EVERSHEDS SUTHERLAND

The right returns

Our pensions investment newsletter

Spring 2021

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Introduction

Welcome to our Spring 2021 edition of the Right Returns. As the UK and the world slowly start to move towards a new post-COVID-19 way of life, the pace of change in the pensions investment and insurance space continues to increase.

In this quarter's edition, we continue to look at some of the issues and challenges faced by Trustees and Sponsors in relation to the rapidly evolving area of ESG and Climate Change related disclosures.

Articles in this quarter's edition cover:

– recent developments in the ESG space including calls for evidence from the DWP and TPR's own climate change strategy
– the output of an industry discussion on climate change and how this could practically change the way pension schemes operate
– the new Green Gilts proposals and how they might be structured
– issues in connection with cannabis related investments for pension schemes
– other topical matters

We hope you enjoy this quarters edition of our newsletter. As always we would be happy to discuss any of the areas of interest with you and we welcome your comments and feedback. Please feel free to get in touch with me or any of the authors of the articles to discuss.

ESG – Recent developments

It is a regular observation in the Right Returns that environmental, social and governance ("**ESG**") considerations have become an increasingly prominent part of trustees' investment strategies over the past few years. The Minister for Pensions and Financial Inclusion, Guy Opperman MP, recently stated that trustees who are not alive to the risk of climate change should take "a long, hard look in the mirror", which underscores how prominently this area features on the government's pensions agenda.

In light of this, there are three new developments which should be of interest to trustees and employers of, and providers to, pension schemes:

- a new call for evidence from the Department for Work and Pensions ("**DWP**") in relation pension scheme investment and social issues
- the Net Zero Investment Framework issued by a number of international bodies, including the Institutional Investors Group on Climate Change ("**IIGCC**")
- the publishing of the Pension Regulator's climate change strategy

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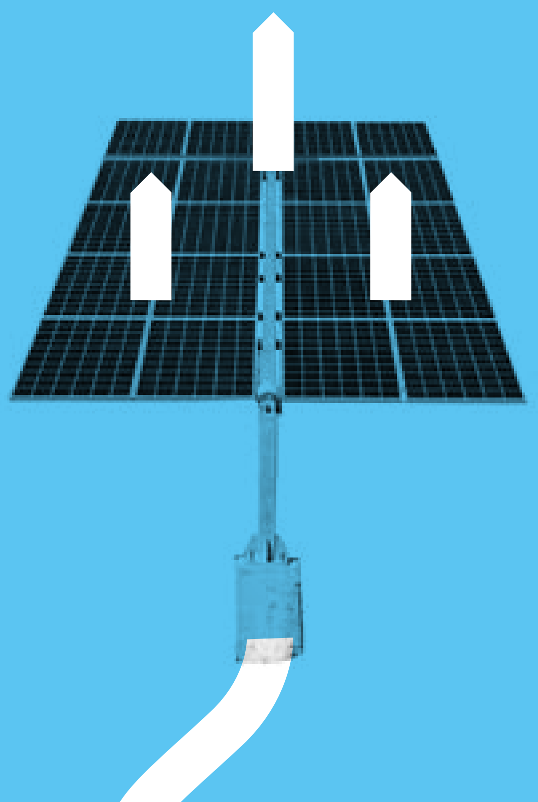

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DWP call for evidence

Guy Opperman has expressed concern that ESG considerations in pension scheme investments tend to focus solely on climate change, at the expense of the social and governance aspects.

Reacting to this, the DWP has called for evidence to determine whether trustee policies and practices in occupational pension schemes on social issues are sufficiently robust and to explore what the government could do to enable trustees to meet their legal obligations in this respect. The consultation (which can be found here) asks eight questions, broken into four chapters that focus on trustee legal duties, the nature of social factors, how trustees can take these into account and where social factors can present investment opportunities.

Why social factors are important

The DWP acknowledges that social factors are wide ranging in and are open to interpretation, but suggests that they could include:

- practices within a company and its supply chain, such as workforce conditions and modern slavery
- company products and selling practices, such as product quality and safety and consumer protection
- companies in the community, such as management of human rights and community engagement

The DWP believes that companies which fail to perform well on social factors could expose themselves to breaches of the law or reputational damage.

The call for evidence notes that if social factors are not managed appropriately then this could pose financial risks to the pension scheme investments, or cause trustees to miss out on suitable investment options. Trustees must therefore be able to understand and navigate these issues so that they can understand and manage the financially material risks and opportunities in accordance with their legal duties.

