

Consultation: The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

Response from ShareAction (formerly FairPensions)

About ShareAction

ShareAction (formerly FairPensions) is a registered charity established to promote responsible investment practices by pension funds and other institutional investors. In particular, we work to encourage active stewardship of listed companies through the informed exercise of shareholder rights. ShareAction also champions greater transparency and accountability to the millions of people whose long-term savings are entrusted to the capital markets.

We are a member organisation and count amongst our members a growing number of globally recognised NGOs and trade unions, as well as over 8000 individual supporters.

Summary of response

- Effective disclosure is vital, not just to enable members to understand their benefits and make informed decisions, but also to enable effective monitoring and scrutiny of decisions made on members' behalf. This is particularly important in the context of auto-enrolment. In our view, more attention therefore needs to be paid to the provision of information about schemes' investment approaches.
- We agree that the disclosure regime should be harmonised as far as possible between occupational and personal schemes, and would urge that this be done by 'levelling up' rather than 'levelling down'.
- We do not support the removal of requirements on personal pension schemes which are deemed to be covered by FSA rules. In our view, this undermines the objective of ensuring clarity and consistency of disclosure obligations, and creates the risk of further discrepancies arising in the future if and when either set of rules is changed.
- In relation to the proposed new provision on lifestyling, we support anything designed to help members understand where their money goes and how it is being invested in their best interests. We would urge the government to consider making this part of a holistic approach to ensuring that members receive regular, accessible



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information on the investment of their savings. This would be in line with the aspirations of the Myners Review, which as yet appear to be unrealised.

- Regarding electronic disclosure, we suggest that schemes (at least above a certain size), should be required to maintain a website, and that certain documents should be provided online as a matter of course. This is the modern equivalent of disclosing information to members on request, and provides a cost-effective way for schemes to disclose information proactively rather than simply reactively, thereby facilitating better engagement and monitoring by members.
- We strongly oppose the replacement of specific regulations with a principles-based approach, for the same reasons set out in our response to the 2009 consultation. We would however favour the introduction of an overarching principle as a *complement* to existing specific disclosure requirements, in order to encourage adherence to the spirit and not simply the letter of the regulations.

We respond below to the specific questions which fall within our area of expertise.

Question 1

In our view, disclosure is vital not only to informing members' active decisions about their pension, but also to promoting good governance by facilitating scrutiny of decisions made on members' behalf. This was recognised in the OECD Guidelines for the Protection of the Rights of Members and Beneficiaries, which state:

“Adequate disclosure, in addition to helping to effectuate the substantive and procedural rights of members and beneficiaries, may also lead to more effective pension plan governance by enabling members to monitor certain aspects of plan administration.”¹

This is all the more true under auto-enrolment, where most members are not expected to make active decisions about most key elements of their pension. Scrutiny of decisions taken on members' behalf – even if only undertaken by a relatively small number of individuals – is therefore an important mechanism for ensuring schemes function in the interests of members more generally. In addition, as the consultation paper notes, it can help to build the trust which will encourage people to remain opted-in.

There is growing recognition of the importance of long-term and responsible investment, both to outcomes for members individually and to the sustainability of the pensions system as a whole. As we move towards a DC world, long-term investment performance will have an increasingly central impact on retirement outcomes. As the Kay Review has highlighted, at present it is not always clear that investment decision-making is aligned with the long-term interests of pension savers: the dominance of 'trading' over 'investment' led approaches, seeking to beat the market rather than to nurture value in the real economy, represents an inherently zero-sum game which cannot improve outcomes for pension savers taken as a whole. Active scrutiny by pension savers has an important role to play in addressing this problem, but can only be successful if members have access to relevant and useful information.

In particular, the exercise of ownership rights in listed companies is both important to outcomes for members as a whole, and of genuine interest to many members. The Walker

¹ www.oecd.org/daf/pensions/guidelines

Review highlighted the role of institutional investors in allowing banks to take on too much risk, causing a financial crisis with enormous and ongoing implications for pension savers. More recently, government has sought to encourage institutional investors to make greater use of their voting rights on executive pay. Active, engaged pension savers have the potential to greatly support this policy objective – but, as our 2012 report *The Missing Link* showed, those who do question their fund about its voting activities often receive little or no relevant information.

