



DWP's Consultation on Enabling Productive Finance

<https://www.gov.uk/government/consultations/enabling-investment-in-productive-finance/consultation-on-enabling-investment-in-productive-finance#annex-a>

Response by the Transparency Task Force, January 18th 2022

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Our response to you has been produced by a highly collaborative group of TTF volunteers, our "Response Squad," working together to build consensus, whilst always remaining true to our "North Star" question: "What is best for the consumer?" For further information about the Transparency Task Force see: <http://www.transparencytaskforce.org>

This response is all non-confidential.

Please note that all comments in this response are part of the response, and should be considered.

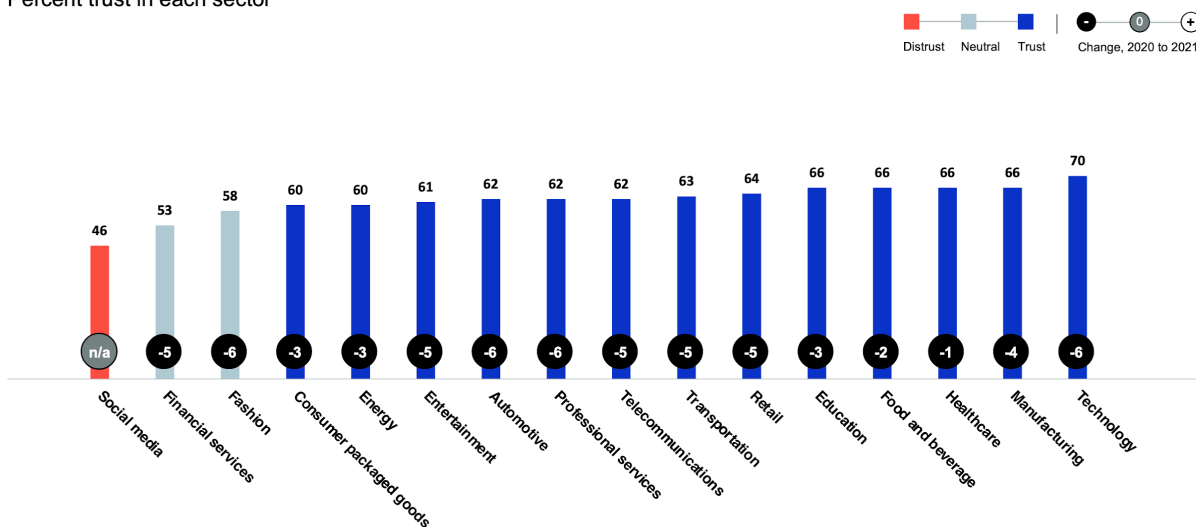
Some of this response is contained in answers to HM Treasury's specific questions below, but the parts of the response not shown as direct answers to questions are equally part of this response, and for consideration by the HM Treasury.

As always, context is key

We believe that there is cause for concern about the reputational integrity of the financial services sector as whole, in most parts of the world. There is ample evidence to suggest that society is distrusting of financial services. The highly credible [2021 Edelman Trust Barometer in Financial Services](#) shows it to be the second most distrusted industry; second only to social media.

TRUST DECLINES ACROSS SECTORS

Percent trust in each sector



2021 Edelman Trust Barometer. TRU_IND. Please indicate how much you trust businesses in each of the following industries to do what is right. 9-point scale; top 4 box, trust. Industries shown to half of the sample. General population, 27-mkt avg.

Edelman | 46

Given the fundamental need for the financial sector to be trusted for it to function successfully, it should be a great concern for the sector's market participants, trade bodies, professional associations and regulators that it is a sector that society does not trust.

It is easy to understand why the financial sector is distrusted; in fact the evidence suggests that people *should* distrust it. Consider for example the overall conduct of the financial industry in the UK compared to other industries when it comes to the level of violations.

The best source for such data is the recently launched [Violation Tracker UK](#). In the interests of transparency we should point out that Transparency Task is [very closely connected with Violation Tracker UK](#); and proudly so. For example, we Chair its UK Advisory Board.

Violation Tracker UK holds data about corporate infringements in 46 sectors. What does the data in Violation Tracker UK show about the UK's financial services sector? It shows that the conduct of the sector is so bad that if you add up all the infringements by all the other 45 industries it equates to roughly the same as the financial sector on its own.

That is a truly alarming reality; so much so that repairing the reputational integrity of the sector should be Priority #1 for all stakeholders that truly care for the wellbeing of the sector and the society it is meant to serve.

The screenshot below shows the top of a chart that all financial sector stakeholders in the UK should be ashamed that the financial sector is at the top of:



GOOD JOBS FIRST VIOLATION TRACKER UK

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Violation Tracker UK Parent Industry Penalty Totals

Download results as [CSV](#) or [XML](#)

RANK	PARENT MAJOR INDUSTRY	TOTAL PENALTIES	NUMBER OF CASES
1	financial services	£4,531,112,681	425
2	aerospace and military contracting	£1,563,848,550	72
3	telecommunications	£1,222,571,005	65
4	utilities and power generation	£648,048,895	962
5	diversified	£606,182,473	160
6	pharmaceuticals	£336,859,373	24

To view the chart in full, [click here](#).

