

SPP Template Single Code of Practice consultation response form

GENERAL QUESTIONS

Updates

We welcome any observations about a possible regular process for issuing updates to the new code.

- For example, should updates be annual, or at longer intervals?
- Please advise us of any concerns about regular updates. We would also be interested to hear about any topics that we should prioritise for inclusion in the new code.

As the Code will be built up with later material on funding, material detriment, subsisting rights, etc. then we expect further iterations. In principle, to make the changes manageable in terms of an industry adapting to increasing demands, we believe that the Code should be updated NO MORE FREQUENTLY than once a year while 'missing' modules are added or changes made to existing content. As required under s91 PA04, the Pensions Regulator must consult such persons as it considers appropriate and, assuming that this will always mean a public consultation, we ask that sufficient consultation time be given on draft updates.

To be workable each of the revised Code's requirements must be assimilated and this requires time to assess, undertake training and apply the principles; so there must be a clear and reasonable period of time before updates become effective.

Given the Parliamentary process involved preceded by consultation, an annual change is likely to be the only practicable outcome in the early years. It may help to ease understanding if the Code is only brought in each case at a regular point, such as the start of the tax year or calendar year – or to coincide with the dates on which DWP legislation is updated (i.e. April or October).

Beyond that we expect greater stability so that in some years the Code would not need alteration and long term there may be several years between revisions.

It is essential that each proposed change after the initial Code is finalised is presented with a marked up audit trail revision of the text compared with the previous version as, for example, the FCA does when presenting instruments making new rules.

Version control is also vital so that the Code in force at any point in time can easily be found and searched. Ideally TPR should allow users to input an historic date and see the version of the Code in force at that point.

Guidance

Which pieces of guidance, or topic areas, should be prioritised for updates following the introduction of the new code?

It is a concern that the linked guidance to the Code is not also to be presented. We expect TPR to join up guidance so that it is available with the new Code.

Guidance on the new areas of the Code are therefore priorities to develop, particularly the modules on the ESOG, Risk including the ORA, and also Climate Change.

We suggest before the new Code is laid before Parliament the linked guidance is published in draft for comment along with the updated Code (following consultation responses) in a second consultation. This will ensure that expectations are in sync.

As TPR are looking to review the effectiveness of SIPs and Implementation Statements at the end of this year, it would be helpful if this review fed into any relevant guidance. TPR's guidance for completing the

Chair statement is helpful, with its examples of good and bad practices, and we would suggest this approach is considered for SIPs and ISs too.

In addition, the following areas for guidance should be considered, reflecting the direction of travel for many schemes:

- Guidance on governing body support: executive and Secretarial resources – roles, sources of services, sufficiency, agreement with the Employer. This area is often a constraint on schemes.
- Guidance on the trustees' approach where an Employer intends to change the scheme governance model e.g. to a Professional Corporate Sole Trustee (PCST), a DB consolidator, a DC (or DB) Master Trust – what is expected of the governing body before, during and where relevant, after, such a change.
- Guidance on expectations for DB governing bodies in the period whilst securing a full buy-out, through to a wind up.

We assume areas of work such as the TPR Diversity & Inclusion (D&I) initiative will form part of a periodic update, with guidance, once agreed.

The Trustee Toolkit is an important resource and needs to stay in step with the Code and the guidance, and particularly for the new areas of the Code.

Governing bodies

Do users understand the term “governing body”? Would another term work better?

We believe this term is satisfactory apart from in relation to certain public service schemes and will be understood by most Code users in all scheme types.

It is though an issue for public service schemes, where the role of a chair is completely different from that for a trustee board. The chair, in relation to a public service scheme, assists the scheme manager and does not have a fiduciary responsibility. Please see our response to CAD010. For example, in the LGPS, the scheme manager and the responsible authority (which would, presumably, be the governing body in the eyes of the Pensions Regulator) are two different entities. We would, therefore, suggest usage of terminology, consistent with that defined in the PSPA13, would aide in clarifying which body is expected to undertake which duty.

Public Sector Equality Duty (PSED)

We would be interested to understand if there are any aspects of our expectations users think would discriminate against, disadvantage or present an additional or exceptional challenge to anyone with a protected characteristic.

We have no comment on this area.

General comments about the new code of practice

Please use this page for any further comments you have.

Overall

The Single Code is a complex and significant undertaking for the Pensions Regulator. Yet the timescale given to the industry to review the full draft has been insufficient. As a result, we fear the resulting Code risks being flawed and costly to implement, undermining member value.

We suggest the Pensions Regulator focuses this year on bringing in the new Code areas in an improved way, together with accompanying guidance (i.e. for the IORP II regulations, Stewardship, Climate Change, Cyber risk) in an improved way, so it is fit for the range of schemes the expectations will apply to. The additional work to update existing codes and guidance can follow in a more manageable way later, with increased guidance in the meantime for areas of greater regulatory focus such as the Implementation Statement and SIP.

On reflection it may be wise to consider again whether a single code of practice fulfils the key objective of supplementing the Pensions Acts 1995 and 2004. Whilst having a single code avoids the need for repetition of content, it may also be the case that relevant content could be spread over the very large document, meaning that key information could be missed by readers, in a way that is much less likely where a code of practice covers a single topic.

Addressing possible consequences

Many of our comments reflect our concerns about the level of detail and the difficulty smaller (and some medium) schemes will have in knowing how to apply the draft Code, and what 'proportionate' means for them, particularly in new areas which deal with IORP II regulations.

Governing bodies already have very stretched programmes of work, usually tight resourcing, limited trustee time and limited budgets. There is a risk of box ticking and of compliance cost escalation. We anticipate that the difficulties that many schemes have in recruiting or retaining good lay trustees, often with important historic scheme knowledge, will increase; with acceleration in professional roles, use of PCSTs and consolidation happening at a faster rate than the Regulator may have anticipated which may bring other challenges.

Strategic context

A module that needs adding, to frame and join up the Code, is Scheme strategy. This needs to come at the start and to position the ESOG: long term objectives (financial and non-financial objectives), the strategy to achieve them, the main risks and tolerances, the ESOG that is needed to deliver the objectives. Governing bodies with clarity on this are likely to be more confident in applying the Code in a proportionate way, and able to see the wood for the trees, in what is already a very lengthy Code.

Elements of the Future of Trusteeship consultation that concern governing body effectiveness, particularly the expectation of a regular assessment of trustee effectiveness and acting on the outcomes, should be addressed in the Code at this stage.

Increased clarity

The single Code is not self-contained due to reliance on source legislation accessed via hyperlinks. We are concerned about the need to interpret legislation outwith the Code, adding to cost and complexity. A sensible balance needs to be found so readers can see the sense of what is intended.

Conversely, some of our members would prefer that the content of the Code should not repeat what is in the legislation, but be limited to adding additional guidance where the legislation is unclear or specifically requires the Pensions Regulator's input.

Whichever approach is taken, it is useful to include legislative references.

In several places it is hard to be clear (and particularly for a lay user) which schemes certain parts of the Code are meant to apply to. For example, wording such as (our italics) "*where it exists* the legal duty is...",

“specific requirements *for relevant schemes*” and “*for certain schemes* the role of the chair should form part of its effective system of governance”. There is a need for greater clarity in such areas.

The consultation document notes what is meant by the words 'must', 'should' and 'need'. We think the Code itself needs to explain the difference to readers, who will generally not be familiar with government communication principles or even that they exist and are relevant here. "Need" is particularly problematic because it very strongly suggests a legal obligation but that is not actually what it is intended to mean.

We have commented in some modules on examples where the new Code appears to expect more than TPR's previous expectation, or more than the IORP-implementing regulations, when there may be no good reason to do so. One notable example is the choice of an *annual* own-risk assessment (ORA) rather than three-yearly which is the maximum time allowed under the regulations. In the first year, readers are also warned this is expected to be a significant undertaking; however this will not necessarily need to be the case. Even if the Pensions Regulator remains of the view that undertaking an annual ORA is appropriate, we strongly recommend that it provides a longer timescale for schemes to carry out and document their first ORA, particularly as it is not unreasonable to expect that there may be changes resulting from the consultation process. A period of 18 to 24 months following publication of the final version of the Code would seem more reasonable.

Master trusts and governance expectations

In particular, the Code's application to Master Trusts is far from clear. Notwithstanding the fact that Code of Practice 15 is currently excluded from this phase of the Combined Code we are conscious that the underlying legislation (see s249A of Pensions Act 2004 as amended by the Governance Amendment regulations SI 2018 No.1103) excludes Master Trusts from the types of schemes that have to establish and operate an ESG.

The regulations also state “The code of practice which the Regulator issues under section 90(2) of the Act (codes of practice) in relation to the discharge of the duty imposed by section 249A(1) of the Act must include the matters set out in paragraphs (2) to (8), in accordance with paragraphs (9) and (10)”. At the time that the regulations were made, the expectation was that the IORP II-implementation elements would feature in Code of Practice 09 – that on internal controls. The exemption of Master Trusts from the Code, in that context, therefore made sense.

As the Pensions Regulator has, instead, opted to not only amend CoP 9, together with many of the others, it has undertaken to combine them into a single code. This then makes it far more difficult to seek to apply a sensible interpretation of the exemption in the legislation – does it exempt Master Trusts from all elements of the Combined Code, or only those bits relating to IORP II implementation? The latter seems the more logical conclusion. For the most part, this may be possible and reasonable. (Master Trusts should be exempt from the requirements to appoint the stated key functions, produce an ORA and draw up remuneration policies.) However, the element relating to ‘outsourcing’ is more problematic as this is not a discrete element within the Combined Code.

We have not, within the timescale afforded by the consultation, been able to suggest a detailed account of how this situation can be addressed, but we believe that TPR needs to give some considerable thought to this before publishing the final Code.

Improved substance and quality

There are points in the Code that need more substance and/or hyperlinked guidance, for example why the effect of large transfers needs to be monitored – to answer the ‘*so what?*’ question in readers’ minds. There are other examples.

The quality of the Code needs further checking e.g. in TGB033 there looks to be some potentially important text missing on the use of internal audit, in a cross reference. There are typographical errors and incorrect legislative cross-referencing.

Although the glossary at the end of each section is welcome; there are some errors and in appropriate glossary terms. Moreover, words when defined could be hyperlinked in the main part of the text – perhaps using hover notes. Some definitions are missing e.g. AVCs are there, actuarial valuations are not. Some

definitions are not consistent between modules and contain mistakes – quality control needs to be applied prior to final production. For example, in module TGB001 the glossary definition of 'deferred member' would include pensioners, which is obviously not intended. Also, in TGB015, the definition of 'Articles of Association' is wrong: these do not have to set out the purpose of a company, and they generally don't. There is inconsistency in TGB016 with 'Chairperson' a defined term but not used at all in the Code where 'Chair' is commonly used. We see an apparent general lack of attention to definitions, which therefore need a proper review. It will also be appropriate for checks to be made that defined terms are actually used in the relevant section - quite often they are not.

SPP Single Code of Practice response form 2 – The governing body

MODULE TITLE: **Role of the governing body (TGB001)**

Q1: 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?

We have no comment on this question.

Q2: 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 governing body is responsible for running the scheme.' This should be expanded to explain what it means and to position the Code in a strategic context from this start. We suggest wording along these lines: This means the governing body is responsible for setting and reviewing scheme strategy, identifying and mitigating the risks to that strategy and overseeing its delivery via a clearly defined business plan and regular engagement with scheme stakeholders.

Need to make mention of the collective, joint and several responsibility for all members of the governing body to meet these responsibilities and to exhibit the behaviours and standards expected.

Expected behaviours and standards – the bullet point on professionals: financially sound would also incorporate the point on trading difficulties. This paragraph needs to mention/ refer to TPR's Professional Trustee standards and guidance. TPR should also make clear that professional trustee accreditation (APPT, PMI) and adherence to a professional Code of Conduct (APPT) are good practice and expected by TPR.

A professional could be a Sole Professional Corporate Trustee (SPCT) arrangement which should also be mentioned, linked to the Professional Trustee Standards, accreditation and SPCT Code of Conduct.

Q3: 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 paragraph needs to refer to TPR's Professional Trustee standards and guidance, professional trustee accreditation (APPT, PMI), professional Code of Conduct and if relevant PCST Code of Conduct (APPT).

The glossary definition of 'Deferred member' is defective in that it is so broad it would cover pensioner members who also have benefits in the scheme but are not pensioner members.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

It is stated that "The law also requires that members of certain governing bodies are fit and proper to carry out their duties." We would not wish this to be read to imply that it is permissible that others need not be fit and proper, so perhaps clarify the wording.

MODULE TITLE: Recruiting to the governing body (TGB014)

Q1: 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?

We have no comment on this question.

Q2: 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?

Make clear this module applies to all roles on the governing body irrespective of how they are nominated or appointed under the scheme constitution. (Also, as there is a specific module on MNTs and on Chairs)

Clarify that the governing body should regularly consider, and engage with nominating bodies as relevant, whether the constitution / policy enables access to a sufficiently wide and suitable pool of candidates for the future needs of the scheme, in the context of the scheme strategy. The constitution / policy may need updating to enable succession and future governing body needs, and vis-à-vis the changing membership profile of the scheme.

For example, potentially members of the deferred population as ENTs or MNTs, as well as actives and pensioners; independents or professionals who bring skills, experience, time needed; co-opting for skills on a committee, and as a way of managing succession and moving to a desired size or composition.