We would therefore suggest that the objective of “ensur[ing] individuals can access the information they need in order to understand and manage their pension provision” must encompass not only information about members’ individual benefits and options, but also information about investment governance – including investment policies and their implementation, actual investments held, costs, performance and exercise of shareholder rights.

ShareAction co-ordinates a network of individual savers who we support to engage with their schemes on such issues. We also regularly take calls from individuals seeking our advice on how to engage. Our experience is that, at present, individuals are often unable to access the information they need to hold decision-makers to account. In our view, further amendments to the regulations are therefore needed in order to meet the objective of ensuring members have access to all necessary information. We detail these further in our response to Question 15.

We are also not convinced that the regulations fully meet their objective of ensuring consistency of requirements across different types of pension scheme. Please see our response to Question 4.

Questions 3 & 4

We agree that the regulations for occupational and personal pensions should be consolidated in one place and harmonised wherever possible. In our view it is important that this is approached with a view to ‘levelling up’ standards of disclosure, rather than ‘levelling down’.

However, we do not support the removal of disclosure requirements for personal pension schemes where these are deemed to duplicate FSA/FCA requirements. In our view this compromises the objective of ensuring that members receive consistent information regardless of type of pension.

First, even if FSA requirements do currently replicate DWP regulations (it is regrettable that the department has not provided a direct comparison, since we have not had the resources to undertake such analysis ourselves), it is unlikely that information would be provided in the same format. Given that most people are expected to be auto-enrolled into numerous different pensions over the course of their working life, due to changing jobs, it is clearly desirable that the information they receive takes a consistent form, as recognised by the department’s stated aim at page 8: “We want members to get consistent information from their pension schemes, whatever type of scheme it is, so that they recognise and can engage with what they are being told”. Failure to ensure this is likely to add to confusion and hamper efforts to build sufficient familiarity to enable savers to engage meaningfully with pensions.

Secondly, relying on FSA rules is unlikely to achieve the department's objective of ensuring consistency over time. As the consultation paper acknowledges, the present situation of "duplications, discrepancies and gaps" has arisen from the fact that separate sets of regulations have been "amended over ... time to take account of evolving policy changes". Locating some key requirements for personal pensions in a set of rules overseen by an entirely different body, with different policy objectives, seems likely to lead to further discrepancies arising in the future - as either FSA rules or DWP regulations are amended independently of one another.

Finally, having different requirements located in different sets of rules undermines the new regulations' potential to clarify schemes' responsibilities by having all requirements in one place. Under this proposal the disclosure regime remains obscure and confusing both for schemes, members and the wider public (as indicated, we ourselves have found the intersection between DWP regulations and FSA rules difficult to navigate in preparing this response). Conversely, the benefits to schemes of this 'simplification' would seem to be limited, since under this 'hybrid scheme' the new DWP regulations still contain some provisions relating to personal pensions – meaning that schemes will still need to ensure they comply with both sets of rules.

We would therefore suggest the reinstatement of these provisions, but perhaps with a cross reference included either in these regulations or in COBS, to clarify the provisions which are duplicated and the fact that compliance with one is sufficient to demonstrate compliance with the other. This would ensure that schemes do not feel obliged to duplicate work in order to satisfy the requirements of both regulations. Alternatively, guidance could be provided to this effect.

In relation to the decision to retain specific disclosure requirements for stakeholder pension schemes, we would stress that it would be unacceptable for other personal pension schemes to be left subject to a lower level of disclosure than stakeholder schemes. Whilst we understand the desire to retain the stakeholder label as a "discrete, identifiable product", if it is felt that the disclosure of certain information serves the interests of members of these schemes, it would seem difficult to justify not extending such protection to all members of personal pension schemes.

It is noteworthy that many disclosure obligations applying to occupational pension schemes were imported for stakeholder schemes – for example, the requirement to produce a Statement of Investment Principles (SIP) – which did not apply to other personal pension schemes in the same terms. We note that "a summary of the scheme's investment policy" is among the 'basic information about the scheme' which personal pension schemes will no longer have to provide under the new regulations. As indicated, we have not been able to assess the extent to which COBS replicates this requirement, including whether the relevant information would be provided in an equivalent format or under equivalent circumstances. We would favour the 'levelling up' of disclosure requirements for personal pension schemes to mirror those applying to stakeholder and occupational schemes. We also note that the duplication between DWP and FSA/FCA rules is not considered to be a problem in relation to stakeholder schemes.