Taking into account social factors

The call for evidence acknowledges that there is no single way to consider social factors, but suggests:

- **screening** – excluding particular companies or investments in certain areas
- **tilted funds** – schemes can tilt their portfolios towards high scoring ESG assets and sectors
- **social impact investing** – investing in areas with positive social impact, provided this is compatible with the need to produce suitable returns on investments financially
- **voting** – in a way that supports social considerations
- **engagement** – liaising and corresponding with companies on social issues

Voting and engagement is a particular focus of the call for evidence, with the now familiar message that trustees must understand their investments and tailor their approach to stewardship according to the assets that they invest in – a box ticking exercise will not be enough.

Responding to the call for evidence

The DWP's information gathering exercise principally aims to test and evaluate the extent to which trustees of pension schemes are currently responding to social concerns. Given the rapid pace of development in this area in recent years (including the upcoming requirements under the Pension Schemes Act 2021, based on the Task Force on Climate-related Financial Disclosures ("**TCFD**"), and the obligations in the Pension Regulator's new draft supercode), it may be expected that the results of the call for evidence will inform the direction of future policy.

The questions DWP has requested responses to can be found here. Reponses will be accepted until 16 June 2021 and can be sent to Emma Walmsley at **pensions.governance@dwp.org.uk**.

Net Zero Investment Framework

On 20 March 2021, the IGCC and a number of other global investor networks issued their Net Zero Investment Framework Implementation Guide (see here). As the name suggests, this aims to provide a basis on which investors of all types can make commitments to achieving net zero emissions, define their strategy for doing so, measure alignment and transition their portfolios. The overall aim is to achieve the following two objectives:

- decarbonise investment portfolios in a way that is consistent with achieving global net zero greenhouse gas emissions by 2050
- increase investment in the range of climate solutions needed to meet that goal

A number of large pension schemes and providers, including NEST, the Avon Pension Fund, Aviva and the Universities Superannuation Scheme have fed into the report.

This follows announcements from a number of larger schemes and providers (such as the National Grid UK Pension Scheme and the auto-enrolment default fund provided by Aegon) that they have adopted targets which go beyond the requirements of the TCFD regime. These mostly aim for net zero by 2050, although some have announced more ambitious targets – for example, the BT Pension Scheme has declared its intention to reach net zero by 2035, reflecting a similar target set by BT (the scheme sponsor).

The Pensions Regulator climate change strategy

Finally, the Pensions Regulator (the "**Regulator**") has published a new **climate change strategy**, setting out its strategic response to climate change. The strategy underscores the Regulator's belief that climate change is a risk for schemes or all size, regardless of their current investment strategy.

The Regulator proposes to drive up standards and tackle risk by focusing on four areas:

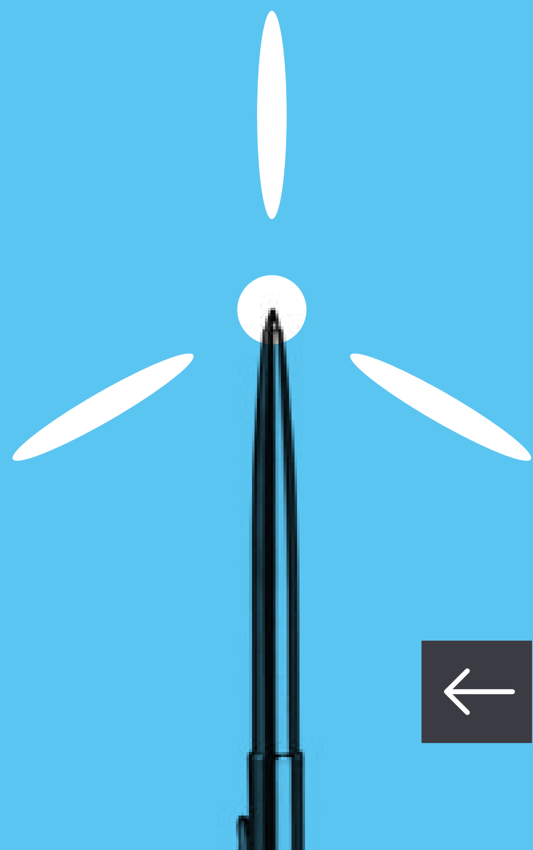
- **setting clear expectations** – e.g. by issuing guidance on the climate change regulations to be issued under the Pension Schemes Act 2021 and sharing best practice TCFD reports
- **identifying risk early** – e.g. by publishing a thematic review on scheme resilience to climate scenarios and a further review of implementation statements
- **driving compliance through supervision and enforcement** – e.g. adding questions to scheme return on web addresses of SIP, implementation statement and TCFD report and publishing an index of SIP web addresses
- **working with others** – such as cross-government groups and other regulators

