

Local Government Pension Scheme Advisory Board (England and Wales)

Response to the consultation on The Pension Regulator's Combined Code

This response is submitted on behalf of the Local Government Pension Scheme Advisory Board (England and Wales) which is a body set up under Section 7 of the Public Service Pensions Act 2013 and The Local Government Pension Scheme Regulations 110-113.

The purpose of the Board is to be both reactive and proactive. It seeks to encourage best practice, increase transparency and coordinate technical and standards issues.

The response was compiled by the Board secretariat in consultation with members of the Investment Governance and Engagement committee.

Jeff Houston
Secretary to the Board
4th June 2021

Overview of Response

This overview provides the Board's view of the scope of the application of the Governance and Investment sections combined code to LGPS Administering Authorities. It is based on our understanding of sections 90A and 249B of the Pensions Act 2004 as inserted by Schedule 4 of the Public Service Pensions Act 2013 but does not constitute any definitive opinion on the application of the law with regard to the LGPS.

Answers to individual questions in the consultation's governance and investment sections can be found following this overview.

Governance

Role of the governing body (TGB001)

Applies in part but definition of governing body and exact application should be local decision

Questions for: Recruiting to the governing body (TGB014)

Applies in part – to pension boards

Questions for: Member-nominated trustee appointments (TGB044)

Not applicable to LGPS

Questions for: Role of the chair (TGB015)

Not applicable to LGPS

Questions for: Meetings and decision-making (TGB006)

Applies in part – to pension boards

Questions for: Remuneration policy (TGB016)

Applies in part – to pension boards

Questions for: Working knowledge of pensions (TGB017)

Applies in part – to pension boards

Questions for: Governance of knowledge and understanding (TGB005)

Not applicable to LGPS

Questions for: Building and maintaining knowledge (TGB003)

Applies in part – to pension boards

Questions for: Value for scheme members (TGB009)

Not applicable to LGPS

Questions for: Managing advisers and service providers (TGB010)

Does not apply but could be used as best practice on a voluntary basis

Questions for: Identifying and assessing risks (TGB031)

This applies as under 90A TPR must make a code about the obligations of PSP schemes under 249B (internal controls)

Questions for: Managing risk using internal controls (TGB032)

This applies as under 90A TPR must make a code about the obligations of PSP schemes under 249B

Questions for: Assurance of governance and internal controls (TGB033)

This applies as under 90A TPR must make a code about the obligations of PSP schemes under 249B

Questions for: Continuity planning (TGB022)

Does not apply but could be used as best practice on a voluntary basis

Questions for: Conflicts of interest (TGB039)

Only the final part (last para and 2 bullet points) applies to LGPS and only for pension boards

Questions for: Own risk assessment (TGB045)

Does not apply but could be used as best practice on a voluntary basis

Questions for: Scheme governance (TGB046)

Applies only so far as the obligations in 249B (internal controls) but could also be used as best practice on a voluntary basis

Investment

Investment governance (FAI001)

Does not apply but could be used as best practice on a voluntary basis

Questions for: Investment decision-making (FAI003)

Not applicable to LGPS

Questions for: Implementation report (FAI004)

Not applicable to LGPS

Questions for: Investment monitoring (FAI005)

Not applicable to LGPS

Questions for: Stewardship (FAI006)

Not applicable to LGPS but could be used as best practice on a voluntary basis

Questions for: Climate change (FAI011)

Not applicable to LGPS

Questions for: Statement of investment principles (FAI008)

Not applicable to LGPS

Questions for: Default arrangements and charge restrictions (FAI010)

Not applicable to LGPS

TPR Combined Code “Governing Body” Section Response to questions

Role of the governing body (TGB001)

ROQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes – however, there are considerable concerns about the use of “governing body” as a broad term to be applied across significantly different types of pension schemes.

For LGPS it should be for the scheme manager (the LGPS administering authority) to determine who or what is the governing body – see next question.

ROQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme’s own circumstances?

No, with regard to the areas set out below:

This extract is a clear example of the issues with focusing on using the term “governing body”:

The governing body is responsible for running a scheme.

