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Dear Ms. Donnelly and Ms. Bird,

Consultation on clarifying and strengthening trustees' investment duties

ShareAction is pleased to respond to this consultation. ShareAction has been working on the issue of the scope and nature of trustees' fiduciary duties for approximately 8 years. Our first major publication on this topic, 'Protecting Our Best Interests: Rediscovering Fiduciary Duty', was published in 2011.

ShareAction is a registered charity established to promote transparency and long-term, responsible investment 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 26,000 individual supporters. We work with institutional investors to promote stewardship and engagement, and we also conduct annual industry-wide surveys to rank them on these activities.

Overall, we welcome the proposals as an important step forward in this area.

Q1. We propose that the draft Regulations come into force approximately 1 year after laying, with the exception of the implementation report, which would come into force approximately 2 years after laying.

a) Do you agree with our proposals?

Yes, we agree with the proposed timescale for the following reasons:

- As noted in the consultation paper (Chapter 1), trustee confusion on environmental, social and governance (ESG) factors was flagged in the 2012 Kay Review. However, it had been an area of debate before this: the UNEP FI published its report on trustees' duties and ESG¹ in 2005. Whilst it is true that since 2012 there has been greater awareness of the importance of managing ESG factors (most notably climate change) in order to ensure financial stability and long-term prosperity, performance on these areas by pension schemes is

¹ http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf

mixed. As set out in our response to Q2., there is substantial evidence to show that some pension trustees remain confused about their obligations in respect of important ESG factors like climate change. It is time that the UK's pension regulations are updated to reflect developments in understanding and to clear up confusion.

- It is particularly urgent that schemes address the risks posed by climate change. UKSIF's recent survey on oil companies' valuations suggests these could be significantly impacted within the next 2 years or so². Such an eventuality could have a material impact on pension schemes' portfolios in the very near future. Furthermore, state signatories' climate mitigation commitments made under the Paris Agreement start from 2020. These could see substantial changes in states' policies on carbon-intensive industry, potentially leading to stranded assets for unprepared investors.
- One year is a reasonable amount of time for schemes to update a SIP: it allows for the estimate in the consultation paper that this can take up to 6 months (Chapter 1, para. 31). However, we also note that the funds of the Local Government Pension Scheme (LGPS) were given 5 months to produce statements similar to those in the draft Regulations³.
- As the Impact Assessment notes, the proposals do not require trustees to state new policies, but instead to state their existing policies. Additional effort will be required for schemes without policies, but it is concerning that they do not have them. Other schemes may choose to *improve* their policies, but one year should be enough time for them to do this, and they can still meet the letter of the draft Regulations by stating their existing policies.
- None of the concepts covered by the draft Regulations should be new to trustees. As noted in the consultation paper (Chapter 1, para. 7) The Pensions Regulator's trustee toolkits for DC and DB schemes cover the need for trustees to consider long-term investment factors. Multi-employer schemes are already required to have mechanisms to consider members' views and occupational schemes have requirements around member nominated trustees. For many schemes, therefore, compliance is not likely to take over one year.
- Finally, it should not be overlooked that the proposals, and the timetable to introduce them, would *protect* trustees from potential action by members should climate-related losses materialise. There is now plentiful evidence that climate-related financial risks may be material, and thus have a detrimental impact on members' potential pension pots. There is also evidence that a good number of schemes globally are taking action to address these. This leaves schemes, and trustees, with poor policies and practices in this area exposed to allegations of negligence and breach of duty if the climate risks materialise. It is therefore in their interests to address these issues urgently.

b) Do you agree that the draft Regulations meet the policy intent?

² <http://uksif.org/2018/04/26/not-long-now-survey-of-fund-managers-responses-to-climate-related-risks-facing-fossil-fuel-companies/>

³ We understand that the relevant regulations came out in November 2017 and the ISS statements had to be ready for 1 April 2018

Yes, we believe the draft Regulations meet the policy intent in relation to timescale for the following reasons:

- The draft Regulations are much clearer than the wording in the existing regulations, which has been a source of confusion for trustees. This is the case in respect of all elements of the proposals: financially material matters, members' views, and stewardship.

