

<b>Subject</b>	<b>Regulatory Update</b>	<b>Status</b>	For Publication
<b>Report to</b>	Authority	<b>Date</b>	10 <sup>th</sup> June 2021
<b>Report of</b>	Director		
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## 1 **Purpose of the Report**

- 1.1 To provide members with an update on regulatory matters.
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## 2 **Recommendations**

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

## 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 several developments in the regulatory environment of which members 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 several topic specific codes such as those concerned with contribution collection which also affect LGPS funds.
- The Government have made a written ministerial statement indicating the next steps in dealing with the McCloud (age discrimination) remedy within the Local Government Pension Scheme.

### *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 in the SYPA context.*
- 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 during 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 and exceed 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 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 on the development of the regulations and guidance takes place. However, there are likely to be non-trivial resource implications arising which are to some degree anticipated by changes proposed elsewhere on the agenda.

#### *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 prior to the local elections were 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 several 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 The areas of significance in the new code where it is anticipated the Authority will need to devote time and resources are shown below, although in themselves these all seem to be reasonable expectations of a well-run pension scheme.
- *Develop a strategy for the long-term administrative objectives of the scheme* – It is not entirely how this relates to the requirements already in the LPGS Regulations (and proposed to be included under the Good Governance changes) for business plans and a Pensions Administration Strategy. Nor is it clear whether the Authority's current plans will address expectations in this area which are not further defined.
  - *Record the procedures to follow when administering the scheme, and how to maintain those procedures* – While we maintain a significant amount of procedural guidance and instructions for staff this is a particularly challenging area given the complexities of the Scheme. Officers were already considering seeking accreditation under the Pension Administration Standards Association

(PASA) scheme which would help to formalise this as part of an overall quality assurance process.

- *Secure evidence that the IT system can meet the current and anticipated physical system requirements.* – This area needs will need to be formalised, specifically the forward-looking element.
- *Ensure that all communications sent to members are accurate, clear, concise, relevant and in plain English.* – This is an entirely sensible approach and is something that we currently aspire to achieve and where we are seeking to provide some additional training and support for staff. However, it may be sensible to engage with the Plain English campaign in relation to certain key static publications and high-volume communications.
- *Governing bodies should have measures in place to review and ensure the accuracy of the information in their scheme return before they send it to us (tPR).* – It is not clear exactly which part of the Governance structure would be covered by the term Governing Body in this case, but this may require some additional steps so that for example the Chair of the Authority and/or Local Pension Board could approve the return before submission.
- *Governing bodies should be satisfied that those responsible for reporting breaches are aware of the legal requirements and this code. Training should be provided for the governing body and any in-house administrators.* – Training was provided when the breach reporting policy was first introduced, although this was some time ago so it would make sense to both update the policy and then run some further training, while adding an annual refreshed into the regular training programme.

5.7 Officers prepared a response to this consultation which is at Appendix A and has been agreed with the outgoing Chair of the Authority and the Chair of the Local Pension Board before submission. This response concentrated more on process and areas where the proposed code seemed likely to cause confusion or lack clarity in relation to LGPS rather than on the detail of particular items in the code which as indicated above are standards which the Authority would wish to meet. The broad conclusion in the response is that while a single code may be helpful for the regulator and their staff it is actually likely to be unhelpful for those in LGPS being regulated and either a separate comprehensive public sector code or LGPS code would have been a more sensible approach.

5.8 At this stage the detailed 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, rather than an entirely new burden.

#### *McCloud Remedy*

5.9 The McCloud case is the name given to the process of addressing the age discrimination which the Supreme Court has found to exist in the arrangements within the 2014 LGPS which protect the interests of scheme members close to retirement when the scheme moved from a pure final salary basis to a career average basis. The Government has been considering how the remedy required by the Supreme Court judgement should be applied in each of the public service pension schemes.

5.10 In order to allow each of the public service pension schemes to make new regulations to address the discrimination issue the Government needs to bring forward new primary legislation. Following this, regulations specific to LGPS will be made which it is anticipated will come into force from 1<sup>st</sup> April 2023. The Government has indicated following an earlier technical consultation the nature of the remedy they intend to apply which is in line with their previous proposals which were broadly accepted as the best of the options available. While the timescale for regulations does seem somewhat relaxed having clarity on this matter allows more detailed planning and preparation to be undertaken while other tasks such as GMP reconciliation which might have become intertwined with the remedy can be dealt with beforehand. It is likely that there will be additional software costs and potentially some further one-off costs as a result of these changes.

*Boycotts, Divestment and Sanctions Bill*

5.11 The Queen’s Speech included proposals for a bill to give effect to the Government’s manifesto commitment to stop public bodies from imposing their own approach or views about international relations. In terms of the Local Government Pension Scheme this specifically relates to a case lost in the Supreme Court by the Government around the content of statutory guidance which sought to impose a similar ban. The detail of the Bill is awaited and while it is not expected at this stage to cause significant issues the way in which it interacts with responsible investment policies in various areas will require careful study.

**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 some of the requirements 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**

<b>Background Papers</b>	
<b>Document</b>	<b>Place of Inspection</b>
Scheme Advisory Board – Good Governance Project	<a href="#">LGPS Scheme Advisory Board - Good Governance (lgpsboard.org)</a>
tPR – Proposed single Code of Practice	<a href="#">Single code of practice consultation   The Pensions Regulator</a>
Written Ministerial Statement McCloud Remedy	<a href="#">Written statements - Written questions, answers and statements - UK Parliament</a>
Government Briefing on the Boycotts, Divestment and Sanctions Bill	<a href="#">BDSB21.pdf (lgpsboard.org)</a>