

PRESS RELEASE

INVESTORS REPRESENTING £550bn ASK GOVERNMENT FOR STATUTORY CLARIFICATION OF FIDUCIARY DUTY

Statutory clarification of trustees' duties in respect of ESG investment approaches would complement the excellent Law Commission report

Embargoed until 00.01am, Monday 7th July

- Sustainable investment trade association supports Law Commission's views on stewardship and how pension trustees should consider ESG factors
- Law Commission says poor governance, environmental degradation and poor treatment of customers, suppliers and employees are financially material risks to investors and savers.
- Law Commission asks The Pensions Regulator to give their guidance "exposure and authority"
- Law Commission recommends Government review on whether trustees should state policies on stewardship.
- UKSIF asks the Government to be prepared to go further to provide absolute clarity

London, 7th July 2013 – the UK Sustainable Investment and Finance Association (UKSIF) today co-ordinated a letter signed by investors from organisations with over £550 billion in assets under management to Vince Cable, Secretary of State for Business, Innovation and Skills, and Steve Webb, Minister of State for Pensions, urging the Government to take up the Law Commission's recommendations on ESG and stewardship issues, while asking the Government to consider statutory clarification.

Simon Howard, UKSIF Chief Executive, said:

"We live in a world where issues such as climate change, resource depletion and human rights practices are coming under increasing scrutiny. It is therefore essential that the government gives absolute certainty to pension trustees that they can and should consider the full range of sustainable investment approaches necessary for the type of long-term decision-making that grows the value of beneficiaries' assets.

We were delighted with the Law Commission's views that environmental, social and governance factors should be taken into account where financially material, and think the draft guidance they have provided will be tremendously useful. We would urge the Government to quickly push forward with the Commission's recommendations, on stewardship and ESG issues.

However, we believe that statutory clarification of some aspects of the law in line with the Law Commission's views is still the most effective way to protect the public's pensions and savings, and is a much stronger statement of the Government's commitment to long-term investment. We therefore call upon Vince Cable and Steve Webb to consider statutory clarification to provide pension trustees with the greatest possible confidence to consider the full range of investment approaches."

List of signatories:

Simon Howard, *Chief Executive*, UK Sustainable Investment and Finance Association

Fouad Benseddik, *Director of Methodology and Institutional Relationships*, Vigeo Rating

Paul Ellis, *Chief Executive*, Ecology Building Society

Katherine Garrett-Cox CBE, *Chief Executive Officer*, Alliance Trust

Peter Harrison, *Head of Investments*, Schroder Investment Management

Nick O'Donohoe, *Chief Executive Officer*, Big Society Capital

Ian Simm, *Chief Executive*, Impax Asset Management

Steve Waygood, *Chief Responsible Investment Officer*, Aviva Investors

Danielle Walker Palmour, *Foundation Director*, Friends Provident Foundation

Peter Webster, *Chief Executive Officer*, EIRIS

Rob Wylie, *Chairman*, WHEB Group

Notes to editors

The Law Commission's recommendations on ESG and stewardship issues

"...The report concludes that trustees should take into account factors which are financially material to the performance of an investment. Where trustees think ethical or environmental, social or governance (ESG) issues are financially material they should take them into account.

However, whilst the pursuit of a financial return should be the predominant concern of pension trustees, the law is sufficiently flexible to allow other, subordinate, concerns to be taken into account. We conclude that the law permits trustees to make investment decisions that are based on non-financial factors, provided that:

- they have good reason to think that scheme members share the concern; and
- there is no risk of significant financial detriment to the fund."

http://lawcommission.justice.gov.uk/areas/fiduciary_duties.htm

12.1 We recommend that TPR considers how the guidance we have set out can be given greater exposure and authority. In the short-term this could be through guidance in its trustee toolkit. In the longer term, we recommend that TPR include our guidance in one of its codes of practice.