However, we note overall that the following 'gaps' may persist once the draft Regulations are enacted:

- The draft Regulations do not actually change the investment duties of trustees, they instead require better transparency on issues that trustees should already be addressing. As such, for those trustees most resistant to consideration of ESG factors, stewardship and/or seeking members' views, the draft Regulations will not force them to change their behaviour. We expect that there will be a persistent group of laggard schemes who do not take these areas seriously. However, we support the attempt to prevent this by the introduction of the implementation report.
- In response to Q.3 below, we flag that the proposals could be at least clarified and, ideally, strengthened, in order to meet the Government's policy intent.
- Transparency is a powerful tool for driving up quality. The draft Regulations may allow a difference between the quality of SIPs and statements for DC and DB schemes, given the difference in disclosure between the two. Further guidance from The Pensions Regulator on how to improve the quality of DB schemes' SIPs would be welcome.

Despite these, we are very supportive of the draft Regulations:

Q2. We propose to require all trustees of all schemes that are obliged to produce a SIP to state their policy in relation to financially material considerations including, but not limited to, those resulting from environmental, social and governance considerations, including climate change.

a) Do you agree with our proposals?

Yes, we agree with the proposals for the following reasons:

- Taking into account ESG considerations is an important part of investment by long-term institutional investors like pension funds. However, despite guidance from The Pensions Regulator that this is appropriate for DC and DB schemes, confusion persists amongst some trustees. For example:
 - The Institute and Faculty of Actuaries' evidence submitted to the Law Commission for its 2017 review on pension schemes and social impact investing stated that "*pension scheme trustees generally consider short-term financial returns and risks to be their predominant concern in making investment decisions. In addition, the legal provisions allowing trustees to consider longer-term and other factors are not well understood by trustees, or often by investment advisers.*"⁴

⁴ P.79, https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2016/11/pension_funds_call_for_evidence_responses.pdf

- The Environmental Audit Committee found that even amongst the UK's 25 largest pension schemes there were schemes still doing very little on climate change, despite this being a widely recognised financially relevant risk⁵.
- ShareAction's recent survey of the largest auto-enrolment providers found that only one, NEST, incorporates climate-related financial risks when setting the default funds' investment managers' performance objectives and reporting requirements. NEST is also the only provider to have a measurable and time-bound target to reduce the portfolio's exposure to climate-related financial risks⁶.
- Research In Finance found that "*most scheme managers and trustees report that they don't engage with ESG principles at all, or that they only do to the extent that they expect investment managers to have a clear ESG policy. One cynical scheme manager commented, "I consider ESG to be nothing more than well-intentioned window dressing."*⁷
- We also note the evidence noted in Chapter 1 of the consultation (Sackers, para. 12; Professional Pensions, para. 16; Hermes, para. 17 and Grant Thornton, para. 18).
- Clarifying the existing law, which has been the source of some of this confusion, would dispel this confusion.
- It might be argued that, given that trustees are under a general obligation to take account of financially material issues it is unnecessary to separate out ESG considerations including climate change. However, we disagree with this line of argument for two reasons. First, as stated above, it is clear that some trustees are confused about their obligations in respect of ESG considerations and so need this to be clarified in law. Secondly, ESG considerations are often different to other investment risks and opportunities: ESG considerations are often macro-level, systemic factors which are not necessarily well dealt with by looking at particular asset classes. They may require a policy which looks across asset classes and investments. We agree with the consultation's discussion of this point at Chapter 2, para. 7.
- We strongly support the reference to "climate change". Climate change poses significant financial risks (and opportunities) which need to be addressed by financial actors like pension funds. Failure to do so has potentially serious implications for members' outcomes. It is therefore an important financial issue which should be firmly on trustees' agendas.

b) Do you agree that the draft Regulations meet the policy intent?

