UKSIF
UK Sustainable Investment and Finance Association

11 May 2016

Louise Sivyer
Regulatory Policy Directorate
The Pensions Regulator
Napier House, Trafalgar Place
Brighton, BN1 4DW

Dear Ms Sivyer,

The Pensions Regulator Code of Practice Guidance for DC Schemes Consultation

Thank you for the opportunity to feed-in to The Pensions Regulator's consultations on guidance for the new DC code of practice. We appreciate your continued engagement with stakeholders throughout the consultation process and felt the workshop in January was particularly useful.

As you will be aware, UKSIF has put forward its views both publicly and privately with regard to the development of the DC code of practice and the associated guidance and we are pleased that our views are reflected in both.

UKSIF has called for legislative and regulatory clarity for trustees over their responsibilities as investment intermediaries. We are therefore delighted to see inclusion of the section on financial and non-financial factors- an area which the Law Commission, in its 2014 report on fiduciary duties, identified as needing further clarity. Key to this is the statement 'where you think environmental, social and governance (ESG) factors are financially significant you should take them into account', which closely mirrors the language used by the Law Commission. We agree with the three bullet points in this section, and welcome inclusion of Law Commission's view on ethical investment, although we would add that in paragraph 6.102 of their report they state:

'There are some limited circumstances in which significant financial detriment to the fund may be justified. Trustees must act in accordance with the trust instrument, and this may contain provisions affecting trustees' investment discretion. Moreover, where members of DC schemes choose to invest on an ethical basis, there can be no legal objection if the performance of their investments is less than would otherwise have been the case.'

This is an important point: Ensuring trustees understand this would be desirable both in providing clarity and also supporting the growth of ethical investment funds and we would welcome its inclusion in the guidance. TPR may wish to note that in polling commissioned for Good Money Week 2015[1] showed that 54% of British investors wanted their investments

[1] http://goodmoneyweek.com/

to have a positive impact beyond just making money. This is a record high since polling began in 2009 and we expect this trend to continue.
We also welcome the direct link to the Law Commission report, enabling trustees and advisors easily accessible information on their legal duties as fiduciaries. While we appreciate it is unlikely to be read front to back, it is nonetheless an important resource. TPR may wish to highlight the particular aspects it feels are most relevant to trustees.

We were pleased to see the section on sustainability, particularly with references to potential long-term risks including from climate change. In our report for Ownership Day 2016, *Understanding and applying fiduciary duty,*[2] we suggest trustees should identify and assess the key risks to their fund with their advisers. We also specifically refer to risks stemming from climate change and note that currently the investment consultants Mercer are advising trustees who consider climate change to add it to their risk register. This helps to ensure proper monitoring and mitigation of the risk is integrated into the fund's governance processes and we would welcome reference in the guidance to inclusion of long-term risks in the risk register.

The section on investment stewardship is also very welcome, however we feel TPR should be more directive here. In particular, we would make the following amendments (in bold):

- We would encourage you to become familiar with your managers' stewardship policies and where **trustees deem it** appropriate, seek to influence them.
- Where **trustees consider it appropriate** you may wish to **set** specific voting criteria **for your** investment managers.

Some trustee boards remain under a misapprehension that their schemes may be too small to influence stewardship activities. This is simply not true and by working with investment managers as set out above active and responsible ownership can be achieved by schemes of all sizes. TPR may also be interested in the Pension Fund Roundtable's guide to reporting in public equity[3] published in 2015 by the NAPF and 16 of the largest pension funds in the UK. It is an engagement and monitoring tool for current *and prospective* fund managers and is designed to be particularly useful for smaller funds. Inclusion in the guidance would certainly go a long way to dispel myths surround smaller funds' ability to be good stewards. It would be very helpful to include this in the 'useful links' section.

We welcome the information in the 'useful links' section- this material will be extremely useful for trustees. The nature and means by which sustainable and responsible investment is conducted is constantly evolving. While the links currently listed are likely to be kept up-

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[2] UKSIF, *Understanding and applying fiduciary duty,* 2016 available at http://ownershipday.co.uk/wp-content/uploads/2016/03/Fid-duty-report-FINAL3.pdf
[3] Available at http://www.btpensions.net/download/353/Guide+to+Responsible+Investment+Reporting+in+Public+Equity+-+26.01.15.pdf

to-date, we would also suggest a separate page on TPR's website with other reports, links and updates in relation to ESG, sustainability and stewardship. One report which would be particularly useful for trustees, is the Arabesque and Oxford University meta-study into the link between ESG and outperformance. The authors make several concluding remarks, which include the following:

'Given the strength, depth, and breadth of the scientific evidence, demonstrating that sustainability information is relevant for corporate performance and investment returns, we conclude:

- *It is in the best interest of institutional investors and trustees, in order to fulfil their fiduciary duties, to require the inclusion of sustainability parameters into the investment process.*
- *Investors should be active owners and exert their influence on the management of their invested companies to improve the management of sustainability parameters that are most relevant to operational and investment performance.'*

We believe having TPR dedicate one of its pages to becoming a repository for the latest evidence, guides and strategies in responsible investment and which can be easily and frequently updated will go some way to encouraging asset owners to fully embrace the guidance TPR has drafted.

This relatively short response reflects the fact that much of our feedback has been given over the past few months and we are grateful it has been taken on board. As ever, we would be happy to receive any questions you have in relation to this submission either via email or face-to-face.

I look forward to hearing from you.

Yours sincerely,

Simon Howard
Chief Executive
UK Sustainable Investment and Finance Association (UKSIF)