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By email to: DCconsultation@tpr.gov.uk

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Dear Louise

Consultation on guides to support Code of Practice 13

We would like to respond to the above consultation paper relating to the guides for the new Code of Practice 13: Governance and administration of occupational trust-based schemes providing money purchase benefits. ShareAction is a registered charity established to promote transparency and Responsible Investment ("RI") practices by pension funds and other institutional investors. We are a member organisation and count amongst our members well-known NGOs and charitable foundations, as well as over 35,000 individual supporters.

We were very pleased to note some important and positive developments in the draft guides, including the focus on long-term risks in the "Sustainability" section and the links to useful external documents. We have identified some additional points for inclusion and are submitting these under Question 3 of the consultation paper, as set out below.

Question 1: Would the speed of completing a transfer of money purchase benefits be improved if we set a recommended timescale, from the point of a member's initial request, within which a transfer should be completed? Would setting a timescale of this nature effectively address the delays that the government identified in its consultation on Pension Transfers and Early Exit Charges? View the consultation at http://bit.ly/TranExit. If so, what timescale do you think should be set? If you do not think that setting a timescale would be effective, please explain why?

Not answered.

Question 2: Do you have any examples that you think could be usefully included to demonstrate the different approaches that schemes of different sizes, and with varying available resources, might take to comply with any of the standards we have set in the new code? If so, please provide further details.

Not answered.

Question 3: Are there any topics relevant to the standards we have set in the new code on which you believe we have not provided sufficient detail within the guides? If so, please provide details.

The trustee board

We would suggest recommending that automatic enrolment compliant pension schemes monitor and publish figures on the diversity of their governing boards.

Scheme management skills

We recommend strongly encouraging trustee boards to offer specific training for member-nominated trustees, designed to give candidates the confidence and ability to ask challenging questions.

We would also recommend highlighting that longer-term risks, particularly systemic risks such as climate change, should be considered in reviewing and updating the scheme's risk register.

Investment governance

Investment delegation structures, paragraph 5: We are pleased to see the Pensions Regulator's recommendation that trustees should aim for a balance between independent, employer and member nominated trustee members in an investment sub-committee. Member representation in scheme governance can have a very positive impact on scheme processes and decision-making. In the research gathered for ShareAction's 2015 report, *Realigning Interests, Reducing Regulation*[1], it was found that:

[M]ember nominated trustees (MNTs), or individuals with experience of working with them, repeatedly said that despite not being pensions or investment experts, MNTs would often ask difficult questions of providers. Several interviewees and roundtable participants said MNTs can be less reticent to ask questions that seem 'silly', or obvious, compared with professional trustees with a reputation to uphold.

Clear roles and responsibilities, paragraph 2: Members should be able to access information allowing them to understand the governance arrangements in their scheme if they wish to. We were pleased to see the suggestion that a high-level summary of the governance arrangements could be made available to members on the scheme's website or employer intranet. However, it would be good to make this suggestion stronger, perhaps by replacing the wording "You could make it" with "It would be helpful to make this".

Financial and non-financial factors: We are very pleased to see a summary of the Law Commission's guidance on financial and non-financial factors in a prominent position in the guide, and welcome the clarity this will provide to trustees.

Financial and non-financial factors, paragraph 1: We recommend that you amend the first sentence of this paragraph to say "The Law Commission has clarified the law on trustees' fiduciary duties and has produced guidance on how trustees should consider financial and non-financial factors". This is to ensure that trustees reading the guidance fully appreciate the significance of the Law Commission's findings.

[1] de Ste Croix, C. (June 2015), ShareAction, *Realigning Interests, Reducing Regulation: A vision for reforming UK workplace pensions*. Available from: http://action.shareaction.org/page/-/ReducingRegulationReport.pdf [accessed 11 May 2016].

Financial and non-financial factors, bullet point 2: We suggest that you replace the word "issues" with the word "factors" to ensure it is clear that financially significant ESG factors are on an equal footing with other investment factors. Additionally, the term "ethical" tends to suggest a non-financial investment factor. Therefore, referring to "certain ethical issues [which] are financially significant" will almost certainly cause confusion. We would suggest that this sentence is deleted, as the previous sentence is sufficiently clear in itself.

Financial and non-financial factors, bullet point 3: For clarity, we would recommend that you amend the first sentence to say "While the pursuit of a financial return, including consideration of financially relevant ESG factors, should be your main concern…" We also suggest that you replace the word "concerns" later in the sentence with the more neutral "factors".

Financial and non-financial factors, new bullet point 4: We think that is important to include the point from the Law Commission's review stating: "There are some limited circumstances in which significant financial detriment to the fund may be justified... 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 otherwise would have been the case."[2]

Investment stewardship, paragraph 2**:** We feel that this section could be more directive. For example, we think it would be worth deleting "where practicable" and inserting the wording "where you consider it appropriate".

Sustainability: This is a very positive step forward, especially in light of the long-term investment horizons of many pension schemes and the findings of the Kay Review on short-termism in capital markets. The list of examples of ESG risks is particularly welcome. However, it is necessary to clarify that this list of factors is not exhaustive. We are very pleased to see references to the actions that can be taken by trustees following consideration of the longer-term sustainability of investments. We feel that this should encourage trustees to take a more active role in exercising ownership rights on behalf of their members.