Yes, we agree that the draft Regulations meet the policy intent for the following reasons:

- They are much clearer than the existing regulations. The draft Regulations also remove the suggestion of optionality on whether or not to have a policy on financially material

⁵ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/top-25-pension-funds-letters-17-19/>

⁶ <https://shareaction.org/ranking-pensions-2018/>

⁷ <http://www.portfolio-institutional.co.uk/news-analysis/pensions/esg-important-criterion-well-intentioned-window-dressing-institutional-investors/>

ESG considerations. They also do not conflate these types of considerations with ethical ones.

- We support the proposed drafting and the definition of "financially material considerations".
- We agree with the distinct reference to "climate change": climate change is an ESG consideration which is particularly urgent and systemic in nature. There is also a tendency to conflate the "E" in "ESG" with "climate change". Separating climate change out will show trustees that there are also potentially other financially material environmental factors to be considered.
- We agree that relevant schemes' default strategies should also be amended as proposed.

Q3. When trustees prepare or revise a SIP, we propose that they should be required to prepare a statement, setting out how they will take account of scheme members' views.

a) Do you agree with our proposals?

Yes, we strongly support this proposal for the following reasons:

- We agree with the Government that it is "*good practice for trustees to inform the design of investment strategies with an understanding of members' views*" and that it "*aids with assessing value for members*"(Chapter 2, para. 24).
- The Law Commission has twice clarified that the law permits trustees to consider members' views on wider "non-financial" factors, such as ethical and quality of life concerns. However, as with financially material ESG considerations, trustees' understanding of their powers in this respect is mixed and often confused. This is not helped by the existing drafting of the regulations, which refers to "ethical" but conflates this with environmental and social considerations which may equally have a financial impact.
- In ShareAction's experience⁸, schemes' practices on seeking to understand members' views are mixed. Good practice exists but is in the minority. It includes:
 - Scottish Widow's 'pension bus' visiting workplaces
 - TfL and Legal and General hosting an annual member forum
 - NEST's member panel
 - Digital innovation by Standard Life and Legal and General.
- However, many schemes have no formal or regular method for seeking to understand members' views. ShareAction works with members who are keen to engage with their schemes but whose experience of doing so is often tortuous. As members do not choose their pension scheme, it is appropriate that the law should encourage better practice across all schemes in this area.
- We agree with the discussion in the consultation paper which emphasises that the proposals may help trustees develop and formalise a decision-making process for taking account of members' views (Chapter 2, para. 31). Such a process may enable trustees to communicate better with their membership.
- In DC pensions, individuals' retirement outcomes depend upon: (1) the level of contributions, (2) the costs deducted, and (3) investment performance. Seeking to

⁸ <https://shareaction.org/wp-content/uploads/2018/06/TheEngagementDeficit.pdf>

understand and potentially (subject to meeting the two-part test) reflect members' views may play an important role in increasing contributions.

- The Government's review of auto-enrolment, published in December 2017, concluded that engagement is an important part of the success of this policy. Although auto-enrolment is predicated on inertia, the review noted that there is evidence that once people are enrolled into pensions, engagement can play an important role⁹. Evidence shows that people would put in more money if they felt their investments were better aligned with their values:
 - Research by the Defined Contribution Investment Forum found that 40% of those surveyed would contribute more to their pension saving if they knew it was being used for responsible investments (as referred to in the Impact Assessment).
 - Independent research for ComRes/Big Society Capital found that around one third would put more money into a pension they felt aligned with their values¹⁰.
- There is a lot of evidence that younger members in particular are concerned about where their money is invested and how it is stewarded¹¹.

b) Do you agree that the draft Regulations meet the policy intent?