Question 5

Yes, we agree the new structure is a useful change and makes the regulations clearer. Having a single set of regulations covering all the relevant disclosure obligations is also a great improvement.

Question 7

Regarding the changes to basic scheme information, please see our response to Question 4 regarding the removal of requirements applying to personal pensions. In our view it is important that basic scheme information be provided in a consistent and comparable manner regardless of the type of scheme.

Question 8

Regarding the proposed new rule on lifestyling, we support anything designed to help members understand where their money goes and to assess whether investment decisions are in their best interests. We believe members should have the information to do this at all stages of their savings career, and not just in relation to the commencement of lifestyling. We would therefore urge the government to consider making this requirement part of a wider approach whereby members receive regular information about the fund's investment strategy – as suggested by the Myners Review – rather than restricting itself to requiring a single statement on a specific issue.

For example, annual benefit statements could include a short paragraph headed 'where does my money go?' summarising the investments held and the strategy adopted during the year. Alternatively, as we have previously advocated to DWP, annual investment reports could include narrative information about how the SIP has been implemented during the year.² Research from NEST and others suggests that, when the right language is used, members are deeply interested in knowing what happens to their money, and that this can promote greater trust and engagement with saving.

Indeed, such measures would seem likely to enhance the narrower objectives of the lifestyling disclosure. At present it seems likely that these disclosures will only be acted upon by a very small minority of highly financially literate members. If members receive accessible explanations of investment strategy as a matter of course, they will be better equipped to assess and act on information about lifestyling, and indeed to make other investment decisions.

Question 12

As we argued in our response to the department's 2009 consultation on the disclosure regime,³ we believe that web-based disclosure offers an opportunity to make disclosures proactive rather than reactive, and that this opportunity has been missed in drafting the regulations.

At present, most information about investment must be extracted rather than being volunteered: the onus is largely on the individual member to request information. This undermines the accountability and monitoring function of disclosure: if members are not furnished with information about the scheme's investment and engagement policies and

² *Institutional Investment in the United Kingdom; a Review*, Paul Myners, March 2001, Chapter 11, Paragraph 11.5,

³ Available online at

http://www.shareaction.org/sites/default/files/uploaded_files/documents/FairpensionsDWPDisclosureResponseMay2009.pdf

their application, they will likely be unaware even of the existence of matters which might give rise to questions or concerns.

An informative scheme website should be a solution to this problem. Indeed, in 2004, the Government's consultation document on the Myners principles proposed the following revised principle 10 (Regular reporting):

“Trustees should publish their Statement of Investment Principles and the results of their monitoring of their own performance, and that of advisers and managers. They should send key information from these annually to members of these funds, as well as posting this on a fund website, including an explanation of why the fund has chosen to depart from any of these principles. It is good practice for funds with more than 5,000 members to have a website dedicated to the fund.”⁴

However, this was subsequently replaced by a more general principle on transparency.

Our most recent survey of pension providers (undertaken in 2009) provides evidence that these guidelines have had little effect.⁵ The survey revealed that 25 of the 30 schemes surveyed had some form of public website but that only a limited number of these provided relevant detailed information. For instance, 19 schemes made their annual report available publicly, but only 14 published either full or summary SIPs and only 12 made further detailed disclosure of their RI policies. Even more disappointingly, only 8 schemes publicly disclosed policy implementation and monitoring measures, while a mere 5 schemes published full voting records or details of engagement initiatives. Given the size of the schemes in the survey, it is reasonable to suppose that average disclosure standards among UK schemes generally is much lower.

We think, therefore, that the disclosure regulations should require schemes to maintain websites and should prescribe the minimum information to be posted. This information should include the annual reports, the trust deed and rules and any SIP. One of the advantages of this approach is that as the documents in question would have to be prepared anyway, the additional cost involved in uploading them to the website would be modest. Small schemes with fewer than a set number of members could be provided with a template website to minimise costs, as suggested in our 2009 response, or, if this was still felt to be disproportionate, could be exempted from the requirement altogether. Given the closeness of the regulations' commencement date, a deferral period could be provided for in order to give schemes time to adjust to any new provisions.

A revised approach to the role of web-based disclosure could also help to simplify the regulations: we agree with other stakeholders that these are currently somewhat confusing, and believe this arises in part from the approach of treating web-based disclosure as a 'bolt-on' to a reactive paper-based disclosure regime.

