – eg. if it is reasonably affordable for the employer to pay off the entire deficit in say 2 years, it is unclear why the trustee even needs to consider things like the maturity of the scheme, the funding level etc. Over half of PLSA members (54%) support this view.

59. In relation to deficit repair contributions (DRCs), paragraph 309 states that they should be prioritised over the use of available cash to make discretionary payments or to enable covenant leakage or investment in sustainable growth, where trustees are not confident that this investment will result in growth within a period consistent with the schemes liability profile. Essentially trustees are being asked to assess the potential growth resulting from an investment by the employer in the business – and if the benefit to the business is not within a time horizon that is going to benefit the scheme, then trustees should not permit that investment. We believe this requirement goes too far and is at odds with the sustainable growth objective of the regulator. Sustainable investment should not just be about delivering growth to the business while the pension scheme exists (and is linked to the employer) – i.e. investment in sustainable growth should be allowed to have a much more long-term perspective/outlook.

[1] We note that the amended section 226 of the Pensions Act 2004 inserts new sub-clause (3A) allowing regulations to make provisions as to matters to be taken into account, or principles to be followed, by trustees in deciding whether a recovery plan is appropriate. However, the draft regulations (by amending The Occupational Pension Schemes (Scheme Funding) Regulations 2005) then only provide for a single principle – i.e. the reasonable affordability one. The net result, it seems, is that the trustee is expected to take various factors into account in preparing a recovery plan but should assess its appropriateness against only the reasonable affordability principle.

60. Paragraphs 314–317 of the code, which require trustees to understand and assess where/how a company wants to use their money to invest in the sustainable growth of the business, are too prescriptive and onerous (with 54% of PLSA members recently surveyed supporting this view). In particular, there are concerns over the level of scrutiny that trustees are expected to undertake on sponsors' business plans, effectively turning trustees into a management oversight role across a wide range of sponsors (i.e. not just distressed employers where the level of scrutiny may be warranted). Questions also arise as to:

    a) How much information do trustees need in order to make this assessment?

    b) Do they have to satisfy themselves that these payments are good for the business?

    c) How far are trustees supposed to go in undertaking their assessment?

    Without clarification and guidance, we believe this section is too prescriptive and could lead to some unintended consequences that can negatively impact the relationship between trustees and employers. Also, given TPR's new powers in relation to being able to pursue and take action against employers for not providing enough information or under-funding a scheme, it is unclear why trustees even need to do all this analysis. In our view it seems unnecessary and potentially costly to expect this level of analysis by trustees. As such, we believe the requirements in these paragraphs should be relaxed.

61. Paragraph 335 of the code says that "*when performing their duties under Part 3 of the Pensions Act 2004, trustees should not take into account the potential for the PPF to provide compensation to members of the scheme*". Feedback from some PLSA members of law firms indicates that this wording appears to go too far from a legal perspective. This view is also supported by many of our members (63% of those recently surveyed). Looking at the existing case law, the courts have ruled that whether or not trustees are allowed to take into account the PPF should be considered on a case-by-case basis. That being so, it would seem that paragraph 335 has overstated the legal requirement on trustees, and it would be helpful if this were clarified and the final code amended to reflect the courts' previous rulings on this matter (refer to the relevant entry in the table at Appendix A for the relevant case law reference).

CHAPTER 11: INVESTMENT AND RISK MANAGEMENT CONSIDERATIONS

Consultation questions:

46. Do you agree with our approach that, while trustees' discretion over investment matters is not limited by the funding and investment strategy, we expect investment decisions by trustees should generally be consistent with the strategies set out in the funding and investment strategy? If not, why not and what you suggest as an alternative?
47. Do you agree with the examples we have given for when trustees investment strategies may not mirror their FIS? Are there other examples we should consider?
48. Do you agree with the expectations regarding trustees with stressed employers? If not, why not and what you suggest as an alternative?
49. Do you agree with the principles we have set out regarding risk management? Are there other aspects it would be helpful for us to include?
50. Do you agree with the principles we have set out regarding liquidity? If not, why not and what you suggest as an alternative?
51. Do you agree with how we have approached security, profitability and quality? If not, why not and what you suggest as an alternative?

> 52. Are there other aspects it would be helpful for us to include?
> 53. Do you agree with the above considerations? If not, please explain.
> 54. Do you think there are any areas of systemic risk that should be considered further in in light of our draft code? If yes, please explain.

