

Subject	Governance and Regulatory Update	Status	For Publication
Report to	Local Pension Board	Date	22 nd April 2021
Report of	Director		
Equality Impact Assessment	Not Required	Attached	No
Contact Officer	George Graham Director	Phone	01226 772887
E Mail	ggraham@sypa.org.uk		

1 **Purpose of the Report**

- 1.1 To provide Board members with an update on governance and regulatory matters.

2 **Recommendations**

- 2.1 Members are recommended to:
- a. **Note and comment on the issues raised in this report.**

3 **Link to Corporate Objectives**

- 3.1 This report links to the delivery of the following corporate objectives:

Effective and Transparent Governance

To uphold effective governance showing prudence and propriety at all times.

The Authority will need to ensure that it adapts the way in which it approaches a range of key governance matters in order to ensure that it complies both with the standards set out in the Scheme Advisory Board's Good Governance standard and the Pensions Regulator's new single code.

4 **Implications for the Corporate Risk Register**

- 4.1 The actions outlined in this report are relevant to all the existing governance risks in the Corporate Risk Register and are likely to result in the identification of further risks around compliance with regulatory requirements, once a full assessment of the work required has been completed.

5 Background and Options

5.1 There have been a number of developments in the area of governance requirements on funds of which members of the Board should be aware (the full details of each are linked under background papers):

- The Scheme Advisory Board has approved the final stage of its Good Governance Project and has made recommendations to the Minister in relation to regulation changes and is implementing an action plan in relation to items which do not require regulatory change.
- The Pensions Regulator has issued its draft single code of practice for consultation. This replaces 10 existing codes including CoP 14 which specifically relates to the governance of public sector schemes, but also a number of topic specific codes such as those concerned with contribution collection which also affect LGPS funds.

Good Governance Project

5.2 The Good Governance Project is a piece of work which has been on the Scheme Advisory Board's agenda since it was created, but which was delayed due to a range of other pressures on time and resources, including the implementation of pooling. The key issues arising from the report and the implications for SYPA are identified below:

- Each administering authority to appoint a single named officer responsible for LGPS Delivery (the LGPS Senior Officer) – *Due to the fact SYPA is an organisation in its own right SYPA already has this in place and it is in effect the definition of the Director's role.*
- Each administering authority to publish an annual governance compliance statement (GCS) setting out how they comply with the governance requirements for LGPS funds to be set out in new statutory guidance. This statement must be co-signed by the LGPS Senior Officer and S151 officer. – *While this is a new statement (and the new statutory guidance is probably at least 18 months away) many of the processes required to produce this are already in place due to the need to produce the Annual Governance Statement. The documents produced by the Scheme Advisory Board include a skeleton for such a statement and "dry run" statements will be produced in the period up to the production of the new statutory guidance to ensure that SYPA is prepared for this change.*
- Each fund should produce a conflicts of interest policy - *A policy is already in place and forms part of SYPA's constitution. However, as with all such policies it will need to be reviewed to ensure that it remains relevant and addresses issues identified in guidance.*
- New guidance around fiduciary duty should be produced – *Once produced members of the Authority and officers will need to have regard to such guidance in their decision making.*
- Funds to publish a policy on representation of scheme members and non-administering authority employers in their governance structures – *While this is defined in the constitution of SYPA there is no formal policy in place. This will be addressed in the coming year.*

- A requirement for members of the Authority and officers to have an appropriate level of knowledge and understanding to carry out their duties effectively together with requirements around the publication of training plans and assessment processes – *For SYPA officers this is already addressed through the appraisal process and professional ethical codes where relevant. For elected members (and to some degree Board members) this will be a regulatory change. However, if members are operating in line with the Learning and Development Strategy (elsewhere on the agenda) then they are likely to comply, although this will not be clear until the relevant guidance has been produced. The requirements relating to training plans etc. are met through the Member Learning and Development Strategy and for officers will be addressed through the next iteration of the HR Strategy which is due to be considered by the Authority in January 2022.*
- Introduce specific training requirements for s151 officers – *It is not clear quite how this will apply to SYPA given the somewhat different arrangements in place for the statutory officers.*
- Administering Authorities should publish a roles and responsibilities matrix setting out how key decisions are reached linked to the relevant constitutional provisions. – *In essence this is what the scheme of delegation in the constitution already does. However, it is accepted that this could be more clearly presented and some work will be undertaken on this with a view to including such a matrix alongside the constitution at its annual update in 2022.*
- The making mandatory of the Pensions Administration Strategy – *SYPA already has such a strategy in place and while some changes may be necessary depending on the content of the final guidance this will not be a major change.*
- Introduction of an agreed set of performance indicators to allow measurement and comparison of standards of service. – *SYPA has continued to participate in a range of benchmarking activity while participation across LGPS has tended to drop off, so this will not represent a major change. However, there are likely to be significant debates over the precise indicators to be used and how they should be calculated, while there are potential challenges around the use of crude league tables in the same way as happened previously with the indicators for council services produced by the Audit Commission.*
- Changes to processes around business planning and budget setting to involve Pensions Committees in the process and ensure a sign off that the level of resources allocated is adequate to deliver the service. – *This is an area where SYPA's status as a free standing pension organisation means that the arrangements in place would already meet the basic requirements indicated. Some changes may be required at a detailed level in reaction to the final content of regulations and guidance when available. Some of these detailed changes can be anticipated to some degree and will be reflected in the next budget cycle.*
- Each administering authority should undergo a biennial Independent Governance Review and produce an improvement plan to address identified issues. The review reports will be assessed by a panel of experts appointed by the SAB. In addition consideration will be given to a peer review process for LGPS Funds. – *SYPA has already undertaken such a review in preparation for the introduction of these changes and is working through the resulting action plan (progress will be reported later in the year). The way in which this review process interacts with the external auditors work on the Value for Money conclusion in the case of SYPA is not entirely clear and will need to be considered as the guidance and regulations are developed.*