In our view there would be value in a more rounded consideration of the role of technology in improving schemes' communication with members. For example, it should be possible for members to access information about their pension pot online in the same way they would expect to do with a bank account. This could be particularly useful in a DC context. Online benefit statements integrated with 'calculator' tools, allowing members to alter different assumptions (contribution rates, retirement age, investment returns, etc) and see

⁴ Myners principles for institutional investment decision-making: a review of progress December 2004, page 37

⁵ ShareAction, 2009, 'Responsible pensions? UK occupational pension schemes' responsible investment performance', available at http://www.shareaction.org/sites/default/files/uploaded_files/documents/ResponsiblePensions_2009.pdf

the impact this would have on their retirement outcomes, might well be more effective in engaging members than annual benefit statements based on a single set of debatable assumptions. Such an approach helps members to understand the variables involved much more effectively than disclaimers about assumptions which most will never read, and if more widely adopted could guard against over-reliance on projections in SMPs.

Question 15

Our position remains the same as in our response to the 2009 consultation: we strongly oppose the replacement of specific disclosure requirements with a general ‘principles-based’ approach. As such we would not welcome further consideration of this approach, which in our view was thoroughly considered following the 2009 consultation and was found to be without merit.

The 2009 consultation paper recognised that such an approach would have the disadvantages of uncertainty as to compliance with its principles and of lack of clarity as to members’ rights; it also acknowledged that in any event there would have to be some prescriptive regulations to give effect to the IORP directive. This would result in a ‘hybrid’ disclosure regime which was unsatisfactory from all angles, and would certainly not promote consistency between scheme types and funds, leading to the possibility of greater confusion for members.

We think that there could be advantages if more specific disclosure regulations incorporated a general principle to which, in the words of the 2009 Consultation Paper, “*schemes must have regard in determining their disclosure arrangements and in interpreting the regulations themselves*”. Such a principle could encourage trustees to adopt the spirit as well as the letter of the regulations and might reduce the ever-present danger of mere “box-ticking” compliance.

However, as indicated in our 2009 response, we would not favour the precise wording proposed in that consultation and reiterated in this one, since it refers only to information about benefits and about decisions made by members themselves. This ignores the broader function of disclosure in facilitating effective monitoring of scheme governance and of decisions made *on behalf of* members, as discussed in our response to question 1. Our 2009 response contained indicative amended wording to cover this important aspect of disclosure.⁶

Question 16

As indicated in our response to Question 4, we think there could be value in providing guidance for personal pension schemes on their disclosure obligations, as an alternative to the currently proposed approach of removing regulations which are deemed to duplicate FSA rules.

Pension providers could also be given guidance on the most effective language to use when communicating with members, drawing on DWP and PADA/NEST’s research in this area.

With regards to whether more general guidance might be needed, we are currently undertaking a research project to explore ways in which institutional investors could be

⁶ See page 10.

encouraged to become more transparent and accountable to savers. A roundtable will be held in May to which representatives of DWP will be invited. A report with policy recommendations will be published in September and we would not wish to prejudge this by making more detailed comments at this stage. However, we would welcome the opportunity to discuss our findings with DWP officials both before and after the publication of our report.

Question 17

We would refer to our proposal in response to the 2009 consultation⁷ that a consequential amendment is needed in relation to Paragraph 30, Schedule 3 of the draft regulations, which replicates Paragraph 14, Schedule 3 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996. This currently requires schemes to report on investments made in breach of the SIP. However, since 2000, the SIP has been required to include information not only on the making of investments but also (a) on the scheme's policy in relation to the exercise of rights attaching to investments, including voting rights, and (b) on the integration of social, environmental and ethical issues in the 'selection, retention and realisation' of investments. Breaches of these elements of the SIP would not necessarily be caught by the current wording and a consequential amendment is therefore needed to align the two sets of regulations. Again, our 2009 response contained indicative wording to cover these points.⁸

As indicated above and in our 2009 response, we also believe that the content of the investment report more generally needs to be reviewed, such that schemes provide an overview of how the SIP has been implemented, and not only of instances where it was breached (which in any case are likely to be rare given the level of generality at which most SIPs are currently written).

⁷ See pages 13-14

⁸ See page 14