62. In relation to risk management practices, the feedback we have received from members is that the majority of schemes already have high standards in relation to establishing appropriate processes for identifying and mitigating risks. So there is a danger that the code might actually cause some schemes with effective risk management procedures in place to "do less". Therefore the messaging and guidance from TPR around the code's implementation (and enforcement) will be very important – i.e. that the requirements in the code are the minimum expected of trustees, but they are encouraged to do more – to ensure that the rollout of the code does not result in a backward slide of established risk management practices.

63. There is a point of tension between the draft code and regulations where, under the code, trustees need to set a low dependency asset allocation from the relevant date, but they do not necessarily have to invest in that way. However, from a legal perspective, that does not appear to align with the requirements of the Pensions Act 2004 (which require trustees to set out the investment allocation they intend to adopt from the relevant date) or the regulations (which state that trustees are required to invest in accordance with a low dependency investment strategy). In our view, notwithstanding the wording in the primary legislation, it would be helpful if the regulations were amended to reflect the flexibility that is in the draft code.

64. On the employer stress scenarios (specifically paragraph 333, where trustees are expected to consider either stopping the accrual of future benefits or winding up the scheme), there is a view that the requirements in this paragraph are stated too bluntly and need to be moderated. The reality is that trustees alone do not have the power to conclude if a wind-up of the scheme is the best course of action (i.e. it usually involves meaningful discussion and negotiation with the sponsoring employer). The requirements in this paragraph, as currently stated, place too high an expectation on trustees that they are unlikely to be able to meet, and we would therefore recommend that TPR temper the wording of the requirements in paragraph 333.

65. Finally, we note the lack of any references to climate change risk in the draft code. There is plenty of discussion within the code on the importance of integrated risk management and understanding risks in general, however the issue of climate change risk is not specifically addressed. Managing the challenges of climate change will be fundamental considerations of trustees' strategic decisions in the future. Therefore, given 'integrated risk management' plays an important part in the new code, as well TPR's ongoing focus on climate change risk (as articulated in its Corporate Plan 2021 to 2024), the absence of any reference to this important issue in the code is perhaps somewhat surprising.

    There are many schemes that have made great progress in this area, but also others (particularly some smaller schemes) that are perhaps still looking to consider climate risk in any detail and may be unsure where to start. Therefore, we believe some direction from TPR on the importance of managing the risks associated with climate change in the code would be welcome.

APPENDIX A

The table below lists the instances where, in the view of our legal panel (consisting of major advisory firms in the sector), the wrong term has been used in the code (eg. the word **'must'** has been used where no legal duty exists, or the terms **'should'** or **'expect'** have been used where we believe a legal duty does exist) or where the description of a legal duty or a regulatory expectation goes beyond what is, or what should be, required. The items shown in **red text** reflect the issues we believe are particularly material.