- 5.3 In general it appears that SYPA is fairly well prepared for these changes whenever they might finally be implemented. However, there is a clear concern that because SYPA is a free standing organisation some of these changes may result in some degree of duplication with other statutory processes such as the annual governance statement and value for money conclusion processes which in a conventional administering authority would be carried out on a council wide basis and very rarely touch directly on the Pension Fund. Officers will be raising these issues as consultation of the development of the regulations and guidance takes place. However, there are likely to be non-trivial resource implications arising from these changes which will need to be addressed in future budget processes.

The Pensions Regulator's Single Code

- 5.4 The Regulator's new single code replaces 10 previous codes and applies to private sector defined benefit and defined contribution schemes and to public service schemes, although in the latter case the provisions relating to investment and funding do not apply as the Regulator does not have oversight of these matters for public sector schemes. Board members and members of the Authority have been signposted to a range of learning activity associated with the Code.
- 5.5 The new draft code runs to around 150 pages and while much of it simply replicates and re-orders the existing codes there are a number of significant changes:
- The new code is much clearer on those things which funds *must* do (legal duties) and those which they *should* do (TPR expectations). This is in line with broader changes in how government communicates and is to be welcomed.
 - There is an acceptance that given the wide diversity in scale within the pension industry it is in general not possible to specify how things should be done.
 - There is an increased emphasis on controls to address scams, which in general terms is welcome and reflects current practice. However, it does need to be understood that the activities of scheme managers and administrators can never provide an absolute defence against scams.
 - For the private sector schemes the inclusion of provisions in relation to responsible investment and climate risk is welcome in that it reflects a broad policy position which the Authority supports.
- 5.6 While there is much in the draft code which would be expected and with which it is difficult to disagree and the clearer expression of expectations is to be welcomed there are from the LGPS point of view two issues which cause some concern.
- Firstly, the consultation process is running between 17th March and 26th May which straddles the election and annual council meeting period during which Pension Committees and most Local Pension Boards do not meet due to the purdah provisions. Thus elected members of pension committees in LGPS are effectively excluded from formal engagement in the consultation process. Officers have raised this matter with the LGA but it seems unlikely that this will result in an extension to the consultation period
 - Secondly, in those areas where the Regulator's responsibilities exclude the LGPS, particularly in relation to investment strategy and responsible investment issues they are highlighting provisions which would represent good practice for LGPS Funds. While the provisions pointed to are unexceptionable and in some cases things SYPA already does there is an important principle

here that Parliament specifically did not give tPR a role in regulating LGPS in respect of these areas and it is a matter for others to provide the necessary guidance and regulation and for funds themselves to identify good practice which should be followed. It is also the case that tPR approaches these areas and the area of funding for Defined Benefit pensions from a particular point of view focussed on closed schemes which are very different to LGPS which is an open scheme with future accrual in which the major employers are tax raising bodies rather than private companies exposed to significant market related covenant risks.

- Thirdly, TPR were requested to consider an LGPS specific version of the code which would clarify the specific responsibilities of pension committees and local pension boards. TPR have resisted this because of the various governance arrangements in place across the LGPS and instead have just used the generic term ‘governing bodies’ throughout the code to cover both sets of responsibilities.

5.7 Officers will be preparing a response to relevant elements of the proposed Code of Practice and will consult the Chair of the Board before submitting it for approval to the Chair of the Authority in consultation with the s41 members under the urgent business procedure.

5.8 At this stage the resource implications of the Code are unclear, but it would be reasonable to assume that compliance with it will form part of the biennial assessment required under the Good Governance proposals and there will be a need to monitor compliance as part of the demonstration of effective management of the Fund. Given the comprehensive nature of the new Code this will be a not insignificant task although it may amount to the consolidation of a range of existing information.

6 **Implications**

6.1 The proposals outlined in this report have the following implications:

Financial	There are likely to be non-trivial financial implications resulting from the requirements of both the sets of regulations discussed in the report. Officers will need to reflect on how to address these and integrate this activity with existing service development plans.
Human Resources	There are likely to be a range of additional training and development requirements arising from these changes which will be addressed in the ordinary course of business.
ICT	The tPR code highlights the importance of cyber security risks which will need to continue to feature significantly in the ICT Strategy.
Legal	There are no direct implications
Procurement	There are no direct implications

George Graham

Director

Background Papers	
Document	Place of Inspection
Scheme Advisory Board – Good Governance Project tPR – Proposed single Code of Practice	LGPS Scheme Advisory Board - Good Governance (lgpsboard.org) Single code of practice consultation The Pensions Regulator