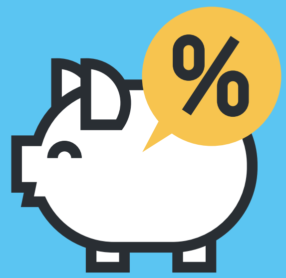
The promise of further clarity on the Regulator's approach to the new climate change regulations should be particularly helpful for larger occupational pension schemes, authorised master trusts and collective money purchase schemes in scope of the new requirements, which will start to apply from October 2021. For further information these requirements please see our:

- **speedbrief:** Greater clarity on mandatory climate change governance and reporting standards for pension schemes
- guide to the Pension Schemes Act 2021

The Regulator has also referred to its expectations on climate change for schemes with 100 or more members in its draft single Code of Practice (there are reduced expectations for smaller schemes). These schemes will need to include consideration of environmental factors in their governance systems. Trustees should talk to advisers about how climate change is built into their advice and understand what measures are being taken to reflect climate change risk in investment portfolios. They should also consider the possible short, medium and long-term effects of climate change on the scheme and have processes for identifying climate-related risks and opportunities.

The Regulator has also confirmed that it expects trustees to take steps to identify how to exercise the rights and responsibilities relating to the investments held and ensure they are familiar with their investment manager's stewardship policies.





A discussion on climate change and pension schemes

Eversheds Sutherland and Hymans Robertson recently hosted a roundtable for pensions managers and independent trustees with a particular focus on the impact of climate change on pension schemes.

The group met shortly after Guy Opperman's latest **speech** to the Pensions and Lifetime Savings Association, where he stressed the importance of this issue for trustee decision making:

"I think the key phrase for me is when Mark Carney said that "pension funds are on the road to making sure that every financial decision takes account of climate change". I believe that there is not a single trustee now working who isn't alive to the risk of climate change and starting to take action. Certainly, if you are a trustee, and you are not alive to the risk of climate change, and you are not taking action, you need to take a good long, hard look in the mirror."

Harriet Sayer
Principal Associate

The discussion was wide-ranging, covering several key questions on addressing climate change issues that trustees and pension managers are considering right now.

What changes need to be made to governance and risk management processes to reflect the new climate change requirements in the Pension Schemes Act 2021?

The discussion started with thoughts on how in-scope trustees (broadly, trustees of larger occupational pension schemes, authorised master trusts and collective money purchase schemes) could prepare for the new requirements on governance and risk management.

Trustees in scope for the first tranche, and indeed many trustees generally, typically already have effective governance systems in place and established processes for managing the key risks facing the scheme. Nevertheless, many schemes are turning their minds to whether new working groups or sub-committees focused on climate change or responsible investment (or a broader focus for their existing groups) are needed to ensure that they are ready for additional duties that will apply from 1 October 2021 (or 1 October 2022, in the case of schemes with net assets between £1bn and £5bn).

The Department for Work & Pensions (the "**DWP**") has suggested that a range of approaches would comply with the new rules:

"Trustees may choose to take an approach to the oversight and management of climate change risks that replicates the process for how they consider other risks and opportunities. Alternatively, trustees may decide that the governance process around climate-related risk and opportunities should be separate, reflecting the unique challenge these risks pose and the severity of the impact they could have on their portfolio. Either approach is acceptable – trustees may base the decision on their assessment of the magnitude, nature, unpredictability and duration of climate-related risks to the scheme, and may take account of cost and complexity."

The attendees discussed the need to "piece the jigsaw together". Management of climate change risks and responsibilities must be integrated into overall risk management – e.g. by keeping the main board and other sub-committees updated. Schemes also need to strike a balance with ensuring a streamlined approach where decisions could be taken promptly and it was clear which party is responsible for delivering on particular roles and functions.

For schemes which established a dedicated committee, its responsibilities should be considered with care. Too narrow a focus (e.g. on investment issues, without giving due attention to funding, covenant or wider governance issues) could stifle creative and holistic thinking. Integrated risk management remains a priority for schemes.

Schemes focusing on the changes were typically documenting their approach in terms of reference, or tables of responsibilities. They were also checking that the right resolutions were passed to ensure delegations were in place.

