

FIDUCIARY DUTIES OF INVESTMENT INTERMEDIARIES

RESPONSE TO QUESTIONS

This optional response form is provided for consultees' convenience in responding to our Consultation Paper on Fiduciary Duties of Investment Intermediaries.

The Consultation Paper is available free of charge on our website at:
http://lawcommission.justice.gov.uk/consultations/fiduciary_duties.htm

The response form includes the text of the questions in Chapter 15 of the Consultation Paper, with checkboxes for answers and space for comments. You do not have to respond to every question. Comments are not limited in length (the box will expand, if necessary, as you type).

Each question gives a reference in brackets to the paragraph of the Consultation Paper at which the question is asked. Please consider the surrounding discussion before responding.

We invite responses from 22 October 2013 to **22 January 2014**.

Please return this form:



by email to: fiduciary.duties@lawcommission.gsi.gov.uk or

by post to (before 4 November 2013):

Folarin Akinbami, Law Commission, Steel House, 11
Tothill Street, London SW1H 9LJ.

Tel: 0203 334 0200

by post to (after 4 November 2013):

Folarin Akinbami, Law Commission, 1st Floor, Tower,
52 Queen Anne's Gate, London SW1H 9AG.

Tel: 0203 334 0200

We are happy to accept responses in any form – but we would prefer, if possible, to receive emails attaching this pre-prepared response form.

Information provided to the Law Commission

We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000.

If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the Data Protection Act 1998.

YOUR DETAILS

Name of respondent:

Type:

Postal address:

Telephone:

Email:

Confidentiality:

Please read the Freedom of Information statement above before checking this box.

I wish to keep this response confidential.

Please explain why you regard the information as confidential:

We would like comments and responses on the following questions.

PENSION TRUSTEES' DUTIES TO ACT IN THE BEST INTERESTS OF BENEFICIARIES

Question 1 Do consultees agree that Chapter 10 of the Consultation Paper represents a correct statement of the current law? (14.6)

Yes:	No:	Other:

Question 2 Do consultees agree that the law reflects an appropriate understanding of beneficiaries' best interests? (14.11)

Yes:	No:	Other:

Question 3 Do consultees think that the law is sufficiently certain? (14.15)

Yes:	No:	Other:

Question 4 Should the Occupational Pension Scheme (Investment) Regulations 2005 be extended to all trust-based pension schemes? (14.15)

Yes:	No:	Other:

Question 5 Are there any specific areas where the law would benefit from statutory clarification? (14.15)

Yes:	No:	Other:

Question 6 Do consultees agree that the law permits a sufficient diversity of strategies? (14.21)

Yes:	No:	Other:

Question 7 Do consultees agree that the main pressures toward short-termism are not caused by the duty to invest in beneficiaries' best interests? (14.24)

[illegible]

Question 8 Do consultees agree that the law is right to allow trustees to consider ethical issues only in limited circumstances? (14.28)

Yes:	No:	Other:

Question 9 Does the law encourage excessive diversification? (14.32)

Yes:	No:	Other:

Question 10 Does the law encourage trustees to achieve the right balance of risk and return? (14.32)

Yes:	No:	Other:

Question 11 Are there any systemic areas of trustees' investment strategies which pose undue risks? (14.32)

Yes:	No:	Other:

Question 12 Overall, do consultees think that the legal obligations on trustees are conducive to investment strategies in the best interests of the ultimate beneficiaries? (14.33)

Yes:	No:	Other:

Question 13 If not, what specifically needs to be changed? (14.33)

FIDUCIARY-TYPE DUTIES IN CONTRACT-BASED PENSION SCHEMES

Question 14 Do consultees agree that the duties on contract-based pension providers to act in the interests of scheme members should be clarified and strengthened? (14.42)

Yes:	No:	Other:

Question 15 Should specific duties be placed on pension providers to review the suitability of investment strategies over time? If so, how often should these reviews take place? (14.42)

Yes:	No:	Other:

Question 16 Should members of Independent Governance Committees be subject to explicit legal duties to act in the interests of scheme members? (14.42)

Yes:	No:	Other:

Question 17 Should pension providers be obliged to indemnify members of Independent Governance Committees for liabilities incurred in the course of their duties? (14.42)

Yes:	No:	Other:

FIDUCIARY DUTIES IN THE REST OF THE INVESTMENT CHAIN

Question 18 Do consultees agree that the general law of fiduciary duties should not be reformed by statute? (14.61)

Yes:	No:	Other:

Question 19 Should rights to sue for breach of statutory duty under section 138D of the Financial Services and Markets Act 2000 be extended? (14.67)

Yes:	No:	Other:

Question 20 Is there a need to review the regulation of investment consultants? (14.71)

Yes:	No:	Other:

Question 21 Is there a need to review the law of intermediated shareholdings?
(14.74)

Yes:	No:	Other:

Question 22 Should the FCA review the regulation of stock lending by custodians? (14.75)

Yes:	No:	Other:

Do you have any other comments about fiduciary duties in the investment chain, or how those duties are applied in practice?