

JOHN RAISIN FINANCIAL SERVICES LIMITED

Haringey Pension Fund

The Pensions Regulator: General code of practice

A paper by the Independent Advisor

February 2024

1. Background

The Public Service Pensions Act 2013 extended the role of The Pensions Regulator (TPR) to include public service pension schemes including the Local Government Pension Scheme (LGPS) from 1 April 2015.

With regard to the LGPS The Pensions Regulator (TPR) now has responsibilities in relation to Governance and particularly Administration. However, the Pensions Regulator's role has not been extended to funding and investment issues within the LGPS which remain the responsibility of the particular Secretary of State whose remit includes the LGPS.

Schedule 4 of the Public Service Pensions Act 2013 requires TPR to issue a Code of Practice or Codes of Practice in respect of certain specified matters. In response to this requirement TPR issued Code of Practice No 14 "**Governance and administration of public service pension schemes.**" which came into effect as Code No 14 from 1 April 2015. This Code of Practice is applicable both to the Haringey Pension Fund and the individual Employers within the Fund.

The role of TPR in non-public service pension schemes is wider than in the public service schemes and also includes funding and investment issues. TPR has issued a total of fifteen of Codes of Practice which are applicable to various aspects of the governance and operation of non-public service pension schemes.

On 17 March 2021 TPR published a consultation on a new Code of Practice which it was proposed would convert and update the content of ten of the existing Codes including Code of Practice No 14. This Consultation closed on 26 May 2021. TPR issued an Interim Consultation response on 24 August 2021 and a Final Consultation response on 10 January 2024.

On 10 January 2024 TPR also published its **General code of practice** which is due to come into force on 27 March 2024. Although this new Code is 171 pages long it is significantly shorter than the ten codes it replaces. The General Code includes content which is both updated and new. Two issues of particular note for public service schemes, including the LGPS, are the (new) modules on "Cyber Controls" (pages 115 to 117) and "Scams" (page 145).

2. Introduction to the General code of practice

The Pension Regulator (TPR) General code of practice seeks to introduce, as far as practical, comparable standards across all types of Pension Schemes and to make it easier to maintain and update these. The General code comprises five areas which are in turn broken down into fifty one modules. The five areas are:

- **The governing body**
- **Funding and investment**
- **Administration**
- **Communications and disclosure**
- **Reporting to TPR**

It must however be clearly stated that not every part of the General Code applies to all pension schemes. As TPR states (page 6 paragraph 1) *“This code applies to governing bodies of occupational, personal, and public service pension schemes. Some legal obligations do not apply to all types of governing bodies or schemes.”*

In considering the General Code it is vital to draw a distinction between the governance requirements placed upon occupational pension schemes and public service schemes under Section 249 of the Pensions Act 2004 (As amended) in relation to scheme governance requirements. This issue is covered on pages 68 and 69 of the General Code. As is stated at Page 68 paragraph 2 *“The standards of governance required by law depend on the type of scheme the governing body operates.”*

Section 249A (1) of the Pensions Act 2004 (As amended) states that *“The trustees or managers of an occupational pension scheme must establish and operate an effective system of governance including internal controls.”* In contrast Section 249B (1) states that *“The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed...”* A clear difference is between the requirement for *“effective”* which applies to non-public service schemes and *“adequate”* which applies to public service schemes including the LGPS.

TPR make two statements, at page 69 paragraphs 6 and 7 regarding their *“expectations”* regarding non public service schemes (covered by Section 249A) and public service schemes (covered by Section 249B). These are:

- *“We have broadly the same expectations for each type of scheme...However, the standard required to meet those standards 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. Where an expectation does not apply to a scheme because the law doesn't apply, the governing body may wish to consider whether the principles should be adopted as good practice.”*

The above statements clarify that while there is a different legal applicability of the Code between non public and public service schemes the TPR anticipates high standards from all schemes and that where a provision does not apply legally the scheme “may” still “wish to consider whether the principles should be adopted as good practice.” This however does not mean that a LGPS scheme should adopt aspects of the Code that specifically refer to a (non-public service) scheme required to operate an “effective system of governance.”

3. Applicability of the General Code to the LGPS

As has been stated above not all of the General Code applies to the LGPS. Within the General Code TPR make references which seek to indicate the applicability of the contents of the Code to different schemes and which provide some clarity.

However, these references are not sufficient to define in all cases exactly which of the numerous requirements of the Code apply to the LGPS. Consequently the Local Government Pension Scheme Advisory Board for England and Wales (SAB) stated on 19 January 2024 that *“The Secretariat is studying the Code closely to identify any new requirements for funds...”* and that *“Clarity is required on which parts of the Code specifically apply to the LGPS and what these mean for funds and how they should be applied in practice. The SAB will support funds in understanding any new requirements in the Code and where needed, will produce new or update existing guidance to assist funds with their responsibilities.”*

While clarity is required on the exact applicability of the General Code to the LGPS it can be said those modules which subject content are also covered in the existing Code No 14 are, overall, those within the General Code where there will clearly (continue to) be significant requirements on LGPS Funds. These include, for example - Knowledge and understanding, Conflicts of interest, Publishing scheme information, Internal Controls, Record keeping, Data monitoring and improvement, Contributions (Receiving, Monitoring, Overdue), Benefit information statements, Dispute resolution procedures, and those modules (Who must report, Decision to report, How to report, Reporting payment failures) in the “Reporting to TPR: Whistleblowing – reporting breaches of the law” section of the General Code. Therefore, it can certainly be stated that significant aspects of the new General Code do apply to the LGPS.