The group also discussed the potential benefits of inviting representatives from the employer sponsor to join dedicated working groups, or provide other support. Several attendees noted that their employer sponsor had years of experience reporting in line with the recommendations of the Task Force on Climate-related Financial Disclosures ("**TCFD**"). Their expertise was a valuable resource for schemes.

Attendees also shared some current climate change-related items on trustee agendas:

– in-scope trustees are likely to have more complex portfolios. They were focused on gathering data for real estate debt, private equity, asset backed securities, property. They were considering whether the data they already had was comparable
– how could decisions of sub-committees be better integrated into wider risk decisions? Attendees discussed the need to establish clear reporting lines and how, in some cases, trustees were taking roles on several committees
– what should happen by when? Schemes were identifying key milestones and timeframes

How could the reforms influence trustees' decisions on where to invest?

Many schemes were looking beyond compliance with the Pension Schemes Act 2021 to how trustees could improve decision making more generally as they start to receive more information around their investments. Improved data and clearer methods for analysing that data could help trustees deliver better risk adjusted returns, or security for members, in other ways.

In many cases, trustees had already developed a set of investment beliefs. Some were considering whether to adopt further goals or strategies, such as net zero targets or impact investing. In some cases, these were aligned with climate related goals set by the employer sponsor. Some trustees considered that their schemes would benefit from additional targets as part of a wider framework for monitoring and responding to risks. Others considered that the time horizon of the scheme meant that investing in infrastructure (such as renewable energy) helped them meet other goals for the scheme.

Some were focused on obtaining the results of new modelling and scenario analysis first. Questions were raised whether trustees could set long term aspirational targets or an overall strategy and policy, before they have confirmed granular steps or interim milestones for delivering on that strategy. Where schemes had made long term strategic decisions, participants noted the challenge of implementing these, given the time horizon of available data.

These kinds of decisions are necessarily scheme specific. The balance between the costs and the value for members depends on multiple factors: the funding to the scheme, its exposure to certain risks, the profile of benefits and current investments (e.g. whether the scheme is close to buy-out or has a high asset allocation in gilts).

Each scheme faces its own challenges, such as gaps in reporting, or metrics being suitable of only part of a portfolio. It was reassuring that, for many of the new duties, trustees needed to act "as far as they are able" and that the DWP proposed to limit trustees' obligations to carry out certain activities in a way that is reasonable, proportionate and takes into account the costs and time this would involve.

The renewed focus on climate change also offered opportunities to improve engagement with members, particularly in defined contribution schemes. Members who focused on their "financial footprint" may be more focused on their savings rate and their wider investments options under the scheme.

Across the group, schemes stressed the importance of achieving value for members in implementing the reforms, rather than treating it as "tick box" compliance exercise.

What is the biggest roadblock to complying with the new requirements?

All pension schemes have different starting points, knowledge and experience when it comes to addressing climate change risk and opportunities.

The attendees shared four challenges that many schemes have in common:

Data. This was the most common obstacle, especially for schemes which had a high asset allocation in private markets. In many cases, the data needed to comply with the new regime had not been provided systemically in the past. Schemes were identifying gaps and putting their managers on notice as to the information they needed.

Resources. The new requirements have been introduced quickly, alongside a wealth of statutory and non-statutory guidance and other relevant materials. Trustees and pensions managers are still getting up to speed with the latest developments, and identifying ways to make it digestible and actionable across the scheme. Many pension schemes have also faced a gruelling few years and were conscious of the competing priorities on trustee time – e.g. wider changes under the Pension Schemes Act 2021, GMP equalisation, the impact of Covid-19 and Brexit, the Pension Regulator's Funding Code. They were considering what additional resources were needed and whether the employer sponsor might be able to assist with this. Some schemes were expanding their teams, recruiting analysts focused on environmental, social and governance issues. Others were drawing on the wider experience of their independent trustees.

Trustee knowledge and understanding. Some schemes faced a steep learning curve to equip trustee boards and working groups with the skills they need to comply with their new duties effectively. They were considering what additional training they need and who could provide it.

Setting a meaningful target. The new regime requires schemes to select a (non-binding) target for the scheme relating to one of their chosen metrics. Schemes are focusing on the need to make this comprehensible to members, in a way that addresses member security and is aligned with the scheme's wider investment and funding strategy.

