

TERMS OF REFERENCE

1.1 On 26 March 2013 the Law Commission received a reference from the Secretary of State for Business, Innovation and Skills in the following terms:

- (1) To investigate the extent to which, under existing law, fiduciary duties apply to:
 - (a) intermediaries (including investment managers and pension scheme trustees) investing on behalf of others;
 - (b) those providing advice or other services to those undertaking investment activity.

- (2) To evaluate what fiduciary duties permit or require such persons to consider when developing or discharging an investment strategy in the best interests of the ultimate beneficiaries: in particular, the extent to which fiduciaries may, or must, consider:
 - (a) factors relevant to long-term investment performance which might not have an immediate financial impact, including questions of sustainability or environmental and social impact;
 - (b) interests beyond the maximisation of financial return;
 - (c) generally prevailing ethical standards, and / or the ethical views of their beneficiaries, even where this may not be in the immediate financial interest of those beneficiaries;

- (3) To consult relevant stakeholders in the equity investment chain on their understanding of what the content and application of fiduciary duties in this context is, or should be, and to consider their responses;

- (4) To consider whether fiduciary duties, as established in law or as applied in practice, are conducive to investment strategies that are in the best interests of the ultimate beneficiaries. In particular, to consider whether the duties:
 - (a) reflect an appropriate understanding of the scope of beneficiaries' best interests;
 - (b) are sufficiently certain in content and application to market participants;
 - (c) permit sufficient diversity of strategy;
 - (d) sufficiently encourage long-term investment strategy and consideration of factors which might impact on long-term investment performance;

- (e) allow fiduciaries to invest in line with generally prevailing ethical standards, and / or the ethical views of their beneficiaries, even where this may not be in the immediate financial interest of those beneficiaries;
 - (f) require a sufficient balance of risk and benefit; and
 - (g) are sufficiently balanced against each other.
- (5) To identify any areas where changes to fiduciary duties are needed in relation to these criteria and to make recommendations.