Specify the term of office for the appointment and, in relation to non-affiliated trustees, a maximum tenure (10 years overall per Regulation 28(4) of the Scheme Administration Regulations). Retention of experience and knowledge of scheme history is valuable but needs to be balanced with the advantages of fresh thinking and new diverse perspectives. Schemes should be recommended to consider adopting an appropriate policy, linked to a succession plan, to ensure that the governing body's skills and membership are appropriately refreshed and updated over time (not only a marker for multi-employer schemes that the draft Code refers to).

Clarify the availability and annual time expectations for each appointed role (meetings, preparation, training, other duties) and how the time required for the role is agreed and managed with the Employer.

Mention the consideration of diversity of view as well as skills e.g. including gender, age, ethnicity, background, independence, scheme membership. Otherwise a missed opportunity for the D&I marker.

Resignation or removal policy: clarify that a policy may include grounds of availability or other issues that are impacting performance of duties and meeting expectations.

Q3: 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?

Examples of governing body structures with different types of representation, case studies of appointment processes: to enable a scheme strategy; recognise benefits of diversity; enable the working time needed.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The module should recognise the difficulty many schemes have in recruiting MNTs and also ENTs, to encourage governing bodies to modernise appointment and selection processes for an increasingly complex and demanding role. Several comments above pertain to this point.

Also the documented principles on remuneration should be communicated to prospective candidates.

Perhaps the appointment of the Chair should also feature here rather than in TGB015.

MODULE TITLE: **Member-nominated trustee appointments (TGB044)**

Q1: 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?

We have no comment on this question.

Q2: 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?

Nomination process specifically mentions actives and pensioners but not consideration of deferreds, or seeking greater diversity.

Clarify here for points on this we mention for Module TBG 014, linking to the draft paragraph that comes later on concerning review of MNT arrangements every 3 to 5 years.

Reflect that good practice is to put in place a proportionate selection process (which could also include election/ ballot as part of the process if still required) often involving a balanced panel, to help encourage interest, meet and interview candidates and oversee a fair process.

Clarify what is meant by references to appointing non-members to an MNT role, why this may be needed. Does this mean professionals, independents? To recognise difficulty in recruiting MNTs and as active populations shrink for DB? Fill skills gaps and improve time availability for a demanding role?

We have concerns about the definition of pensioner member. For this purpose, the MNT process should not include survivors in receipt of pensions.

Q3: 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?

Case studies and guidance for: updating who can apply; selection and criteria; encouraging diversity; selection processes; panel composition; selection with election/ballot; evolving from election/ ballot only.

Q4: 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?

Other than the 'modernising' points raised in this module, we have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Subject to what is intended in references to appointing non-members to MNT roles, the module may need updating further to reflect the reality of many schemes' difficulty in recruiting MNTs. The one third MNT requirement for schemes with corporate structures is increasingly difficult to marry with role expectations for many schemes, even as board sizes typically reduce on a DB derisking journey.

Many of these difficulties are also found in sustaining suitable Employer-nominated lay appointments from the workforce, also reflected in our comments on Module TB014.

MODULE TITLE: **Role of the chair (TGB015)**

Q1: 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?

We have no comment on this question.

Q2: 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 term governing body is an issue for public service (PS) schemes and where the role of a chair is completely different to that for a trustee - in public service schemes, the chair assists the scheme manager and does not have a fiduciary responsibility.

Our other comments pertain to schemes appointing Trustee Chairs, outwith PS.

Clarify that a clear role and person specification (skills and competencies) is needed for Chair appointments.

As good practice TPR should expect a governing body to nominate a suitable unconflicted lead to engage with the Employer/ nominating bodies in good time on Chair succession, the future role and person spec, and enable a working group to meet the preferred candidate or a final short list, including in situations where it is the Employer's power to appoint.

Clarify that a *substantive* appointment to the Chair role is expected within a three month period (to close a loophole around unsuitable interims pertaining for longer in that role).

The Chair's role also needs to reflect the following points based on good practice, other Codes and the professional trustee standards:

- lead the governing body on setting and reviewing strategic objectives;
- oversee delivery of a business plan to meet objectives and deliver priorities;
- ensure information provided by other for the governing body's work is of the standard required;
- lead governing body engagement with the Employer/ nominating bodies;
- lead regular assessment of governing body effectiveness, ensuring actions are taken as needed.

In terms of competencies the Chair needs to:

- role model the behaviours, soft skills and decision skills expected (rather than simply demonstrate behaviours which all are required to do);
- chair discussion and decisions inclusively;
- mentor and provide feedback to others as needed (rather than teach);
- be open to advice, and to feedback.

Q3: 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?

The professional trustee standards for the chairing role could usefully be pointed to.

The text and a heading here refer to 'relevant schemes' (i.e. broadly DC schemes) but this term is not defined and does need clarification, since it is not at all intuitive. We are not asking for legislation to be reproduced in the Code but are looking for clarity.

Some care should be taken in stipulating that the chair be 'free from POTENTIAL conflicts'. Given that even independent chairs have an interest in their fees and their business model while member trustees have their own interest, then this could be read as ruling out practically everyone.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The Chairing module should come before that on MNTs, to emphasise that the Chair leads the governing body. Effectiveness in this role (as enhanced above) is strategically important for a scheme.

The definition of 'Articles of Association' is wrong: these do not have to set out the purpose of a company, and they generally don't.

MODULE TITLE: Meetings and decision-making (TGB006)

Q1: 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?

We have no comment on this question.

Q2: 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 requirement to meet quarterly is stated to apply "in most cases". We understand that a number of trustee boards do not currently meet this frequently. It is not clear from the module whether the Regulator would expect these trustees to meet on a quarterly basis or not as it is not clear from the module when quarterly meetings might not be required. It would be helpful if the module made it clearer when it might be appropriate to meet less often than quarterly.

Q3: 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?

The requirements about frequency of meetings, meeting minutes etc ignore the sole trustee model where there are no "meetings" as such. We consider that a separate section on expectations for how meetings and decision-making should operate in these circumstances would be useful.

Q4: 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?

It states that Governing bodies should "*consider publishing information about their activity, for example board papers, agendas and minutes or summaries of meetings. Redactions relating to sensitive or confidential information and/or data covered by the data protection legislation may be appropriate*". The information in the board papers and minutes will often include confidential information from the sponsoring employer or legally privileged advice or advice from other advisers who are not willing to have it published in case third parties rely on it. Therefore, some of these documents would need to be heavily redacted before publishing. This would take time, effort and cost for something that, in our view, is likely to have little benefit to members because very few of them will actually read it. We also have some concerns that if Governing bodies had to publish minutes or summaries of their meetings this would stifle discussion and/or lead to limited documentation of any discussion, which would be detrimental to the governance of schemes.

The module also states that Governing bodies should consider publishing additional information to promote a culture of transparency. Schemes already produce quite a lot of information for members (and it is not clear how much of this information is actually read by members). We consider that the focus should be on getting members to engage with the information that Governing bodies are already required to provide to them rather than on publishing more information that, we suspect, very few members will read.

Some processes feel like overkill and will likely not be set up for most schemes, for example: “create a process for rescheduling postponed meetings”. For most schemes this happens without the need for a formal policy. This potential “overkill” could lead to some Governing bodies also ignoring other more important parts of the Code.

Recording decisions made outside a meeting - Governing bodies may make decisions in writing (including by email) outside of their quarterly meetings. As these decisions will have been recorded by the fact they are in writing, it seems disproportionate to have to record them again in the meeting minutes.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comment on this question.

MODULE TITLE: Remuneration Policy (TGB016)

Q1: 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?

We have no comment on this question.

Q2: 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?

Given this is a new area, we consider that Governing bodies will need further guidance in order to better understand what should be included in a remuneration policy. For example, would a policy setting out some high-level principles governing remuneration be sufficient? It would be helpful if the Regulator could publish a template policy that schemes could use, as other regulators have done.

It states that the Governing body should consider any outsourced service provider, which suggests that the remuneration policy should also cover such providers. It is not clear how this fits with the Managing advisers and service providers section. Fees will be one factor that is taken into account when determining whether to appoint a service provider and also when determining whether to replace them. In our view, it would make more sense for the remuneration of third party service providers to be covered in the Managing advisers and service provider section only.

Q3: 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.

Q4: 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?

The remuneration policy is supposed to cover people undertaking activities in relation to the scheme paid for by the Governing body and/or sponsoring employer. Therefore, it would cover, for example, a pensions manager who is employed by the sponsoring employer. Given the Governing body is likely to have no control over that individual's remuneration, it is not clear why they should be covered by the Governing body's policy. A policy should only cover matters that the owner of the policy can control (or at least have some role in the decision making process) and so it should not extend to the remuneration of people where the Governing body does not play any role in setting the remuneration.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

In the Glossary, 'Chairperson' is defined but not used in either the module or the rest of the Code, where 'Chair' is the used term.

MODULE TITLE: **Working knowledge of pensions (TGB017)**

Q1: 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?

We have no comment on this question.

Q2: 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 list will underline the mismatch in regulatory expectations versus practice, particularly for newer trustees, those with less time and those who are less confident on financial and investment matters. It is also a demanding list for trustees of small schemes with limited supporting and training resources.

Despite its length, the list of topics needs to reflect some other important matters:

- (near the top of the list) understanding of scheme strategy, journey planning, member needs, setting objectives (financial and non-financial), reflecting priorities in the business plan;
- there is also the need for some understanding of scheme history, Employer and member context.

The draft is silent on these developing areas, which should be added:

- understanding principles around ESG and stewardship and to ensure these are applied as intended;
- knowledge and understanding of cyber risks, digital services for members, pension scams;
- developments in pensions governance e.g. how governing bodies are applying the Code, the trend to other governing models beyond an single Employer trust for DB and for DC.

The funding and investments topic list would be improved by grouping into areas e.g. funding, covenant and investment for DB, referring to objectives, journey plan. Investment beliefs, and Scheme cashflows also both need a mention.

The order on the risk management framework would more logically be:

- risk management framework
- direction and oversight: objectives, governance including risk function, roles, concept of risk appetite
- scheme risk policies and systems
- processes and reporting including the risk register and risk escalation.

Q3: 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?

Refer to standards and accreditation for professional trustees as good practice.

The glossary definition of 'Employer covenant' is only partially correct. In fact past Regulator guidance on covenant sets out a correct definition: "The covenant is the extent of the employer's legal obligation and financial ability to support the scheme now and in the future.": see

<https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/assessing-and-monitoring-the-employer-covenant>

Q4: 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 Q5 below – for smaller, less resourced/ well advised schemes the role is increasingly onerous.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Bringing this overview together is important, but we anticipate (together with the Pension Schemes Act 2021) the wide expectations of the role will hasten the trend towards lay retirements and difficulties in recruiting, with acceleration in professional appointments and the trend to newer governance models.

MODULE TITLE: **Governance of knowledge and understanding (TGB005)**

Q1: 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?

We have no comment on this question.

Q2: 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?

Regular self-assessment and review of progress on knowledge and understanding, at individual trustee and governing body levels, should be part of an effective governance approach led by the Chair.

Set a proportionate expectation for trustee time to be spent on learning and related preparation for newer areas of governing body work that they will be involved in; ensure the Employer is aware of time needed.

Q3: 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?

We have no comment on this question.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comment on this question.

MODULE TITLE: **Building and maintaining knowledge (TGB003)**

Q1: 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?

We have no comment on this question.

Q2: 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?

We think that the following alterations should be made in a clear way in the module:

- Encourage trustees to use a range of learning methods, and where possible, not to be wholly reliant on existing advisers.
- Recognise that using learning in practical trustee work is the best way to help it root, and that regular refresh is needed in key areas of responsibility and areas that are changing due to legislation, regulation.
- Encourage the Chair, other experienced trustees to informally mentor others to help build knowledge.
- Include a reference to the Trustees Toolkit (or explain why not).

Q3: 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?

We have no comment on this question.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comment on this question.

MODULE TITLE: Value for scheme members (TGB009)

Q1: 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

Q2: 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?

We have no comments on this question

Q3: 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?

The module is very short given the importance of the topic, particularly in light of the revised requirements from the DWP consultation on Improving Member Outcomes. Therefore we assume TPR will link to the existing guidance (as in COP13) and consider a full review/expansion of this section once the new DWP requirements are confirmed.

However, we believe that in the 'Determining VFM' section that the inclusion of the following points are both appropriate and necessary (since value involves quality as well as quantity, plus the Code is giving directions on this matter) and already in the current Code at paragraph 115:

"Value for members does not necessarily equate to 'low cost', notwithstanding that the law puts in place certain charge limits on some schemes. A scheme which fully complies with the charge controls will not necessarily provide good value for members.

"In our view, charges and transaction costs are likely to represent good value for members where the combination of costs and what is provided for the costs is appropriate for the scheme membership as a whole, and when compared to other options available in the market."

Q4: 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?

We have no comments on this question

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

It is perhaps not helpful that TPR continue to refer to "value for members" when FCA use "value for money" (particularly in view of the joint paper due shortly on joint standards for value for money). Clarity in the module to explain any differences would be helpful and, if there are no differences, then agreement should be reached over consistent use of either 'money' or 'members', but not both.

MODULE TITLE: Managing advisers and service providers (TGB010)

Q1: 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.

Q2: 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?

Broadly yes. On the first bullet point under Selection, please clarify these expectations and why a two-yearly review is envisaged.

