

ELECTRICITY PENSIONS TRUSTEE LIMITED

65 Gresham Street, London, EC2V 7NQ

For the attention of Emma Walmsley, Tom Rhodes and David Farrar
Climate Change and Responsible Investment Team
Department of Work and Pensions

By email only: pensions.governance@dwp.gov.uk

5 March 2021

Dear Sirs

Response to Consultation: Taking action on climate risk: improving governance and reporting by Occupational Pension Schemes

Introduction

Electricity Pensions Trustee Limited ("**EPTL**") welcomes this opportunity to respond to the DWP consultation entitled "**Taking action on climate risk: improving governance and reporting by occupational pension schemes – response and consultation on regulations**".

We write further to our response to the August 2020 consultation, which sets out EPTL's position in relation to the Government's proposals (the "**Initial Response**").

As detailed in the Initial Response, EPTL is the Scheme Trustee of the Electricity Supply Pension Scheme ("**ESPS**") which is an industry-wide pension scheme for non-associated employers within the electricity supply industry. Each non-associated employer has its own Group within ESPS, each Group having its own set of Group Trustees, while EPTL is the Scheme Trustee having certain central functions as set out in the scheme documents of ESPS. ESPS is one of the largest private sector pension schemes in the United Kingdom, with approximately 170,000 DB and DC members as at 31 March 2020, of whom approximately 24,000 are active members.

The employers participating in ESPS have a separate body, Electricity Pensions Limited, to represent their interests. This consultation response is given solely on behalf of EPTL.

Response

EPTL welcomes the approach set out in the draft regulations to require larger schemes to adopt climate change governance and reporting, with smaller schemes to follow over time. However, the draft regulations apply to all trustees of occupational pension schemes with assets over the relevant value, regardless of whether they have any control over the investment of those assets. We consider this to be too broad. As explained in the Initial Response, we believe that trustees should be responsible for the climate change governance and reporting only in respect of investments within their control and covered by their Statement of Investment Principles.

This distinction is particularly important for atypical structures, such as the ESPS, where the investment duties are not all vested in one party. The ESPS is somewhat unusual in being a segregated scheme in

which each segregated section has its own set of trustees with its own duties specifically in relation to that section (the Group Trustees referred to in the Introduction).

Each set of Group Trustees is responsible for the investment of the assets held for their particular Group (after consulting the relevant Group employers). EPTL retains power to invest in assets or funds to which individual Group Trustees wish to subscribe, offering a form of pooled investment within the ESPS for individual Groups. At the moment, the investments made by EPTL are limited to a relatively small investment in forestry. Statements of Investment Principles are maintained by each set of Group Trustees. EPTL maintains its own Statement of Investment Principles in respect of the limited investments it makes.

In short, although EPTL discharges trustee obligations in relation to the custody of all the assets of the ESPS, it only has control of the investment strategy and ownership of the relationship with investment managers in relation to a small portion of those assets. We therefore believe that it is more appropriate for the responsibility for climate change governance and reporting to vest in the Group Trustees in relation to those assets for which they make the investment decisions and manage the relationship with investment managers. This last point is critical because investment managers will play a key role in providing information to support a scheme's climate change governance and reporting.

Indeed, most of the duties set out in the schedule to the draft regulations can only be carried out by the Group Trustees. For example, assessing the impact of climate-related risks and opportunities on investment and funding strategies (paragraph 5 of the schedule) can only sensibly be done by the Group Trustees who devise, implement and review the investment and funding strategies in relation to their individual Groups (with their Group employers). EPTL, as Scheme Trustee, plays no part in this process.

The draft regulations are unclear as to where the obligation for climate change governance and reporting lies – with the Scheme Trustees, the Group Trustees or both. The ambiguity leaves the two sets of Trustees open to criticism from activist organisations who take a different view from the Trustees themselves on the construction of the regulations in their application to atypical schemes. The Pensions Regulator, who is responsible for enforcing them, is also exposed to the risk of judicial review if he takes a different view from those organisations. We therefore believe that the regulations should be clarified in their application to schemes with atypical structures.

We respectfully submit that the following amendment as an additional paragraph to regulations 2 and 3 would clarify the position:

"Where an occupational pension scheme:

- (a) is a scheme in relation to which there is more than one employer and which is divided into two or more sections each of which has trustees appointed as trustees specifically in relation to that section,
- (b) is not used, or intended to be used, only by employers which are connected with each other, and
- (c) is a scheme to which the modification of Part 3 of the Pensions Act 2004 set out in paragraph 1 of schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations 2005 applies,

[paragraphs (1) and (2) of regulation 2] [paragraph (1) of regulation 3] shall apply as if each section were a separate scheme and references to the trustees were references to the trustees appointed as trustees specifically in relation to that section."

The definitions of "employer" and "connected" could follow those in sections 1(3) and 1(4) of the Pension Schemes Act 2017.

We would be happy to have further discussions with you, or to arrange for our advisers to do so, if it would be helpful for us to elaborate any of the above points.

Yours faithfully

A handwritten signature in black ink, reading "Melanie Cusack". The signature is written in a cursive style with a large initial 'M'.

Melanie Cusack, Chair
Electricity Pensions Trustee Limited