The session concluded with some final thoughts from the group:

- few schemes are yet equipped to comply fully with the new regime from day one. Most are aiming to put a robust framework in place in manage climate related risks and opportunities, identify the gaps remaining and to build from there
- where key decisions are taken, they need to be taken for the right reasons, following a proper process.
- climate change is not just an investment issue – for defined benefit schemes its relevance to scheme funding is also key
- schemes should report on how they are addressing climate change issues to members in a digestible way
- investment managers and advisors need to be allies for pension scheme trustees in this journey

For further information the latest climate change proposals and requirements under the Pension Schemes Act 2021 please see our:

- **Speedbrief:** Greater clarity on mandatory climate change governance and reporting standards for pension schemes
- Guide to the Pension Schemes Act 2021

[If you would be interested in joining a further roundtable with us on climate change, please get in touch with your usual Eversheds Sutherland contact.]

Green gilts – How should they be structured?

In his Budget speech, the Chancellor confirmed the government's intention to issue the UK's inaugural green gilt this summer. Further issuance will follow later in the year so that, by next April, there will be at least £15bn of green gilts in issue. But what would investors – and particularly pension scheme trustees – like to see from such gilts?

The Investment Association published a **position paper** on this on 26 March 2021. The IA's 250 members together manage £8.5 trillion of assets for pension schemes and insurance companies and the UK's investment management industry is the largest in Europe and the second largest in the world.

The IA's paper sets out its position on the 10 features which its members believe are desirable for green gilts to be viable for investment managers while also enabling the government to finance the environmental and social needs of the UK. The features can be grouped together as follows.

Simon Daniel
Partner

Purpose and deployment

Use of proceeds – governments currently have unfettered discretion as to how they use the proceeds of conventional gilt issuance, but the IA says that green gilts should be different. It recommends that, for green gilts to be attractive to investors, the gilt instruments should explicitly designate how proceeds will be used and there should be a change to legislation to segregate the proceeds of issuance in the national accounts.

Forward-looking – market practice tends to be for gilts to be issued on a look-back basis, but the IA suggests green gilts should be forward-looking through providing a path for financing future projects.

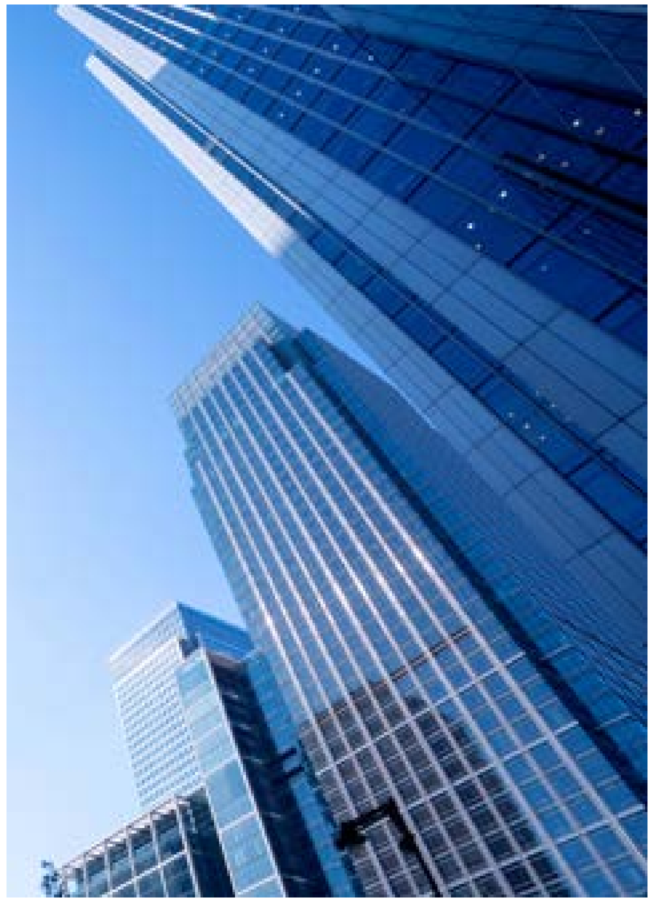
Social impact – the IA supports proceeds being used to fund environmental projects with social co-benefits but says there should be government guidance on exactly how social impact motives will be incorporated.

Recognised standards – the IA suggests the incorporation of certain widely-recognised standards to maximise investor take-up. For this purpose, the IA invites the government to consider the "Green Bond Principles" developed by the International Capital Market Association, the "Impact Management Norms" developed by the Impact Management Project, the EU's Taxonomy for Sustainable Activities, the UN's Sustainable Development Goals, and the UK's "Nationally Determined Contributions" under Article 4 of the legally binding international treaty enshrined in the Paris Agreement (reached at the 21st UN Climate Change Conference of the Parties in December 2015).

