

Item 9 – Appendix 3

Consultation questions

Draft public service code

1. Does the code sufficiently address the standards of conduct and practice necessary to evidence compliance with pensions legislation? If not, why not? What improvements would you recommend?

Yes it does sufficiently address the standards and practice necessary to evidence compliance. However, it is not clear that the Code explicitly acknowledges the complexity of large multi-employer schemes such as the LGPS funds and the responsibilities of those employers.

2. Does the level of guidance included in the code provide sufficient detail to enable scheme managers and members of pension boards to comply with pensions legislation and undertake their role effectively?

Yes it does assuming that the “scheme manager” refers to both the administering authority and statutory pensions committee.

3. The code relates only to the specific matters on which we are required to issue a code under section 90A(2) of the Pensions Act 2004. Are there any other legal requirements which you think should be brought within the scope of the code? Are there parts of the code which you think go beyond legal requirements, practical guidance or good practice?

It would be very helpful in the case of LGPS funds if the code recognised the employer’s responsibilities to provide accurate and timely information and payments. Employers are an integral part of the process. For example paragraphs 104a the scheme manager has no power to ensure the employers do anything and yet para 110 vests the legal responsibility with the scheme manager. Paragraphs 121 to 123 identify further responsibilities in respect of employers but the only power available to the scheme manager is to report breaches without any statement as to potential remedies. There is clearly a need for specific responsibilities to be attached to employers as key players in the effective administration of the fund and this needs to be addressed.

Questions that are specific to the various sections in the public service code are addressed below.

Section 1: Introduction

This section sets out the status of the code, who it applies to and why we have issued it.

4. Have we targeted the code at the right groups of people? If not, which have been overlooked?

Yes.

5. Is there any further information or explanation you would like to see in the terms used section of the introduction?

Clarity as to whether the “scheme manager” includes both the administering authority and any statutory committee for local LGPS funds.

6. Does the code strike the right balance between being as concise as possible and providing enough practical guidance relating to the underlying legal obligations?

Yes

Section 2: Governing your scheme

This section sets out our expectations about standards of governance including the requirements on members of pension boards, such as reviewing and updating knowledge and understanding, and the need for them to understand their own scheme; the identification, monitoring and management of potential conflicts of interest and publication of information about the pension board.

7. Do we adequately describe the level of knowledge and understanding required of members of pension boards? If not, why not?

For LGPS funds the level of knowledge required for pension committees who are taking decisions may be different to the knowledge required by pension boards whose responsibility is to assist with and ensure compliance with the regulations and codes of practice. Therefore it is not necessarily clear the level of knowledge that the code is setting for pension board members. To understanding the investment and Funding strategy statements, a level of understanding of the underlying technical aspects will be required by pension board members for them to be satisfied that the statements comply with regulations. However, the level of technical knowledge required will not be as high as for those committee members involved in approving the statements.

8. Does the practical guidance adequately address the risks of the different types of conflicts of interest which may occur? Could you provide better examples of key conflicts which should be provided in the code?

It is extremely useful for the guidance to give examples of key conflicts that could occur. However, a potential conflict not explicitly provided is when moral or ethical views can influence a decision, especially in relation to investment decisions. We acknowledge that both the Law Commission and Shadow National Pension Board are currently investigating this issue independently. However, including this potential conflict in this Code once there is greater clarity, or not, would be a positive development for funded schemes.

9. Does the practical guidance in the code sufficiently capture all of the duties, including any fiduciary duties, owed by pension board members? Do you consider that such duties may arise in the context of public service schemes? Please explain your response.

Please see comments to question 8.

Section 3: Managing risks

This section sets out the importance of risk management and the key stages of the risk management process in establishing an effective internal controls framework relevant to public service schemes.

10. Have we set out clearly what actions are expected of scheme managers and members of pension boards in relation to risk management and internal controls?

Yes.

Section 4: Administering your scheme

This section sets out our expectations about standards of administration including record-keeping, data protection, maintaining contributions, processing core financial scheme transactions and administration systems.

11. Does the public service code include sufficient practical guidance on the standards of administration that we expect? Are there any parts of the code that you think are too prescriptive?

Yes sufficient practical guidance on administration standards has been included. However, the Code should not set extra or duplicated standards in contradiction to the LGPS regulations rather that these should be harmonised..

12. We provide examples of what failures to pay contributions are likely to be materially significant to the regulator. Are there any other examples or scenarios that should be included?

We are concerned that (re contributions) the code (paragraphs 141 and 150) states *“the amount deducted is to be paid to the managers of the scheme within 19 days beginning on the day after the deduction is made, or within 22 days if paid electronically (the ‘prescribed period’).*

Is this a change? On the Pensions Regulators own website they state under the heading **“When you must pay your contributions”** :-

“the law requires that when you deduct contributions from your staff’s pay you must pay these to your staff pension scheme no later than the 22nd day (19th if you pay by cheque) of the next month.”

If it changes to 19 or 22 days after the deduction (rather than “of the next month”) we, as administrators, will have numerous different contribution dates as employers have numerous different payroll dates. This would be administratively difficult and may make the actuaries assumptions on cash flow more complex. I assume this is just an oversight and is not a statement of law, but it is confusing to have inaccurate messages that might be used as points of reference. It should be corrected.

Section 5: Resolving issues

13. Have we made clear the circumstances under which breaches of pensions legislation should be reported to us?

Yes circumstances are clearly defined although should not override or conflict with LGPS regulatory requirements. However paragraph 247 identifies a number of examples which span the spectrum of materiality and whilst the Scheme manager

may have a documented dispute resolution process to resolve less serious matters, the only remedy available if the matter persists is to submit a report to the regulator. It would be more helpful if LGPS Administration Strategies were allowed and required to disclose punitive remedies for employer failings to comply with either regulations or requirements set out by the Scheme manager in the first instance rather than report to the Regulator.

Draft public service regulatory strategy

14. Does the strategy, together with the public service code, sufficiently address risks to good governance and administration?

Yes it sufficiently addresses the risks to good governance and administration. However, the LGPS is a heavily regulated scheme with an oversight body (National Scheme Advisory Board) in place to set governance standards and ensure compliance. Therefore there is risk for the LGPS of over regulation or duplicating of regulations / compliance with standards.

15. Does the strategy explain adequately the approach we will take in regulating public service schemes?

Yes

Impact assessment

16. The impact assessment undertaken by the Treasury concluded that the new governance, administration and regulatory oversight provisions should not result in additional costs for schemes. The code gives practical guidance and sets standards of conduct and practice in relation to those new provisions. Do you agree that the public service code and public service regulatory strategy do not place an additional regulatory burden on schemes? If you do not agree, please explain and quantify additional costs.

It is not realistic to assume that new arrangements will not result in additional costs. The combination of the TPR Code and the new governance arrangements for the LGPS funds could increase costs, especially for those funds where governance standards need to be improved. Some funds may have to spend more on training to meet the Regulators standard. However, the additional cost would not be significant.