Generally, yes:

It would be problematic for the Government if this provision was not included in the final Regulations for the following reasons:

- Seeking members' views and engaging members is an area of the law which is poorly understood and needs clarification. The policy intent is to clarify trustees' duties and so the final Regulations must clarify the law in this area.
- The Government's Final Response to the Law Commission's 2017 report makes clear statements on policy intention which are in line with the draft Regulations on this point on members' views. If the final Regulations were silent on members' views or rolled back from the proposed new Reg 2(2)(c), it would undermine the Ministerial statements and professed policy intent. For example, the Joint Ministerial Foreword to that statements says (pages 4 to 5):

"We should also not forget the savers who are the ultimate beneficiaries of pension investment - the people whose money is being invested, ideally in a way that supports the sort of world they want to live in. We know that an increasing number of people want to reflect their values in the things they choose to buy, the places they live and visit, and the jobs they do. People care about the impact that their choices have on our

⁹ The review notes that "prior to the implementation of auto-enrolment, evidence showed that variation in how individuals think and feel about pensions...were not closely associated with different pension savings behaviours" and attempts to change saving behaviour by increasing engagement had negligible effect. However, the review notes that, in a context in which people are already saving, engagement can play an "important role" to complement an inertia-based approach (DWP, 2017a: 155)

¹⁰ See stats at P.17 including: Two in five employees (39%) said they would be more likely to take up a pension if their employer offered social pension funds, and nearly a third (31%) say they would save more if a social pension was offered to them https://www.bigsocietycapital.com/sites/default/files/attachments/Pensions%20with%20Purpose_Final.pdf

¹¹ For example: 84 per cent of pension scheme members say they would prefer a pension that uses investments to encourage companies to be more responsible (LGIM 2016): 70 per cent of UK adults 'felt it important for pension providers to invest in companies that concentrate on avoiding unethical practices' and 49 per cent would like their employer 'to choose a provider which makes a specific point of investing ethically, even if this fund would achieve lower returns on investment' (NAPF (now PLSA) 2014): Millennial investors are nearly twice as likely as non-millennials to invest in companies or funds that target specific social or environmental outcomes (EY 2017).

environment and humankind. Pension scheme members should therefore be able to see how their money is being put to work, and to make their views heard".

- We fully support this policy intent. To meet this, the Regulations must include something clear on members' views. We support the proposed draft Regulations as a step forward from the existing Reg. 2(3)(b)(vi) which refers to 'ethical' considerations, but has been poorly understood. We suggest below some amendments which we think would make the draft Regulations even more in line with the policy intent.
- As an aside, we think that this area of the draft Regulations may be subject to push-back from industry stakeholders. We have heard concerns expressed about whether the statement on members' views will undermine trustees' discretion. We do not see how this can be the case, so we would urge the Government to be mindful of whether responses to this consultation which are negative about this provision reflect a misunderstanding of what is being asked of trustees under the draft Regulations.
- The proposals **do not** undermine trustee discretion for the following reasons:
 - It is clear, as explained in the consultation (Chapter 2, paras. 31 to 32), that trustees retain complete discretion in their decision-making and need not be driven by the membership.
 - The Law Commission has made very clear that there is a huge amount of flexibility in how trustees seek views (we find that lots of critics complain about the ineffectiveness of surveys, but as the consultation notes, the Law Commission and The Pensions Regulator have both suggested other means of seeking members' views).
 - There is also flexibility in deciding whether or not to act on or reflect members' views in investment decisions. For example, the Law Commission has said trustees do not need to become embroiled in debates with members on non-financial factors. The draft Regulations do not change this.
 - Under current law, DB trustees "must" consult the employer before preparing or revising the SIP, but no one seems to argue that this (stronger) requirement undermines trustees' discretion.

Simple amendments which may clarify the proposals

We think that there are two potential areas for confusion in the proposed drafting of Reg. 2(2)(c). For the record, ShareAction does not share this confusion, but we think it may be prudent for the Government to make small changes in order to limit the risk of confusion.