Q3: 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, with the qualification that the links to existing relevant guidance are maintained.

Q4: 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.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comment on this question.

MODULE TITLE: Identifying and assessing risks (TGB031)

Q1: 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 apart from the introductory three paragraphs which do not at first glance have any direct relevance. Technically they are of course relevant, but as a standalone document they need to be tied more logically and openly to the remainder of the content – we suggest creating an introductory module to set the technical framework for this section so that the text of the subsequent modules is internally clearly relevant.

Q2: 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?

Expectations are mainly clear, but application is less clear. The statutory purpose of a Code is to contain practical guidance in relation to the exercise of functions under the pensions legislation, and to set out the standards of conduct and practice expected from those who exercise such functions. This section is short on practical guidance:

Fourth and fifth paragraphs: Reference to it being “not necessary, nor possible, to eliminate all risks”, and suggesting that only “some investment risks” may be accepted is misleading and unhelpful. It is not only neither necessary nor possible, it is not desirable to eliminate risk in a pension scheme, on either the asset or the liability side of the equation.

- There is no risk-free investment – even cash is exposed to inflation risk – and without risk there is no, or inadequate, return. An occupational pension scheme is by definition a collective balancing act and trustees are expected to understand, mitigate and control acceptable risks.
- Code 9 reflected that message, but it has not transferred clearly across. Annex 2 to the Consultation states that paragraphs 19 and 22 of Code 9, explaining how to understand risk and controls and assess what risk is undue, are drawn through to this mode, but neither have been reflected in the draft text. The same goes for paragraph 109 of Code
- The DC Code 13 had a formulation which could usefully be adopted here – see paragraph 38 of that Code on identifying, evaluating and taking steps to mitigate. Annex 2 suggests that paragraph has been brought through, but our view is that the message has been lost in transition.
- As a result, trustees are not being given adequate signposting as to how TPR's expectations may be applied.

Definitions: We question whether the definition provided of “asset liability management” is actually helpful or fully correct. The concept needs fleshing out.

Q3: 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?

In a number of areas this module is light on actual practical guidance or too vague to be capable of being followed. If the practical guidance will be in actual “guidance”, it would be helpful to see what is being transferred to be retained to understand whether there are gaps to be completed in the Code. The Code and the guidance should go hand in hand, albeit with the guidance being capable of faster adaptation to changing circumstances. An example is guidance on risk registers which is particularly relevant to this module.

The list of risks to consider needs clarifying and risk management/mitigant suggestions split out from the risks themselves.

- A number of the “risks” itemised are features of a pension scheme, rather than risks as such:

- “scheme investments” is not a risk, but a poor investment strategy, failure to take appropriate advice, poor market performance and failure to match appropriately to liabilities are all risks relating to scheme investments – the focus needs to be more clear.
- Scheme funding and employer covenant are not risks, but the current level of each, and deterioration in either, is.
- Some of the risks are actually tools for mitigation of risk, such as asset liability management, insurance, compensation funds etc. The Code 9 approach was to list suggested mitigants against individual risks, which was helpful, but perhaps rather narrow in its approach. The equivalent for the structure being adopted in this new Code might be a separate list of example mitigation tools in the “Monitoring and mitigating risk” section, including a signpost to the internal controls section and to the various other processes covered in this section e.g. identification.
- The reference to existing controls not operating “as intended” risks being too limiting – something can work as intended and still not be fit for purpose. We suggest “effectively, or as intended”
- Restricting the risk in governance and decision-making to where it is not operating as required by law risks being is both too narrow and too wide, and potentially circular. Consider recasting as “inadequate governance structures and decision-making processes” and then pointing readers at the modules/guidance on how to set up good structures/processes . Setting the bar at statutory requirements is potentially circular given that the purpose of a Code is to set out guidance on how to deliver on those requirements. At a minimum the Code should at that point state which requirements are being referred to and how they relate to this issue.
- We would recommend a cross reference to the conflicts of interest module for the last item.

There is no mention in the draft of the expectation that is currently in Code 9 at paragraph 30 that governing bodies challenge their risk assessment process and outputs and consider when it would be beneficial to take professional advice on them. Both are good practice and should be included here.

Module TGB032 references an expectation that the process for identifying and assessing risk is closely integrated with the operation of internal controls, but that is not mentioned in this module. We suggest it should be.

Code 9 at paragraph 21 has some practical guidance on looking at the various functions and activities and identifying the key risks associated with them, which could usefully incorporated before the list of specific risks.

Q4: 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?

Risk management function

It is somewhat misleading to say that section 249A requires schemes of a certain size to “have in place a risk management function”. That section requires an effective system of governance which is proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme. The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 require TPR to produce a Code which, in relation to an occupational pension scheme which has 100 members or more, covers the “risk-management function” as a key function in the scheme.

We make that point because the draft Code indicates an expectation that such schemes will have a separate/freestanding “risk management function” (sic), as if this were required or automatically a separate thing, or job, in its own right. That separation is neither required nor necessarily desirable, and for many schemes will be disproportionate.

The risk management function in a pension scheme (of any size up to and including master trusts) will usually be delivered by a matrix of the trustee body itself and any in-house pension support provided by the sponsoring employers, supported by relationship managers from the scheme administrator and investment managers and fed by reports from those functions. That means the “function” itself is no more than the establishment of policies and protocols, plus contractual service level agreements with third

parties, in each case to deal with the identification, reporting, mitigation and assessment of risk and allocation of responsibility for each. It is that allocation and documentation piece that should be the focus of this section. It is briefly referenced later in the “Roles and responsibilities” section.

As a separate matter, creating an expectation of sub-committees or independent bodies is disproportionate. This may be simply because of practicality/cost, or because the trustee is a sole independent trustee, as is progressively the case now. This possibility should be acknowledged as one end of the spectrum of proportionality.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

There is no obvious link between the first three paragraphs, about an effective system of governance and internal controls and the remainder of the module on identifying risk. We suggest a little more explanation – part of internal controls is risk management – part of risk management is identifying your risks and assessing them – before starting on the risk identification section. As the first three paragraphs also appear in one form or another in TGB022, TGB032, TGB033, TGB039 and TGB045, is there any merit in having an introductory module with the statutory references and then directing you to the relevant module so that the section hangs together more coherently?

Structurally, it may be more coherent if the module starts with risk identification and assessment, which everyone must do, then pick up understanding the risks and running through what risks look like, monitoring them and allocating roles and responsibilities and then finishing with the risk management function which only applies to a sub-section of the audience (but see our comments against Q4 in relation to that function). Within the risk management function section, we would suggest that the job of the risk management function is explained first, followed by how that function might be delivered and documented.

MODULE TITLE: Managing risk using internal controls (TGB032)

Q1: 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

Q2: 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, subject to the comments below.

Third main paragraph (on responsibility): we suggest splitting this into two paragraphs – responsibility and documentation as they are very different points and the documentation issue needs to be clearly addressed. See other comments on this paragraph against Q4.

Fourth main paragraph (on reviews):

- As discussed in relation to TGB031, there is a gap between controls not working as intended and not actually being fit for purpose in the first place. We suggest changing “if a control is not working as intended” to “if a control is not working effectively or as intended”.
- We question whether a deterioration in funding is a trigger to review controls as such – it relates far more to the assessment of the likelihood and value of the funding risk, which itself may lead to funding negotiations or a review of the SIP, rather than to changing internal controls as such. We would suggest removing this example.

Q3: 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?

A few notes of warning from the current Codes could usefully be transposed into this draft e.g.:

- Code 9 paragraph 31 first sentence on the continuous process of assessing risks and attendant controls together.
- Code 9 paragraph 32 on understanding the limits on any controls.

Code 14 has some useful practical examples of what to think about when designing internal controls. The headings have been retained in the current draft, but not the detail. We agree with this approach, not least as some of the examples given would not be proportionate to risk for all schemes outside the public sector, but there is still some value in the examples if they had the lower, guidance-level, status. Is it likely that they will reappear in associated guidance?

Q4: 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?

Third main paragraph (on responsibility and documentation): the extent of documentation should also depend on the nature, likelihood and materiality of the risk, not just the size, nature, scale and complexity of the activities of the occupational pension scheme. The legislation ties that latter test to the system of governance, not the amount of documentation of bits of that system. Trustees must be expected to adopt a risk-based approach to their internal controls.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Please see our comments on structure against Q5 for TGB031.

There should be a paragraph break before the last sentence of the second paragraph – internal controls apply to all schemes.

Typo in footnote MN4 (Norther)

Is it necessary to have in the body of the text all the explanations about governing bodies being the scheme manager for public sector schemes when it already says that in the glossary for this module? It distracts from the thrust of the various sections it appears in.

MODULE TITLE: Assurance of governance and internal controls (TGB033)

Q1: 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, subject to our comment on explaining what “assurance” is in this context – see Q5 below.

Q2: 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?

Please see our comments against Q4 in terms of the proportionality of the expectations expressed. In addition:

- Fourth paragraph: this refers to “various assurance frameworks” but doesn’t then go on either to list them or if the frameworks in question are in fact just the audit and assurance reporting options described in the second half of this module, say that. It needs to be clear what is actually meant by an assurance framework.
- Statutory audit, first paragraph: statutory audits (and auditors) are not required for all occupational pension schemes. This is only conceded in the footnotes (although please note the legislative references are incorrect – audited accounts are required under section 41 Pensions Act 1995 and Occupational Pension Schemes (Requirement to Obtain Audited Accounts and a Statement from the Auditor) Regulations 1996).

Applying the pattern adopted in the draft Code in other areas where exemptions apply, the first sentence should be changed to something like “Occupational pensions schemes (unless exempt) are subject to annual statutory audit of their report and accounts. The exemption from the statutory requirement to appoint an auditor should also be reflected in the explanation of statutory auditors versus internal auditors.

- Internal auditors: “internal” here is a misnomer. An internal audit may involve an external auditor who is not acting as a statutory auditor. This section needs further work – see further below.

Q3: 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?

Please see our comments against Q4 in terms of the proportionality of the expectations expressed. This applies also to the explanation of the internal audit route. It needs to be clear that this is not a legal requirement as such, although it is a good idea.

As this is likely to be a new area for many trustees of small schemes who have previously only relied on the statutory audit (or not even that where exempt), there should be more explanation to help trustees understand what extra they need to do (or could do if it were proportionate to the risks faced by the scheme). To this end, it would be helpful to address questions such as:

- does it need to be an external appointment?
- does it need to be an “auditor” or can the function include assurance work carried out by non-audit qualified advisers or even the trustees themselves?
- what should the internal audit cover?

It might be helpful to include a brief explanation/link to the AAF 01/06 (now AAF 01/20) materials from the ICAEW to give an idea of what trustees can expect from service providers. Paragraph 120 of Code 14 also has some helpful description about what an assurance report might include and how to go about getting one.

Q4: 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 module sends the strong message that an assurance framework is required. The legislation requires “an effective system of governance including internal controls” and the Code is required to cover “how [the system of governance] includes an effective internal control system” and “how [the system] is subject to regular internal review”. That is a long step away from requiring trustees to adopt a full blown “assurance framework”. This section should be recast, with the starting point being that trustees need to be reviewing how their system is actually performing, and one good way of doing it is to adopt an assurance framework although what that needs to look like will depend on the size, nature etc.

This module also indicates that an assurance report is required, with specific contents. Again, this is disproportionate to the risk for many schemes. This section should be recast as “If the governing body commissions an assurance report ...”

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Please see our comments on structure against Q5 of TGB031.

It would be helpful if there was a brief introduction at the start of this module to what assurance actually is in this context (i.e. a way of testing controls/systems etc). The term is being used as a term of art here and may be entirely unfamiliar to the trustees of small schemes. Paragraph 110 of Code 14 could be a good place to start.

Typo in footnote AS4 (Norther)

Is it necessary to have in the body of the text all the explanations about governing bodies being the scheme manager for public sector schemes when it already says that in the glossary for this module? It distracts from the thrust of the various sections it appears in.

MODULE TITLE: Continuity planning (TGB022)

Q1: 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

Q2: 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?

Reasonably clear but see comments on Q2 below.

Q3: 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?

As this is the first time this concept has been introduced for most schemes, we would suggest including some examples of likely disruptions to set the scene for why continuity planning is necessary e.g. full lockdown, fire at a provider's office or off-site data storage, cyber attack, takeover or collapse of a core provider, or at the lower end, loss of key personnel within the administration or service provider function.

The first bullet of the action list is the purpose of the continuity plan, not an actual action (and is the driver for this module under the legislation). We suggest moving this to the first main paragraph introducing continuity plans. Text should refer to "activities of the scheme".

Second bullet introducing the BCP: Language has gone awry: we suggest it should read "key actions *and arrangements with third parties* in case *any* of a range of events occur that *could* impact"

Third bullet: clarify what is it about data and scheme administration that should be in the BCP e.g. safekeeping, restoration, continuation of processing.

Fifth bullet (choosing how to rely): it is not clear what this is about. Please expand and clarify. What reports and arrangements might they see? What are the options if they don't like what they see? What shouldn't they like?

Eighth bullet (priorities): this should be "core scheme activities". Should core financial transactions also be a focus?

Ninth bullet (continued access): this needs expanding – what key parties? Is this the same thing as the advisers and service provider bullets further up the list? Or is this about making sure the trustee board has a cascade phone/email list so that decisions can be expedited?

