STEPHENSON HARWOOD

pensions law group

CLEAR VIEWS

The Pensions Regulator's Draft Single Code of Practice

SUMMARY

A draft single code of practice (the **Single Code**) has been published by The Pensions Regulator (**TPR**). The Single Code deals with the governance and administration of pension schemes and applies to pension scheme trustees.

The initial draft is part of a first phase intended to replace ten existing codes of practice. TPR plans to replace all existing codes of practice into the Single Code in a series of phases. TPR also plans to review all existing guidance.

In addition to merging ten existing codes of practice, the Single Code covers new topics such as remuneration, stewardship and climate change.

The Single Code sets out TPR's expectations for compliance with the law. It is not legally binding, but the courts and TPR may take compliance with the Single Code into consideration in deciding whether a statutory requirement has been met. In practice, therefore, compliance with the Single Code is likely to be seen as mandatory.

In due course trustees will need to familiarise themselves with the Single Code and review their existing internal controls and procedures in line with the Single Code.

WHY IS TPR DRAFTING A SINGLE CODE?

TPR is drafting the Single Code so the content of its 15 existing codes of practice can be combined into a simpler, shorter code.

There will be a phased transition to the Single Code, with the first phase consolidating ten existing codes (although consultation is already underway in relation to other areas for consolidation). The Single Code is designed to be a clearer and more accessible. The Single Code is intended to be a 'living document' which will be routinely updated by TPR in line with new law and policy changes.

TPR launched a consultation exercise on the Single Code in March 2021; that consultation closed on 26 May 2021. Once the Single Code is finalised it will require parliamentary approval before it comes into effect.

There are five sections in the draft Single Code:

1 The governing body

2 Funding and investment

3 Administration

4 Communications and disclosure

5 Reporting to TPR

Each of these sections is sub-divided into subject areas which are then divided into shorter sub-sections, referred to as **modules**. There are 51 modules in the draft Single Code which are web-based so they can be easily navigated.

WHAT CODES OF PRACTICE WILL THE FIRST DRAFT OF THE SINGLE CODE COVER?

The following existing Codes of Practice are incorporated into the Single Code.

Code of Practice	Part of new code?
01: Reporting breaches of the law	✓
02: Notifiable events	x
03: Funding defined benefits	x
04: Early leavers	✓
05: Reporting late payment of contributions to occupational pension schemes	✓
06: Reporting late payment of contributions to personal pension schemes	✓
07: Trustee knowledge and understanding (TKU)	✓
08: Member nominated trustees/member nominated directors – putting arrangements in place	✓
09: Internal controls	✓
10: Modification of subsisting rights	x
11: Dispute resolution – reasonable periods	✓
12: Circumstances in relation to the material detriment test	x
13: Governance and administration of occupational trust-based schemes providing money purchase benefits	✓
14: Governance and administration of public service pension schemes	✓
15: Authorisation and supervision of master trusts	x

Although the draft Single Code does not cover any of the new provisions brought in by the Pension Schemes Act 2021, these will be covered by later phases.

WHO WILL THE SINGLE CODE APPLY TO?

The Single Code will apply to **governing bodies** of occupational, personal and public service pension schemes. This definition covers the trustees or managers of occupational pension schemes, managers of personal pension schemes and the managers and/or pension boards of public service schemes regulated by TPR.

WHAT'S NEW?

As well as consolidating existing requirements, TPR has taken the opportunity to include some new requirements in the draft Single Code.

New requirements	Summary	Trustees' action points
Remuneration policy	The remuneration policy module applies where an occupational pension scheme has more than 100 members. It does not apply to public service schemes and authorised master trusts. The remuneration policy must set out the details of levels and means for remunerating those undertaking activities in relation to the scheme paid for by the governing body or sponsoring employer. TPR's detailed expectations are set out in the remuneration policy module.	The governing body should keep a written record of the remuneration policy. The policy should be proportionate to the size, scale, nature and complexity of the scheme's activities and should be reviewed at least every three years. That said, TPR considers that, in most cases, it will be appropriate to review the remuneration policy annually (or immediately following any significant changes to the scheme's governance arrangements). The policy should be published on the scheme's website or otherwise made available to scheme members.
Own risk assessment (ORA)	Governing bodies of schemes with 100 or more members should carry out and document an ORA of their effective system of governance (see below). The ORA is an assessment of how well governance systems are working and the way potential	A governing body should prepare and document its first ORA within one year of the Single Code coming into force. Each subsequent ORA should be reviewed and documented within 12 months of the last (or sooner

New requirements	Summary	Trustees' action points
	risks are managed. The ORA module sets out TPR's expectations in relation to this requirement and provides a detailed list of the elements that schemes must consider. Those elements encompass documentation, policies for the governing body, risk management policies, investment governance processes, administration and payment of benefits.	if there is a material change in the risks facing the scheme or to its governance process). This is more frequent than the three-year review required under regulations. Records of the ORA do not have to be sent to TPR but TPR may ask to see it. The ORA should be proportionate to the size, nature and complexity of the scheme. TPR notes that, as the ORA is a "substantial process", the governing body may need to expand its risk assessments to satisfy TPR's expectations.
Scheme governance	The Pensions Act 2004 requires trustees of occupational pension schemes to "establish and operate an effective system of governance including internal controls ... proportionate to size, nature, scale and complexity ..." of the scheme's activities. The scheme governance module contains the requirements for, what TPR refers to as, an effective system of governance (**ESOG**). The module then lists other modules where TPR's expectations for ESOG are set out in detail. TPR notes that it has broadly the same expectations for each type of	A governing body should ensure that each element of their ESOG is subject to a regular internal review. Policies should be established and maintained for the review of each element of the ESOG. Policies and each element of the ESOG should be reviewed at least every three years (although it is not necessary for trustees to review all elements of an ESOG at the same time).