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 2, para 20	Trustees **must** obtain the employer's agreement to the funding and investment strategy.	This should be changed to: *Trustees must **normally** obtain the employer's agreement to the funding and investment strategy.*	Section 229(1)(za) Pensions Act 2004 as modified by Schedule 2, Paragraph 9 Scheme Funding Regulations 2005
Chapter 2, para 27	For the purposes of the funding and investment strategy, trustees **must** assume that scheme assets will be invested in accordance with a low dependency investment allocation on and after the relevant date.	Are trustees required to assume this even if they do not intend to adopt a low dependency asset allocation on and after the relevant date, as the code envisages might be the case in some circumstances?	Schedule 1, para 3(2)(b) draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Chapter 2, para 39	Trustees **must** ensure that this transition is: • dependent on the strength of the employer covenant, where more risk can be taken if the covenant is strong; and • subject to the above, dependent on the maturity of the scheme	The two bullets referred to in paragraph 39 are principles and, as the draft code recognises, there may be circumstances in which it is not appropriate for a scheme to be bound by them. For example, the code recognises that where a scheme has a weak sponsor it may be appropriate for trustees to take more investment risk than the employer covenant can support in order to maximise the likelihood of members' receiving their benefits in full. Therefore, we believe it would be better if this paragraph read as follows: Trustees must ensure that this transition takes account of the principles that, generally speaking: • more risk can be taken if the covenant is strong; and • more risk can be taken where a scheme is less mature.	Schedule 1, para 4(2)(a) & (b) draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Chapter 2, para 49	A statement of strategy that is revised between valuations **does not need** to be sent to us.	We agree with this statement. But even though there is no legal requirement to send a statement of strategy to the Regulator in these circumstances, we believe that it makes sense for the Regulator to have sight of any revision. Therefore, this paragraph could be modified to say that although trustees do not need to send the revised statement of strategy to the Regulator, the Regulator would **expect** them to do so.	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 2, para 54	The assumptions used in the actuarial valuation **must** be consistent with the funding and investment strategy in the following ways: • the valuation assumptions applicable to the period after the relevant date **must** be actuarially consistent with the low dependency funding basis assumptions as determined in the funding and investment strategy • the valuation assumptions applicable to the period preceding the relevant date **must** be calculated in a way that is consistent with the planned investment transition.	The first two '**musts**' that appear in this paragraph reflect legal requirements. However, we cannot see a legal basis for the '**must**' contained in the second bullet and therefore we believe this should be changed from a '**must**' to a '**should**'.	Section 222(2A) Pensions Act 2004; Draft new Regulation 5(4)(e) Occupational Pension Schemes (Scheme Funding) Regulations 2005.
Chapter 3, para 58	For the purposes of the funding and investment strategy, trustees **must** assume that on and from the relevant date scheme assets will be invested in accordance with two principles: • the investments would meet the requirements of a low dependency investment allocation; and • the assets would be sufficiently liquid to enable the scheme to meet expected cash flow requirements, and with reasonable allowance for unexpected cash flow requirements.	We welcome the fact that this paragraph refers to trustees must assume that their scheme's assets will be invested in accordance with these principles on and from the relevant date, rather than saying that they are required to be invested in accordance with these principles. However, this is at odds with the wording in Schedule 1 of the draft Regulations which indicates that: • trustees must follow the principles outlined in paragraphs 3 to 6 of Schedule 1 of the draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023 (see Schedule 1, para 2); • the principles set out in paragraph 3(2) of Schedule 1 relate to minimum requirements that a scheme is subject to on and after the relevant date (see Schedule 1, para 3(1); and • on and after the relevant date the scheme is subject to the requirement that its assets must be invested in accordance with a low dependency investment allocation (see Schedule 1, para 3(2)(b). It is important that these parts of the Regulations are amended to permit the approach adopted in the draft code.	Bullet point 1 reflected in Regulation 6(3)(b) and Schedule 1, paragraph 3(2)(b) draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023 Bullet point 2 reflected in Schedule 1, para 6(2) draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023.