Suggested amendment 1: be clear trustees can make assumptions about members' views/do not need to do surveys etc:

- The first potential area is whether trustees seeking to understand members' views have to undertake surveys or other engagement. As the consultation paper makes clear, trustees do not have to undertake surveys. Trustees can make assumptions about members' likely views as distinct from ascertaining their actual views through surveys etc (Chapter 2, para. 27 to 20). To reflect this in the draft, you could add the phrase "or are likely to hold" as follows:

*"prepare a statement explaining the extent to which the views which, in the reasonable opinion of the trustees, members of the schemes hold **or are likely to hold** (including*

the views they hold or are likely to hold¹² on non-financial matters) will be taken into account in preparing or revising the statement of investment principles”

Suggested amendment 2: trustees’ retain their full discretion on investment decisions

- The second potential area for clarification is that the statement on members’ views does not undermine trustees’ discretion. This is an important area to clarify because it relates to concerns trustees may have about whether or not they have to follow the views of a vocal minority, whether they need a certain percentage of members to respond to a survey etc and what they do when they find strong and/or conflicting views amongst the membership. The answer to all of these is that they have the discretion to decide (a principle which has been upheld by the Courts). This point could be simply clarified by the addition of the term ‘if at all’:

“prepare a statement explaining the extent (if at all) to which the views which, in the reasonable opinion of the trustees, members of the schemes hold or are likely to hold¹³ (including the views they hold or are likely to hold on non-financial matters) will be taken into account in preparing or revising the statement of investment principles”

- The benefit of this addition is that it mirrors the language in the existing Reg. 2(3)(b)(iv).

ShareAction thinks that the draft Regulations could be strengthened further in the following two ways, both of which are better aligned with the recent recommendations of the Environmental Audit Committee that schemes make statements about what they do to consider member views in a robust manner:

Suggested amendment 3: comply or explain element

- Assuming that the policy intent is to make trustees think about how they inform their decisions with a wider understanding of members’ views, as explained in para. 31 of Chapter 2 of the Consultation, another suggested addition to the drafting would be to add the following at the end of the new Reg 2(2)(c): **“and, if members views are not taken into account, to explain why”**.
- This would focus the minds of trustees who are deciding not to take members’ into account.

Suggested amendment 4: clarifying the framework/process for trustees

- An amendment which may better *clarify* the law in this area would be to amend Reg. 2(2)(c) to require that: (a) trustees state what steps they have taken to ascertain members’ views; and (b) trustees explain how this information would be taken into account in preparing the SIP.
- Although this drafting may look stronger, in that it has two ‘mandatory’ requirements, we believe it is actually clearer as to what trustees would have to cover in a statement as it sets things out as a process. This may allay any fears caused by any perceived lack of clarity over what trustees are expected to do. Transparency about the process may

¹² We note the repetition of “or are likely to hold” is a bit inelegant, but this could be cleared up in the final draft. We have not amended it to do this because we want to convey our point as simply as possible

¹³ See amendment 1 above

also drive up market practice by allowing trustees to compare their approach with other schemes:

“prepare a statement explaining:

- (i) any steps trustees take and any assumptions they make in order to form an opinion as to the views (including views on non-financial matters) which, in the reasonable opinion of the trustees, members of the schemes hold or are likely to hold¹⁴; and**
- (ii) the extent (if at all¹⁵) to which those views will be taken into account in preparing or revising the statement of investment principles”**

Members’ views on non–financial and financial factors

- As a final, more general, point, ShareAction supports the proposal that members’ views may be sought on financial considerations too i.e. the implication from the use of the phrase ‘**including the views**’ they hold on non-financial matters’. This is consistent with the Law Commission’s findings.
- We recognise that the line between "financially material considerations" and "non-financial matters" will at times be blurred and so it may be artificial to delineate members' views on topics in this way. For example, trustees may discover that members care about gender equality. In the context of corporate board governance this is a potential financially material factor, but it may not be in other contexts. Despite this, trustees may still wish to reflect it in their investment and/or stewardship. Another example may be that trustees find that the issue their members care most about is climate change, which is a financially material consideration. However, trustees might still be prompted to reflect on their SIP and investments as a result of making this discovery about their membership.
- Given the fact that many issues have both financial and non-financial aspects, trustees may find they gather information about both from members. Any confusion in this area would also be helped by our Suggested Amendment 2 (addition of ‘if at all’) as this would make it clear that trustees have discretion on what to take into account and when.

