

Nick Gannon
Regulatory Policy
The Pensions Regulator
Napier House
Trafalgar Place
Brighton BN1 4DW

26 May 2021

The Pensions Regulator – new code of practice consultation

Thank you for the consultation inviting comments on the draft content for the first phase of your new code of practice.

I respond on behalf of the Local Government Pensions Committee (LGPC) of the Local Government Association (LGA).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. In total, 327 local authorities are presently members of the LGA. The LGPC is a committee of councillors constituted by the LGA, the Welsh Local Government Association (WLGA) and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS) in the UK, a scheme which has over 5.9 million members.

The annex to this letter sets out the LGPC's views on the sections below:

- Administration
- Communications and disclosure
- Reporting to TPR.

I hope the response is helpful; if you have any questions, please do not hesitate to contact me.

Yours faithfully



Jeff Houston
Head of Pensions

Administration

Administration (ADM001)

2. 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, the module refers to section 249A of the Pensions Act 2004 and the obligation on governing bodies of *certain schemes*. It then goes on to say that section 249B applies to Public Service Pension Schemes (PSPS) and that '*every governing body should have some of the following measures in place, although the measures will vary depending on the nature of the scheme and the legal obligations to which it is subject*'.

It is not easily identifiable which of the measures should be in place for the LGPS scheme managers and this could lead to different interpretations. It would be helpful if your expectations were made clearer.

The planning and preparation section seems heavily focussed on third party administration which is not applicable to the majority of LGPS administering authorities.

In the online version of the code there is a link at the bottom of the page to 'Administration: detailed guidance'. This links to a section on managing DC benefits which is not appropriate for the LGPS and could be confusing for users.

Financial transactions (ADM002)

2. 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?

Mostly, however on page 84 of the full draft, the final paragraph refers to the governing bodies of public service pension schemes. It would be more appropriate to use the term scheme managers in this context, as defined in the relevant legislation.

Transfers (ADM014)

2. 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?

Not entirely. We think there is an error on page 87 of the full draft. It states that '*the transfer process under legislation will typically begin when the governing body receives a request from an eligible scheme member for a statement of entitlement. This will include their cash equivalent transfer value (CETV). The governing body must provide the statement within two months of receiving the request, unless this information has been provided in response to a request in the previous 12 months.*'

This is not correct. Regulation 14 of the Disclosure Regulations 2013 relates to the purchase of a transfer credit in exchange for a CETV or transfer payment. It does not relate to the provision of a CETV. A statement of entitlement must be provided to the member within 10 days of the guarantee date (section 93A of Pension Schemes Act 1993 and regulations 6 & 11 Occupational Pension Schemes (Transfer Value) Regulations 1996). In turn, the guarantee date must be within three months beginning with the date of the member's application for a statement of entitlement (section 93A Pension Schemes Act 1993 and regulation 6 Occupational Pension Schemes (Transfer Value) Regulations 1996).

Page 89 of the full draft recommends retaining written confirmation that advice was received by the member for at least six years. We appreciate the words 'at least' but given that most claims for mis-selling / incorrect advice arise years later, often only when a member comes to take payment of their benefits, we would recommend a much longer retention period.

Scheme records (ADM003)

2. 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?

Not entirely. The fourth bullet point under administrative systems on page 92 of the full draft needs clarifying. It suggests that a projection of benefits should be included in the information provided in an annual statement. The footnote refers to section 14 of the Public Service Pensions Act (PSPA) 2013 and the Occupational Pension Schemes (Disclosure of information) Regulations 2013. It is not clear if this is referring to the annual

benefit statement or an information request under regulation 16 of the Disclosure Regulations 2013.

Section 14 of the PSPA 2013 relates specifically to the provision of annual benefit statements. However:

- The PSPA 2013 says the statement must include a description of the benefits earned by the person and such other information as Treasury directions may specify.
- The Public Service Pensions (Information about Benefits) Directions 2014 in turn provide a scheme must include the information listed in Parts 1 and 2 of Schedule 5 to the Disclosure Regulations 2013.
- The Disclosure Regulations 2013 provide that the scheme manager can choose to provide **one** of the following:
 - amount payable on a date specified by the managers of the scheme
 - amount payable if the member were to continue in pensionable service until normal pension age
 - amount that would be payable on a date agreed between the member and the managers of the scheme.

There is therefore no requirement to project benefits in the annual benefit statement for the LGPS.

Data monitoring (ADM006)

2. 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?

On page 96 of the full draft, the term decumulating is used in the universal requirements section; however, it is not a term that is used in DB schemes. Would it be more applicable to use the term taking benefits instead?

Maintenance of IT systems (ADM015)

No comment

Cyber controls (ADM016)

2. 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?

In the glossary, having a separate definition of governing bodies without specifying it only relates to this section is not helpful – the definition does not include public service pension schemes for this section. This could cause confusion when reading other sections.

Receiving contributions (ADM007)

2. 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, it is not clear what TPR expects of the LGPS in this section.