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 3, para 73	When determining the low dependency investment allocation, trustees **should** also consider the requirements of high resilience to short-term adverse market changes and liquidity.	It is a requirement of a low dependency investment allocation that the value of the assets relative to the value of the scheme's liabilities is highly resilient to short-term adverse changes in market conditions, as reflected in paragraph 75 of the draft code. Therefore, we believe this paragraph should read: *When determining the low dependency investment allocation, trustees:* • ***must** also consider the requirements of high resilience to short-term adverse market changes; and* • *should consider the liquidity of the scheme's assets.*	Regulation 5(2)(b) & Schedule 1, paragraph 6 draft Occupational Pension Schemes (Funding and Investment Strategy) Regulations 2023
Chapter 3, para 76	We **expect** trustees to carry out a suitable level of analysis to enable them to assess the resilience of their low dependency investment allocation to short-term adverse market changes.	Given that trustees are required to ensure that the value of the assets relative to the value of the scheme's liabilities is highly resilient to short-term adverse changes in market conditions when setting a low dependency investment allocation, we believe this paragraph should be strengthened and that the word '**expect**' here should be replaced with '**should**'.	Regulation 5(2)(b) draft Occupational Pension Schemes (Funding and Investment Strategy) Regulations 2023
Chapter 3, para 78	As the low dependency investment allocation **will contain** matching assets to match payments from the scheme, changes in the short-term market value of these assets **should not** affect their ability to continue to meet the liability cash flows.	Given that under a low dependency asset allocation the cash flow from the investments is only required to be broadly matched with the payment of pensions and other benefits under the scheme, we believe this paragraph should read: *As the low dependency investment allocation will contain assets with cash flows designed to broadly match payments from the scheme, changes in the short-term market value of these assets should not affect their ability to continue to meet the liability cash flows.*	Regulation 5(2)(a) draft Occupational Pension Schemes (Funding and Investment Strategy) Regulations 2023
Chapter 3, para 90	... for the purposes of setting the funding and investment strategy, **must** follow the principle that trustees scheme assets are invested in accordance with the low dependency investment allocation on and after the relevant date.	This reflects Schedule 1, paragraphs 2 & 3(2)(b) Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023. However, are trustees required to follow this principle even if they do not intend to adopt a low dependency asset allocation on and after the relevant date, as the code envisages might be the case in some circumstances?	Schedule 1, paragraphs 2 & 3(2)(b) draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Chapter 4, para 92	Trustees **should** assess whether the low dependency funding test would be met under most reasonably foreseeable scenarios.	It is unclear what the reference to the "low dependency funding test" being met means. Is it referring to the requirement that no further employer contributions will be met under most reasonably foreseeable scenarios? If so, this should be clarified.	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 4, para 99	The table in Appendix 3 sets out **our expectations** on expenses for use in the low dependency funding basis.	This paragraph should refer and link through to Appendix 4.	
Chapter 6, para 121	In order to assess what journey plan would be appropriate, trustees **must** bear in mind the strength of the employer covenant. In particular, that the investment de-risking journey **should** be: • dependent on the strength of the employer covenant, where more risk can be taken if the covenant is strong • subject to the above, dependent on the maturity of the scheme.	The code recognises that there may be circumstances where it may be appropriate for trustees to take more investment risk than the employer covenant can support in order to maximise the likelihood of members' receiving their benefits in full (i.e. where there is an underfunded scheme with a weak sponsor). In light of this, we believe that the second sentence is too prescriptive, and it would be better if it read as follows: In particular, when setting their scheme's investment de-risking journey they **should have regard to** the principles that, generally speaking: • more *risk* can be taken if the covenant is strong; and • more risk can be taken where a scheme is less mature.	Para 4, Schedule 1 the draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Chapter 6, para 126	For employers where insolvency is highly unlikely over the short to medium term, their strength relative to the low dependency deficit will help the trustees understand the support available for their journey plan. The higher the risk of insolvency, which would trigger a debt due under section 75 of the Pensions Act 1995, the more weight there **should** be on employer support relative to the solvency deficit.	The meaning of the second sentence is unclear. We presume that it means that the higher the risk of insolvency the more trustees should focus on the strength of employer support relative to the solvency deficit (as opposed to being concerned with the low dependency deficit). It would be helpful if this was clarified.	
Chapter 6, para 127	Trustees are required to carry out an employer covenant assessment to understand the extent to which the employer can support the scheme now and in the future. In general, trustees **should** focus on the ability of the employer to make cash contributions to the scheme to address downside investment risk. Contingent assets can also be valuable where the trustees can evidence that the contingent asset is legally enforceable, will be sufficient to provide the level of support when required, for example where a guarantor is substantially stronger than the employer and provides an all monies guarantee.	We believe the second sentence should encourage trustees to focus on the ability of the employer to make good any deficit in the scheme as well as the employer's ability to address downside investment risk.	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 6, para 129	The covenant **should** be assessed in the context of, and relative to, the scheme's funding and investment risk. Trustees **should** consider the following: • The size of the scheme's low dependency liabilities relative to the strength of covenant support. • The level of investment and funding risk, providing an indication of how the scheme's funding requirements and reliance on covenant support could change over time with changes in market and financial conditions. • The maturity and the expected cash flows of the scheme, as this will affect the timing of the scheme's reliance on the covenant.	The first bullet does not refer to a scheme's liabilities measured on a solvency basis, even though trustees are told elsewhere in the draft code that they should assess the employer covenant by reference to a scheme's solvency deficit as well as the low dependency deficit (see, for example, paras 125 & 126).	
Chapter 6, para 149	A contingent asset's legal enforceability is determined by the terms and conditions of the relevant agreement and the applicable law. Trustees **should** consider obtaining legal advice in relation to the enforceability of proposed contingent assets.	We are comfortable with this as far as it goes. However, we note that the existing code goes further and states that trustees also "need to consider the value that is likely to flow to the scheme from a contingent asset… taking appropriate legal, covenant, investment and actuarial advice to understand the associated risks." We believe that this should be reflected in the new code.	The Pensions Regulator – Code 03: Funding Defined Benefits (paragraph 66)
Chapter 6, para 151	To understand whether a contingent asset will provide a particular level of support when required, trustees **must** identify the following: • the scenario in which the contingent asset is likely (or able) to be called upon (for example in the event of insolvency of the employer). • an appropriate method to assess the expected realisable value of the contingent asset. This will primarily be driven by the type of contingent asset, i.e. whether it is a security arrangement (for example security over an asset, cash in escrow, letter of credit) or a group or parental guarantee.	The two bullet points do not reflect a specific legal requirement. Consequently, the code should state that trustees '**should**' identify these matters rather than '**must**'.	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 6, para 153	Other assets have less certain value. For example, the value of security over a tangible asset such as a building or machinery will depend on the future market value for that asset and its condition at that time. Trustees **must** determine the most appropriate valuation methodology, considering the scenario and the timing in which any asset value is likely to be realised (for example insolvency) and their expectation of the development of the relevant market for that asset in the future.	This does not reflect a specific legal requirement. Therefore, the word '**must**' should be replaced with '**should**' or, perhaps more appropriately, '**will need to**'.	
Chapter 6, para 154	Where the contingent asset is provided by the employer (rather than a third-party), trustees **must** be mindful of the impact enforcing the security may have on the employer's continued performance and financial ability to support the scheme. Where enforcement will have a material negative impact on the employer's financial ability to support the scheme, trustees **must** also factor that cost into its valuation.	We believe the words '**must**' should be replaced with '**should**' as these sentences do not reflect legal requirements.	
