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Dear Elias

Consultation on the Law Commission's report on fiduciary duties

I am writing on behalf of Lane Clark & Peacock LLP in response to the Department for Work and Pensions ("DWP") consultation on changes to the Investment Regulations following the Law Commission's report "Fiduciary duties of Investment Intermediaries".

Lane Clark & Peacock LLP is a firm of financial, actuarial and business consultants, specialising in the areas of pensions, investment, insurance and business analytics. LCP is regulated by the Institute and Faculty of Actuaries in respect of a range of investment business activities. LCP has offices in London and Winchester in the UK. In Europe, the LCP group includes offices in Belgium, Ireland and the Netherlands.

1. 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?

Our view is that the structure of the current wording is such that trustees and others naturally think of "risk" as being of a financial nature and "social, environmental, ethical considerations" as being a "softer" afterthought.

We think it is reasonable to amend regulation 2(3)(b) of the Investment Regulations so as to make clear:

- what constitutes a financial or non-financial factor;

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- trustees' duties regarding financial and non-financial factors when assessing investments; and
- to do this in a way that leads trustees and others to give due consideration and weight to each.

An alternative (*italicised*) wording for regulation 2(3)(b) could be as follows:

- (b) their policies in relation to
 - (i) the kinds of investments to be held;
 - (ii) the balance between different kinds of investments;
 - (iii) risks, including both *financial and non-financial related risks*;
 - (iv) the ways in which *financial* risks, including those arising from social, environmental or ethical factors that the trustees deem to be material to an entity's performance and/or sustainability, are measured, managed and mitigated;
 - (vi) the expected return on investments; and
 - (vii) the realisation of investments.
- (b1) *Where the trustees take into account non-financial risks, they should provide details of the steps taken to confirm that members share their views about these non-financial risks and, except where the Trust Deed specifically permits, or in the case of money purchase benefits where the member is actively choosing the investment, that this does not significantly increase financial risk.*

2. 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 do.

We support the Stewardship Code and its aims, but believe that it remains "below the radar" for many, not only trustees but also some fund managers and some consultants. Giving the "comply or explain" requirement regulatory status will raise its profile making it easier to engage and to generate action with all parties about the worthwhile aims of the Code.

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3. Question 3 – What steps would trustees need to take to comply with any amendments to the Investment Regulations, as set out in Chapter 2? What, if any, costs would be involved in meeting any new requirements?

There are a number of steps. Trustees would need to:


- Receive training on the requirements of the new regulations from both a legal and investment perspective – for example, an “NAPF Made Simple” guide would be useful here;
- Discuss with their managers and consultants how they propose responding to the new regulations (eg in the case of consultants, how they might modify their investment manager selection criteria and in the case of managers, how they might modify their investment process);
- Confirm or gather the views of their scheme’s membership with respect to non-financial issues and their importance to them; and
- Decide how to incorporate the requirements of the new regulations into their Statement of Investment Principles.

This could take one to two years to implement and therefore any amendments to the regulations should allow a suitable lead time prior to coming into force.

Costs would relate consultancy and legal fees, training, drafting revised documentation and member consultations.

We are happy for our comments, which represent the collective view of a number of partners within LCP, to be attributed to LCP. We hope that our response is helpful but if you have any questions, or would like to discuss anything further then please contact me.

Yours sincerely

 Prepared as an attachment to an email
at 17:42 on 24 April 2015

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