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Climate Governance & ESG Team
Department for Work & Pensions
Caxton House
Tothill Street
London
SW1H 9NA

Dear Climate Governance & ESG Team

DWP Consultation - Taking action on climate risk: improving governance & reporting by occupational pension schemes

I am writing on behalf of The Law Debenture Pension Trust Corporation p.l.c. in response to the above consultation issued by the Department for Work and Pensions (DWP). Law Debenture acts as trustee for around 200 pension schemes with around 3 million members and £350bn of assets under management. It is in our capacity as a professional pension trustee that we provide this response and, as such, it is primarily focussed on the impacts on pension schemes and their key stakeholders, namely the sponsoring employers and members. We do not make this submission on behalf of the trustee boards on which we serve, whose views are not necessarily the same.

At Law Debenture we believe that the pension industry should be actively involved in the promotion of sustainable practices for the long-term benefit of our scheme members given the long-term nature of pension scheme investing, the magnitude of the combined assets of UK pension schemes and the declaration of climate emergencies. We therefore welcome the consultation, whilst noting that these proposals will represent a significant piece of work for pension schemes if they are to be completed with rigour.

Whilst we have no specific evidence to point to, our experience would indicate that the costs that would be incurred by a £5 billion scheme or authorised Master Trust attempting to lead the way on these reporting requirements are materially underestimated and as such we can see a strong case for requiring a significant portion of the burden of analysis to fall on the asset management industry – we note that the FCA CP20/3, is an opportunity to require asset managers to make TCFD disclosures on the assets they manage, as has been welcomed by the Pensions Minister[1].

[1] https://www.gov.uk/government/news/fca-climate-risk-plans-welcomed-by-pensions-minister

Our comments on specific questions raised in the consultation are set out in the Appendix.

We hope that you find the contents of this letter of assistance. We would be happy to discuss them further if that is helpful. In that event, please contact Natalie Winterfrost at natalie.winterfrost@lawdeb.com.

Yours faithfully

Mark Ashworth

Mark Ashworth
Chair

Appendix: Responses to questions

Q1 We propose that the following schemes should be in scope of the mandatory climate governance and Task Force on Climate-related Financial Disclosures (TCFD) reporting requirements set out in this consultation:

a) trust schemes with £1 billion or more in net assets
b) authorised master trusts
c) authorised schemes offering collective money purchase benefits

Do you agree with our policy proposals?

We can see pros and cons of both reducing and increasing the required AUM to fall within the requirements. We believe that the TCFD disclosure requirements may be a positive influence for change and as such should apply as widely as possible. On the other hand, if the bulk of the disclosure preparation falls onto the scheme itself, then the expense will be difficult for schemes to bear the smaller they are, and the cost of doing so would not offer value for members of small DC schemes in particular. Under this scenario we believe that even the £5 billion threshold may be too low and it would be better to first apply the rules to £10 billion schemes.

If fund managers were mandated to provide much of the analytics supporting the disclosures, then the direct cost would become less material, meaning that smaller schemes can be brought into the requirements. This would be our preference. It is possible that it may become market practice for asset managers voluntarily to provide supporting data, but this would almost certainly lead to outliers who did not do so and to resulting holes in scheme reporting.

The applicability or ease of compilation of the TCFD disclosures will also vary by asset class. Climate-related matters are less financially material when trustees are considering a buy-in and the data for TCFD disclosures may be far harder to obtain for certain non-listed assets or government bonds, for example (although this should not exempt a fund manager from providing data on a best endeavours basis). This could be taken into consideration when determining scope.

Q2: We propose that:

a) trustees of schemes with £5 billion or more in net assets on their first scheme year end date to fall on or after 1 June 2020 are subject to the climate governance requirements from 1 October 2021 and the trustees must publish a TCFD report within 7 months of the current scheme year end date or by 31 December 2022 if earlier
b) trustees of schemes with £1 billion or more in net assets on the first scheme year end date to fall on or after 1 June 2021 are subject to the climate governance requirements from 1 October 2022, and the trustees must publish a TCFD report

within 7 months of the current scheme year end date, or by 31 December 2023 if earlier
c) trustees of master trust or collective money purchase schemes which are authorised on 1 October 2021 are subject to the climate governance requirements with immediate effect, and the trustees must publish a TCFD report in line within 7 months of the current scheme year end date, or by 31 December 2022