Chapter 6, para 160	Schemes frequently have more than one employer. Trustees **must** consider the extent to which it is appropriate to analyse the financial ability of every sponsoring employer to support the scheme and how to reach an overall view on the covenant provided by the pool of employers as a whole.	We do not consider this to be a legal requirement and therefore the word '**must**' should be replaced with '**should**'. Therefore, the principle is in line with current legislation, there is currently no specific mention of this in relation to multiple employers.	
Chapter 7, para 176	Trustees **should** determine their plan to transition from the scheme's existing investment portfolio to one that would meet the standards of a low dependency investment allocation. Trustees **should also** plan for how the scheme **will** reach a position of being at least 100% funded on a low dependency funding basis on and after the relevant date.	As the draft code recognises, trustee primacy in investment decisions remains and there is no legal requirement for trustees to invest in line with a low dependency investment allocation. It will also not always be possible for a scheme to reach 100% funding on a low dependency basis by the relevant date. In light of this, we believe it would be better if this paragraph read: ***Where appropriate,*** *trustees should determine their plan to transition from the scheme's existing investment portfolio to one that would meet the standards of a low dependency investment allocation. Trustees should also plan****, as far as possible,*** *for how the scheme will reach a position of being at least 100% funded on a low dependency funding basis on and after the relevant date.*	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 8, para 237	They **must** provide information on the scheme's assets they intend to hold at the relevant date in line with a low dependency investment allocation.	Strictly, trustees must specify the investments they intend the scheme to hold on the relevant date (S.221A(2)). In line with this it would be better to refer to "investments" rather than "scheme's assets" in this paragraph because it is about investment categories rather than specific assets (as clarified in the Regs: Reg12(c), para 5 of Sched 2 of the draft Regs and para 3(2)(b) of Sched 1). We also note that section 221A(2) does not prescribe that this has to be "in line with a low dependency investment allocation". We query whether the code is right to indicate that this is required in all circumstances, including where trustees know that they will not be invested in a low dependency asset allocation at the relevant date (because they intend to take more or less investment risk than this at that time).	s.221A(2) Pensions Act 2004
Chapter 8, para 240	Trustees **must** provide an assessment of the main risks faced when implementing the funding and investment strategy. We **expect** trustees to outline these risks, detail how they are being monitored and explain how they intend to mitigate the risks if they transpire. Trustees **should** evidence objective –risk-taking, explaining in detail how risks are being managed.	The points covered by the second sentence in this paragraph are prescribed in the draft Regulations and, therefore, we believe this sentence should begin "Trustees **must** outline..." rather than "We **expect** trustees to outline...". There is also a requirement to provide evidence in relation to certain risks (see Regulation 15(4) of the draft Regulations).	S.221B(2)(b) Reg 15(2) to (4) Para 5, Schedule 2 draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Chapter 8, para 241	Trustees **should** monitor the scheme's progress towards their long-term objective and explain the actions they will take to ensure they achieve it, should the scheme's journey plan not progress as expected.	Arguably, this is a legal obligation under the Regulations, particularly in relation to explaining the actions the trustees intend to take – in which case the word '**should**' should be replaced with '**must**'.	S.221B(2)(b) Pensions Act 2004 Regulation 15(2) to (4) & paragraph 5, Schedule 2 draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Chapter 9, para 259	If they instruct their actuary to certify the TPs using an approach the actuary considers a clear failure to comply with Part 3 of the Pensions Act 2004, we **expect** the actuary to report that certification to us.	If the actuary cannot certify the valuation, the legislation **requires** the actuary to report the matter.	S.225(c) Pensions Act 2004
Chapter 9, para 267	Paragraph 267 states that the economic assumptions **must** be set consistently with each other.	The legislative/regulatory source for this requirement is unclear. We do not disagree with the overall principle of consistency in setting the assumptions, but the use of the word '**must**' in this case is unnecessarily prescriptive and, in the absence of a requirement under law, the wording should be softened to an **expectation** on trustees.	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 10, para 287	Although these matters must always be considered, trustees may apply different weights to the various factors depending on the scheme's circumstances. They are **subject to the overriding principle** that deficits must be recovered as soon as the employer can reasonably afford.	The consultation on the draft Regulations asked whether the new principle of reasonable affordability should have primacy other factors. If the principle of reasonable affordability is not given primacy in the final regulations it would not be correct to refer to this as the "overriding principle".	
Chapter 10, para 291	Trustees **can** take post-valuation experience into account in the recovery plan.	To avoid questions about shades of meaning, we suggest '**can**' is changed to '**may**' for consistency.	
Chapter 10, para 307	Where a scheme has a low funding level, the risks to the scheme are increased. We therefore expect the scheme to receive more of the available cash by way of DRCs rather than for discretionary payments or to effect covenant leakage. If the scheme is running risks that are not supportable, then **we would not expect** any discretionary payments or covenant leakage.	Does "we would not expect" have the same meaning as "we expect there not to be" (or "there should not be"), or is there a middle ground between those phrases?	
Chapter 10, para 309	Once a scheme has reached significant maturity, DRCs **should be** prioritised over… investment in sustainable growth, where the trustees are not confident that this investment will result in growth within a period consistent with the schemes liability profile.	The Regulator's statutory objective to minimise any adverse impact on the sustainable growth of employers is not limited to promoting sustainable growth only during the time horizon of the relevant scheme. Therefore, business investment should be capable of being justified where it is needed to secure the long-term future of an employer even though the benefits of this may not be realised (or fully realised) during the lifetime of the scheme. We believe paragraph 309 should be updated to reflect this.	Section 5(1)(cza) Pensions Act 2004
Chapter 11, para 321	For the purposes of their funding and investment strategy, trustees **must** plan to be invested in accordance with the requirements for a low dependency investment allocation from the relevant date.	This paragraph seems to contradict other parts of the draft code which indicate that trustees are not required to adopt an investment strategy which mirrors the strategy contained in the funding and investment strategy, but that there is an expectation that they will generally be consistent (see, for example, paragraphs 90 and 322). For this reason, we believe it would be better if this paragraph read: *For the purposes of their funding and investment strategy, trustees **must assume that they will** be invested in accordance with the requirements for a low dependency investment allocation from the relevant date.*	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 11, para 321	They **must** also formulate a de-risking journey plan.	This paragraph implies that a journey plan can only involve de-risking. While we recognise that this might generally be the case this does not cater for a scenario in which a journey plan requires an element of re-risking. Therefore, we believe the word 'de-risking' should be deleted from this sentence.	
Chapter 11, para 322, 323, 326, 349	...our **expectation** is that investment decisions by trustees (and fund managers to whom decision making has been delegated) will generally be consistent with the strategies set out in the funding and investment strategy (para 322) ...the funding and investment strategy **should** also underpin trustees' actual investment decisions...' (para 323) Investment risk **should** be depending on the extent to which the employer covenant can support downside risks on the path to <u>significant maturity</u> (para 323) ...our general **expectation** is that investment decisions... will be consistent with the strategies set out in the FIS (para 326) These sections highlight our **expectation** that trustees' investment decisions will generally follow their FIS and the **expectations** set out in this code for a schemes journey plan and low depending investment allocation. (para 349).	The Regulator has no powers to direct how Trustees invest and, as the draft code acknowledges, trustee primacy in investment decision making remains. However, these paragraphs indicate that there will be a regulatory expectation that trustees will invest in line with their funding and investment strategy. Although it is not expressed in these paragraphs as a legal requirement this comes very close to the Regulator directing how trustees should exercise their investment powers and it is likely to be interpreted by some in this way. These paragraphs also fail to recognise the scheme specific nature of investment decisions.	
Chapter 11, para 323 (second bullet)	trustees **need** to plan how they <u>will</u> transition to that low-risk investment strategy over time....	As the draft code recognises, trustee primacy in investment decisions remains and there is no legal requirement for trustees to invest in line with a low dependency investment allocation. Therefore, we believe it would be better if this bullet read: ***where appropriate,*** *trustees* ***will*** *need to plan how they will transition to a low-risk investment strategy over time...*	

