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This matter is being dealt with by: George Graham

Dear,

### **Consultation on the New Code of Practice**

Thank you for the opportunity to comment on the proposed new code of practice.

South Yorkshire Pensions Authority is responsible for the management of the South Yorkshire Pension Fund within the Local Government Pension Scheme. As at 31<sup>st</sup> March 2021 the Fund had a value of £9.71bn and a membership of around 167,000 drawn from 533 different employing organisations.

Initially the Authority regrets that as the consultation process took place during the period of the local government elections it has not been possible for the full membership of the Authority or the Local Pension Board to consider this response, although it has been agreed by the outgoing Chair of the Authority and the Chair of the Local Pension Board.

There are several developments within the proposed new code which are welcome, particularly the distinction between “musts” and “shoulds” which will no doubt be useful for smaller schemes with particularly limited resources. The greater clarity around those elements of the various codes of practice beyond CoP 14 which directly apply to LGPS funds is also welcome, as is the emphasis on scams and cyber security.

However, there are several areas where the Code seems to fall short of the intention of providing clearer regulation when set in the context both of SYPA and the Local Government Pension Scheme more generally and it is these areas which are addressed in this response rather than the more general questions posed on each section.

To be effective any regulatory framework must be easily comprehensible to those being regulated, if not levels of compliance are likely to fall. As far as the LGPS seems to be concerned the draft code seems to fail this test.

Appendix 1 to the overarching consultation document contains a table which sets out the applicability of the various standards within the Code to differing schemes. However, it is clear that previous attempts to draw distinctions between elements of regulation which do and do not apply to LGPS have been unsuccessful when, for example, we see cases of LGPS funds being challenged by auditors to provide implementation statements, something not required by the LGPS regulations. This will be further confused by the identification of certain items as best practice. While undoubtedly such things are best practice and, in many cases, will already be adopted by LGPS funds, because they are in a code regardless of what it says about their status, they will become de facto regulation. This “regulation by stealth” appears to represent a creeping extension of the scope of tPR’s engagement with the sector which has no basis in the statutory framework.

It is the case throughout the code that no reference is made to the actual regulations which LGPS Authorities must follow in the running of funds. These together with relevant statutory guidance (the equivalent of a code of practice) set out in some detail what is required, for example the requirement that the Investment Strategy Statement set out the Fund’s position in relation to the considering of ESG issues. As a result of omitting this referencing it is not clear whether what is set out in this code is in addition to the requirements of the regulations or whether it is simply amplification of what the regulation say.

Thus, there appears to be a significant risk of duplication and conflict between the requirements of the Code and of the regulations under which LGPS must work. If the Regulator considers that in some way the LGPS regulations and statutory guidance are, in its view, insufficient to achieve effective governance then it should be made clear in what way they are lacking, and recommendations made to the appropriate authorities for changes to enable LGPS authorities to address the perceived weaknesses.

All of the above indicate that there is the potential for confusion in the LGPS around whether or not a particular section legally applies to the scheme. The following sentence *“We have broadly the same expectations for each type of scheme. However, the standard required to meet those expectations frequently differs according to scheme type and size. Where an expectation is different or applies differently in law for a specific type of scheme, this is made clear in this code”* states that is made clear where there is a difference in the law applying to a scheme – it is respectfully stated that it is not sufficiently clear in the case of the LGPS throughout the code.

While recognising that the particular statement does not apply to LGPS we would nevertheless wish to comment on the statement that:

*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.*

There does not appear to be a clear rationale for this statement especially given that large open DB schemes are increasingly looking to private markets to deliver the growth/income required to meet their liabilities within their appropriate risk appetite. Even if not applying to LGPS this will create an expectation amongst auditors and others that it is a limitation that should be applied thus potentially significantly impacting on the effectiveness of Fund’s investment strategies.

The concept of the Governing Body is problematic in the context of the LGPS and while the use of the term is perhaps an attempt to get round the issues caused by the complexities of LGPS governance it fails. Other commentators will be able to provide far greater detail on this. Suffice to say that by promoting ambiguity this surely fails the test of effective regulation.

Within the consultation document it is acknowledged that requests have been made for a separate LGPS version of the Code. The consultation document implies that the LGPS is too inconsistent for a separate code to be appropriate. We can see how it would be resource intensive to provide a code specifically for the LGPS. However, we would suggest that it would not be onerous for TPR to set out where the law applies differently to the LGPS. It must be in TPR's interests for LGPS authorities to be clear what their legal obligations are. As an alternative, we would suggest that the LGPS Scheme Advisory Board will need to produce a "guide" to the TPR code, creating another layer of regulation and guidance with the potential for conflicts of interpretation.

Regretfully, if the test of regulation is that it facilitates the effective running of the regulated entity, we feel that in relation to the LGPS the draft code fails the test by unhelpfully creating further layers of ambiguity for those running funds.

Yours sincerely

A handwritten signature in black ink, appearing to read 'George Graham', written in a cursive style.

George Graham  
Director