Although the body named in regulations as the administering authority is responsible for the management and administration of the scheme there will be different arrangements for how that function is exercised within the authority. For example– there are pension committees; although sometimes finance committees deliver the function of a pension committee, and in a small number of funds there is one officer who has the function of the pensions committee delegated to them.

There are also statutory bodies created under the Public Service Pensions Act 2013 (PSPA) – local pension boards and the scheme advisory board. Some administering authorities have a joint pensions committee / local pension board (LPB).

Committees are made up of elected members who are appointed according to the constitution of the authority, sometimes without much choice (and with a variety of knowledge of the subject matter) and sometimes for short periods of time. This makes them fundamentally different to trustee boards, which are made up of members who volunteer/apply for the role, are much more familiar with the subject matter and are often remunerated for their trustee duties.

Some sections include a clarification on the meaning of governing body for the purpose of that section. For example, TGB033 includes ‘governing bodies in this module refer to scheme manager but not pension boards’. However, many sections are silent .

It would be preferable if all sections clarified in a similar way but even if that were to be the case we consider that LGPS authorities should be able to determine for themselves who or what is the governing body for the purposes of this code in particular where there are a number of alternative arrangements for delegating the scheme manager function as set out above

Legislation may apply to governing bodies differently depending on the type of scheme they govern.

This sentence is accurate but is unfortunately not that helpful. In this section, there is specific reference to public service pension schemes (PSPs) as well as trustee boards. If it is

possible to set these differences out, it is questionable why it isn't possible to weave that distinction through the code, making clear where legislation *does not* apply to the LGPS or other PSPs. Outside of the investment section of the draft code, there is no reference elsewhere (that I can find) to elements of legislation not applying to the LGPS. Another example is with the following sentence:

The law also requires that members of certain governing bodies are fit and proper to carry out their duties.

The footnote refers to section 3 of the 1995 Act, which does not apply to the LGPS. Bearing in mind the distinction referred to above is made elsewhere in the section, it is questioned why a sentence can't be added to state that the legislation does not apply to the LGPS.

Where acting in a professional capacity, members of governing bodies should be financially sound and not experiencing severe trading difficulties, and have indemnity insurance

This sentence could be interpreted as applying to members of pensions committees and LPBs, where elected members could consider themselves to be acting "in a professional capacity". However, this does not apply to the LGPS. We agree that it is helpful to set out a list of behaviours and standards that are expected of members of relevant bodies; however, the same issue of clarity arises here as elsewhere around what is *legally* required, as opposed to expected/best practice.

For example, all councils are required to have a local Councillor Code of Conduct and elected members are subject to the Nolan Principles in all aspects of their work as councillors, do the behaviours listed supersede or add to these?

Although the approach of LGPS authorities will in the majority of cases be in line with that set out, that may not always be the case. It would perhaps be preferable if such statements were clearer and couched in language more appropriate to LGPS authorities. We are concerned that authorities will not be clear about the circumstances in which they may find themselves inadvertently in breach of the code.

The following paragraph implies that the LGPS is too inconsistent for a separate code to be appropriate. We can see how it would be resource intensive to provide a code specifically for the LGPS. However, we would suggest that it would not be onerous for TPR to set out where the law applies differently to the LGPS. It must be in TPR's interests for LGPS authorities to be clear what their legal obligations are. As an alternative, we would suggest that the LGPS SAB will need to produce a "guide" to the TPR code.

During the development of the new code we have received requests for a Local Government Pension Scheme (LGPS) specific version of the code. We have examined this request but, due to the various management structures that exist across the funds and their associated authorities it would be impractical to do so. Governing bodies of LGPS funds should consider their own governance arrangements and where responsibilities ultimately sit within them.

ROQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

See response to ROQ2. This module would be improved by being clearer about the specific requirements in the LGPS.

ROQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

Yes, if LGPS authorities are expected to match their obligations to those under this code and meet code obligations in addition to their own. See also answer to ROQ2.

ROQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No

Questions for: Recruiting to the governing body (TGB014)

REQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes – other than use of “governing body” as set out above.

REQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme’s own circumstances?