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Chapter 11, para 325	Other circumstances where investment decisions may not mirror the funding and investment strategy are: • A sponsoring employer refuses to agree to changes to the investment strategy set out in the funding and investment strategy, despite the trustees considering it appropriate. Employer agreement **is required** for the funding and investment strategy, **but not for the investment elements** in the statement of strategy (where consultation with the employer is required)…	We believe the reference to employer agreement not being required for the investment elements of the statement of strategy is potentially misleading given that the employer agreement is required to the funding and investment strategy which will require agreement to be reached over the investments the trustees or managers intend the scheme to hold on the relevant date or relevant dates.	Sections 221A and 221B Pensions Act 2004
Chapter 11, para 335 Appendix 1, para 384	When performing their duties under Part 3 of the Pensions Act 2004, trustees **should not** take into account the potential for the PPF to provide compensation to members of the scheme.	This does not reflect the current legal position which was summarised by Henderson J in *Independent Trustee Services v Hope* [2009] EWHC 2810 (Ch) [at 106] *"that there is no single all-purpose answer to the question whether the PPF is a relevant consideration for trustees to take into account. It all depends on the context and purpose of the particular power which the trustees are proposing to exercise, and the particular way in which they wish to take the PPF into account".* This view was endorsed by the Court of Appeal in *Granada UK Rental & Retail Limited v The Pensions Regulator* [2019] EWCA Civ 1032 [at 191].	*Independent Trustee Services v Hope* [2009] EWHC 2810 (Ch) *Granada UK Rental & Retail Limited v The Pensions Regulator* [2019] EWCA Civ 1032
Appendix 1, para 380	Where conflicted trustees **should** consider withdrawing from negotiations – for example where the trustee is also the finance director, member of the scheme, or hold trade union representative roles.	We query whether a trustee who is also a member of scheme should be encouraged to consider withdrawing from funding negotiations, particularly in light of the easement for trustees who are members of a scheme contained in section 39 Pensions Act 1995.	
Appendix 1, para 388	The actuarial valuation **must** incorporate the actuary's certification of the TPs calculation and the schedule of contributions.	There is legal requirement for the scheme actuary to certify the calculation of the technical provisions (section 225, PA 2004) and the schedule of contributions (Regulation 10(6), Scheme Funding Regulations). However, it is unclear what this paragraph means when it says that this must be "incorporated into" the actuarial valuation or what legal requirements this is based on.	Section 225, PA 2004. Regulation 10(6), Scheme Funding Regulations 2005