In addition, there will certainly be additional requirements on LGPS Funds arising from the new General Code. The modules on Cyber security and Scams certainly have applicability to the LGPS.

Unlike all other LGPS Funds (except Hampshire) the Haringey Fund does not exercise its governance functions utilising a (separate) Pensions Committee which exercises the “scheme manager” (decision making role) and a Pensions Board which has the role of “assisting” the Committee but does not (normally) have a decision making function. Haringey operates a combined Pensions Committee and Board which exercises both the “scheme manager” and “assisting” role. Therefore, the Haringey Fund should determine to what extent this arrangement means that the TPR General Code is more applicable to the Haringey Pensions Committee and Board than is usual for a LGPS Pensions Committee. The obvious example is in respect of the statutory requirement for “knowledge and understanding” which in the case of a LGPS Fund does not fall on the members of the Pension Committee but the members of the Pension Board (by virtue of Schedule 4 of the Public Service Pensions Act 2013 and Section 248 of the Pensions Act 2004 (As amended)).

Also even where an aspect of the General Code does not actually “apply” to LGPS Funds, as is the case in relation to establishing and operating an effective system of governance (ESOG) – see pages 68 to 71, or the Own risk assessment (ORA) pages 61 to 64, there are principles and practices which in reality could, or in some cases should, be adopted by the LGPS.

The area of the Code which clearly has the least applicability to the LGPS is that covering **Funding and investment** (pages 72 to 93). This is because TPR does not have responsibility in relation to LGPS funding and investment (which remains the responsibility of the Secretary of State whose remit includes the LGPS – at present the Secretary of State for Levelling Up, Housing and Communities) and also because from the narrative within this area it is clearly directed at non-public service pension schemes as is exemplified, for example by the legislative references utilised. However, even within this Funding and investment area it will be beneficial to LGPS Funds if the Local Government Pension Scheme Advisory Board for England and Wales (SAB) provides clear guidance – for example where LGPS Funds may or should apply elements as “good practice.”

4. What should the Haringey Fund be doing?

As explained above the exact applicability of the TPR General Code to the LGPS is not absolutely clear. The SAB however has stated (on 19 January 2024) that it *“will support funds in understanding any new requirements in the Code and where needed, will produce new or update existing guidance to assist funds with their responsibilities.”* Therefore, the Haringey Fund should pay particular attention to any guidance issued by SAB in relation to the TPR General Code.

However, the Haringey Fund should not simply wait for SAB guidance but should seek to assess its compliance with those relevant requirements of the TPR General Code as soon as it comes into force which is expected to be on 27 March 2024. Actions that the Fund should take include:

- To go through the Code in detail to assess, as far as it is able, which elements of the Code clearly apply to the LGPS.
- Assess to what extent the Haringey joint Pensions Committee and Board arrangement means that the TPR General Code is more applicable to the Haringey “scheme manager” (decision making body) than is usual for a LGPS Pensions Committee.
- Assess the Fund’s current compliance/arrangements against the General Code.
- Produce a plan to make changes or enhancements to ensure necessary compliance.
- Seek to determine which elements of the General Code though not applicable to the LGPS may represent good practice for the Fund and plan to make any consequent changes or enhancements.
- In doing the above the Fund should attend relevant seminars/webinars on the implications of the General Code for LGPS Funds (which may be held prior to 27 March 2024). These may be offered by organisations including SAB and the Actuarial/Investment Consultants who support the LGPS.
- Use, if/as the Fund considers appropriate any tools and/or LGPS specific training relating to the General Code available from the Actuarial/Investment Consultants who support the LGPS.
- Take particular cognisance of any relevant guidance when issued by SAB.
- Report to the Committee and Board on a regular basis progress towards compliance with those parts of the Code that are determined to be applicable to the Haringey Fund and those which are considered to be good practice.

5. Conclusion

The TPR General Code seeks to ensure that pension schemes adhere to relevant legislation and guidance in their governance and operation and to promote good practice.

It will take time and effort to assess the exact applicability of the TRP General Code to the Haringey Fund and to effect any necessary changes or enhancements.

However, all LGPS Funds must be aware that going forward, and having given time for assessment and implementation, where The Pension Regulator (TPR) find that any Fund is not doing what they should do under the General Code they could, and likely will, use their regulatory powers against the Fund in question.

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19 February 2024

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