Q4. Do you agree with our proposal not to require trustees to state a policy in relation to social impact investment? If not, what change in the legislation would you propose, and how would you address the risk of trustee confusion on this point?

Broadly, yes, for the following reasons:

- The policies envisaged by the draft Regulations should allow trustees interested in making a social impact investment to do so. If the social impact investment is financially rewarding, trustees can invest regardless of its social impact. And if trustees find that members care strongly about certain social issues, they may (as reflected in their statement on members' views) take these into account through pursuing social impact investment, subject to meeting the two-part test. This is what the Law Commission found in its 2017 report on pension funds and social impact investing.
- However, we know that there is confusion about whether trustees can make social impact investments, even when they have comparable returns to 'mainstream' investments. We suspect that some trustees may even be put off financially rewarding

¹⁴ See amendment 1 above

¹⁵ See amendment 2 above

social impact investments because they assume they are not permitted to invest in them owing to the label "social impact".

- The consultation notes the work of the Social Impact Investment Advisory Taskforce and the Green Finance Taskforce. Through both of these, hopefully greater clarity will be reached on definitions and scope of social impact and green investments, which may provide trustees with comfort about the legitimacy of investing in these on financial grounds. However, until greater clarity has been reached, it does make sense not to require trustees to state their policy on social impact investment, as this may just cause more confusion.
- However we urge the Government and The Pensions Regulator to develop guidance in this area to reassure trustees about pursuing social impact investments, so that the mere label "social impact" does not deter trustees from looking at investments.

Q5. We propose that trustees should be required to include their policy in relation to stewardship of investments, (including monitoring, engagement and voting) in the SIP.

a) Do you agree with our proposals?

Yes, we support these proposals for the following reasons:

- Stewardship of investments is an important part of institutional investors' role. As well as potentially adding value to investments, as discussed by in the 2012 Kay Review, a lack of stewardship and oversight by investors can contribute to corporate failures, which has an impact on schemes' investments and the wider economy.
- The role of trustees / asset owners in stewardship is important. ShareAction's research shows that there is good practice on stewardship amongst the UK's top asset managers. However, this practice will be encouraged and widened by increasing demand for stewardship from managers' clients.
- We agree with the analysis in the consultation paper that the existing regulations are not fit for purpose in this area (Chapter 3, para. 4) and may be causing confusion. In particular we agree with the suggestion that, owing to its focus on voting, the existing regulations may send a message that trustees without voting rights cannot undertake stewardship, which is incorrect.
- We agree that the long tail of schemes with 100 and fewer members should be exempt from this provision. However, we would resist any suggestion that other schemes with low numbers of members (i.e. those with greater than 100 members) cannot undertake stewardship. Stewardship activities can be undertaken even by smaller schemes and at lower cost, for example:
 - Through collaboration with other asset owners. This may be through organisations/groupings like the PRI, the IIGCC, UKSIF, Climate Action 100, the Investor Forum, or ShareAction.
 - Careful selection of managers and consultants with good performance on responsible investment and stewardship. Even smaller schemes can access the expertise of these managers without having to undertake direct stewardship. It is important that asset owners monitor asset managers, as reflected in the proposed drafting.
- PRI members include asset owners with AUM under £5billion, such as the Superannuation Arrangements of the University of London (SAUL) and UNISON Staff Pension Scheme.

