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Robert Holloway
Pensions Secretary
Local Government Association
18 Smith Square
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Sent by email

10th January 2020

Dear Mr Holloway,

Consultation on Local Government Pension Scheme responsible investment guidance

I am writing on behalf of ShareAction, a registered charity established to promote transparency and responsible investment practices by pension funds and other institutional investors. We are a member organisation and count amongst our members well-known NGOs and charitable foundations, as well as over 26,000 individual supporters.

Please see below our comments on the draft LGPS responsible investment guidance[1]. Text in ***bold italics*** indicate proposed alterations to the text.

Paragraph 4 – at end of paragraph, insert ***'However, administering authorities should be clear that a failure to consider financially material ESG factors in investment strategy constitutes a failure of fiduciary duty.'***

Overall, the guidance should reflect the shift in attitudes to ESG in recent years that has been reflected in investment practice and regulatory changes. Amongst the majority of investors and policymakers, it is no longer a debate on whether ESG is financially material, but how they can mitigate its impact on returns. We have inserted this line from the UN PRI's *Fiduciary Duty in the 21st Century: Final Report*[2], which effectively summarises how thinking on the subject has developed.

Paragraph 12 – '*Authorities will be aware of the growing concerns around the financial risks associated with climate change with particular emphasis both on the risks that are associated with climate change on the sustainability of companies in which pension funds invest and the* ***contribution pension funds could make*** *in achieving a net zero carbon economy. In response to such concerns DWP have announced that from October 2019, private sector pension trustees will be required as part of their Statement of Investment Principles to publish their policy on ESG considerations, including the financially material risks associated with climate change.*'

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[1] LGA (November 2019). *Responsible Investment in the Local Government Pension Scheme.* Available online at: https://lgpsboard.org/images/Consultations/RIGuidance/DRAFT_Part_1_Responsible_Investment_Guidance_Final_pdf_version.pdf [accessed 10 January 2020].

[2] UN PRI (October 2019). *Fiduciary Duty in the 21st Century: Final Report,* p. 2. Available online at: https://www.unpri.org/download?ac=9792 [accessed 10 January 2020].

We think this change is more conducive to pension funds taking positive action and highlighting the role they can play.

Paragraph 17 – '*Assessing whether a non-financial decision would have a significant financial detriment to the fund will always be a question of fact and degree. Divesting from a sector which makes up of 15% of a fund is likely to represent financial detriment whereas a portfolio of 3% may not.*'

We are not clear on the source of the '15% vs 3%' statistics. We assume they are meant to be estimates, but nonetheless the guidance runs the risk of administering authorities taking these statistics as a specific guide on when to divest. A general statement acknowledging that the impact of divestment depends on the size of the investment would be preferable. We suggest altering the paragraph as follows:

'*Assessing whether a non-financial decision would have a significant financial detriment to the fund will always be a question of fact and degree.* ***The impact of divestment from a particular sector/company will depend on what percentage that sector/company comprises***.'

Paragraph 19 – '***The 2020 UK Stewardship Code defines stewardship as the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries lead to sustainable benefits for the economy, the environment and society.*** *Effective stewardship benefits companies, investors and the economy as a whole.* ***The Code makes clear that comprehensive consideration of ESG factors is integral to effective stewardship. Code signatories must produce a Stewardship Report, detailing outcomes of their stewardship activities.*** *The Code is recognised as an effective standard for asset owners and asset managers to comply with and demonstrate best practice in discharging their stewardship responsibilities;* ***as such they should become official signatories to the Code if they have not already done so.****'*

The revised 2020 UK Stewardship Code[3] has replaced the 2012 version, taking effect from 1st January 2020. The new Code places a much greater focus on the centrality of ESG consideration to good stewardship.

Paragraph 29/30 – after these paragraphs, insert a new paragraph as follows:

'More recent regulations of private sector pensions have set even higher standards regarding responsible investment and stewardship:

- ***The Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2018 require their Statement of Investment Principles to outline how they take account of financially material ESG factors.***
- ***The Financial Conduct Authority's Policy Statement PS19/30 outlines changes to Independent Governance Committees (IGCs) on contract-based pension schemes. IGCs must now outline their policy on financially material ESG factors, and report on implementation of that policy.***

These more recent regulations represent a new standard on responsible investment and stewardship elsewhere in the pension sector. As such administering authorities are encouraged to apply the provisions of these regulations to the pension schemes they manage.'

[3] FRC (2019). *The UK Stewardship Code 2020.* Available online at: https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Dec-19-Final.pdf [accessed 10 January 2020].

We feel it is important administering authorities are aware of a new general standard in the pensions sector regarding responsible investment and stewardship. Though these regulations do not legally apply to administering authorities and the schemes they manage, the application of their provisions would be of great benefit to the schemes.

Paragraph 36 – The detailed summary of the Roberts vs Hopwood 1925 case is problematic. While the legal principle in the case still stands, the way it was applied in a case in 1925, dealing with the issue of ensuring equal pay for women, would not apply today.

While the LGPS guidance is not intended to be prescriptive on investment decisions, including the Roberts vs Hopwood ruling in detail will likely cause confusion for administering authorities. This is especially the case given that gender pay inequality, and low pay generally, are now recognised by investors as a key ESG factor. (A ShareAction investor briefing expands on this in more detail[4].)

The much more recent case of Bromley vs GLC 1981, referred to in Paragraph 37, would be a more appropriate example to expand on. The case still highlights the legal principle that administering authorities must abide by, i.e. their fiduciary duty to local taxpayers. However, the substance of the case, about the cost of proposed local taxation changes by the GLC affecting the London Transport Executive, does not cause confusion with regard to ESG issues. We would recommend removing reference to the 1925 case altogether and expand on the 1981 case instead.

Appendix 1 – in the '*Social*' column of the table, under '*Employment standards*' add sub-bullet points expanding on this – include '***Low pay/in-work poverty***' and '***Precarious employment contracts, e.g. Zero-hours contracts***'. These are particularly pertinent ESG concerns amongst investors at present.

Appendix 2 – UN PRI's *Fiduciary Duty in the 21st Century: Final Report*[5] to be included under '*Introductory material'*.

Yours sincerely,

David O'Sullivan
UK Policy Officer, ShareAction

[4] ShareAction (November 2018). *Influencing UK Workforce Practices Through Responsible Investment.* Available online at: https://shareaction.org/wp-content/uploads/2018/11/InvestorBriefing-UKWorkforceFINAL.pdf [accessed 10 January 2020].

[5] UN PRI (October 2019). *Fiduciary Duty in the 21st Century: Final Report.* Available online at: https://www.unpri.org/download?ac=9792 [accessed 10 January 2020].