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Appendix 1, para 390	Trustees **should** have good reasons if they decide not to follow the actuary's advice. If they instruct their actuary to certify the TPs and/or schedule of contributions using an approach the actuary considers a clear failure to comply with Part 3 of the Pensions Act 2004, the actuary **should** report that certification to us.	We question how an actuary could be forced to certify the TPs/schedule of contributions in these circumstances. In any event, a scheme actuary **must** make a report in writing to the Regulator if he/she is unable to certify that a scheme's technical provisions are calculated in accordance with regulations made under section 222 Pensions act 2004 or if he is unable to certify that a scheme's schedule of contributions meets the requirements set out in Section 227(6) Pensions Act 2004.	Sections 225(3) and 227(9), Pensions Act 2004
Appendix 2, Changes in circumstances	Trustees **should** be alert to material changes which may lead them to review and, if necessary, revise their scheme funding and investment strategy. Where, having taken advice from the actuary, it seems to the trustees that these material changes make it unsafe to continue to rely on the chosen assumptions used in the funding documents most recently submitted, they **should** review and, if necessary, revise those documents (bearing in mind that they would usually **need** to agree a revised recovery plan with the employer). Commissioning an early actuarial valuation is one technique for doing this, but may lead to unnecessary cost and delay when a revision of the existing recovery plan can achieve the necessary results. Trustees **should** adopt a proportionate approach when deciding how to proceed.	The draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023 make clear that: "*The funding and investment strategy must be reviewed and, if applicable, revised... as soon as reasonably practicable after any material change in the circumstances of the pension scheme or of the employer in relation to the scheme*". In light of this, we recommend that this paragraph is amended to make clear that: *Trustees should be alert to material changes which may* ***require*** *them to review and, if necessary, revise their scheme funding and investment strategy...* In addition, the wording in parenthesis should be updated as follows to reflect the fact that employer agreement to revise a recovery plan is normally required: *(bearing in mind that trustees* ***must*** *normally agree any revisions to an existing recovery plan with the employer).*	Regulation 13(2)(e) draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023
Appendix 2, Summary funding statements	Trustees **must** issue a summary funding statement to all members and beneficiaries of their scheme (who are neither excluded persons nor persons whose only entitlement to benefits under the scheme is, or will be, to money purchase benefits) within three months of the trustees receiving the valuations or reports.	The legislation only requires that a summary funding statement is given *"on, before or within a* ***reasonable period*** *after, the date by which the trustees or managers of the scheme are required under section 224 of the 2004 Act to ensure that the valuation or report is received by them".* Therefore, this paragraph should be updated to reflect this.	Regulation 15, Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734) Paragraph 153, Scheme Funding Code