With regard to the scheme manager the legal requirement applying to the LGPS authorities which are councils are set out in the Local Government Act 1972 for membership of committees and delegation to other parties. The PSPA and the Local Government Pension Scheme Regulations 2013 set out the requirements for local pension boards. Each LGPS authority will operate its own processes within those accordingly.

It should be clear that LGPS authorities should follow those arrangements, which will in many ways match those in this section but in other not. For example, remuneration for councillors is governed by The Local Authorities (Members' Allowances) (England) Regulations 2003.

In our view LGPS authorities in respect of the scheme manager function should look to their own legislation and arrangements not to this section.

However, this section does apply to LGPS pension boards in relation to the requirement for representation and LGPS authorities may wish to have regard to the rest of the section as best practice when recruiting to those boards.

.

REQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

Yes

REQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

No

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

No

Questions for: Member-nominated trustee appointments (TGB044)

MEQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

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

This section is not relevant to the LGPS

MEQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

This section is not relevant to the LGPS

MEQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

This section is not relevant to the LGPS

MEQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

This section is not relevant to the LGPS

MEQ5: Do you have any further comments on the module that have not been covered by the previous questions?

Questions for: Role of the chair (TGB015)

RLQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

RLQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

The LGPS is not covered by the legislation quoted. Therefore, this section does not apply and rest of the answers to this section are marked as N/A.

RLQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

RLQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

RLQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Meetings and decision-making (TGB006)

MTQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

MTQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

Although the preamble refers to Section 249B of the 2004 Act Regulation 6 of the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 applies only to local pension boards and not pension committees or other decision-making arrangements within the LGPS authority. Arrangements for meetings and decision making for councils acting as LGPS authorities are set out in the Local Government Act 1972 and Local Government and Housing Act 1989 and applies to each council as appropriate. Therefore, it should be made clear that this section applies to LGPS local pension boards only.

MTQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

See above

MTQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

Yes, if LGPS authorities are expected to match their obligations under Regulation 6 of the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 to those under this code and meet code obligations in addition to their own. If the Regulator considers that scheme specific regulations and guidance are, in its view, insufficient to achieve effective governance then it should be clear in what way they are lacking, and how they should be changed to enable LGPS authorities to better approach investment governance.

MTQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No

Questions for: Remuneration policy (TGB016)

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

Yes

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

This section states that it does not apply to LGPS as a public service pension scheme but then goes on to state that such schemes may wish to adopt it as best practice. As covered above remuneration for councillors is governed by The Local Authorities (Members' Allowances) (England) Regulations 2003. Therefore, LGPS authorities which are councils cannot adopt this if it does not conform with those regulations.

However, the LGPS could adopt this as best practice for the remuneration of any members of pension boards and those of governing bodies where such arrangements are not covered by extant legislation preventing them from doing so.

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

No further comment

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

No unless TPR seeks to impose this section as an expectation of best practice rather than leaving it to each LGPS authority to determine if and how they may wish to use it

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

No

Questions for: Working knowledge of pensions (TGB017)

WOQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

WOQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

Although certain sections are marked as not applying to the LGPS this should also be clearer in the first two parts. The obligation for the LGPS under 248A of the Pensions Act applies only to pension boards, not the scheme manager.

Therefore, it should be made clear that the expectations as set out relate solely to pension board members. It may be that LGPS authorities could choose to use this list (including those elements marked as not for the LGPS) as best practice for the development of members of governing bodies as a collective but there can be no expectation placed on an individual member, even for purposes of best practice, for the reasons set out in a previous answer relating to elected members.

WOQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

No further comment

WOQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

Only if TPR expects elected members acting as members of governing bodies to meet these expectations on an individual basis as best practice

WOQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No

WOQ6: The expectations in these modules are based on longstanding existing guidance. Do the expectations provide a new member of a governing body with sufficient knowledge and understanding to enable them to fulfil their role?

No further comment

Questions for: Governance of knowledge and understanding (TGB005)

GOQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

GOQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

The obligations of Section 249A do not apply to the LGPS (249B applies). Therefore, this section does not apply and the rest of the questions are marked as N/A

GOQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

GOQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

GOQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

GOQ6: The expectations in these modules are based on longstanding existing guidance. Do the expectations provide a new member of a governing body with sufficient knowledge and understanding to enable them to fulfil their role?