- We therefore think that it is important that the draft Regulations be adopted, as they will provide an important prompt for all schemes to consider how they can undertake stewardship.

b) Do you agree that the draft Regulations meet the policy intent?

Yes, for the following reasons:

- Compared to the existing regulations, the draft Regulations widen the activities to be captured in a stewardship policy, which is important given the overly narrow focus on voting in the existing regulations. However, none of the suggested additions are unusual or burdensome activities for schemes to consider having as part of their stewardship policies.
- We support the expectation in the consultation that all schemes that produce a SIP should have a policy on stewardship and the way this is reflected in the drafting, which does not invite policies of "no policy".
- The draft Regulations include monitoring of investment managers and also engagement with other shareholders, which can be an effective, lower cost approach for schemes to undertake stewardship. Overall we believe the draft Regulations represent a cost-effective approach to increasing pension schemes' focus on stewardship (which we will discuss further at Q.8 below).
- We agree with the definition of "relevant matters".

Q6. When trustees of relevant schemes produce their annual report, we propose that they should be required to:

- **prepare a statement setting out how they have implemented the policies in the SIP, and explaining and giving reasons for any change made to the SIP, and**
- **include this implementation statement and the latest statement outlining how trustees will take account of members' views in the annual report.**

a) Do you agree with our proposals?

Yes, for the following reasons:

- The consultation paper quotes ShareAction's research which flags poor practice in SIPs, in particular in relation to the areas covered by the draft Regulations (Chapter 4, para. 1).
- We support the proposals, which should help to bring up standards unilaterally and to also ensure that even those schemes producing good SIPs reflect on how those SIPs are influencing their actual decision-making.
- The implementation report will be a step towards avoiding the SIP being a matter of box-ticking and compliance.
- We support the transparency created by putting this implementation report and the statement on members' views in the annual report because:
 - It will allow the members, who bear the risk in DC schemes, to assess how their agents are acting against the SIP.
 - It will potentially drive up standards in the market by showing schemes different SIPs.
 - It will make trustees more cognisant of the need to explain clearly how policies have been implemented. Simply following the process of preparing the report

should help trustees reflect on how well they are meeting the needs of the members. This process should drive up standards.

b) Do you agree that the draft Regulations meet the policy intent?

Yes, we agree for the following reasons:

- Requiring the trustees to set out the extent to which the SIP has been followed in the previous year should focus the minds of trustees on whether the SIP is fit for purpose and move some away from box-ticking or generic SIPs.

Q7. We propose that trustees of relevant schemes should be required to publish the SIP, the implementation report and the statement setting out how they will take account of members' views online and inform members of this in the annual benefits statement.

a) Do you agree with our proposals?

Yes, we support this transparency for the following reasons:

- DC members bear the risk of investment and therefore have an interest in how their money is being managed.
- Transparency is a good tool to drive up standards, as it allows trustees to compare their schemes with others. It also allows members themselves to do so, and enables wider commentators, consumer interest groups and civil society to analyse and digest information on behalf of members.
- Informing members via the annual benefits statement makes sense, given that this is where costs and charges disclosure will also be flagged.

b) Do you agree that the draft Regulations meet the policy intent?

Yes we do. We also urge the Government to consider how it might drive up the standards in SIPs and reporting in DB schemes. It is not necessarily true that the employer provides careful oversight of the SIP or that DB scheme SIPs are uniformly of a higher standard. If the Government believes that transparency can drive up standards in the DC sector by allowing trustees to compare SIPs with other schemes, it might consider this principle to apply in DB schemes too.

Q8. Do you have any comments on the business burdens and benefits, wider non-monetised impacts we have estimated in the draft impact assessment?

The benefits will outweigh any "burdens" for the following reasons:

- For the proposals on financially material matters and stewardship, evidence shows that taking account of ESG factors is often financially beneficial¹⁶. Clearing up trustee confusion on this issue will potentially allow for better long-term investment strategies.