After 1 October 2021:

d) trustees of master trust or collective money purchase schemes which become authorised are subject to the climate governance requirements with immediate effect, and the trustees must publish a TCFD report within 7 months of the current scheme year end date
e) where schemes cease to require authorisation, the climate governance and TCFD-aligned reporting requirements fall away with immediate effect, unless they remain in scope via the asset threshold on the previous scheme year end date

From 1 June 2022 onward:

f) trustees of schemes not already in scope of the requirements and with £1 billion or more in net assets on any subsequent scheme year end date:

- are subject to the climate governance requirements starting from one year after the scheme year end date on which the £1 billion asset threshold was met
- must publish a TCFD report within 7 months of the end of the scheme year from which the climate governance requirements apply

g) trustees of schemes in scope of the requirements whose net assets fall below £500m on any subsequent scheme year end date cease to be subject to the climate governance requirements with immediate effect (unless they are an authorised scheme) but must still publish their TCFD report for the scheme year which has just ended within 7 months of the scheme year end date

Do you agree with the policy proposals?

Your proposals put the development burden largely with the £5 billion plus schemes and authorised master trusts, which may as a consequence find that the fund management sector 'steps up' less, unless mandated to do so. This could support a conclusion that schemes with a lower asset value should be included from commencement; the flip side to this is the risk that if the support does not materialise from the industry quickly enough, the burden on these schemes will be too much.

We would also not want to see the bar for the quality of the TCFD disclosures set at a low level – we perceive a risk that this could be an unintended consequence of the relatively tight timescales. We propose that all schemes have until 31 December 2022, regardless of their year-end, and that the priorities for early year disclosures are clear.

Imposing a development cost burden for TCFD disclosures on DC authorised master trusts may also be at odds with delivering value for members through DC authorised master trusts.

Q3: Subject to Government deciding to adopt any of the governance or reporting requirements proposed in this consultation, we propose to conduct a review in 2024 on whether to extend the measures to schemes with below £1 billion in net assets which are not authorised master trusts or an authorised scheme offering collective money purchase benefits, and if so how and on what timescale.

This review would be informed by consideration of TCFD disclosures by occupational pension schemes to-date, their impact, and the availability and quality of both free and paid-for tools and services. We would propose also to review any regulations and statutory guidance which had been put in place to identify whether any of this needs to be strengthened or updated. Do you agree with these proposals?

Regardless of the decision on scope taken initially, we agree that 2024 would be an appropriate time to conduct a review of which schemes are in and out of scope, assuming the original deadlines are broadly adhered to.

Q4: We propose that regulations require trustees to:
a) adopt and maintain oversight of climate risks and opportunities
b) establish and maintain processes by which trustees, on an ongoing basis, satisfy themselves that persons managing the scheme, are assessing and managing climate-related risks and opportunities.

We also propose that regulations require trustees to describe:
c) the role of trustees in ensuring oversight of climate-related risks and opportunities
d) the role of those managing the scheme in assessing and managing climate-related risks and opportunities, only insofar as this relates to the scheme itself and the processes by which trustees satisfy themselves that this is being done

We propose that statutory guidance will cover the matters in the box above. Do you agree with these proposals?

As climate-related risk is a recognised material risk, trustees already largely have a responsibility to meet a) and b), and in determining their ESG policy and in due course reporting in their Implementation Statements, trustees should already be considering c) and d). If it is intended that this requirement should increase trustee duties or potential liabilities beyond these existing requirements, then this should be made explicit and should be considered and consulted upon further.

We support annual , rather than more frequent, disclosures by trustees of aggregated scheme emission and non-emission based data, although we would like it to become common practice for fund managers to make data available, by mandate, for regular monitoring by trustees.

Q5: We propose that regulations require trustees to identify and disclose the climate change risks and opportunities relevant to their scheme over the short, medium and long term, and to assess and describe their impact on their investment and funding strategy. We propose statutory guidance will cover the matters outlined in the box above. Do you agree with these proposals?

We largely agree with the proposals. It should be noted that not all schemes will have the same timescales. An example is a scheme expecting to wind-up and buy-out its benefits imminently – for such schemes the risks and opportunities in the short term are far more relevant than for a scheme that, say, intends to run off its liabilities. Schemes should be free to identify and disclose the climate change risks in their current portfolio to timescales that make sense in these contexts.

Q6: We propose that regulations require trustees to assess the resilience of their assets, liabilities and investment strategy and, in the case of defined benefit (DB), funding strategy, as far as they are able, in at least two climate-related scenarios, one of which must be a 2°C or lower scenario and to disclose the results of this assessment.

We propose statutory guidance will cover the matters outlined in the box above. Do you agree with these proposals?

