

Written evidence from the Association of Pensions Lawyers (APL) (PSC0019)

I am writing on behalf of the Investment and Defined Contribution Sub-Committee of the Association of Pension Lawyers of the United Kingdom ("APL"). The APL is a not-for-profit organisation whose members comprise over 1,100 UK lawyers, including most of the leading practitioners in the field, who specialise in providing legal advice on pensions to sponsors and trustees of pension funds and others, including the largest pension funds in the UK. Its purposes include promoting awareness of the role of law in the provision of pensions and to make representations to other organisations and governments on matters of interest to APL members.

The purpose of this letter is to set out our responses to certain questions asked as part of the Committee's call for evidence on how the UK Government's approach to pension scheme stewardship can inform - and should be informed by - approaches taken internationally. We have not commented on all questions or requests for views, as the experience of the APL does not enable us to do so, and we do not comment on issues of policy.

How should pension schemes contribute to setting COP26 targets and helping to achieve the targets once agreed?

Broadly speaking, the role of a pension trustee is to manage their scheme in line with its purpose and in the best interest of members. The law is clear that this means that trustees should be focused on the best financial interests of the scheme. As the law currently stands, it is not the trustees' role to contribute to setting and/or delivering on COP26 targets or otherwise lobby asset managers in pursuit of an agenda beyond their above stated legal obligations.

In practice an increasing number of trustees have set Net Zero ambitions for their scheme's investments. However, this is because they believe such an approach is financially beneficial to the scheme and will usually be part of a wider scheme strategy to mitigate climate-related risks and take account of climate-related opportunities in the best financial interests of the Scheme. Whilst trustees may set overarching principles in respect of Net Zero targets, under the current law, trustees will need to evaluate each investment decision by reference to financial factors.

It is sometimes suggested that trustees should be able to act in a way which, when taken collectively with other institutional investors, is likely to lead to broader quality of life benefits to the scheme's beneficiaries. However, without further clarification in the law it is not clear that this would be within Trustee fiduciary duties.

What role should international standards have in supporting pension schemes to assess climate change risks when considering scheme investments?

In our view, trustees would benefit from some uniformity in reporting on climate and other ESG factors from investment managers (which would in turn require uniformity in the underlying reporting to managers from investee companies). Such standardization might make it easier for trustees to comply with their own regulatory reporting obligations and where trustees themselves are likely to have to aggregate data across multiple manager mandates, funds, asset classes and jurisdictions. This does, however, have to be balanced with the limitations and potentially adverse implications in attempting to provide a standardised

approach to climate change reporting across the entire universe of potential asset classes/managers.

What regulatory changes or other government action has been most effective in delivering change in the UK; and what changes on the part of Governments elsewhere should the UK learn from?

It is too soon to comment on the impact the recent climate change reporting requirements introduced under the Pension Schemes Act 2021 will have on delivering change. However, many of our members have observed that there has been a significant increase in trustees meaningfully looking at climate change in light of the new requirements. This has been accompanied by recent announcements by certain consultancy firms that they are scaling up significantly to support clients on ESG.

Whilst this is generally a positive development, which is to be welcomed, we are seeing at least some evidence of products emerging which are simply marketing a “Green” overlay. Further, there is at least some risk of trustees applying a substantial amount of time, resource and cost to climate-related issues in a way which might draw attention away from other areas of ESG focus. In our view, the key priority for pension trustees should be to be better informed and apply more resource to better investment governance and practice in the round (and which fully integrates consideration of climate-related risks and opportunities as well as other financially material ESG factors into that process) so they can better understand the investment managers and products they rely on.

We did not observe a significant change in behaviours following the updated ESG requirements to Statements of Investment Principles or the requirement for Implementation Statements to be included in trustees’ annual reports and accounts from 2020. In general these new requirements appear to have been dealt with as a compliance exercise, as opposed to triggering a change in trustee behaviours. We wonder whether part of the cause for this is that, by including implementation statements in trustees’ accounts, it is not clear who they are intended to target. It is, for example, unlikely that such reporting will result in increased member engagement.

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