Additional fund options: bullet point 3, sub-bullet 1**:** On reflection, we think this bullet point ("Financial implications of environmental, social and governance factors") should be deleted because this is a subset of investment risks, rather than a subset of members' needs. The financial implications of environmental, social and governance factors are relevant to all members, not merely to a particular values-based group of members.

Additional fund options: bullet point 3, sub-bullet 2: For the sake of clarity, we would suggest amending the bullet point "Ethically focused investment" so that it reads "Non-financial (ethically focused) investment factors".

Value for members

Ongoing monitoring and evaluation, paragraph 2 and bullet point 4: We are pleased to see the inclusion of a prompt for trustees to conduct a "mid-year 'sense check' of any developments since [their] last review that could affect good value", with the possibility of new risks flagged as a consideration. As we suggested in our response to the consultation on the DC Code, a low-cost scheme which failed to address longer-term financially material factors would represent very bad value for members if the risks materialise and their pension pot is reduced. Therefore, regular assessment of emerging risks, including those that may

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[2] Law Commission. (July 2014), *Fiduciary Duties of Investment Intermediaries*, paragraph 6.102. Available from: http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc350_fiduciary_duties.pdf [accessed 11 May 2016].

materialise over the medium to long term, is vital for ensuring that members receive good value.

Communicating and reporting

We are very pleased that the Pensions Regulator is emphasising the importance of effective member engagement in this guide, and recognises the importance of trustees providing clear and accessible information to members.

<u>Knowing your members and seeking their views:</u> We are glad to see that a variety of member engagement methods has been included in this section of the guide. We feel that providing concrete examples of tried and tested engagement methods for trustees of different size schemes will help trustees to engage effectively with their members and assess members' views under the new DC Code.

<u>Communications in response to member requests, paragraph 4:</u> As we mentioned in our response to the consultation on the new DC Code, the disclosure requirements in the Occupational Pension Schemes (Investment) Regulations 2005 often translates into funds publishing statements which are often very general, at times vague and "boilerplate". In our experience, when members approach funds to ask questions about how their money is used in practice, they are directed to these statements. A typical example taken from the SIP of a large fund is:

The Trustee… [has] delegated all day-to-day decisions about the investments that fall within each mandate to the relevant fund manager through a written contract. These duties include:
…
Taking into account social, environmental, and ethical considerations in the selection, retention and realisation of investments in so far as this is consistent with their overall objectives.
…
The Trustee… expect[s] the fund managers to manage the assets delegated to them under the terms of their respective contracts and to give effect to the principles in this statement so far as is reasonably practical.

It is difficult to see how a responsible individual could use this information to make informed decisions and to ask meaningful questions of a scheme. We believe that the required level of detail in member communications should be included in the Pensions Regulator's expectation that member communications are "accurate, clear, relevant and in plain English".

Engaging the interest of members is dependent on supplying them with high-quality, accessible information about how their savings are being invested. We note that this guide states that some information, such as voting on equities owned by the scheme, can be dense and complex for members to understand. It is true that the information supplied by fund managers can be complicated. However, if a member has shown an interest in how their voting rights are being exercised on their behalf, we feel that it is only right that trustees should supply them with information that fully answers their question. It is important that trustees do not use this guide as justification to simply refer members to vague, boilerplate statements. Therefore, we would suggest that additional wording is included at the end of this paragraph: for example, "It is important to ensure that the information supplied answers the member's question with the necessary level of detail." We think that trustees need to be prepared for members asking more questions about how their money is invested and how their ownership rights are exercised, particularly in a post-COP 21 world where individuals are increasingly concerned about exposure to carbon risk.

Further to this, we would suggest adding a paragraph encouraging trustees to make available on the scheme's website accessible information in plain English on the scheme's equity and other holdings, the exercise of voting rights and stewardship/engagement activities (to be updated at least once every six months). The scheme's Statement of Investment Principles and annual reports could also be published on the scheme's website. As noted in this section of the guide, supplying this kind of information on the scheme's website may reduce the amount of administrative time spent responding to members' queries, as members can be referred to the scheme's website.

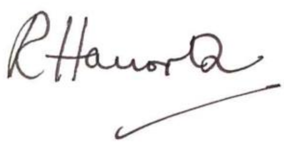
<u>What should be in the chair's statement?, paragraph 3:</u> We welcome the confirmation that trustees should write the statement in plain English, so that it is clear for members what costs and charges have been paid on their behalf. We are also pleased to see that the Pensions Regulator has encouraged trustees to publish the statement so members have access to the information without having to make individual requests.

Question 4: In relation to accountability for regulator impact. Do you agree with our draft business engagement assessment on the impact of the new DC code on business that we have published alongside this document? If not, please provide details. If, having reviewed the new code in light of the draft guides, you believe the standards set out in the code are likely to significantly increase or reduce costs to any parties involved in running a scheme offering money purchase benefits, please quantify the relevant costs or benefits in the Excel template published alongside this document. Significant costs or benefits should be calculated relative to the existing DC code, and over and above costs that might be incurred as a result of complying with the underlying legislation.

Not answered.

We would be happy to meet to discuss any of the views raised.

Yours sincerely,



Rachel Haworth, Policy Officer