Penultimate bullet (contingency to mitigate): again this needs expanding. It presumably should be referring to service providers and possibly sponsor services.

Last bullet (likely events):

- We suggest expanding this section and giving examples. It is quite cryptic.
- This is also the province of service providers, to agree what happens in stretch situations and what the service level agreements should be.
- Language seems to have gone awry – the events themselves do not have to be reasonable to occur. We suggest "any reasonably foreseeable events that may require additional resources" and giving examples.

While the full-blown continuity strategy requirements of Code 15 for master trusts is not appropriate or proportionate, there are nonetheless elements of guidance in that Code that could usefully be adapted for

this module e.g. paragraphs 131 and 132 on what good looks like, and protecting members' benefits, paragraphs 146 - 148 on what governing bodies should be including in their BCP and what they might need to have a quick think about ahead of time.

Q4: 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?

Fourth bullet: for smaller schemes it may be very difficult to secure agreement from service providers to business continuity – those providers may need, or choose, to prioritise their biggest clients. We suggest limiting this expectation to “where feasible”

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Second paragraph: there should be a paragraph break before the last sentence starts – the action list is for all schemes.

MODULE TITLE: Conflicts of interest (TGB039)

Q1: 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.

Q2: 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?

There are important gaps. Please see our comments on Q3 below.

The public sector scheme section should be under a new heading to keep a clear division between the two different regimes. We note that the public sector section is significantly condensed from the original text in Code 14 – views should be obtained from public sector schemes as to whether that is actually helpful or not.

Q3: 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?

Fifth paragraph (A conflict of interest may arise):

- the structure adopted suggests that there may be times when a member of the governing body does not need to act in the interests of members. This may be better presented as “A conflict of interest may arise when a member of the governing body is obliged to act in the interests of the members but at the same time...” (i.e. remove the first bullet).
- Please note that there is not universal acceptance of the concept of acting in the “best” interests of members – this issue has been raised with the Pensions Regulator previously.

Eighth paragraph (legal and professional requirements): the example given is very specific to public sector schemes and, given the very different restrictions placed on members of public sector governing bodies, would fit better in the section devoted exclusively to public sector schemes. We would suggest replacing that example in this paragraph with specific reference to section 47 Pensions Act 1995 obligations on specific professional advisers to declare conflicts, and the specific rules of various professional bodies on the management of potential conflicts.

Identifying and recording conflicts of interest:

- Seventh bullet (declarations): it may help to remind trustees that they are entitled to these declarations under section 47 Pensions Act 1995 for specified advisers in any event.
- Eighth bullet: between the professional requirements for client confidentiality and conflict management, legal advisers may not be able to agree to this. We would suggest adjusting the text to read “disclose relevant conflicts of interest to the governing body (where appropriate this requirement should be aligned to the advisers’ own professional regulatory requirements)”

Q4: 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?

Sixth paragraph (It is possible that): this module needs to acknowledge that certain conflicts of interest are authorised by legislation (section 39 Pensions Act 1995), or can otherwise be dealt with under the governing documents of the scheme. The draft Code ignores these important exceptions.

Seventh paragraph (CA2006): conflicts of interest of directors can be authorised in a number of different ways, including via the articles of association, and regularly are authorised for exactly this sort of purpose. This needs to be acknowledged.

Identifying and recording conflicts of interest

- Sixth bullet: the suggestion of publishing the register of interests is disproportionate and would have very little if any benefit for the scheme. Conflicts are a difficult area as is acknowledged by the last bullet, which may require careful consideration by the trustee board before a particular issue is discussed and decided. The register itself would not reveal the nuances of that decision. That does not mean that trustees should not be held to account if a conflict is not managed/avoided, but publication of the register itself could be used as a blunt instrument by aggrieved members seeking to undermine the trustees' exercise of their powers without being privy to the full discussion on conflicts in relation to the particular issue being discussed.
- Penultimate bullet:
 - compliance with FRS 102 will not satisfy a governing body's duties in relation to conflicts of interest – these need to be addressed when they arise, not when it comes time to do the annual accounts.
 - It is not part of the general requirements on a governing body that they should “ensure transparency” and compliance with FRS 102 is only relevant when it actually applies – a number of concepts are being blurred together here to give a misleading impression of the overall duty on the trustees.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The structure adopted here, of explaining the issue and then providing the statutory backdrop, is very helpful and could be a useful reference point when looking at the other modules in the risk management section. Please see our comments e.g. on TGB031.

Typo in footnote CN2 (Norther)

Definition: the definition of “sponsoring employer” is not particularly helpful in the form it is presented here – by inference it is limited to actual “statutory employers”. That is not necessary or appropriate in the current context, where the reference should catch all the entities actually funding the scheme or employing the members, whether or not they are “statutory employers” for the purposes of employer debt, PPF or scheme funding purposes. We would suggest the term “statutory employers” is used for statutory employers and “sponsoring employers” (or “scheme sponsors”) be used for the more generic sense when it doesn't matter if the entity is a statutory employer or not.

MODULE TITLE: Own risk assessment (TGB045)

Q1: 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?

As this statutory requirement only applies to schemes with 100 or more members, it would be more helpful if the title were something like “Own risk assessment for larger schemes”. Please see our comments against Q4 below.

Q2: 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 ORA presents a dilemma – the legislation is very prescriptive on what it should cover (although see our comments below on whether the current draft Code correctly imports those requirements). However, the Code gives no guidance as to the level at which the ORA should be completed. That combination of long lists and no guidance on approach is likely to lead to a very wide spectrum of compliance, from “tick the box” exercises from schemes with poor governance, and vast essays from schemes which are already well governed. We would suggest shortening the lists but adding much more guidance on the approach to assessment and content to avoid the risk of trustees patting themselves on the back that they are doing everything brilliantly.

The concept of an ORA is “own risk” which suggests an internal review, but it may be worth flagging to trustees that they can seek help in benchmarking what they are doing. External/independent advice may be helpful to trustees with limited time/experience in risk, at least to set up the approach at the beginning.

Documentation:

- Third bullet requires ORA documentation to be available on request. To whom? If this is for regulatory supervision purposes, then please add “to us”. However, there is no requirement on trustees to make the ORA available to members.
- Fourth bullet requires the chair of the trustee to sign off. Only “relevant schemes” (Scheme Administration Regulations) are required to have a chair of trustees. What is signing off supposed to entail? And what additional liability are you reasonably intending the chair to have for the ORA over and above the other members of the governing body?

Records

- First bullet: The date on which the ORA has been prepared – please clarify what is this supposed to be? Is it the effective date as at which the information to collate the report has been collected, or the date the final “i” is dotted on the document, or the date it is reviewed by the trustee board?

Q3: 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?

As discussed against Q1 above, we suggest additional practical guidance and examples – as a precedent the approach eventually taken to the guidance around DC chair’s statements was particularly helpful (leaving aside the merits of the chair’s statement itself).

We have discussed proportionality at Q4 below. We would suggest some guidance around what good looks like for different sizes of scheme. This would have the added advantage of emphasising the proportionality decision required by trustees.

Q4: 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 module sets disproportionate expectations compared with the underlying legislative requirements in a significant number of areas. Underlying our comments below is a serious concern that this ORA requirement, as currently cast in the module will significantly increase costs and bureaucracy out of proportion with the likely improvement in overall governance. This has been the case with the DC chair's statement regime, which has not in our experience had any conspicuously beneficial effect on governance – it has just added a greater administrative burden. We commend the Regulator for seeking to raise standards, but doing it by shoe-horning an extensive shopping list into the ORA is not in our view the most proportionate way of delivering on that aim and does not reflect the aims behind the legislation as explained below.

The UK legislation is clear that (a) the ORA only applies to schemes with 100 members or more, and (b) a scheme's system of governance, which includes the ORA, must be proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme. Therefore, although the legislation is extremely prescriptive on the matters that the ORA must cover, it is important that the Code emphasise throughout the proportionality of the expectation on governing bodies and the limits on the scope of this requirement. Conspicuously missing from this module is the paragraph which is in TGB031 explaining that latter point. It should be included. It is fine to encourage other schemes to follow best practice, but it is not reasonable to expect that.

There is a mention of proportionality in the seventh paragraph, but that message should be much more pervasive throughout the module.

The UK legislative requirements derive from IORP II. IORP II is clear that the scale of the obligation should have regard to the "size and internal organisation of the IORP, as well as to the size, nature, scale and complexity of the IORP's activities" (Article 28). The UK legislative requirements do not specifically reference "size and internal organisation", but this consideration should form part of the matrix against which this module of the Code is drafted.

The deadline for first compliance does not reflect the legislation. The third paragraph cites a deadline of a year from the date of the Code. The legislation gives the later of:

- 12 months from the end of the scheme year in which the Code is issued; and
- for DB arrangements (and hybrids) in line with the timetable for producing the next triennial valuation for which the effective date is after the Code is issued;
- for DC arrangements (and hybrids) in line with the next chair's statement.

The explanatory memorandum to the UK legislation introducing the ORA Code requirements also notes this more blurred deadline: "trustees will be expected to carry out and document such a review by the end of their next scheme year following the publication of the COP, or in alignment with their existing review and document cycle if different."

The deadline for later assessments does not reflect the legislation – the third paragraph proposes annual assessments, but the legislation only requires triennial assessments. The cost analysis presented to Parliament in the explanatory memorandum to the UK legislation introducing the ORA Code requirements specifically only contemplates a triennial exercise. The draft Code would entail an expectation of a two-fold increase in overall cost to the scheme and is disproportionate. Perhaps the best thing would be to suggest trustees consider interim reviews in the intervening years, and of course monitor for major changes requiring an out of cycle ORA.

Individual sections of the remainder of the module are each stretched beyond what is contemplated by the legislation. There is nothing here that wouldn't be covered in the ordinary course of a governing body's deliberations, but we challenge whether it is appropriate to shoe-horn it all into the ORA. We would suggest that some of this be moved into guidance rather than forming part of the "comply or explain" framework created by Codes. A few examples are listed below:

Risk management policies:

- Third and fourth bullets: the references to conflict management significantly exceed what is required by the legislation, which focuses only on conflicts with the employer arising where the trustee outsources key functions to the employer or to the same person used by the employer. There are already significant expectations around conflict management – it does not seem helpful to also add it to the ORA.

Investment:

- It is not clear why investment performance should be part of the ORA.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Typo in footnote OW1 (Articles)

MODULE TITLE: **Scheme governance (TGB046)**

Q1: 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?

The title could helpfully be expanded: Scheme governance and an Effective System of Governance so that it is clearer that the ESOG itself is dealt with here.

The module sets much of the context for the Code overall and should be an initial module/ page link in the Code, making linkages and references to the ESOG in subsequent modules clearer to users. This will better position the ESOG requirement and join the Code up for users. It needs to come after an additional module on Scheme Strategy, which should provide the over-arching context for the use of the Code.

Q2: 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?

We have some concern about the scope of policy work expected for the ESOG elements, which will be numerous – it is not yet clear what is needed. Well prepared schemes will already have or be getting policies documented ahead of the ORA requirement coming in. But for many others, where TPR seeks to improve practice, developing policies is likely to require a lot of work for modules needed, adding to costs, whilst governing bodies and support teams remain busy on scheme BAU and other projects. Therefore expectations on development of the ESOG and on policies, also need to be proportionate.

A rolling three-yearly review of the ESOG (and on significant change) would seem proportionate for most schemes in time, with the ORA process following up proportionately as an annual round up confirmation (focusing on what has changed or is changing) rather than be seen as a major compliance exercise, which we fear the combination of the ESOG and ORA requirements as set out may potentially become.

An independent ESOG review should be encouraged at sensible intervals. This is good governance practice more widely in UK regulation and mitigates the risk of governing bodies or potentially conflicted advisers/ professional firms marking their own homework.

Q3: 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?

We have no comment on this question.

Q4: 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 comments above in relation to scope and clarification of intended proportionality, for all schemes.

The bar for the ESOG at schemes with over 100 members is set at a low level, reflecting IORPII requirements brought into UK regulations. In practice we expect this will lead to box ticking of the Code, including the ORA, by many governing bodies and particularly by smaller schemes.

We note that the Government's current BEIS consultation on Audit and Corporate Governance Reform intends to bring in reforms first for premium listed companies, with a two year lead in before widening to other companies in scope. Could such a graduated approach be considered by TPR to bring in the draft ESOG policy review and ORA initially for large, high impact schemes? Meanwhile smaller schemes could attend to ESOG arrangements, developing policies where needed so as to prepare for their ORA.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We believe a section on Scheme strategy would be helpful to position the Code and the ESOG: setting scheme strategy and objectives, linking to risk, the business plan and the ESOG. This could be an introductory section before this module, right at the start of the Code.

SPP Single Code of Practice response form 3 – Funding and investment

MODULE TITLE: Investment governance (FAI001)

Q1: 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

Q2: 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, we consider that expectations are broadly clear – subject to our comment in Q3 below. We also wonder whether there should be some cross-reference to the trustee knowledge and understanding module to give trustees some context as to how they gain the knowledge for meeting the investment governance expectations.

The module states that there is an obligation to produce a Statement of Investment Principles (SIP) but is only the case if the scheme has 100 or more members.

Q3: 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?

As in other parts of the code there is a tension between how detailed the documentation of policies on the areas covered should be and scheme size. Some further detail to help trustees understand and manage this would be useful.