CODE CHAPTER & PARAGRAPH	RELEVANT EXTRACT	COMMENT	RELEVANT LAW
Appendix 3, Cash commutation	The proportion commuted **should** be no higher than recent experience and any projections should allow for any decreasing trend. The assumed commutation factor **should** be no lower than current factors and, where appropriate, consideration **should** be given to making an allowance for future improvements in mortality. For example, where the trustees have the sole power to set cash commutation factors and those factors reflect the actuarial value of the pension commuted, we would **expect** an allowance for future improvements to factors to be made consistent with the trustees' expectations for how mortality will improve in the future.	Given mortality rates may go up or down in the future, this paragraph should be updated to provide that: *..., where appropriate, consideration should be given to making an allowance for future **changes** in mortality.*	
Appendix 4, No requirement under the rules for the employer to pay expenses: All schemes	We **expect** the low dependency basis to include a reserve for expenses. That expense reserve **should** be the value of all non-investment related expenses of the scheme, including annual levies and adviser fees, expected to be incurred on and after the relevant date (the relevant date expenses). The expenses **should** be consistent with the long-term strategy adopted by the scheme. For example: • if the strategy assumes the scheme will run on until all benefits are paid, it **should** be all the expenses associated with this • for a scheme that is targeting buy-out, it **should** include the expenses associated with that strategy.	In practice, it may be difficult to put a meaningful figure on the amount that should be reserved for expenses, particularly where a scheme is due to be run-off over many years. Therefore, it would be helpful if the expense reserve were described as *"**a reasonable estimate of the** value of the **expected future** non-investment related expenses of the scheme, including..."*	
Appendix 4, No requirement under the rules for the employer to pay expenses: Immature schemes	The reserve will be the value of those expenses at the relevant date discounted to the present time. It **should** be calculated assuming the projected position at the relevant date which **should** be a fully funded scheme on a low dependency basis with a de-risked investment strategy fully implemented.	It is unclear why the reserve should be calculated assuming the projected position at the relevant date which should be a fully funded scheme on a low dependency basis with a de-risked investment strategy fully implemented, particularly where a scheme's trustees do not expect this to be the case.	
Appendix 4, No requirement under the rules for the employer to pay expenses: Schemes at or past relevant date	For schemes at or past the relevant date, this reserve will be the capitalised value of current and expected future expenses. This should be a more accurate estimate of expenses needed which we **expect** to be monitored and updated in line with experience.	The first line should include the words "discounted to the present time" as per the row above.	

DISCLAIMER