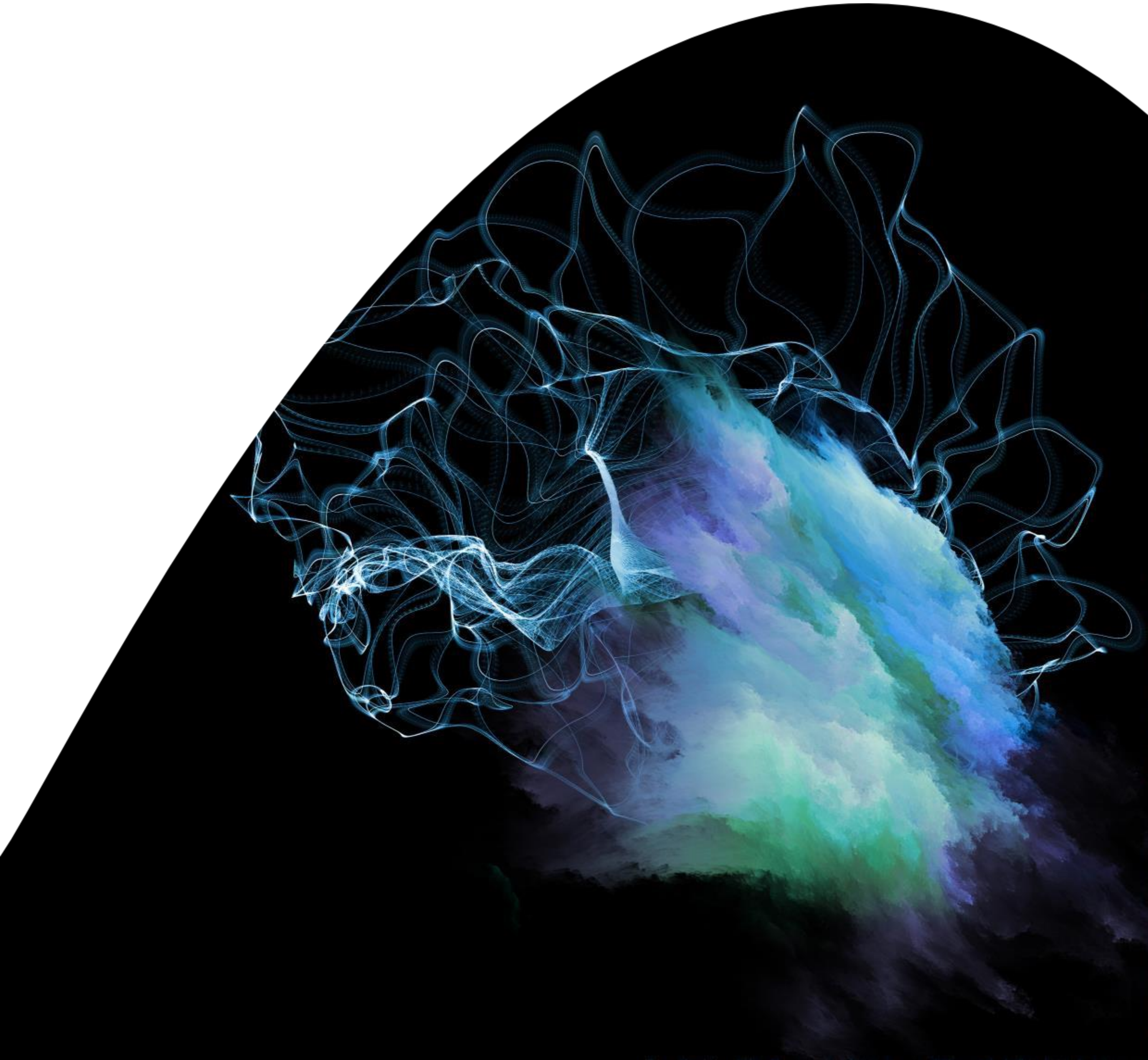
Pinsent Masons

Taking action on climate risk: improving governance and reporting by occupational pension schemes



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Introduction to Pinsent Masons LLP

Pinsent Masons LLP is an international law firm. We have one of the strongest pensions teams in the UK. Spanning our UK offices, the team has around 80 specialist lawyers, paralegals and independent trustee administrators dealing with pensions. We are dedicated to providing clear, practical, cost-effective advice for our clients. We advise trustees, sponsoring employers and providers on the full range of pensions issues. We have considerable experience in advising trustees on investment matters, including strategies dealing with the financial risks of climate change.