Not all schemes, particularly smaller ones, will necessarily want to establish their own investment governance framework but will prefer to rely on outsourcing. Some further information on how this might be achieved could be helpful.

Q4: 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?

We have no comments on this question

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The penultimate bullet point under "The governing body should" mentions assessing performance of scheme assets quarterly. In defined benefit schemes it is also important to assess performance relative to liabilities. We wonder whether this should be mentioned either in this bullet or a separate one.

The words “The governing bodies of most DC schemes must produce a SIP for their default arrangement(s) if they have them, which is subject to different requirements. Learn more in Statement of investment principles.” appear twice in the module – on pages 62 and 64. Is this deliberate. We wonder whether where they first appear on page 62 they should be the final bullet in the list, rather than a separate paragraph.

The glossary definition of 'Employer covenant' is not complete and accurate in that it doesn't include the issue of the extent to which there is a legal obligation to support the scheme. Existing Pensions Regulator guidance on covenant sets out a correct definition ("The covenant is the extent of the employer's legal obligation and financial ability to support the scheme now and in the future.") here: <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/assessing-and-monitoring-the-employer-covenant>.

MODULE TITLE: Investment decision-making (FAI003)

Q1: 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

Q2: 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 – apart from our further comments in Q4 below.

Q3: 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?

The writing of the second paragraph is misleading in that it can be read as implying that only governing bodies of schemes with fewer than 100 members must ensure that their investments are appropriately diversified.

In fact Regulation 4(7) of the Investment Regulations [S.I. 2005/3378] makes it clear that the principle applies to larger schemes generally: "*The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.*"

The confusion has arisen because Regulation 7 disapplies Regulation 4 above but then at paragraph (2) imposes the requirement to "*have regard to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme*". In short, all schemes must have regard to diversification to the appropriate degree.

Q4: 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?

We believe the following wording is new: "*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*". We consider that this could be an unreasonable restriction for large schemes which have the expertise to invest in non-regulated markets. It also arguably goes against initiatives to encourage schemes to invest in illiquid assets such as infrastructure.

For these reasons we request that this wording and limitation is reviewed – the 20% limitation appears arbitrary and arguably unnecessary, given the existing legislation in place around pension scheme investment.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comment on this question.

MODULE TITLE: Implementation Report (FAI004)

Q1: 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.

Q2: 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 that the subtitle on the top of page 68 to "relevant DC schemes" should recognise that schemes can be relevant if they have DC sections rather than just being DC schemes and there should be a clear link to a definition of such schemes or sections of schemes. Finally, the 'relevant schemes' is used elsewhere and there should be some consistency.

Q3: 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?

Implementation reports are a new and complicated requirement for governing bodies to comply with. We think that further clear and supportive guidance is particularly important for this topic so that TPR's expectations are understandable. This is especially relevant while the investment management industry, which is being relied upon to provide much of the disclosed data, is working to provide this in a consistent and useable form. Trustees are currently heavily reliant on the quality and completeness of this data to meet the reporting requirements.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The fifth bullet point in the first list should be expanded to also refer to engagement activities as stated under Reg 2 (3)(c)(ii) of the Investment regulations.

The last two bullet points (description of voting behaviour and use of a proxy voter) listed as additional requirements for relevant schemes seem to repeat points made on the previous page and therefore appear unnecessary.

MODULE TITLE: Investment monitoring (FAI005)

Q1: 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?

The title of the module is fair reflection of the content.

Q2: 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, we believe expectations are clear in this module.

Q3: 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?

We think that more detail would be useful for governing bodies but accept that the detail may be more appropriate for supplementary guidance rather than the code itself.

Q4: 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?

We do not consider there are any unreasonable burdens.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Should there be a reference to the additional legal requirements that relate to reviewing and monitoring default arrangements, and a link to other relevant part(s) of the code?

MODULE TITLE: Stewardship (FAI006)

Q1: 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?

We believe governing bodies will be familiar with this term so yes, we believe the title is a fair reflection of the content. That said, given the potential for ambiguity, inclusion of a definition of “stewardship” within the text would be helpful for completeness.

Q2: 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?

We are not sure whether expectations are completely clear for any schemes other than the largest. There will inevitably be some practical issues for medium-sized and smaller schemes following some of the requirements set out in this module.

Q3: 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?

We feel that this module would benefit from some further detail in the accompanying guidance.

Q4: 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 mentioned in Q2 above, the level of expectations may need some extra clarity for medium/smaller schemes, for example bullets such as:

- include engagement with investee companies, policymakers, and collaborative industry initiatives, whether directly or via investment managers, to mitigate these risks
- consider co-operation with other institutional investors in engaging with investee companies on ESG issues

Also, the Code does “recommend” governing bodies that run schemes not legally required to have an effective system of governance follow the principles anyway. In other modules (when you are looking for schemes to do something they aren’t legally required to do) the Code says governing bodies “may wish to consider”. Is “recommend” an intentionally stronger push to do this?

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

From a drafting perspective, the list which follows “governing bodies should”, includes a number of bullets which start “enable governing body to” or similar. The double references to “governing body” are unnecessary.

MODULE TITLE: Climate change (FAI011)

Q1: 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?

We would suggest that "climate change: risks and opportunities" would be a better title. Currently from what we see in the market most trustees and advisers are focusing on the risks of climate change rather than opportunities. We think making the point in the title of the module that there are two sides to the investment equation would be helpful.

Q2: 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 feel as though more could be said about expectations around member communication and best practice approaches. For example, the module could also flag mandatory and voluntary TCFD reporting as a consideration for trustees. We also think that more could be said about integrating climate change risk assessment into covenant monitoring for defined benefit schemes.

Q3: 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 – the module could perhaps refer to TCFD formal and informal guidance that is being produced to aid schemes with their TCFD reporting obligations.

Q4: 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, not in our opinion.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Climate change has been singled out in the module as a specific ESG "financial factor" (to use the terminology of the Investment Regulations). We think it would be helpful to also include modules on impact investing and consideration of "non-financial factors" when selecting investments. In our view it is not clear that trustees can safely invest on the grounds of "non-financial factors" and it should be made clear to trustees that they should obtain legal advice before they consider doing so. We do however consider Trustees can make impact investments based solely on "financial factors" and their common law investment duties. Please see the Impact Investing Institute paper, "*Impact investing by pension funds Fiduciary duty – the legal context*" <https://www.impactinvest.org.uk/wp-content/uploads/2020/11/Impact-investing-by-pension-funds-Fiduciary-duty-%E2%80%93-the-legal-context.pdf> for further details.

MODULE TITLE: Statement of Investment Principles (FAI008)

Q1: 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.

Q2: 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. We would prefer that the wording in the default SIP section: "*the matters set out in the Investment Regulations*" is replaced with a more detailed explanation.

Q3: 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?

Overall, yes.

But we note that the draft module does not contain a link to guidance for DC schemes about SIPs in the third paragraph, although there is a link there for DB guidance. We suggest this is modified for clarity (we are aware that both are referred to under Related Content).

We also point out that there is no mention in the module to review the default SIP after any significant change in the demographic profile of relevant members (i.e. members with assets in the default arrangement). This is an additional requirement for default SIPs contained in regulation 2A(2) of the investment regulations which does not apply to the main SIP.

Q4: 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?

We believe that the following new wording has been added to this module:

"In cases where preparing a SIP is not a legal requirement, in our view it would be good practice for governing bodies to prepare a document that is similar in nature, and to publish it online as if it were a SIP."

We agree with the sentiment but do have slight concerns that this is effectively seeking to apply requirements to schemes that are exempt by regulation.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The term 'Relevant scheme' is listed in the Glossary and we note previous comments on 'Relevant DC schemes' in module FAI004, Q2. It would be good to see more consistency and a more helpful glossary definition provided.

MODULE TITLE: Default arrangements and charge restrictions (FAI010)

Q1: 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

Q2: 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?

It is not entirely clear. The module is prefaced with a warning that this is a complex area and that professional advice should be sought. This is effectively an admission that this module is not comprehensive and cannot be read as being authoritative.

Q3: 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. There should be a direct link to Appendix 1 of your DC investment governance which covers default arrangements in more detail.

We also think that the new module contains less information about these topics than the existing COP13 does. Is this intentional and a tacit recognition that the requirements are too complex to easily summarise?

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Please see comments made in module FAI004 Q2 and FAI008 at Q5.

SPP Single Code of Practice response form 4 - Administration

MODULE TITLE: Administration (ADM001)

Q1: 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?

Current heading 'Administration' is a broad term that could easily encapsulate the whole of this section of the code. This specific area could be repositioned as 'Management of Administration' ('Oversight of' or 'Governance of' would also be suitable terms).

Q2: 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?

Our concern is that this would become a checklist that Trustees tick off rather than genuinely engaging with some of the topics that this section requires them to do. The key requirement that is not clear here is that Trustees are expected to know whether the administration is delivering or not, in terms of compliance with regulations/legislation, contractual standards and the scheme's own objectives.

Trustees need to have appropriate processes, reporting, roles and mechanisms that enable them to answer that question. This should be the overarching expectation with the bullet points forming guidance on how best to do that, i.e. having administration on the agenda, risk register etc.

The detailed points refer to having a strategy to achieve long-term objectives but set no expectations on having agreed long-term objectives for the scheme's administration in the first place.

Q3: 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?

We have no comment on this question.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

References to contracts focus only on advice, but not their ongoing management. A good administration agreement will contain a number of schedules with information that is key to the ongoing management, e.g. governance, service levels, reporting requirements. These make the contract a tool for oversight and 'contract management' is an important skill to have when managing administration, beyond just the negotiation of an agreement.

We see this module as being the overarching administration module which is closely interconnected with everything else that is being set out for trustees in future modules. This is why we suggest it is badged as 'management', 'governance' or similar – it should set out the need for trustees to have objectives, strategy,

risk processes, controls, appropriate reporting and interactions, knowledge etc. that filters into the other modules. For example, governance of administration requires suitable reporting – without this at the highest level, trustees cannot ensure financial transactions are being processed appropriately etc.

As a general comment, there is a tension in the Administration section of the Code between an apparent desire on the part of TPR not to be highly prescriptive, lest it stimulate a tick-box approach to compliance; and the risk to scheme administrators that their interpretation of requirements is deemed by TPR to be inadequate or wrong. This needs to be better recognised than it is currently so that governing bodies can be confident in meeting what is expected of them in a proportionate manner.

Page 82 – Administration

The words “Every governing body should have some of the following measures in place, although these measures will vary depending on the nature of the scheme and the legal obligations to which it is subject.” followed by a series of measures is likely to make it difficult for trustees to see the ‘*wood for the trees*’. We suspect you would like a governing body to consider and think through all of them to decide and determine which ones are appropriate to them, but the Code does not say so.

MODULE TITLE: Financial transactions (ADM002)

Q1: 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?

We have no comment on this question.

Q2: 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?

Governing bodies are expected to annually review processes and systems relating to financial transactions where they can influence this. The vast majority of schemes that use an outsourced third-party provider are unlikely to be able to influence how these processes and systems operate. We assume that these schemes will not have to carry out any form of review, but it would be helpful if this could be made clearer.

Q3: 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?

It would be helpful to give some specific detail on what are the relevant financial transactions for these purposes as not all governing bodies may be familiar with the details of the legislation and it may be unrealistic to expect every reader to have a copy of legislation next to them when looking at the Code. For example:

Core financial transactions include (but are not limited to)—

- *investment of contributions into the scheme;*
- *transfers into and out of the scheme;*
- *transfers of assets relating to members between different investments within the scheme;*
- *benefit payments from the scheme to members and other beneficiaries.*

The content leaves it to the trustees to determine what is appropriate in their circumstances. This is sensible but it would be helpful for guidance to include some indicative timescales for things like “undue delay” that trustees can use as a measure for their own schemes and their administrators.

On the second bullet point under ‘Governance processes and IT systems’, it is correct to suggest that the trustee may not be able to influence the administrator. Therefore, we suggest expanding this to say that trustees should work with their administrators to seek to improve processing, in terms of controls, accuracy and timeliness, and develop plans each year to ensure these are implemented. Continuous improvement is important, and trustees ought to be engaging actively to ensure their administrator is doing this as a business and as a provider to their scheme. It should form part of the contract as well.

Q4: 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?

Governing bodies are expected to “ensure that any authorisation processes for any financial transactions do not cause undue delay” and “seek to ensure that a segregation of duties exists in administration processes to prevent financial transactions without appropriate authorisation”. If the governing body uses a third-party administrator it will not be able to ensure these matters. We suggest that this should instead form part of understanding what procedures and controls the administrator operates.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We suggest the following changes in the subsection on “Investing contributions (if applicable)”:

- at the end of the first bullet add the words ‘and after completion of a reconciliation exercise’
- change the second bullet to read ‘if the scheme operates a less than daily dealing cycle, contributions should be invested within 5 working days or the next dealing date, after completion of a reconciliation exercise’

The above words ‘after completion of a reconciliation exercise’ are in the existing Code of Practice 13 and it is important that they are retained.

A minor point - the Glossary refers to “Service level agreement”. This is the only place in the code where the term is singular.

MODULE TITLE: Transfers (ADM014)

Q1: 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?

“Transfers out” would give a better reflection of the content.

Q2: 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?

We have no comment on this question.

Q3: 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?

We ask:

- Should there be an expectation that DC members should be encouraged to take financial advice and/or seek guidance from Pension Wise before deciding to transfer?
- Will reducing DB transfer values be dealt with by guidance?

