



**SOCIAL
INVESTMENT
FORUM**

Response to Consultation on changes to the Investment Regulations following the Law Commission's report 'Fiduciary Duties of Investment Intermediaries'

24th April 2015

Who we are:

The **Social Investment Forum (SIF)** is the national forum for social investment and finance intermediaries (SIFIs) in the UK. SIF was established informally in 2010 to provide a place for SIFIs to network and share practice; since then, it has helped develop a collective voice to influence social investment policy through the co-ordination of evidence, information and expertise. SIF members also work together to improve the practical functionality of the social investment market, sharing good practice and up-to-date information, and facilitates purposeful networking between members. SIF's work involves:

- sharing good practice and learning
- co-ordinating advocacy and providing a collective voice for social investment
- agreeing and raising industry standards
- disseminating information, research and resources
- encouraging partnership working

The current members of SIF are: Allia, Big Issue Invest, Big Society Capital, Bridges Ventures, CAF Venturesome, CAN Invest, Charity Bank, ClearlySo, Community Development Finance Association (CDFA), City of London Corporation, Esmée Fairbairn Foundation, Ethex, FSE, Investing For Good, London Rebuilding Society, NESTA, Resonance, Social and Sustainable Capital, Social Investment Business, Social Finance, Social Stock Exchange, Triodos Bank, UnLtd (Ventures)

SIF is chaired by Social Enterprise UK, who also provide the secretariat.

Summary of response:

We support the findings of the Law Commission's report (*Fiduciary Duties of Investment Intermediaries*) and agree that the fiduciary duties of investment intermediaries managing pension schemes are currently unclear. We believe that much value can be derived by clarifying these duties.

Particularly, we welcome efforts to provide trustees with a stronger remit to consider social and environmental factors when making investments. In this regard, the greater the degree of clarity offered to trustees, the better. In the long-term we would welcome an approach comparable to the recent recommendations made as a result of the [Law Commission's review of Social Investment by](#)

[Charities](#), which propose a new statutory power for charity trustees to make social investments.¹ This type of clear, affirmatory power is likely to be more useful for trustees in the long term.

We believe that investment intermediaries should be required to observe two considerations:

- Factors relevant to the ethical performance of the fund, related to its social or environmental impact (“non-financial”)
- Factors relevant to the long-term financial performance of the fund, which is likely to be closely related to its social or environmental impact (“long term financial”)

We do not believe that an approach which views social or environmental concerns as solely “non-financial” is likely to succeed, and we welcome the recognition of this in the Law Commission report.

The guidance offered by the Law Commission would seem to indicate quite clearly that social investments are consistent with trustees’ duties in this regard, even where the financial return on investment is lower in the short term than may be available elsewhere. However we agree with the government that there has been significant uncertainty on this issue, and that there is a need for greater clarity. We would welcome any steps that the government can take to further promote this to pension trustees. Any guidance published on this topic should clearly reference that social investment is within scope.

Below are our specific responses to questions 1 and 2 of the consultation document. We have not provided a response to question 3.

[Response to specific questions:](#)

Question 1: How could regulation 2(3)(b) of the Investment Regulations be amended so that it more clearly reflects the distinction between financial and non-financial factors?

We welcome the move to clarifying what content is required to be contained with the Statement of Investment Principles (SIP). However, if this is to be done by amending the Investment Regulations, then great care must be taken to ensure that this does not sow more confusion than it removes.

The current requirement that social, environmental or ethical considerations are taken into account (2-3-b-iv) is useful, at least, insofar as it is ‘hardwired’ into regulation, even if it is unhelpfully worded. We would be concerned if the solution was to remove regulation 2(3)(b)(vi) and not replace it with something sufficiently robust.

We believe that any new wording of 2(3) should include/take account of both of the following:

1. Long-term risk, including the degree to which environmental and social factors may impact on the financial performance of their investment *and* the outcomes they are ultimately seeking for their beneficiaries
2. Whether and in what circumstances it would be appropriate to make investment decisions on the basis of non-financial factors

We believe this, as a minimum, should serve to provide greater clarity to trustees. As argued above however, we would prefer an even stronger approach, whether through the SIP regulations or

¹ These recommendations have yet to be enacted in law, and the Social Investment Forum will call on the next government to legislate on this as soon as possible.

elsewhere. Part of the solution to this would be to require trustees to state their approach to measuring and reporting on the social impact of their investment.

We leave the wording of the new regulation up to government, and welcome the opportunity to respond to a further technical consultation about this in due course.

Question 2: Do you agree that amending the Investment Regulations to require trustees to comply with the current requirements in the Stewardship Code or explain why they have not done so, is the most appropriate way to implement the Law Commission's recommendation? If not, what approach would be more appropriate to encourage trustees to consider their approach to stewardship?

We believe that the Stewardship Code has value, and we agree that trustees should become better stewards of the assets in their care.

However, we are concerned about the impact of a blanket implementation of the Stewardship Code, which may not be the best or more appropriate option for smaller funds. We also note that there are a number of alternative codes, which in some cases go further than the Stewardship Code, and we are concerned about the potential to entrench a standard that would otherwise be superseded by another, better standard.

Others have suggested the potential for the Investment Regulations to be amended to require a Stewardship *Policy*, rather than seeking adherence to a single code. We believe that this could be a feasible alternative, which would still achieve the aim of improving stewardship within the sector.