Economic characteristics

Medium- to long-dated – the IA says that investors will expect the maturity of green gilts to align with the maturity of the project(s) they are financing. Typically this will mean medium- to long-term horizons given the expectation that green gilts will finance infrastructure projects.

Equivalent features to conventional gilts – these include being issued in fixed income and inflation-linked form, being eligible for use as collateral under derivative contracts and as deliverable bonds under long gilt futures, and being suitable for benchmarking in UK gilt indices.



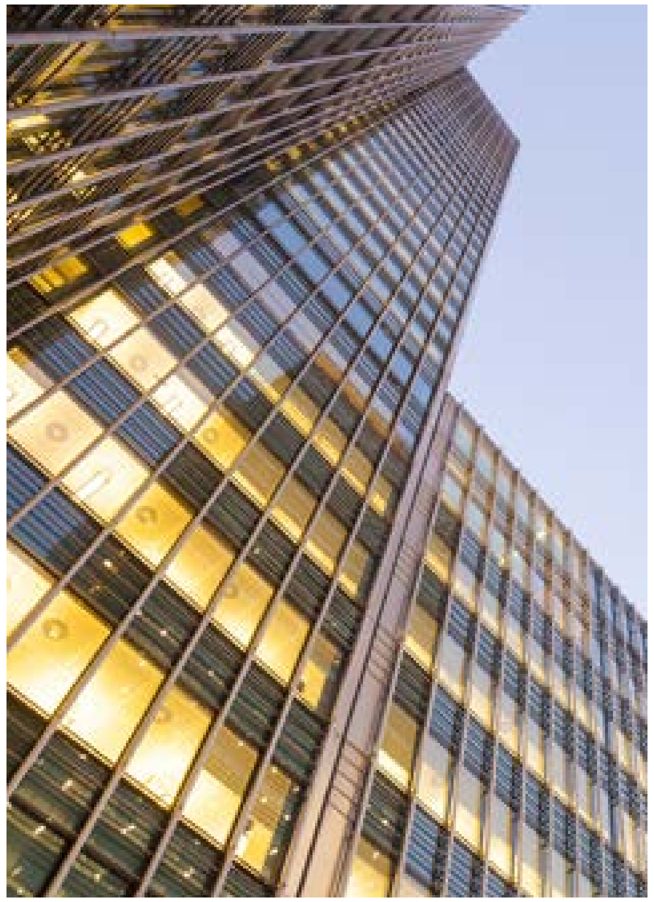
Oversight and accountability

Use of an audit committee – the IA recommends the creation of an audit committee which would include market representatives and would scrutinise the government's sustainability objectives, selection and exclusion of eligible projects, and conduct of environmental and social risk due diligence.

Mandatory verification – the IA says that a process of verification should be committed to that aligns with market standards such as the Climate Bond Standard and the proposed EU Green Bond Standard.

Reporting – the IA says the government should report annually on the allocation and impact of green gilt proceeds, evaluating performance against qualitative and quantitative KPIs. It says this reporting should continue until all proceeds have been allocated or the green gilt matures.

Continuous engagement – in addition to these measures, the IA says there should be continuous engagement between government and the investment management community on the progress of projects over the life of green gilts.



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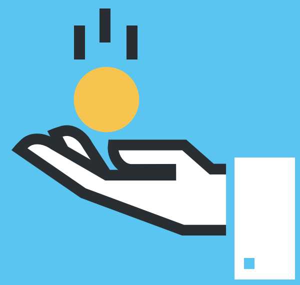

Cannabis investments and potential issues under the Proceeds of Crime Act

The legal restrictions on the production and supply of cannabis have recently been relaxed in many jurisdictions. It is now lawful to cultivate, produce and supply cannabis and its derivatives under local licensing systems. This has created a market whereby UK companies and individuals, either directly or through financial investment products, have invested in these overseas businesses which have direct or indirect exposure to recreational cannabis investments. However, trustees of UK pension schemes ought to be aware of the potential risks associated with the trading or holding of investments associated directly or indirectly with the production and/or distribution of recreational cannabis even where doing so is legal in the jurisdiction where the production and/or distribution is being carried out.

Mark Latimour
Partner
Steve Smith
Partner

What is the potential issue?