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Page 87 in the draft code - Transfers

Governing bodies have three months in which to provide the statement of entitlement, not two months – see Regulation 6 of the Occupational Pension Schemes (Transfer Values) Regulations 1996. Therefore the sentence ‘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’ is incorrect (the reference TR2 is to the wrong regulation as it covers transfer credits). Also, statements of entitlement are only applicable to / available for non-money purchase benefits. The timelines differ for DB and DC transfer out statements, and we suggest the following changes:

For DB eligible ‘deferred’ members (see regulation 6 of SI1996/1847) – *“eligible DB ‘deferred’ members have a statutory right to a guaranteed statement of entitlement if they have not requested a statement in the last 12 months. The guarantee (calculation) date for the CETV must be within a 3-month period which starts from the date the member’s request is received. The statement must be issued within 10 days of the*

guarantee date excluding weekends and certain public holidays (Christmas Day, New Year's Day and Good Friday only)."

For eligible DB 'active' members (see regulation 11 of SI1996/1847) – "*eligible DB 'active' members have a statutory right to a transfer value statement as long as they have not requested a statement in the last 12 months, and will receive a non-guaranteed statement of entitlement which must be issued within three months of the date the member's request is received.*"

For eligible DC members (see regulation 11 of SI1996/1847) – "*eligible DC members have a statutory right to a transfer value statement if they have not requested a statement in the last 12 months. The statement must be issued within 3 months of the date the member's request is received.*"

In the sentence that includes the wording '*the CETV represents the actuarial calculation of the member's benefits within the scheme*' we suggest that '*actuarial value*' is more accurate.

In the final paragraph on page 87 we would suggest, based on the legislation (regulation 7C of SI1996/1847), that a better definition of a DC transfer value is "*the realisable value at the date of calculation of any benefits to which the member is entitled*".

Page 88 – Transferring member benefits

The last bullet states that the governing body "should consider the effect of a transfer of those members with a large transfer value relative to the scheme." This is an example of where the reader is left wondering what it is they should be considering as there is no reference to the risks, potential ills etc. concerning the payment of a large transfer and as such makes it difficult for a governing body to know what conversation they should be having. There are other examples of this; are we to presume considerations will be taken up in guidance?

In relation to the mentioned notifiable event for large transfers, we would welcome reference to the separate Direction that may exempt the need to make such a report, as well as the legislative reference (which should be section 69, not 126).

Page 89 – Specific requirements for DB to DC transfers

This is fine but runs the risk that other areas requiring advice are omitted e.g. transfers from an arrangement with safeguarded benefits to an arrangement with flexible benefits also needs advice. There is a danger that the simplification of the multiple codes of practice to this one single code of practice has been overdone. Under the opening paragraph on independent advice under the section DB to DC transfers, the reference is to the value being transferred (£30,000 plus). However, our understanding is that the requirement to evidence appropriate independent advice applies if the safeguarded benefits in the scheme (not only those transferred) are valued at £30,000 or more.

Minor point, but in the second bullet under "Checking written confirmation" the final secondary dashed bullet does not follow from the wording before the secondary dashed bullets. This should either be a separate bullet or at least not be a dash.

Page 90 – definition of 'cash equivalent transfer value':

The text states that it "can be guaranteed" but instead it should be "is guaranteed" – we are presuming that you are only talking about statutory transfers in this context.

MODULE TITLE: Scheme records (ADM003)

Q1: 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?

As this module is specifically about administration data, as opposed to records like meeting minutes and other schemes documents, we suggest that 'Record keeping and data' might be a more appropriate title.

Q2: 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?

There is an expectation that Governing bodies will "*carry out reconciliations of data, transactions and investments held*". It is not clear what data (not relating to transactions and investments) that the Regulator expects Governing bodies to reconcile or how frequently it expects such reconciliations to be carried out. It is therefore difficult to say whether this expectation could be considered disproportionate for some schemes.

Q3: 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?

There should be reference to the fact that Governing bodies will need to be mindful of their obligations under data protection law with regard to the retention of personal data and perhaps include a link to the relevant part of the ICO website.

It would be helpful for there to be guidance on how long the Regulator expects scheme records to be retained for. There is a legal requirement to retain some scheme records for a minimum of 6 years but we would expect that in many cases the Regulator would expect records to be maintained for longer.

Q4: 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?

There is an expectation that Governing bodies will "*identify and rectify any errors in scheme records*". There needs to be some proportionality here. "Identify and rectify any errors in scheme records" could be expanded to recognise that 100% accurate data is an incredibly challenging (and costly) target and that 'scheme records' might be defined differently depending on what the trustees' objectives are for their administration. Schemes looking at derisking will have different data needs to those just focused on running the admin service and delivering accurate calculations etc.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

No further comments

MODULE TITLE: Data monitoring (ADM006)

Q1: 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?

Could this module not be combined with the Scheme Records module? This module contains some important aspects in setting expectations on what trustees need to do to review and update data which is lacking from the Scheme Records module.

Q2: 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?

It is not specified what action governing bodies are expected to take to "ensure regular reconciliation of scheme membership, especially those reaching retirement".

Q3: 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?

We have no comment on this question.

Q4: 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?

Governing bodies cannot "Ensure any service providers follow their own procedures for reporting errors to the governing body" because they do not control the service provider. We would suggest that instead this bullet point is combined with the bullet point above to read something like: "*Ensure appropriate reporting arrangements are in place so that the Governing body is informed about material errors and gaps in their scheme data, once identified*".

It is suggested that Governing bodies should "assess the need for a data review exercise at least annually". This implies that it may be necessary for some schemes to carry out an annual data review. This feels unreasonable. An assessment on, say, a triennial basis feels more appropriate.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

As noted, there is overlap between the scheme records module and the data monitoring module. It might be helpful if these two modules were combined.

MODULE TITLE: Maintenance of IT systems (ADM015)

Q1: 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?

We have no comment on this question.

Q2: 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?

Our reading is that most of these elements are only within the control of governing bodies where their administration is in-house and they have influence over its management, operations and system development.

Where administration is outsourced, much of this is down to the administrator and the governing bodies will be able to question, test and challenge in relation to systems but will have limited influence over business-wide systems roadmaps, controls and upgrades etc.

The relevance and application of these points in an outsourced service need to be outlined.

Q3: 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?

We have no comment on this question.

Q4: 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?

Please see comments above about the challenges of completing these sorts of requirements to the degree that seems to be expected here if the trustees are working through outsourced administrators.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Under the section on standards for maintaining IT systems, we presume that there is some wording missing in the following:

“Provide evidence to show there is a schedule for the system to be replaced or updated, [following events?] such as changes to tax thresholds.

MODULE TITLE: Cyber controls (ADM016)

Q1: 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?

We have no comment on this question.

Q2: 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 module does not really reflect the fact that for a large number of occupational pension schemes, all of their personal data will be held on IT systems controlled by either the sponsoring employer or third party service providers, not by the governing body itself. To give an example, a governing body can ask the service providers how often their systems are backed up and whether they think this is appropriate but they can't "*ensure critical systems and data are regularly backed up*" because the systems do not belong to it. There will be a reliance on outsourced administrators in certain aspects of this.

The following is very vague: "take action so that policies and controls remain effective". Perhaps it would be better phrased as review policies on an annual basis to ensure they remain appropriate, taking into account any changes in the types of cyber risk facing the scheme.

In our view, it is not clear what is expected in order to "satisfy themselves with service providers' controls". We assume that it would be sufficient for a governing body to receive a written explanation of the controls that a service provider has in place (and we consider this would be appropriate). However, this could be interpreted to mean that they need to carry out some form of audit. While schemes could obviously do this if they wished, we do not consider that this should be the general expectation.

A governing body can challenge policies on e.g. home-working but may have limited real influence over operating models. This can, and should, be a key part of assessing an administrator when selecting one.

Q3: 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?

The fifth bullet under "Managing cyber risk" should be amended to read (amendment in bold): "Have policies to assess whether **personal data** breaches need to be reported to the information commissioner (www.ico.org.uk)".

The module makes no specific reference to investment managers and risks around cyber-attacks. For example, governing bodies should ensure that they have secure processes for giving investment and disinvestment instructions.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

In the first paragraph of this module, consider referring to the fact that loss and disruption can also be caused by a failure in the IT systems of its third-party service provider or investment managers.

MODULE TITLE: Receiving contributions (ADM007)

Q1: 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

Q2: 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?

Under the heading "Maintaining and recording contributions", our comments concern the expectations set out:

- in the first bullet point, it is unclear what is meant by the use of the word "manage". Further clarity would be helpful
- in the third bullet there appears to be a legal requirement as Section 87(2) of PA95 is referenced. If this is correct, it should not be included in the list of expectations.
- the fifth bullet refers to information the employer must provide, but the regulation reference is not specific. We assume this should refer to Regulations 18 and 19 of SI1996/1715?

Phrasing such as "quickly identify", in Operational and risk management, could be helpfully expanded to give some guidance on what TPR considers to be quick.

Also in that section, the additional requirement for schemes to have "processes to demonstrate compliance with HMRC tax requirements" may be read as potentially a significant addition to the recording requirements. If it requires that they simply acknowledge that they have them, then its manageable but if it requires fresh documentation providing evidence of the processes, then given the volume of HMRC requirements which schemes are obliged to meet to preserve their tax registration, it could be a significant piece of work.

Under the heading "Reporting and remedial actions":

- The fifth bullet links to "Resolving overdue contributions". Assuming this refers to module ADM011, the link should be "Resolving contributions".
- the penultimate bullet refers to the need to "have a process for rectifying the missing contributions, ensuring minimum financial detriment to the member". It is unclear what is expected by including this bullet here, rather than simply referring to modules ADM008 and ADM011. Should 'minimum' really be 'zero'? It would be helpful to align TPR and HMRC practice here: the Pensions Tax Manual no longer mentions 'rectification' but uses 'compensation' instead, which can give rise to significant financial detriment to the member (loss of LTA protection, AA charge, etc).

Q3: 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?

We have no comment on this question.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

For consistency, as the module defines “direct payment arrangement”, it should also define “schedule of contributions” and “payment schedule”. Alternatively, links could be provided to the relevant legislative definitions.

Is it worth including a cross-reference in this module to confirm that investment of contributions is covered in the module "Financial transactions"?

MODULE TITLE: Monitoring contributions (ADM008)

Q1: 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

Q2: 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 module begins with a statement that “governing bodies should have processes in place.....”. We would challenge whether this statement should be “governing bodies must have processes in place....”

Under the “recording employee and employer transactions” heading, there is an expectation on employers ie “employers should provide the information required.....”. Given the Code/modules are aimed at governing bodies, it may be more appropriate to rewrite the sentence – for example “the governing body should ensure the employer provides the information.....”.

Q3: 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?

We have no comment on this question.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Page 108 – Recording employee and employer transactions

In simplifying the text to cover both payment schedules and direct payment arrangements, there is some confusion over the use of the words ‘must’ and ‘should’. Under ‘The Personal Pension Schemes (Payments by Employers) Regulations 2000’, the employer **must** send a copy of the record of direct payment arrangements to the trustee or managers of the personal pension scheme.

As the module defines “direct payment arrangements” then it should also define “payment schedules”.

There is a reference to module ADM011 titled “resolving overdue contributions” – this should refer to “Resolving contributions”.

MODULE TITLE: Resolving contributions (ADM011)

Q1: 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, the title is fair.

Q2: 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 expectations are broad, and this may be an issue when more specific direction (see Q3 below) would be helpful to the governing body. Finer details in this area should not be left to guidance that has not been laid before Parliament. The trigger points for reporting or not reporting should be clearer in the Code. The risk is that ambiguity will lead to procrastination and delay on the part of the governing body as to whether a report has to be made. The opportunity to rectify problems before they get out of control will be reduced.

Q3: 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, there is a need for more detail. This is particularly the case as the material in RTT004 *Decision to report* does not properly cover materiality in this context. In particular, the 90-day materiality trigger for reporting "*in any event*" is useful to ensure a backstop in debates on whether and when a late payment becomes material. This facilitates reporting and closes down unnecessary and disruptive debates.

The extra detail includes the following points taken from Code of Practice 05 that should be included with adjustments in red to replace 'Trustees' with 'Governing bodies':

*Having 'reasonable cause to believe' means more than an unsubstantiated suspicion. **Governing bodies** should make enquiries and use their judgement when deciding whether to report to the regulator.*

*The **governing body** may choose to take an employer's response to **their** enquiries at face value if they have no reason to believe it to be untrue or where their risk-based process indicates that there is a low risk of continuing payment failure. Where no response is received, **they** may infer that an employer is unwilling to pay the contributions due.*

The following material (with changes in red) should either be added to this module or RTT004, but it is most helpful if it is added here:

*Circumstances which are likely to be material and which **governing bodies** should report include:*

- where **they** have reasonable cause to believe that the employer is not willing to pay the outstanding contributions. Where **their** reminder and recovery process has been exhausted without response from the employer or without them having obtained the outstanding payment, they may assume this indicates an employer's unwillingness to pay*
- where there is a payment failure involving possible dishonesty or a misuse of assets or contributions. For example, **a governing body** may have concerns that the employer is retaining and using contributions to assist cash flow difficulties or where **they** have become aware that the employer has transferred contributions elsewhere other than to the scheme*

- where there is a failure to pay contributions which carries a criminal penalty. For example, information available to the **governing body** may indicate that the employer is knowingly concerned in the fraudulent evasion of the obligation to pay employee contributions
- where the **governing body has** become aware that the employer does not have adequate procedures or systems in place to ensure the correct and timely payment of contributions due and the employer appears not to be taking adequate steps to remedy the situation, for example where there are repetitive and regular payment failures, and
- in any event where contributions have been outstanding for 90 days from the due date (or such longer time as may be set out in a **Direction issued by the Pensions Regulator**).