N/A

Questions for: Building and maintaining knowledge (TGB003)

BUQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

BUQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

The obligation for the LGPS under 248A of the Pensions Act applies only to pension boards not the scheme manager.

Therefore, it should be made clear that the expectations as set out relate solely to pension board members. Furthermore, regulation 3 of the Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2006 sets out a period of grace from these expectations of six months for individual and corporate trustees. It would be helpful if the code clarified that a similar period should be provided to members of LGPS pension boards.

It may be that LGPS authorities may choose to use this section as best practice for the development of members of governing bodies as a collective but there can be no expectation placed on an individual member, even for the purposes of best practice, for the reasons set out in a previous answer relating to elected members.

BUQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

No further comment

BUQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

Only if TPR expects elected members acting as members of governing bodies to meet these expectations on an individual basis as best practice.

BUQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No?

Questions for: Value for scheme members (TGB009)

VAQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

N/A

VAQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

N/A

VAQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

VAQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

VAQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Managing advisers and service providers (TGB010)

MAQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

MAQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

The obligations of Section 249A do not apply to the LGPS (249B applies). Therefore, this section does not apply, and the rest of the questions are marked as N/A.

However, LGPS authorities may wish to make use of this in whole or as best practice provided it does not conflict with any existing legal requirements in such appointments such as public procurement regulations.

MAQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

MAQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

MAQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Identifying and assessing risks (TGB031)

IDQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes.

IDQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

For public service schemes, this section seems to overlap with the following section.

Therefore, please see responses to the "Managing risk using internal controls" (TGB032) section i apart from IDQ3 below.

IDQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

TGB032 includes a read across from COP 14 para 118 which would bear repeating in this section

IDQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

As above.

IDQ5: Do you have any further comments on the module that have not been covered by the previous questions?

As above.

Questions for: Managing risk using internal controls (TGB032)

MNQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

MNQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

Yes

MNQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

Yes there is sufficient detail. No suggestions on further information or guidance that would assist.

MNQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

No

MNQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No.

MNQ6: The expectations set out apply differently to different schemes. Is this clear from the module, and are governing bodies provided with enough leeway to address the expectations in the most appropriate way for their scheme?

In this instance it is clear enough that the module applies to PSPs.

Questions for: Assurance of governance and internal controls (TGB033)

ASQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes.

ASQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

Yes.

ASQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

Yes, there is sufficient detail. No suggestions on further information or guidance that would assist.

ASQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

No.

ASQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No.

Questions for: Continuity planning (TGB022)

COQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes.

COQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

Yes – it is clear that the legislation doesn't apply to PSPs but that it could be a useful guide as to best practice.

COQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

Yes there is sufficient detail. No suggestions on further information or guidance that would assist.

COQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

No.

COQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No.

Questions for: Conflicts of interest (TGB039)

CNQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes.

CNQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

Yes.

CNQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

While noting that only the final part (last para and 2 bullet points) applies to LGPS and only for pension boards, then yes there is sufficient detail. No suggestions on further information or guidance that would assist.

CNQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

No.

CNQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No.

Questions for: Own risk assessment (TGB045)

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

Yes.

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

Yes.

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

Yes there is sufficient detail. No suggestions on further information or guidance that would assist.

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

No.

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

No.

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

No comments as N/A to LGPS.

Questions for: Scheme governance (TGB046)

SCQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes.

SCQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

As per some of the comments on earlier sections, there is the potential for confusion in the LGPS around whether or not this section legally applies to the scheme. The following sentence *"We have broadly the same expectations for each type of scheme. However, the standard required to meet those expectations frequently differs according to scheme type and size. Where an expectation is different or applies differently in law for a specific type of scheme, this is made clear in this code"* states that is made clear where there is a difference in the law applying to a scheme – it is respectfully stated that it is not sufficiently clear in the case of the LGPS throughout the code.

SCQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

See above.

SCQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

See above.

SCQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No

SCQ6: Is it clear where all the features of an effective system of governance, are covered in code from the content of this module? If not, what needs to be clearer?
Yes.

TPR Combined Code Investment Section Response to questions

Investment governance (FAI001)

INQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes clear

INQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

No, with regard to the areas set out below:

Although the approach of LGPS authorities will in the majority of cases be in line with that set out that may not always be the case.

The statement that different obligations apply in LGPS but that the approach should be the same is potentially confusing for LGPS authorities. What happens if they feel their obligations are sufficiently different to take a different approach will they be in breach of the code? It would perhaps be preferable if the statement was clearer in respect of those elements which LGPS authorities have no obligation in law to follow.

For example - Scheme managers of the LGPS have obligations set out in legislation which are specific to them and which they must follow where they differ from those in this section. Where the approach to investment governance set out in this section add to those obligations LGPS authorities may wish to adopt a similar approach.

The remainder of this section goes on to refer to obligations on 'trustees' and legislation which is not applicable to LGPS authorities. At no time, apart from the general statement above, does it seek clarify that such obligations and legislation do not apply to LGS authorities nor does it make any reference to equivalent legislation which does apply.

INQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

Although the term 'governing body' is understandable in its intent it may benefit from further definition in respect of the obligations which are set out in this section. For example, in the list of obligations on governing bodies of DC and DB schemes.

Have a good working knowledge of investment matters relating to their scheme: There is no such equivalent requirement on LGPS elected members (if that is what is meant by governing body) – what would be expected as best practice for LGPS authorities? In particular is individual or collective knowledge expected?

Understand the investment powers and duties they have under the scheme trust deed, and rules and legislation (see also Working knowledge of pensions): There is no such equivalent requirement on LGPS elected members (if that is what is meant by governing body) – what would be expected as best practice for LGPS authorities? In particular is individual or collective understanding expected?

Appoint a suitably qualified person to advise on investments and obtain and consider proper advice before making investment decisions: Equivalent LGPS obligation is Reg 7 2016 'An

authority must, after taking proper advice....' Similar but no requirement for suitable qualification which may be a problem for those with independent advisors – whose call is the suitable qualification?

Produce a statement of investment principles (SIP), which covers their policies relating to the scheme's investments. Learn more in Statement of investment principles: Equivalent LGPS obligation is Reg 7 2016 Investment Strategy Statement which 'must' cover the items set out in that regulation, there is also an obligation under Reg 58 2013 for a Funding Strategy Statement which must have regard to CIPFA guidance. There will undoubtedly be crossover between the SIP and these two documents but is the expectation that LGPS authorities should also include all of the items in the SIP as 'best practice' or that they can, should they wish or that they can ignore these obligations?. LGPS authorities and their advisors and auditors must be clear about their obligations under this code to avoid confusion and duplication.

Produce an annual implementation report as part of their annual report and accounts (see Implementation report): No requirement for implementation report in LGPS legislation. Some parts of the report match the requirements for LGPS annual reports under reg 57 2013 but others do not. Is the expectation that LGPS authorities should also include all of the items in the implementation report as 'best practice' or that they can, should they wish or that they can ignore these obligations? LGPS authorities and their advisors and auditors must be clear about their obligations under this code to avoid confusion and duplication.

INQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

Yes, if LGPS authorities are expected to match their obligations to those under this code and meet code obligations in addition to their own.

If the Regulator considers that scheme specific regulations and guidance are, in its view, insufficient to achieve effective governance then it should be clear in what way they are lacking and how they should be changed to enable LGPS authorities to better approach investment governance.

INQ5: Do you have any further comments on the module that have not been covered by the previous questions?

No

Questions for: Investment decision-making (FAI003)

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

Yes

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

No, with regard to the areas set out below:

The legislation quoted in this part does not apply to LGPS authorities. The nearest equivalent legislation is Regulation 7 of the 2016 regs. These regulations are clear in what is expected and are backed up by Statutory Guidance 'Preparing and maintaining an investment strategy statement'.