The potential issue for trustees (and indeed other investors) arises as a result of the Proceeds of Crime Act 2002 ("**POCA**"). POCA is the act which codifies the UK's money laundering laws, which are contained in POCA Part 7 and criminalise dealing with, or entering into arrangements in respect of, the proceeds of "criminal conduct". The definition of criminal conduct in POCA embraces conduct which is lawful overseas, but would be a crime if it occurred in the UK.

There are three principal money laundering offences created by POCA:

- the concealing offence
- the arranging offence
- the acquisition, use or possession offence

These criminalise possession, dealing with and entering into arrangements in respect of "criminal property" - the proceeds of "criminal conduct" where there is "knowledge" or a "suspicion" that it is the proceeds of crime. These offences apply to everyone. If this catches revenue produced by an overseas licensed cannabis producer, then the anti-money laundering responsibilities established by POCA and subsidiary legislation are engaged.

What is the legal position of cannabis investments under UK law?

All states that are party to the UN Convention on Narcotic Drugs of 1961 (as amended by the 1972 Protocol), which includes the UK, must operate a domestic licensing regime for the regulation of controlled drugs. To give effect to this in the UK, cannabis is subject to the Misuse of Drugs Act 1971 ("**MDA**"). It may also be subject to the Medicines Act 1968 (and regulations made under that Act) depending on its intended use.

The MDA creates various offences relating to production of, trade in and possession of, controlled drugs otherwise than in accordance with regulations made by the Secretary of State or a license issued by the Home Office. In summary:

- in the UK a "controlled drug" is a substance or product specified in Schedule 2 of the MDA. Cannabis, cannabis resin, cannabinol, cannabinol derivatives and third generation synthetic cannabinoids are specified in Part II of Schedule 2 (Class B substances and products)
- the MDA contains offences criminalising production and supply and possession of controlled drugs, and the cultivation of cannabis plants. These offences carry between 5 and 14 years' imprisonment. The prohibition is subject to any regulations made under section 7 of the MDA
- section 7 of the MDA (so far as relevant) permits the Secretary of State to make regulations for licensing controlled drugs

Regulations made under the European Communities Act 1972 and the Medicines Act 1968, the Human Medicines Regulations 2012, regulate medicinal products in the UK. The Act contains detailed requirements regarding licensing and marketing authorisation for medicinal products. This could encompass products containing cannabis if they meet the definition of a 'medicinal product'. So, as with the MDA, conduct which would otherwise be an offence under the medicines regulations is capable, in law, of being licensed.

The UK regime provides that licences can be issued by the authorities to enable the cultivation and supply of cannabis for any purpose – including research, medicinal or recreational use. Therefore, it is possible to say that, since the UK authorities could in law grant a licence and the authorities in the country where the activity took place did grant one, then the activity would be lawful if it occurred here (ie if it were licensed here in the same way as aboard). The alternative more conservative view is that, as the UK does not as a matter of current policy license certain types of conduct (i.e. recreational) if it occurred here, it cannot be lawful here and so is caught as criminal conduct.

The UK Financial Conduct Authority issued guidance in September 2020 relating to admission of cannabis related businesses on the Official List of whether a company's securities are listed in the UK. The Guidance provides that:

Recreational Cannabis Companies: Even when located in jurisdictions that have legalised it, the proceeds of such a business are considered to be proceeds of crime and would therefore not be admitted to the Official List.

UK-based Medicinal Cannabis Companies: Can be admitted to the Official List, if the company has the appropriate Home Office licences for their activities where they are required. This includes cannabis oil companies.

Overseas Medicinal Cannabis Companies: May be admitted to the Official List, provided that the FCA are satisfied that the POCA does not apply and they otherwise satisfy the criteria for listing. Before admission, the FCA will conduct a review of the individual case where the company would need to satisfy the FCA as to risk.

The FCA Guidance supports the conclusion that both UK based and overseas based companies dealing with medicinal cannabis under a licence should be okay, but that recreational based cannabis, even where it is legal, could be considered the proceeds of crime.

It is important to recognize that the UK criminal courts have not yet considered this issue and, whilst many in the industry take the view that there greater certainty in respect of medicinal use (as licences are currently issued for this in the UK, and the UK is the world's largest legal cannabis producer for medicinal purposes) there is less certainty in relation to recreational use cannabis investments (as licences are not currently issued for this).

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What are the risks for trustees?

POCA provides that a person commits a criminal offence of money laundering if he knows or suspects that he is involved in activity that conceals, acquires, uses or possesses criminal property or enters into arrangements in respect of such property.