Stress testing scheme funding under climate-related scenarios would require significant model development which we do not believe is available today. To the extent that this modelling should look at both the asset and liability side of the equation it would always be something bespoke to each scheme and costly for all schemes.

For consistency across schemes, a central scenario and a realistic worse-case scenario on global warming should be set.

Q7: We propose that regulations require trustees to: a) adopt and maintain processes for identification, assessment and management of climate-related risks; b) integrate the processes described in a) within the scheme's overall risk management. We also propose the regulations require trustees to disclose: c) the processes outlined in part a) above. We propose statutory guidance will cover the matters outlined in the box above. Do you agree with these proposals?

No further comment.

Q8: We propose that regulations require trustees to:
a) select at least one greenhouse gas (GHG) emissions-based metric and at least one non-emissions-based metric to assess the scheme's assets against climate-related risks and opportunities and review the selection on an ongoing basis
b) obtain the Scope 1, 2 and 3 GHG emissions of the portfolio, and other non-emissions-based data, as far as they are able
c) calculate and disclose metrics (including at least one emissions-based metric and at least one non-emissions-based metric) used to quantify the effects of climate change on the scheme and assess climate-related risks and opportunities

We also propose in regulations that trustees be required to disclose:
d) why the emissions data that is estimated does not cover all asset classes, if this is the case

We propose that trustees will not be mandated to use a specific measure to assess the effects of climate change on the scheme's portfolio. We propose statutory guidance will cover the matters outlined in the box above. Do you agree with these proposals?

We see a case for mandating the disclosure of certain specified metrics. It could then be voluntary to disclose additional metrics, alongside the mandatory metrics, where schemes felt these were more appropriate. If no specific measure is mandated, schemes will be likely to find that a variety of different metrics are available to them on the mandates delegated to their various fund managers and aggregation across mandates will then become impossible.

Q9: We propose that regulations require trustees to:
a) set at least one target to manage climate-related risks for one of the metrics trustees have chosen to calculate, and to disclose those targets(s)
b) calculate performance against those targets as far as trustees are able and disclose that performance

We propose statutory guidance will cover the matters outlined in the box above. Do you agree with these proposals?

Schemes should be considering climate risks where they may have a financial impact on the value of their assets. A target to reduce climate impact could conflict with the financial interests of the scheme and its members, if a scheme is encouraged to buy low emission assets regardless of their price to meet an emission reduction target.

Q10: We propose that, for all schemes in scope. Do you agree with these proposals?
a) the trustees should be required to publish their TCFD report in full on a publicly

available website where the report is accessible free of charge
b) the trustees should be required to include in the Annual Report and Accounts a website link to the location where the full TCFD report may be accessed in full
c) the trustees must notify all members to whom they must send the annual benefit statement of the website address where they can locate the full TCFD report – this must be set out in the annual benefit statement
d) the trustees should be required to report the location of their published TCFD report to the Regulator by including the corresponding website address in their scheme return
e) the trustees should also be required to report the location of their published Statement of Investment Principles (SIP), Implementation Statement and excerpts of the Chair's Statement by including the corresponding website address or addresses in their scheme return.

We agree with these proposals.

Q11: We propose that:
a) The Pensions Regulator (TPR) will have the power to administer discretionary penalties for TCFD reports they deem to be inadequate in meeting the requirements in the regulations
b) there will be no duty on TPR to issue a mandatory penalty, except in instances of total non-compliance where no TCFD report is published
c) in all other respects, we propose to model the compliance measures on the existing penalty regime set out in regulations 26 to 33 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015
d) failure to notify members via the Annual Benefit Statement or to include a link to the TCFD report from the Annual Report will be subject to the existing penalty regime set out in regulation 5 of the Disclosure Regulations

Do you agree with this approach?

We would caution against any mandatory penalty. There will be situations beyond a scheme's control that may result in a failure to publish a TCFD report. The TPR should publish guidance on the situations under which they will impose penalties.

Q12: Do you have any comments on the new regulatory burdens to business and benefits, and wider non-monetised impacts we have estimated and discussed in the draft impact assessment?

Economies of scale will only be achievable if the onus of analysis is placed upon fund managers. It is our expectation that the estimated costs of compliance of £15k per scheme will be far below the actual cost.

Q13: Do you have:
a) any comments on the impact of our proposals on protected groups and how

any negative effects may be mitigated?
b) any evidence on existing provision made by trustees in response to requests for information in alternative accessible formats
c) any other comments about any of our proposals?

No additional comments.