In our view the expectations as set out in this section do not apply to LGPS authorities who should instead follow the applicable regulations and guidance as listed above and would wish for this to be made clear at the outset.

The rest of the answers to this section are therefore marked as N/A.

Recognising that this part does not apply to LGPS authorities we would nevertheless wish to comment on the statement that:

Unless there are exceptional circumstances, governing bodies should ensure no more than a fifth of scheme investments are held in assets not traded on regulated markets.

There does not appear to be a clear rationale for this statement especially given that large open DB schemes are increasingly looking to private markets to deliver the growth/income required to meet their liabilities within their appropriate risk appetite.

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

N/A

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

N/A

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

N/A

Questions for: Implementation report (FAI004)

IMQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

IMQ2 Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

No, with regard to the areas set out below:

The legislation quoted in this part does not apply to LGPS authorities. The nearest equivalent legislation is Regulation 7 of the 2016 regs. These regulations are clear in what is expected and are backed up by Statutory Guidance 'Preparing and maintaining an investment strategy statement'.

In our view the expectations as set out in this section do not apply to LGPS authorities who should instead follow the applicable regulations and guidance as listed above and would wish for this to be made clear at the outset. The rest of the answers to this section are therefore be marked as N/A.

IMQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

IMQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

IMQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Investment monitoring (FAI005)

IEQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

IEQ2 Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

No, with regard to the areas set out below:

LGPS authorities are exempt from the legislation quoted in this section. Each LGPS authority will, depending on its constitution, have its own legislation, guidance and codes to follow with regard to governance and internal controls.

Therefore despite the statement that LGPs authorities should approach investment monitoring in the same way it is our view the expectations as set out in this section do not apply to LGPS authorities who should instead follow the regulations and guidance as applicable to them and would wish for this to be made clear at the outset.

IEQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

IEQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

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

IEQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Stewardship (FAI006)

STQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

STQ2 Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

No, with regard to the areas set out below:

The legislation quoted in this part does not apply to LGPS authorities. The nearest equivalent legislation is Regulation 7 of the 2016 regs. These regulations are clear in what is expected and are backed up by Statutory Guidance 'Preparing and maintaining an investment strategy statement'.

In our view despite the statement that *governing bodies with investment responsibilities follow the principles set out below, even if they are not legally required to have an effective system of governance*, the expectations as set out in this section do not apply to LGPS authorities who should instead follow the applicable regulations and guidance as listed above and would wish for this to be made clear at the outset.

STQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

STQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

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

STQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Climate change (FAI011)

CLQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

CLQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

No, with regard to the areas set out below:

The legislation quoted in this part does not apply to LGPS authorities. The nearest equivalent legislation is Regulation 7 of the 2016 regs. These regulations are clear in what is expected and are backed up by Statutory Guidance 'Preparing and maintaining an investment strategy statement'.

Furthermore, new regulations in this area are expected from MHCLG this year to be supplemented by guidance. Until these are published LGPS authorities will not know what their obligations are neither in principle nor detail.

In our view the expectations as set out in this section do not apply to LGPS authorities who should instead follow the applicable regulations and guidance as listed above and would wish for this to be made clear at the outset.

The rest of the answers to this section are therefore marked as N/A.

CLQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

CLQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

CLQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Statement of investment principles (FAI008)

SAQ1: Is the title of the module a fair reflection of the content provided within it? If not, what would be a clearer description of this content?

Yes

SAQ2: Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?

No, with regard to the areas set out below:

The legislation quoted in this part does not apply to LGPS authorities. The nearest equivalent legislation is Regulation 7 of the 2016 regs. These regulations are clear in what is expected and are backed up by Statutory Guidance 'Preparing and maintaining an investment strategy statement'.

In our view the expectations as set out in this section do not apply to LGPS authorities who should instead follow the applicable regulations and guidance as listed above and would wish for this to be made clear at the outset.

The rest of the answers to this section are therefore marked as N/A.

SAQ3: Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?

N/A

SAQ4: Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?

N/A

SAQ5: Do you have any further comments on the module that have not been covered by the previous questions?

N/A

Questions for: Default arrangements and charge restrictions (FAI010)

No comments as clearly not applicable