As there is a lack of certainty as to the legal position on cannabis, particularly recreational cannabis, trustees of UK pension schemes which are aware that they have an exposure to recreational cannabis in their portfolio could, consequently, be said to have a suspicion that the following property (held as part of their investments) may represent criminal property for the purposes of POCA:

- shares, bonds or other investments held directly or indirectly in overseas cannabis production companies
- dividends or other income derived at least partly from such businesses
- fees or other disbursements paid to professional or other advisors so derived

In circumstances where there is a suspicion that property represents criminal property, acquiring, using, transferring or possessing the above creates a risk of money laundering. In other words, there is a risk that having investments in the portfolio with an exposure to recreational cannabis could put the trustee in breach of POCA if, once they become aware of them, they do not obtain a defence against money laundering by means of a suspicious activity report. Although we think that it is unlikely trustees would be prosecuted under POCA, the risk of criminal sanctions should be on their radar.

Is there anything trustees can do if they think there is an issue?

Firstly, it is worth noting that the issue only arises where trustees are aware of an exposure to cannabis investments that causes them to have a suspicion that the property represented criminal property. In many cases, trustees will not have knowledge of the specific holdings, but it would be prudent to ensure that any in-house team is aware of the potential issue should they get made aware of any holdings. Trustees should seek advice from their legal advisers if they have any concerns.

Many trustees will also consider reviewing risk appetite and considering the extent that investment mandates enable investment in cannabis related financial instruments.

To the extent that trustees become aware of a potential issue, it is worth noting that it is a defence if a person submits a Suspicious Activity Report and obtains a defence against money laundering ("**DAML**") from the National Crime Agency before carrying out any dealings with the investments. A DAML relates solely to the criminal offence of money laundering but means that the person can carry out the intended activity safe in the knowledge that he will not have criminal liability for money laundering where the conduct falls within the scope of the DAML. So if trustees have a suspicion, there is a route by which they can potentially obtain authorisation. We have assisted trustees and other clients on obtaining a DAML and it is a relatively straightforward process.

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Round-up of other topical matters

New guidance from the FCA and tPR on supporting members with pension scheme decisions

The Pensions Regulator and the Financial Conduct Authority have issued welcome guidance in the form of their joint guide for employers and trustees outlining when employers and trustees can give information to / support members with their pension scheme decisions without straying into needing FCA authorisation. Please click **here** for our briefing on the guide.

Jamie Dunlop
Principal Associate

The CMA's expectations for this year's compliance statements and certificates

At the end of March 2021, the Competition and Markets Authority updated the page of its website on the Investment Consultancy and Fiduciary Management Market Investigation Order 2019 to confirm its expectations on the submission of compliance statements and certificates. This will be useful for trustees and others to bear in mind for the next round of submissions that are due by 7 January 2022.

The CMA's updates explain that a compliance statement in respect of Part 3 of the Order (on running a competitive tender process for the provision of fiduciary management services) needs to be submitted by pension scheme trustees even if fiduciary management services are not used. If FM services are not used, the statement simply needs to confirm that the trustees are compliant for that reason.

The CMA's updates also confirm that, when sending compliance statements and certificates to the **remediesmonitoringteam@cma.gov.uk** mailbox, electronic signatures will be accepted and the inbox's automatic response can be treated as confirmation of receipt.

Simon Daniel
Partner

Activities of parliamentary committees in relation to the management of climate change risk and opportunity by pension schemes

On 22 April 2021, the Commons Treasury Committee published a report on how the UK government can achieve net zero by 2050. The report makes a number of recommendations to government. One recommendation that will be of particular interest to schemes with assets below £1bn is that *"the Government should set out how smaller pension schemes will be encouraged to integrate climate governance and reporting requirements"*.
A recommendation that will be of interest to all schemes is made in the context of the Committee noting that, with the first issuance of a UK green sovereign bond expected this summer, the UK is lagging behind other countries. Against this backdrop, the Committee recommends that, when issuing green gilts, the government should set out its tolerance for them to be more expensive than conventional gilts.

On 29 April 2021, the House of Commons' Work and Pensions Committee launched a call for evidence on the government's approach to pension scheme stewardship, how it compares to approaches taken internationally and how schemes can be supported to make climate-conscious investment decisions. One of the six key questions on which responses are invited is whether suitable financial products are available to enable pension schemes to make climate-conscious investments and how such investment should be facilitated and supported. Another is whether schemes have suitable information to assess climate risk or whether there needs to be international reforms to financial reporting. The call for evidence closes on 18 June 2021.

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