

Mr Folarin Akinbami

By email: fiduciary.duties@lawcommission.gsi.gov.uk

17 January 2014

Dear Mr Akinbami

The Financial Reporting Council (FRC) welcomes the opportunity to comment on the Law Commission's consultation paper 'Fiduciary Duties of Investment Intermediaries'.

In discussions with investment professionals the FRC has encountered some uncertainty about the application of fiduciary duties. We thank the Law Commission for its work to clarify the application of these duties through the investment chain. Whilst we are not qualified to comment on the majority of consultation questions we hope that the Law Commission's final paper will present a clear answer to the question of the applicability of fiduciary duties.

The consultation paper considers fiduciary duties from the perspective of a trust-based pension scheme in order to give context to the discussion of the investment chain. In turn, the paper defines stewardship as 'engaged ownership behaviour', which includes company research, voting and face-to-face meetings. Drawing on this definition and the context of trust-based pension schemes, the Commission came to the conclusion that many trustees do not carry out stewardship activities and that stewardship is not a cost-effective strategy for anyone but the largest funds.

The FRC's definition of stewardship is broader. The Stewardship Code provides that asset owners' commitment to the Code may not involve them engaging directly with companies, but instead indirectly through the mandates they give to asset managers. In the second circumstance:

'They should clearly communicate their policies on stewardship to their managers. Since asset owners are the primary audience of asset managers' public statements as well as client reports on stewardship, asset owners should seek to hold their managers to account for their stewardship activities. In so doing, they better fulfil their duty to their beneficiaries to exercise stewardship over their assets.'

For your information, this reference to a 'duty' is not expressing a view on the application of fiduciary duties, but is intended to apply in a common sense way given the content of the paragraph.

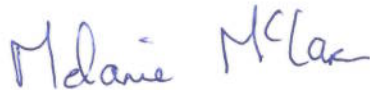
In relation to consultation question 20 pertaining to the regulation of investment consultants the FRC considers that any regulatory change should not result in an effective transfer of fiduciary duties to other parties in the investment chain, for example investment consultants. As the Stewardship Code makes clear, 'Institutional investors may choose to outsource to external service providers some of the activities associated with stewardship. However, they cannot delegate their responsibility for stewardship.'

For the Law Commission's information, there is an existing comply or explain disclosure expectation under Principle 6 of the Stewardship Code concerning stock lending that

'Institutional investors should disclose their approach to stock lending and recalling lent stock.'

Whilst the FRC understands that some pension trustees face resourcing issues we would contend that the broader definition of Stewardship as defined by the Code, focusing on assessment of mandates and monitoring of managers' performance, is an achievable standard for most pension trustees.

Yours sincerely

A handwritten signature in blue ink that reads "Melanie McLaren". The signature is written in a cursive, flowing style.

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