



**CONSULTATION ON CLARIFYING AND STRENGTHENING
TRUSTEES' INVESTMENT DUTIES**

**RESPONSE FROM ICAS TO
THE DEPARTMENT OF WORK AND PENSIONS**

20 July 2018

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Background

ICAS is a professional body for more than 21,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business and in the not for profit sector; many leading some of the UK's and the world's great organisations. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854.

Introduction

The ICAS Pensions Panel welcomes the opportunity to comment on the Department for Work and Pensions (DWP) consultation on clarifying and strengthening trustees' investment duties. We note that any changes arising from the consultation will be actioned through The Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2018.

Key points

In summary, we are content with the main proposals in the consultation to the extent that the regulations are updated to require:

- Trust-based Defined Contribution (DC) schemes to update their default strategy to take account of financially material risks.
- Trust-based Defined Benefit (DB) schemes with 100 members or more to update their Statement of Investment Principles (SIP) to take account of financially material risks.

However, we do not agree that it is necessary to define financially material risks in regulation with reference to environmental, social and governance (ESG) considerations or that the proposals around taking members' views into account are of sufficient priority and merit to regulate for.

A stated objective of the consultation is not to override the autonomy of trustees to make investment decisions but the emphasis on ESG considerations and the proposals around taking members' views into account are designed to influence the behaviour of trustees around investment decisions and could put trustees on the back foot.

We are aware that trustees are focussing more on ESG considerations than ever before and we believe that it is appropriate for trustee boards to do so where such considerations are financially material. However, we would prefer investment approaches to ESG considerations to be covered, as appropriate, by The Pension Regulator's (TPR's) Codes of Practice and regulatory guidance.

Timing and timescale of the consultation.

We are disappointed with both the timing of the consultation and the timescale for responding. The consultation paper was published on 18 June with a deadline for comment of 16 July. We believe that the consultation is therefore not in line with the values expressed in the Cabinet Office consultation principles, in particular the following:

"G. Consultations should take account of the groups being consulted

Consult stakeholders in a way that suits them. Charities may need more time to respond than businesses, for example. When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action, such as prior discussion with key interested parties or extension of the consultation deadline beyond the holiday period."

Member organisations like ICAS need to give members and other key stakeholders time to share their views, preferably through face to face discussions, in order to prepare high quality responses to consultations. We believe it is also incumbent on government to consider key holiday periods across the UK when undertaking consultations.

The timing and timescale has curtailed our ability to consider the proposals as fully as we would have wished. We are also submitting our response several days beyond the deadline, but we hope that our comments will be evaluated along with the other responses received.

Any enquiries should be addressed to Christine Scott, Head of Charities and Pensions, at cscott@icas.com

Question 1

We proposed that the draft regulations come into force approximately one year after laying, with the exception of the implementation report, which would come into force approximately two years after laying:

- a) Do you agree with our proposals?
- b) Do you agree that the draft Regulations meeting the policy intent?

Response

We do not object to the proposed implementation timetable. We would welcome the updating by TPR of its related Codes and regulatory guidance for both DC and DB schemes to reflect any proposals which are to be taken forward. We comment further on this matter in our responses to question 2.

We have not reviewed the draft investment Regulations in detail and therefore cannot comment on the extent to which these meet the policy intent with regard to the implementation timetable.

Question 2

We propose to require all trustees of all schemes which are obliged to produce a SIP to state their policy in relation to financially material considerations including, but not limited to, those resulting from environmental, social and governance considerations, including climate change.

- a) Do you agree with the policy proposal?
- b) Do the draft Regulations meet the policy intent?

Response

We agree with the comments in the consultation about the need to clarify terminology. However, we are more sceptical of the need to reference specifically environmental, social and governance considerations (including climate change) within the definition of 'financially material considerations'.

First, the term 'environmental, social and governance (ESG) considerations' may not be defined or understood by all parties involved in pension scheme investment in the same way. Therefore, specific reference to ESG in the regulations could in itself reduce the clarity of the proposed regulations.

Also, while the consultation paper is at pains to stress that the proposed regulations will not override the autonomy of the trustees to make investment decisions, the emphasis on reporting on ESG considerations in the SIP and the proposals around member views are clearly aimed at fostering behavioural change and could place trustees unnecessarily on the back foot.

It is our experience that trustees are focusing on ESG and responsible investment considerations now more than ever before and we believe that this is appropriate where ESG issues are financially material. However, we are not convinced that it is appropriate or necessary for the DWP to seek behavioural change as pension trustees already have a legal obligation to act in the best interests of scheme members as a whole.

A more principles-based approach to regulation would be to refer to 'financially material considerations' and leave it to the trustees to determine what these are for their scheme. If the proposed changes are being made in the best interests of scheme members, then we believe it is difficult for the UK Government to justify seeking to change the behaviour of trustees and not extend this to the fiduciaries of contract-based pension arrangements.

We believe that reference to ESG considerations is better placed in TPR's Codes and guidance. At the moment ESG considerations appear to be indirectly referred to in Code of Practice 13 for DC schemes (July 2016) and directly in its regulatory guidance on DB investment (July 2017). However, the terminology used is inconsistent. The updating of the Investment Regulations could be an opportunity to bring consistency with regard to 'financially material considerations' and references to ESG considerations.