The governing body should not normally report to the **Regulator** where one of the following circumstances applies:

- where **the governing body has** entered into a payment arrangement with the employer for the recovery of the outstanding contributions and the employer is paying in accordance with that arrangement
- where a claim has been submitted to the Redundancy Payments Office National Insurance Fund or the Northern Ireland Redundancy Payments Service.
- where there are infrequent one-off payment failures or administrative errors resulting from, for example, employees leaving the scheme or employment, new employees joining or changes in salary not being notified promptly to the **governing body**, and those occasional failures or errors have been corrected within 90 days of the due date
- where payments are made in excess of the contributions due under the **scheme**, and
- where contributions are paid late but in full and within 90 days of the due date.

Q4: 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?

Not in this case, but there is the need for extra clarity by including the text at Q3 above.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

No.

SPP Single Code of Practice response form 5 – Communications and disclosure

MODULE TITLE: General principles for member communications (CAD001)

Q1: 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, and 'communication' is better than 'disclosure' as the content is about more than just the information that must be provided to members by law.

Q2: 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, provided it is supplemented by additional guidance (see below).

Q3: 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?

The key message in paragraph 134 of Code of Practice 13 should be retained and restated clearly:

Good member communications, provided at the right time and in an accessible format are vital if members are to engage and make decisions that lead to good outcomes in retirement.

Further specific guidance on principles of good communication would be helpful. Adding in appropriate links to that guidance is desirable.

Q4: 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?

Not really. The reference to "regularly inform members of the impact their contributions will have on their overall benefits" is highly appropriate for DC benefits but is obviously less relevant to DB scheme benefits, and particularly if the DB scheme is employee non-contributory.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

There is inconsistent use of 'governing body' and 'governing bodies'.

MODULE TITLE: Statutory financial statements (DC) (CAD003)

Q1: 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?

It is unhelpful to use the proposed title. Most trustees will be more familiar with the term “Annual benefit statements”, which is used within the body of the module. We would recommend that this is also used as the title. This will also provide consistency with other publications, (for example the Communicating and reporting guidance referenced in the module).

Q2: 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?

We have no comment on this question.

Q3: 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?

We acknowledge that the subject matter is consistent with that presented in existing Codes 5 and 6 and continues to link to the “Communicating and reporting guide”. However, we think that this coverage is too perfunctory and lacks sufficient detail.

We think it would be helpful to state more clearly the circumstances which schemes are required to provide information, and which are exempt. A simple reference to the complicated legislation is not really helpful to governing bodies. For example, note SDC3 states there are ‘certain exemptions’ but is no clearer even though the source legislation [Reg 17 of the Disclosure Regulation] has not been amended since 2014. Likewise note SDC4 will link to the ‘relevant schemes’ definition within the Scheme Administration Regulations at Reg 1, a term that will have multiple uses, but this is not defined here.

In the final bullet point under the heading “The governing bodies must”, it would be helpful to governing bodies if the Code confirmed the specific information that is required to be published online.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

When the supporting guidance is updated, we would recommend considering more content on ways to provide the information digitally, given the move away from paper-based communications.

The glossary contains only a “basic definition” of “contributions”. We believe for consistency it should therefore also define “cash equivalent transfer value”, “statutory money purchase illustration” and “pooled funds”.

MODULE TITLE: Statutory financial statements (DB) (CAD011)

Q1: 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?

Again, it is unhelpful to use the proposed title. Intuitively, readers may think that this module is concerned with requirements for audited accounts.

We are not sure that readers would look under this heading for DB individual member statements. It may be more helpful to use 'summary funding and benefit statements'; i.e. scheme funding position and individual statements for members.

Q2: 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 CoP has the wrong deadline – it's within a reasonable period of the deadline for receiving the valuation/report, not when they receive it.

Legislation SI2013/2734 Reg 15

(3) The information must be given on, before or within a reasonable period after, the date by which the trustees or managers of the scheme are required under section 224 of the 2004 Act to ensure that the valuation or report is received by them

When describing the content of the summary funding statement the draft Code has confusion about the 'actuarial valuation' in one case meaning 'actuarial valuation' and 'actuarial report'. In the first bullet point the text at the end should be "*the latest available actuarial valuation and **actuarial report***". In the third bullet point the reference should be to "*as set out in the latest **actuarial valuation***". No definitions are given of actuarial valuation and actuarial report and it would be helpful if there were such definitions, particular as there is a definition of 'recovery plan'.

Elsewhere in the CoP, more detail is provided on who the material should/shouldn't be sent to. In this regard, there should be consistency in the level of detail.

Q3: 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?

The material is thin and uneven as the content of the summary funding statements is listed but not what should be in benefit statements. Further guidance on the information to be included in benefit statements would be most appropriate.

Also, the exemptions from summary funding statements should be set out. These were recited in paragraph 53 of the Code of Practice 03 to be 'excluded persons' and those whose only entitlement to benefits under the scheme is, or will be, to money purchase benefits. A definition of 'excluded person' should be included to the effect that:

Excluded persons

Those members and beneficiaries whose current postal address and electronic address is not known to the governing body and in respect of whom past correspondence sent to the last known address has been returned or rejected.

Q4: 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.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

There is inconsistent use of 'governing body' and 'governing bodies'.

MODULE TITLE: Statutory financial statements (PSPS) CAD012

Q1: 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?

The title should reflect the content so we would suggest that using annual benefit statements would be more appropriate than financial statements.

Q2: 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?

One omission is with regard to the last sentence of the first paragraph as this should relate to deferred and pension credit members. NB regulation 89(1) of the Local Government Pension Scheme Regulations 2013 requires that '*An administering authority must issue an annual benefit statement to each of its active, deferred, deferred pensioner and pension credit members.*'

Q3: 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 response

Q4: 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

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

No

MODULE TITLE: Retirement risk warnings and guidance (CAD004)

Q1: 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?

We believe the heading should be expanded to make it clearer these are two different points, i.e. the requirement to provide members with generic high level risk warnings for occupational schemes at certain points, and the requirement to point members towards the free and impartial guidance service.

Q2: 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?

It would be helpful if TPR could clarify that the requirement for a detailed risk warning for safeguarded flexible benefits (as introduced by S.I. 2017/717 The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015, in force from 6 April 2018) is not included in this module, which only covers the risk warnings required in relation to pension freedoms (April 2015).

Given two separate topics are covered in this module, it may be clearer for governing bodies if these were separated out within the content. i.e. so that the legislative requirements and expectations are highlighted for risk warnings, then separately for the guidance requirement.

Q3: 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?

It would be helpful if the module also confirmed that governing bodies are required to inform members that pension guidance via Pension Wise can be accessed via the internet, phone or face to face. We suggest that in the third bullet under the heading "Governing bodies must", the wording in brackets is removed and replaced with this statement.

Q4: 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?

We have no comments on this question

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The definitions included in the glossary section are over simplistic, compared to other definitions used throughout the Code and to standard industry definitions. We would recommend these are reviewed to provide additional clarity and remove any confusion.

MODULE TITLE: Short service refunds (CAD016)

Q1: 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

Q2: 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 is a very trimmed-down version of existing Code of Practice 4 and sometimes the editing results in a loss of clarity.

The Preservation Regulations [Reg 27A of S.I. 1191 No.167] require that trustees must furnish information to early leavers about their rights and options within two months of the employer notifying them that pensionable service has terminated. This information is provided in a broad range of classes of leavers and is not catered for in the modules on Statutory financial statements. The reference in this module to providing information within three months is misleading given this context.

It should be made crystal clear in the Code that the notice with the three-month reasonable period attached to it concerns notification of the member's right to choose a cash transfer sum or a contribution refund.

Q3: 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?

We think that there is not sufficient detail.

The introduction of this module on automatic enrolment is not clear as the opt-out period may start only once members have been notified of enrolment and this may be some time after membership starts. Employer and providers have up to six weeks to provide this notification and then the one-month period begins. The text of the first paragraph can be revised to read:

Individuals automatically enrolled into a pension scheme have the legal right to opt out and when they do so their membership is cancelled as if it had never happened [s.8(2) of Pensions Act 2008] and their employer will return directly any contributions deducted, less tax. The governing body should refund to the employer any payments received. This is not a refund of contributions since there is deemed to be no membership and no service. Note that the opt-out period will only start once proper notifications have been given to the member, which may be up to six weeks from the date the membership would have commenced from and the member has that period of a month (or six weeks in the case of errors) to opt out. Therefore, an opt-out may occur to cancel membership (including in DC schemes) significantly after 30 days of pensionable service starting.

The implied reference to no statutory right to a refund if contributions are entirely DC can be misleading. It is true that there is no right to a refund if preserved benefits are provided (or if in fact there are no member contributions) but it is false to imply that member contributions can just be lost if no other benefit or right is provided for. Given the above point on automatic enrolment, the second paragraph should be redrafted also.

In terms of further guidance, we think that governing bodies may find the flow charts that are included in the current Code 04 useful. Is it intended that these will be in associated guidance?

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

No further comments.

MODULE TITLE: Chair's Statement (CAD008)

Q1: 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?

The title would benefit from expansion to clarify what schemes are required to produce a Chair's Statement – see below.

Q2: 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?

We consider that the wording "*The law requires certain governing bodies of DC occupational pension schemes to prepare a chair's statement within seven months of the end of each scheme year*" should be replaced with wording that makes clear that it is "relevant schemes" who have to produce a chair's statement and that this would include, for example, mainly DB schemes which also have a small non-AVC DC section.

We believe that it would be better if the expectations in paragraph 130 of the Code of Practice 13 are retained in the new draft Code (adjustments in red):

The law requires the member borne costs and charges across all arrangements within a scheme to be disclosed in the annual chair's statement. This includes transaction costs, insofar as a governing body has been able to obtain that information. Where a governing body has not been able to obtain information about transaction costs, the law also requires the chair's statement to indicate the information they have been unable to obtain and explain what steps are being taken to obtain the information in future. The costs for default arrangements must be reported separately from the costs for other arrangements in the scheme.

Q3: 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 module does not go into detail about the content of a Chair's Statement. But if the links are maintained to the existing guidance it will suffice.

Q4: 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?

The production of Chair's Statements, and your own enforcement of the requirements is a controversial topic, as was made clear by DWP's recent [Post Implementation Review of the Occupational Pension Schemes \(Scheme Administration\) Regulations 1996 \(legislation.gov.uk\)](#) about them. Some may consider that the expectations are disproportionate for all affected schemes.

In the section headed "Making the chair's statement available" it says: "*in many cases it will be appropriate for governing bodies to publish the statement online in its entirety*". The items currently not published are:

- how requirements for processing financial transactions are met,
- how trustees have satisfied their obligations to have sufficient knowledge and understanding, and
- signatory provisions with the Chair's signature.

Is there some rationale for this? There is a question of whether the first two items would be of interest to members and the risk that publishing the signature in the last may assist the unscrupulous. We suggest that this is best left to the governing body to determine. At the least please reword as "*trustees may wish to.....*".

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comments on this question.

MODULE TITLE: Scams (CAD005)

Q1: 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, and consistent with related material such as the Pensions Scams Industry Group (PSIG) Code.

Q2: 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?

We think that it will be better if a stronger reference to the PSIG Code rather than just acknowledging that it exists. The duty to mitigate scams exists and so the expectation should be set that governing bodies should apply the Code in full or else explain where and why they are deviating from it. Knowledge of the PSIG Code (or at least about it) could also be considered as an necessary for being able to meet that duty and being "*aware of the warning signs of a scam*" mentioned in the draft Code.

We think reference should also be made to the 'pensions pledge' and some detail on reporting of scams would be useful.

Q3: 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. It could be mentioned that failure to comply with current expectations has resulted in governing bodies having to reinstate transferring members in their schemes and at their own expense.

Q4: 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.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

Include URL for PSIG code.

Note that updates will be needed when new requirements under the Pension Schemes Act 2021 come into force – expected this autumn.

MODULE TITLE: Publishing information about public service pension schemes (CAD010)

Q1: 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?

While the title is not unclear, it is very broad and could relate to the reporting duties of a pension board which fall under the 'must' and 'should' requirements but also incorporate the 'may' recommendations of the pension board and the scheme advisory board. However, any confusion that may arise could be dealt with by using terminology in the content of this page that is consistent with the Public Service Pensions Act 2013 (PSPA13).

Q2: 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?

Reading this section in isolation of the remainder of the Code, the usage and application of the term 'Governing body' is not clear as it is not defined. For example, in the LGPS, the scheme manager and the responsible authority (presumably the governing body) are two different entities. We would, therefore, suggest consistent usage of terminology, as defined in the PSPA13, would aide in clarifying which body is expected to undertake which duty.

The pension board (established under section 5 of the PSPA13) and the scheme advisory board (established under section 7 of the PSPA13) are two different entities. The pension board exists to assist in the management and administration of the scheme, whereas the scheme advisory board's role is to advise the responsible authority, at the authority's request, on the desirability of changes to the scheme.