¹⁶ For example, see these two meta-studies: 1. Deutsche Bank Survey 2016 https://www.db.com/newsroom_news/2016/ghp/esg-and-financial-performance-aggregated-evidence-from-more-than-200-empirical-studies-en-11363.htm
2. https://arabesque.com/research/From_the_stockholder_to_the_stakeholder_web.pdf

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- For the proposals on non-financial matters, evidence shows that members may be willing to contribute more to schemes that better reflect their values – see evidence quoted in Q. 3 above. As the Government review into auto-enrolment stated, engagement may have an important role to play in the success of that policy.
 - As the Impact Assessment notes, the proposals require schemes to state their existing policies on ESG and stewardship. It is not a requirement that they enhance them, although it would be a positive feature of the Regulations if trustees were minded to improve their policies.
 - There is nothing in the draft Regulations that should be unfamiliar to diligent trustees as an issue. For example, guidance from the Law Commission and The Pensions Regulator is already aligned with the proposals on financially material matters and non-financial considerations, and so schemes which have taken this seriously should already be well-prepared to meet the proposals.
 - Trustees can undertake lower cost stewardship activities through collaboration, use of existing forums and via careful monitoring of their asset managers. The benefits of long-term stewardship will outweigh any such costs. .
 - For the statement on members' views, the Impact Assessment notes that the Regulations do not require trustees to have a policy on members' views. Nor do they have to act on members' views. However, in ShareAction's experience of working with members seeking to engage with their schemes, many schemes lack any formal structure for dealing with members' views and ad hoc approaches by members can, to be blunt, be met with a fairly haphazard response. If trustees put time into thinking about how they seek to understand members' views and choose to have a clear structure for this, it would no doubt lead to a more streamlined and cost-effective response overall.
 - We note the high figures suggested in the Impact Statement about different types of engagement. One scheme has apparently said it would cost a huge amount to post paper surveys out to members. First, surveys probably are quite a cost inefficient method to use until member engagement levels are generally higher. Secondly, schemes need to think creatively about how best to communicate and engage members, particularly in respect of younger members' expectation that financial matters be dealt with digitally. Digital technology also offers opportunities for lower cost options and there are a number of innovations in fintech that pension schemes could learn from. And if a method is truly cost prohibitive, there is no need for trustees to pursue it.
 - We would be concerned if schemes said that they were too small and under-resourced to comply with the proposals. Seeking long-term sustainable returns is part of trustees' fiduciary duties. If schemes cannot do this in part by considering ESG risks and opportunities and stewardship, then this raises concerns about whether they have sufficient expertise and/or resources to meet members' needs.
 - Finally, it should not be overlooked that the proposals, and the timetable to introduce them, would *protect* trustees from potential action by members should climate-related losses materialise. There is now plentiful evidence that climate-related financial risks may be material, and thus have a detrimental impact on members' potential pension pots. There is also evidence that a good number of schemes globally are taking action to address these. This leaves schemes, and trustees, with no or poor policies and practices in this area exposed to

allegations of negligence and breach of duty if the climate risks materialise.
Such cases would be costly to schemes.

Q9. Do you have any other comments on our policy proposals, or on the draft Regulations which seek to achieve them?

We are very supportive of the policy proposals and the draft Regulations. Our comments in this consultation are aimed at urging the Government to at times clarify the draft Regulations in order to better deliver the policy intent. However, overall, we would be pleased to see the draft Regulations adopted as we believe they represent significant progress on an important issue.

Q10. Do you agree that the revised Statutory Guidance clearly explains what is expected of trustees in meeting their duty to publish the SIP, implementation statement, and statement of members' views?

Yes, we do not have any concerns about the Statutory Guidance.

Q11. What evidence or views do you have of how well the other requirements in the SIP are working? What areas for further consideration and possible future change would you suggest?

We do not have anything to raise at this time but we would be open to working with the Government in any other analysis of how well the SIP is working.