New requirements	Summary	Trustees' action points
	scheme. However, the standard required to meet those expectations will differ according to scheme type and size.	
Investment decision-making	This module sets out the requirements and processes that governing bodies of trust-based pension schemes with 100 members or more should have in place to effective, timely and appropriate management of investments. Governing bodies of relevant schemes (and investment managers to whom responsibilities are delegated) must invest in a way that ensures security, quality, reasonable liquidity and profitability for the scheme as a whole. Governing bodies should also invest scheme assets predominantly in regulated markets.	Legislation does not set a limit as to the amount of investments to be held in assets not traded on regulated markets. However, the module states: *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.*
Stewardship	In the stewardship module TPR states that governing bodies should take an active role in exercising the rights and responsibilities given to them through investments. TPR therefore recommends that governing bodies with investment responsibilities follow the principles set out in the stewardship module, even if they are not legally required to have an ESOG.	Where a governing body has investment responsibilities it should follow the principles set out in the stewardship module even if not legally required to have an ESOG.

New requirements	Summary	Trustees' action points
Climate change	Governing bodies of schemes with 100 members or more (or, as a matter of best practice, governing bodies of other schemes) should: ▪ Consider the possible short, medium and long-term effects of climate change on the objectives of the scheme and its operations. ▪ Maintain and document processes for identifying and assessing climate-related risks and opportunities. ▪ Integrate these processes into their risk management and governance arrangements. ▪ Ensure the governing body oversees, assesses and manages climate-related risks and opportunities related to the scheme.	An ESOG should ensure that consideration of environmental factors is part of the governing body's investment decision-making. Governing bodies of certain schemes are already required to include their environmental, social and governance considerations in their statement of investment principles. The module demonstrates the increasing importance that governing bodies should place on short and long-term climate change risks and opportunities. The module does not (yet) include the new climate change governance requirements currently set out in draft regulations and which are expected to come into force on 1 October 2021.
Financial transactions	Governing bodies of defined contribution schemes are currently required to ensure that "core financial processes" are processed promptly and accurately. TPR appears to extend this to all scheme types.	Governing bodies should ensure that financial transactions are properly managed as part of their internal controls.

New requirements	Summary	Trustees' action points
Maintenance of IT systems	TPR now expects governing bodies to ensure that they have appropriate IT systems in place which are reviewed and maintained regularly. Those IT systems should be able to meet the scheme's current needs and legal requirements. Governing bodies should also ensure that service providers are able to demonstrate they meet TPR's expectations.	Governing bodies should request evidence from service providers that they can meet current and anticipated system requirements. Governing bodies should also review IT policies and procedures to ensure internal control requirements are met and ensure that they have a written policy for maintaining and upgrading hardware and software.
Cyber controls	TPR now has a direct expectation of governing bodies to take steps to reduce cyber risk and sets out a list of requirements within this module.	Measures which governing bodies take to reduce cyber risk should be included within the ESOG.
Resolving contributions	A scheme should report to TPR any employer failure to pay employee contributions to the scheme within 14 days where the governing body believes that the payment failure is likely to be materially significant. Members should then be notified within 30 days of the report to TPR.	This is a change from the existing Codes of Practice which require schemes to make reports to TPR within ten working days. Governing bodies should check that reporting failures are reported within the correct timeframes.

WHAT NEXT?

The Single Code is currently only in draft form and the remaining Codes of Practice are still to be incorporated in it - it may therefore take some time for TPR to finalise it. However, trustees could usefully start to familiarise themselves with the Single Code and, in due course, review their existing internal controls and procedures in line with it.

Contacts

PHILIP GOODCHILD

PARTNER, Pensions

T: +44 20 7809 2166
E: Philip.Goodchild@shlegal.com

STEPHEN RICHARDS

PARTNER, Pensions

T: +44 20 7809 2350
E: Stephen.Richards@shlegal.com

GRAHAM WRIGHTSON

PARTNER, Pensions

T: +44 20 7809 2557
E: Graham.Wrightson@shlegal.com

MARK CATCHPOLE

CONSULTANT, Pensions

T: +44 20 7809 2059
E: Mark.Catchpole@shlegal.com

JULIA WARD

PROFESSIONAL SUPPORT LAWYER, Pensions

T: +44 20 7809 2028
E: Julia.Ward@shlegal.com

STEPHENSON HARWOOD