Paragraph 97 of the DC Code of Practice states that "When setting investment strategies, we expect trustee boards to take account of risks affecting the long-term financial sustainability of investments."

We believe the reference to 'long-term financial sustainability' encompasses ESG considerations. However, as the consultation paper mentions, ESG considerations are not just about long-term financial sustainability and there could be short-term ESG considerations for trustees. Perhaps the wording here could be refined in the context of Regulations which refer to 'financial material considerations' and expanded to specifically mention ESG. References to ESG should be consistent with the regulatory guidance on DB investment.

Section 2 'Investing to fund DB' of the regulatory guidance on DB investment sets out considerations to "help you formulate, refine and revise your investment strategy". These considerations include taking account of "environmental, social and governance factors if you believe they are financially significant".

We can also see that it would be necessary to make further changes to the regulatory guidance on DB investment to introduce the term 'financially material considerations'.

Question 3

When trustees prepare or revise a SIP, we propose that they should be required to prepare a statement, setting out how they will take account of scheme members' views.

- a) Do you agree with the policy proposal?
- b) Do the draft Regulations meet the policy intent?

Response

Taking into consideration the extensive responsibilities and duties of trustees, we do not consider this policy proposal to be of sufficient priority to regulate for.

While we are not against the proposal in principle, we would prefer these proposals not to be included within regulation as there is the potential for conflicts of interest to arise. In circumstances where several members take a position on scheme investment matters which conflicts with the trustees' views on what is in the best interests of scheme members as a whole, valuable trustees' time could be taken trying to manage such a situation. We therefore believe consultation with members and reporting on how this has been done should be at the discretion of the trustees.

Question 4

Do you agree with our proposal not to require trustees to state a policy in relation to social impact investment?

Response

We agree with the proposal.

Question 5

We propose that trustees should be required to include their policy in relation to the stewardship of investments, (including monitoring, engagement and voting) in the SIP.

- a) Do you agree with the policy proposal?
- b) Do the draft Regulations meet the policy intent?

Response

We broadly support this proposal with the caveat that we do not think it is a priority to require trustees to state their policy on how scheme members' views will be/have been considered.

Question 6

When the trustees of relevant schemes produce their annual report, we propose that they should be required to:

- Prepare a statement setting out how they have implemented the policies in the SIP, and explaining and giving reasons for any changes made to the SIP; and
 - Include this implementation statement and the latest statement outlining how trustees will take accounts of members' views in the annual report.
- a) Do you agree with the policy proposal?
b) Do the draft Regulations meet the policy intent?

Response

We agree that when the trustees of relevant schemes produce their annual report that they prepare a statement setting out how they have implemented the policies in the SIP, and explaining and giving reasons for any changes made to the SIP.

Our comments on taking members' views into account are set out in our response to question 3.

Question 7

We propose that trustees of relevant schemes should be required to publish the SIP, the implementation report and the statement setting out how they will take account of members' views online and inform members of this in the annual benefits statement.

- a) Do you agree with the policy proposal?
b) Do the draft Regulations meet the policy intent?

Response

Should the proposals go ahead, we would not object in principle to the online publication of the SIP, the implementation report and the statement on how members' views will be considered or the inclusion in the annual benefits statement of information about how members' views will be considered.

We acknowledge that these requirements apply to the trustees of schemes who are already required to publish costs and charges online and therefore will have a web publication process in place already.

The overall approach to the publication of information by pension schemes would benefit from a more holistic review by the UK Government. By law, trustees of all but the smallest pension schemes are required to obtain audited accounts. However, there is no requirement for trustees to file or publish pension scheme accounts. The publication of the SIP and of cost and charge information by some schemes is intended to enhance transparency but there is a wider discussion to be had about the publication of information by both DC and DB schemes.

We have not reviewed the draft Regulations in detail and therefore cannot comment on the extent to which these meet the policy intent.

Question 8

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

Response

We have no specific comments to make on the draft impact assessment but do question generally the value of placing additional regulatory burdens on scheme trustees given the existing scope of their duties.

We question specifically whether it is necessary to refer in the Regulations to ESG considerations and believe that reference to financially material considerations should be sufficient: ESG matters should be referred to by TPR as appropriate in its Codes and guidance. We are also unconvinced that the proposals around taking members' views into account are of sufficient priority or merit to be the subject of regulation.

Question 9

Do you have any other comments on our policy proposals, or on the draft Regulations which seek to achieve them?

Response

We note that no changes are being made to penalties for non-compliance beyond their application to the scope of the revised regulations.

Question 10

Do you agree that the revised Statutory Guidance clearly explains what is expected of trustees in meeting their duty to publish the SIP, implementation statement, and statement of members' views?

Response

Given the short timescale for responding to the consultation, we have not had the opportunity to consider the Statutory Guidance.

Question 11

What evidence or views do you have of how well the other requirements in the SIP are working? What areas for further consideration and possible future change would you suggest?

Response

We have no comments to make in response to question 11.