Our response

We are very supportive of what the consultation is trying to achieve and of its approach. We believe that regulations and statutory guidance being proposed will help trustees navigate the risks of climate change by providing them with some real focus and support - and that, in turn, will empower them to drive the further development of the data and tools needed for trustee decision-making.

We have not felt the need to address the consultation questions individually, since we are largely in agreement with what is proposed, Instead, we have focused on a few more general points:

- ### Obtaining information from asset managers

  We have been concerned about any potential disconnect between what trustees will require from their asset managers to meet the new TCFD reporting requirements and what those managers are obliged, or indeed able to disclose to trustees under FCA rules or legislation. This issue is exacerbated for many of the £5bn+ schemes that will be the first caught by the new requirements and which have their own in-house investment management function. The requirements for trustees need to be reflected in the disclosure obligations of asset managers and their investee companies.

  To this end, we were pleased to see, in Chapter 3 (Climate Governance and TCFD) at paragraph 54, the reference to the guidance of the Climate Financial Risk Forum (CFRF) and the confirmations about climate related disclosure requirements in the letter of 22 September 2020, from Christopher Woolard (Interim Chief Executive of the FCA) to Guy Opperman (Minister for Pensions). These include that TCFD reporting recommendations will be adopted by the FCA "more widely within our [FCA's] rules, including as they apply to asset managers and contract-based pension schemes,…" having also, earlier this year "proposed a new TCFD-aligned disclosure rule in our rules for premium-listed issuers".

  We consider that this co-ordinated approach by regulators, as also shown in the new Regulatory Initiatives Grid, and the alignment with TCFD disclosure requirements across the sector, are of fundamental importance if trustees are to achieve compliance with their proposed new obligations, because this will depend in part on the disclosure flows to and from asset managers. Going forwards, it will be key to ensure that a cross sector view of disclosure obligations continues to be taken by the relevant regulators and that any further disconnect in disclosures due to Brexit is also addressed.

- ## Multiple sections in NAME schemes

It appears that a non-associated multi-employer scheme (NAME scheme) with multiple segregated sections will only need to produce one report integrating all the sections. This is welcome news. But each segregated section would typically have its own section-specific funding and investment strategy and one of the core components of a proportionate-based approach to climate change risk is that the approach matches the long-term horizon of investments. Therefore the statutory guidance will need to clarify whether each scheme's TCFD report must (i) cover each section separately; or (ii) take a holistic approach and amalgamate sections into reporting groups based on their funding and investment approach. Page 59 of the consultation document suggests that this is a matter for the trustees to decide from an operational point of view. However, it is important that trustees are clear on how that flows through to the reporting requirement.

Where a NAME scheme providing both DB and DC benefits has £5bn + of assets and is also a master trust (in relation to the DC benefits), it will fall within the scope of the new reporting requirements on both counts. The statutory guidance needs to make clear exactly how the reporting requirements apply – for example, whether the trustees will be required to produce separate reports for the master trust and DB sections respectively.

- ## Quarterly emissions data

The consultation lists scenario analysis, metrics and targets as discreet activities that need to be carried out and reported annually rather than as part of the on-going activities of the scheme. However, emissions and non-emissions data needs to be disclosed and measured quarterly. Presumably there is a difference in reporting frequency because scenario analysis, metrics and targets focus on the long-term sustainability and outlook of the portfolio in relation to physical and transition risks whereas the requirement to disclose emissions reflects the current climate-related risk attributed to the portfolio. We recommend that the statutory guidance clarify how the quarterly emissions reporting needs to reflect and complement the annual reporting requirements.

- ## Section 33 of the Pensions Act 1995

Paragraph 62 of chapter 1 of the consultation states: “The usual rules would also apply in relation to exonerations and indemnities for trustees. For example, there might be provision in their Trust Deed and Rules exonerating them from personal liability in certain circumstances, although there will usually be ‘carve outs’ for where trustees have acted dishonestly or in bad faith.” This statement appears not to take account of the fact that section 33 of the Pensions Act 1995 generally prevents the exclusion of trustees' liability for breach of an obligation to take care or exercise skill in the performance of any investment functions although, to the extent that any of these functions are delegated to a fund manager, trustees may be relieved of their liability in accordance with section 34. In practice, we assume that compliance with the relevant sections of the statutory guidance will become a factor in determining whether trustees should be relieved of liability. We otherwise agree with the points made in the consultation document about mitigating trustees' liability.

Please contact Carolyn Saunders (carolyn.saunders@pinsentmasons.com) if you have any questions about this response.