- Page 103 of the full draft says 'unless exempt, a governing body should ensure it has the following measures listed below in place'.
- Regulation 17 of the OPS (Scheme Funding) Regulations 2005 exempts the LGPS and other PSPS from the measures set out on pages 104 and 105.

So, initially it appears that there is no expectation from TPR for the LGPS to comply with the measures; however, footnote RC6 refers to the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 so clearly there is some expectation?

We think the code should recommend that the measures on these pages be adopted as best practice for the LGPS.

Monitoring contributions (ADM008)

2. 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?

Not entirely, page 107 of the full draft mentions reporting contribution payment failures and it refers to section 88(1) of the Pensions Act 1995. This section only applies to money purchase pension schemes.

It would be helpful if the code could clarify the expectation of the LGPS in this area and, if appropriate, link to section 49(9) of the Pensions Act 1995.

The timescale of seven days for employers to provide payment information on request is welcome and appropriate. However, the requirement for scheme managers to report to you within 14 days of the date of initial request, where requested payment information is not supplied, is too short. A period of 21 days would more appropriate.

Also, do you want scheme managers to report to you in every case, or just when the situation is deemed to be of material significance? For example, where:

- an LGPS administering authority has a good relationship with a scheme employer
- the payment information is late due to extenuating circumstances, and
- the employer agrees to rectify the situation just outside of the 14-day limit

would you still expect the scheme manager to report this to you? This seems too prescriptive and could damage the working relationship between the scheme employer and the administering authority.

Resolving contributions (ADM011)

2. 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?

Again, not entirely, as page 111 mentions reporting contribution payment failures and it refers to section 88(1) of the Pensions Act 1995. This section only applies to money purchase pension schemes.

It would be helpful if the code could clarify the expectation of the LGPS in this area and, if appropriate, link to section 49(9) of the Pensions Act 1995.

Communications and Disclosure

General principles for member communications (CAD001)

2. 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 module is quite high level so your expectations are not set out in any detail. We think it would be helpful if the module also referred to the need to comply with scheme rules and any overriding requirement, for example, website accessibility standards for public sector websites.

Statutory financial statements (PSPS) (CAD012)

2. 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, although we think pension credit members should be included in the sentence below.

'They must also provide annual benefit statements to deferred members of the scheme where this is required by scheme regulations.'

Retirement risk warnings and guidance (CAD004)

2. 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, appendix 1 says this module does not apply to PSPS; however, we think it does apply to LGPS administering authorities in respect of the in-house AVC facility.

An in-house AVC scheme is established under an agreement between the appropriate LGPS administering authority and the AVC provider. The LGPS is, therefore, responsible for the disclosure requirement under regulations 18 to 20 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 for any members with an in-house AVC.

Short service refunds (CAD016)

2. 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, as much of the content in this module is not relevant to the LGPS. The first paragraph says:

'Individuals automatically enrolled into a pension scheme, who opt out within one month have their contributions returned, less tax. This is not a refund of contributions.'

However, regulation 5(5) of the LGPS Regulations 2013 provides that where a member opts out within three months of joining, they are treated as though they have never been a member of the scheme in that employment.

The sixth paragraph says:

'The governing body should provide this information within three months of the date the member left service. Governing bodies should advise members where it is likely to take more than three months to provide the information.'

We assume this only relates to the requirement under 101AC of the Pension Schemes Act 1993 (notification of right to a cash transfer sum or contribution refund) and not to the deferred benefit entitlement statement? It would be helpful if this is made clearer.

In relation to early leavers with a right to a deferred benefit, there is no mention of the requirement under regulation 27A of the Occupational Pension Scheme (Preservation of Benefits) Regulations 1991. This requires that the governing body provides early leavers with the information about the rights and options available to them within two months of leaving. For clarity, we do not interpret this a requirement to send a deferred benefit entitlement statement. This is provided for by regulation 72 of the LGPS Regulations 2013.

Scams (CAD005)

2. 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

Publishing information about public service pension schemes (CAD010)

2. 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

Dispute resolution procedures (CAD015)

2. 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?

Not in respect of the below:

‘Governing bodies must follow the dispute procedure to resolve various matters. Dispute procedures may be used to resolve other disputes where alternative arrangements do not exist.’

This paragraph is unhelpfully vague and needs to be explained in further detail. It would be helpful to include the information included in section 50(3) and (9) of the Pensions Act 1995.

Paragraph five says that *‘governing bodies must ensure their scheme’s procedures allow a reasonable period, which should be at least six months, for certain people’*. We think it would be helpful if it is made clear that this period relates to the time the applicant has to make their complaint, rather than the whole scheme procedure.

Page 135 of the full draft sets out your expectations of reasonable time periods for the governing body to respond. These differ to those set out in the LGPS Regulations and it would be helpful if the module could make it clear that the scheme rules may specify shorter timescales, which is the case for the LGPS.

Reporting to TPR

Registrable information and scheme returns (RTT001)

2. 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

Who must report (RTT003)

2. 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

Decision to report (RTT004)

2. 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?

Not in the respect that the legal requirement for knowledge and understanding only applies to the local pension board (Pensions Act 2004 section 248A).

How to report (RTT005)

2. 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