12.3 We recommend that the Government should review...aspects of the Occupational Pension Schemes (Investment) Regulations 2005. These are

(2) the reference to "social, environmental or ethical considerations" in regulation 2(3)(b)(vii), to ensure that it accurately reflects the distinction between financial factors and non-financial factors; and 3) whether trustees should be required to state their policy (if any) on stewardship.

Taken from Chapter 12: List of Recommendations, page 239 of the Law Commission report found here: http://lawcommission.justice.gov.uk/docs/lc350_fiduciary_duties.pdf

About the Law Commission's consultation on *Fiduciary Duties of Investment Intermediaries*

The Kay Report in 2012 identified widespread concern about how fiduciary duties were interpreted in the context of investment. Accordingly, one of the Kay Report's recommendations was that "the Law Commission should be asked to review the legal concept of fiduciary duty as applied to investment to address uncertainties and misunderstandings on the part of trustees and their advisers."

The Law Commission's consultation opened on 22nd October 2013 and closed on 22 January 2014. The final [report](#) with recommendations was published on 1 July 2014.

UKSIF's response can be found [here](#).

About the UK Sustainable Investment and Finance Association (UKSIF)

The UK Sustainable Investment and Finance Association (UKSIF) supports the UK finance sector as a global leader in advancing sustainable development through financial services. We promote and support responsible investment and other forms of finance that advance sustainable economic development, enhance quality of life and safeguard the environment. Founded in 1991, UKSIF has approximately 250 members including pension funds, asset managers, research providers, financial advisers, banks and non-governmental organisations. For more information, please visit www.uksif.org.

The Letters (PDF's available upon request)



4th July 2014

The Rt. Hon Vince Cable MP
Secretary of State
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

Dear Secretary of State,

Re: the Law Commission's recommendations on *Fiduciary Duties of Investment Intermediaries*

We have welcomed the Coalition Government's commitment - via the Kay Review and other related agendas - to reshaping capital markets to restore legitimacy and public trust to markets, and ensure the long-term, sustainable economic recovery that the UK needs.

As responsible and long-term investors - with £550 of assets under management - we, the undersigned, believe an important part of this commitment is creating an environment that facilitates investment decisions which take into account the environmental, social and governance (ESG) issues that can fundamentally affect the value of people's pensions and savings.

We are therefore writing to express our support for the recommendations put forward by the Law Commission in its recent report on *The Fiduciary Duties of Investment Intermediaries*. In particular, we back:

- The Commission's views of how pension fund trustees should consider ESG factors where they are financially material. We would strongly urge the Government to accept the Commission's recommendation that The Pensions Regulator and the Financial Conduct Authority (FCA) provide further guidance in this area, and work with these regulators to do so in a rapid, accessible and inclusive manner.
- The Commission's recommendation that trustees be required to state their policy on stewardship; active ownership of assets by pension schemes of all sizes is key to achieving real financial benefits. We encourage the Government both to take forward the Commission's recommendations and to consider any further action that might encourage high-quality investor stewardship.

However, the Law Commission itself states that the current laws on fiduciary duties are "confusing and inaccessible" and we believe that in itself guidance may be insufficient to provide the certainty that pension fund trustees need to feel confident in considering the full range of investment approaches. Legal clarification would provide a much stronger statement of the Coalition Government's commitment to supporting long-term investment decisions and be more effective in protecting the public's savings and pensions. We therefore ask the Government to go further than the Law Commission's current recommendations in this area.

We thank you in advance for consideration of this letter and would be more than happy to discuss these issues with you further. We have sent a similar letter to the Minister of State for Pensions.

Yours sincerely,

Simon Howard, *Chief Executive*, UK Sustainable Investment and Finance Association

Fouad Benseddik, *Director of Methodology and Institutional Relationships*, Vigeo Rating

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4th July 2014

Mr Steve Webb MP
Minister of State for Pensions
Department of Work and Pensions
Caxton House
6-12 Tothill Street
London SW1H 9NA

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