Under section 6 of the PSPA13, the scheme manager has responsibility for the establishment of a pension board and the publication of information relating to this board. Under section 7(4) of the PSPA13, provides that the scheme regulations must establish a scheme advisory board in each scheme.

However, the usage of governing body within the Code would appear to be interchangeable and could relate to both entities. This duality is compounded by the subsections labelled:

- The scheme manager must publish and maintain
- Governing bodies may also publish
- Governing bodies should

This deliberate change in nomenclature, suggests that the governing body need not necessarily relate to or even be the same as the scheme manager. Additionally, under the subsection 'Governing bodies may also publish', reference is specifically made to the pension board which is appointed by scheme manager and who is responsible for the publication of pension board information (reference section 5 subsection (4)(a) and section 6). In consequence, with no definition of governing body to refer to, it is unclear if the Code is referring to the duties of the scheme manager, scheme advisory board or the responsible authority and it should be made clear which entities this part of the code should apply to. We believe this clarity could be achieved by using terminology that is consistent with those defined in the Public Service Pensions Act 2013 (PSPA13).

Q3: 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?

Reading this page in isolation, it is unclear what a Governing body is – refer to response to Q2.

Q4: 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?

Whether the governing body relates to a responsible authority or the scheme advisory board, it seems disproportionate for these bodies to oversee and specify recruitment processes etc. of pension boards, unless the scheme manager and responsible authority are one in the same entity because there is only one scheme manager of the scheme. However, we believe that it would be helpful if one of the items governing bodies may publish is an annual report of its activities. This will enable scheme members to see the work and value added by their governing body, giving further transparency and context to the work undertaken.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

A definition of what is meant by the term governing body in this specific context, would be of assistance if this term is retained.

MODULE TITLE: Audit requirements (CAD014)

Q1: 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?

Changing the title to “Requirements to obtain audited accounts and associated matters” may give better signposting.

Q2: 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?

We note that this is new content and not based on material from an existing code of practice. However, we are content that it gives a reasonable overview of the requirements. There is the opportunity though to set more specific expectations. Is it planned to provide further information in supporting guidance?

Q3: 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. We think that it would be more helpful for the reader if the module listed what schemes are required to provide audited accounts rather than just referring to “certain governing bodies”.

In addition, the drafting does not seem to contemplate the more limited requirements that apply to ‘ear-marked schemes’ (i.e. only the auditor’s statement about contributions is required and instead insurance company accounts are provided). Also the exemption (Regulation 2(2C) of S.I. 1996 No.1975) to the auditor’s statement requirement where a scheme has at least 20 participating employers is not recognised.

Q4: 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?

We have no comment on this question.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We have no comment on this question.

MODULE TITLE: Dispute resolution procedures (CAD015)

Q1: 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.

Q2: 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 the detail in the module has been reduced to such an extent that key directions in the current Code 11 are lost with consequent uncertainty over expectations. While this may be mitigated by publication of information in linked guidance this is unsatisfactory since a reader of the Single Code has to refer to legislation, the Code and guidance simultaneously.

Take the following paragraph:

Governing bodies must ensure their scheme's procedures allow a reasonable period, which should be at least six months, for certain people^{D16} or their representatives^{D17} to make their applications. The six-month period should normally start immediately after the date on which the person ceased to be, or claims they ceased to be, a person with an interest in the scheme. Governing bodies can accept an application outside of this timeframe, if they believe it is appropriate.

The term 'certain people' is not defined and one has to look at legislation. In the case of the current Code 11 at paragraph 5 there is at least the following in its parentheses:

(broadly those who have ceased, or claim to have ceased, to be a member of the scheme, beneficiary of the scheme, or prospective member of the scheme)

Also, the last sentence in the quotation above offers no direction beyond the phrase 'if they believe it is appropriate'. The current Code is much clearer at paragraph 9:

Trustees or managers may agree to accept an application for a dispute received outside the specified reasonable period. This may be where the person with an interest in the scheme could not have reasonably known about the matter in dispute within the six months (this is particularly the case where disclosure of information to members has been poor) or for exceptional reasons such as incapacity.

In addition, there is no introduction of the concept of the two-stage process as a choice that the governing body could make but yet it is referenced later when setting out reasonable time periods. The current Code 11 at paragraphs 3 at least has the following that can be used (with 'governing body' replacing 'trustees or managers'):

The law allows trustees or managers to operate a two-stage procedure with a 'specified person' undertaking the first-stage decision or adopt a simpler single-stage process if that is more appropriate for their scheme.

In our view, the above detail should be retained in order to make expectations clear.

We add the Code of Practice 14 at paragraphs 220 to 223 introduces this area even better but recognise that they are longer.

In relation to reasonable time periods... section the first three bullet points should have "as far as possible" or "generally" inserted next to the four-month time limit given the content of the final bullet point.

Q3: 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?

It would be more helpful if instead of the scope being listed as all occupational pension schemes “subject to certain exemptions” those exemptions were listed (as the legislation has been very stable on this point). They are:

- Schemes where every member is a trustee
- Schemes with only one member
- Schemes where the sole trustee is a company and all members are directors of that company.

In terms of scope the application to public service pension schemes and the position on personal pension schemes should be made clear.

The following paragraph is too vague, and the legislative reference D15 to exempt disputes does not fit the content as internal dispute resolution procedures would not be used in that context:

Governing bodies must follow the dispute procedure to resolve various matters.^{D14} Dispute procedures may be used to resolve other disputes^{D15} where alternative arrangements do not exist.

As such, the text above may be read as implying that dispute procedures could be “used to resolve” exempt disputes, which is wrong.

The text would be clarified improved by its replacement with the following more specific detail:

Governing bodies must follow their written dispute resolution procedure to resolve pension disputes against them raised by members and others who have an interest in the scheme about matters relating the scheme.

^{D14} *Those with an interest in the scheme will include*

- Members
- Widow, widowers, surviving civil partners and surviving dependants of deceased members
- Other persons entitled to the payment of benefits following the death of a member
- Prospective members (regardless of whether joining is automatic, optional, or only applies in certain circumstances)
- Any former members and any person who was in one of the above categories
- Any person who claims to be in one of the above categories and the dispute is about whether he or she is or is not.

Dispute procedures may be used to resolve other disputes where alternative arrangements do not exist.

However certain matters are outside the scope of dispute resolution procedures^{D15}. These are:

- proceedings that have been commenced in any court or tribunal,
- a dispute that the Pensions Ombudsman has commenced an investigation into as a result of a complaint made or a dispute referred to him
- a dispute that relates to a medical issue concerning police or firefighters where a notice of appeal has been issued by the complainant in accordance with regulations and rules dealing with such matters^{DXX}.

DXX Regulation 4 of The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008.

Q4: 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?

The text states that governing bodies should:

“include in the internal dispute resolution procedure the information they are likely to need from applicants to reach a decision on a disputed matter”.

This is excessive since the range of potential disputes is so large, it is impossible to state with any precision the information likely to be needed. Instead we suggest that governing bodies should do the following:

“make it clear in the internal dispute resolution procedure that applicants when raising a dispute must give their contact details and need to set out what matters they are disputing and why, and should provide information and evidence to explain and support their contention”.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

It may be appropriate to include the following sentence from the current Code 11 in paragraph 16 (change in red):

*The Pensions Regulator may call upon **a governing body** to demonstrate the propriety of the time taken.*

Legislative cross references to the relevant secondary legislation should be given for the sections on:

- “In relation to dispute resolution processes, governing bodies must” and
- “Governing bodies should”.

SPP Single Code of Practice response form 6 – Reporting to TPR

MODULE TITLE: Regular reports - Registrable information and scheme return (RTT001)

Q1: 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

Q2: 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, expectations are clear.

Q3: 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?

A number of glossary definitions here are mistaken and we believe that this area needs much more attention paid to it throughout the whole draft code – a lawyer at the Regulator should review them all. For example: The 'deferred member' definition would include pensioners. The 'Occupational pension scheme' definition could be read as including group personal pensions. 'Pensions members' should probably be 'Pensioner member'. It is not clear in all cases why these terms are used here.

Q4: 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?

We have no comment on this question

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

The following sentence should be amended to read as follows (amendment in bold): “Any changes to items of registrable information should be reported to us within five working days, or at the very latest within five **working** days of the governing body.....”.

MODULE TITLE: Whistleblowing – Reporting breaches of the law – Who must report (RTT003)

Q1: 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

Q2: 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, broadly expectations are clear. However, there is the need to achieve clarity and consistency in relation to the late payment of contributions and when the material significance threshold is met so that a report has to be made. There should be appropriate linkage with modules, ADM007, ADM008 and ADM011 (in particular see comments on Question 3 of ADM011).

Q3: 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. In the section on who has the duty to report please make it clear that, per section 70(1)(e) and paragraph 16 of Code of Practice 01, the following have a duty to report:

Any other adviser to the governing body

This will include other firms (or individuals where the appointments are personal) providing advice to the governing body even if not qualifying as a formal professional adviser. Included within this category are independent financial advisers, pensions consultants and investment consultants.

In the professional adviser section please include in the list (per Regulation 2(c) of the Scheme Administration Regulations 1996):

Custodians formally appointed and anyone who has the custody of cash, securities and any other documents of title to scheme assets.

Q4: 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?

In the section 'Who has the duty to report?' under the sub-heading 'Trustees' it is legally inaccurate to say that the reporting requirement falls on the directors of a corporate trustee: it falls on the trustee company itself.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We think it appropriate to retain some guidance from paragraphs 26 to 28 of the Code as this provides helpful context to users of the Code:

Legal duty should be understood in its full range. It covers not only duties set down in Acts of Parliament relating to pensions, but also other forms of legislation such as regulations and includes breaches of the law affecting pensions but derived from other law. For example, an offence of dishonesty under the Theft Act would also be a breach.

It also extends to legal duties arising out of the law laid down by decisions of the courts, such as trust law and common law.

When considering breaches of trust law, reporters should bear in mind the basic principle that governing bodies are holding property on behalf of others. They should act in good faith and within the terms of their governing documents (such as trust deeds and rules or regulations) for the benefit of all of the beneficiaries of the scheme. If they fail to do so, they are in breach of trust law. A very basic rule of thumb in considering whether an action or failure to act is, or may be, a breach of trust is this: if the governing body has acted in a way which would appear unfair or wrong to a reasonable and objective person, then a breach of trust may have taken place

MODULE TITLE: Whistleblowing – Decision to report (RTT004)

Q1: 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

Q2: 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, there are a number of notable omissions. First, as indicated in our comments on ADM011, *Resolving contributions*, there is the absence of the materiality guidance that currently exists in:

- Code of Practice 05, paragraphs 46 and 47
- Code of Practice 06, paragraphs 47 and 48
- Code of Practice 03, paragraphs 173 and 174.

It is essential that clear expectations are set about late contribution payments.

It is also concerning that there is no mention of those cases where a Reporter fails in their legal duty to make a report. The paragraphs 68 to 70 from Code of Practice 01 are absent and their text should feature in the Code (with the following suggested amendments **in red**):

Failure to report

*Failure to comply with the obligation imposed by the requirement to report breaches of the law without 'reasonable excuse' is a civil offence **and is also reportable**. To decide whether the reporter has a reasonable excuse for not reporting as required, or for reporting a breach later than **we** would have expected, **we** will look at:*

- *the legislation, case law, this code of practice and any guidance issued by **us**;*
- *the role of the reporter in relation to the scheme;*
- *the training provided to the individual or staff, and the level of knowledge it would be reasonable to expect that individual or those staff to have;*
- *the procedures put in place to identify and evaluate breaches and whether these procedures had been followed;*
- *the seriousness of the breach and therefore how important it was to report this without delay;*
- *any reasons for the delay in reporting;*
- *any other relevant considerations relating to the case in question.*

*If there is **active consideration of** imposing a civil penalty, or exercising **a regulatory** function, directly affected parties will receive a warning notice identifying the alleged breach and specifying the relevant function. Further details can be found in **our** guidance on determination procedures.*

***We** may, in addition, where it considers it appropriate to do so, make a complaint to the reporter's professional or other governing body.*

Q3: 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. Under 'effect of the breach', we recognise that notifiable events is an area that is to be covered in a later iteration of the Code and that Code 02 remains in place for now. However, this part of the Code is of general application and so we believe a reference that a failure to report a notifiable event should be included.

Under 'reaction to the breach' we believe that the bullet points should include: "*the corrective action is not being pursued to a proper conclusion*". This is relevant where a breach would otherwise not be material, but the fault still has not been corrected even after a delay.

Q4: 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.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

No

MODULE TITLE: Whistleblowing – How to report (RTT005)

Q1: 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

Q2: 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 since the links to online reporting and Exchange ([Register and log in to The Pensions Regulator](#)) are absent and it would be more helpful if they were given (at least to a landing page).

Q3: 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?

It is concerning that the specific mechanism for reporting late payment of contributions is not covered with even a reference here. It would be best to have a link or utilise the explanation in Code of Practice 05 (changes in red):

*We have standardised reporting for material payment failures in terms of content, format and channel and **governing bodies** should refer to separate guidance for more details including the data standards which **governing bodies** should comply with.*

Q4: 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.

Q5: Do you have any further comments on the module that have not been covered by the previous questions?

We think it would be wise to make the point that reporters should not unduly delay reporting while they try to obtain agreement with other parties to make a shared report.