Furthermore, it is impossible to ignore the obvious question: how can it be, that despite the UK's financial sector being such a systemically important part of our economy and our international reputation, that we are tolerating such poor stewardship of it by its conduct regulator?


That question becomes even more poignant when you look deeper into the data held within Violation Tracker UK and consider the obvious pattern of recidivism that exists within the sector. The screenshot below gives a feel for the nature of the recidivism within the sector:

Basic Search | Summaries | Advanced Search

Violation Tracker UK Parent Industry Summary Page

Parent Industry: financial services
 Penalty Total since 2010: **£4,531,112,681**
 Number of Cases: 425

Note: The totals include only those entries matched to a parent company. The industry designation is the primary one for the parent's operations overall.

TOP 10 PARENT COMPANIES	TOTAL PENALTY	NUMBER OF CASES
Barclays	£515,651,961	20
Lloyds Banking Group	£467,402,170	35
UBS	£460,563,400	5
NatWest Group PLC	£436,370,276	24
 JPMorgan Chase	£396,172,200	4
Deutsche Bank	£395,435,024	4

To see that data in full, [click here](#) and when viewing it, scroll down and see the obvious pattern of the same organisations committing the same offences over and over again. Perhaps this suggests that there is a culture within the sector that sees the fines imposed on it as a cost of doing business. Perhaps this hard evidence also calls into question the grotesque lack of effectiveness of the FCA in ensuring the sector behaves properly and that it succeeds in its objective to maintain the integrity of the sector and provide an appropriate level of consumer

In fact, we are so concerned by the poor performance of the FCA that we are having to spend a huge proportion of our very limited resources on helping to try to fix it, as [these slides](#) about our Plans and Priorities for 2022 show - look in particular at the section about the evidence published thus far from the [APPG on Personal Banking and Fairer Financial Services' Call for Evidence about the FCA](#) - [see here](#).

Please therefore be mindful of these well-founded concerns when reading the rest of this response.

Background

The background to this response is important. Since the UK left the EU at the end of January 2020, we have watched with amazement at how the UK seems to be getting its approach to Financial Services badly wrong.

Promised improvements in investor costs and charges disclosures via MiFID II and PRIIPs regulations have either been postponed or the appropriate rules are not being enforced by the regulator, the FCA. COVID further added to the increasing levels of asymmetry between the FS markets and the retail investor in many areas.

We are now in 2022 and it seems that the government and the FS industry seem set on denying retail investors and pension savers a fair deal. The retail investor struggles to understand what they pay both initially and on an ongoing basis for their pension and lifetime savings financial products.

The rules for claiming compensation via the FSCS and FOS may be tightened, the regulator seems intent on not monitoring or enforcing important regulatory initiatives such as the Assessment of Value regime and now the FCA, per the New Consumer Duty regulations, seem set to deny investors a right to private action.

Retail investors, it seems, are caught in a pincer movement that increases the level of asymmetry, reduces transparency, investor rights and compensation levels whilst they remain uninformed as to the true levels of costs and charges paid for financial products.

For a retail investor, the FS market has been unstable, disorderly and dysfunctional for the last 2 years. The current direction of travel cannot be allowed to continue without introducing material risks to the long-term future of the UK's FS market. Rules and regulations have to be monitored and enforced uniformly and consistently over the long-term for the market "culture" to be maintained at the highest levels.

In this regard, the FCA has failed and is on the verge of losing what remains of the public confidence in it to oversee timely, accurate and comprehensive cost transparency.

We cannot introduce opaque private markets investments into retail Workplace Pensions until such a time as the regulator properly fulfils its mandated regulatory activities such that trustees can have confidence in the costs that their beneficiaries will bear .

Question 1a

Would adding performance-based fees to the list of charges which are outside the scope of the charge cap increase your capacity and appetite, as a DC scheme, to invest in assets like private equity and venture capital?

The wording of this question implies that only pension scheme operators will respond to this consultation. We are doing so as a consumer organisation.

No, as moving more cost items outside of the Charge Cap only discourages investing in private markets-related investments. Investors have every right to understand exactly what they are paying for any product or service both on an initial and on an ongoing basis, whether in finance or in any other sector.

Since 2008, central banks have used QE to try to keep economies on track. It can be argued that much of this money has found its way into stock markets, commodities markets and property, with all asset classes having been recently or currently on highs. The use of QE has meant that we have all borrowed tomorrow's investment returns and have consumed them since 2008.

With returns now low, an investor's investment costs are probably at their highest in history when expressed as a percentage of total return. Investors cannot control returns, but they can control their investment costs and can shop around for products and services accordingly – provided they know how much they are paying both on an initial basis and on an ongoing (annual) basis for the financial product concerned. Compounded investment cost savings over the lifetime of a pension can be considerable.

Consider the following example based on a pension lasting 60 years, 40 in accumulation and 20 in decumulation;

For a 25 year-old with a life expectancy of 85 who saves every year and retires at 65 years, a 1% charge – which sounds reasonable until you consider that this charge is levied every year and compounds over the life of the pension – will slice a huge 25% off the income he or she would otherwise receive in retirement. A 1.5% charge will cut it by 38%, and a 2% charge will reduce it by nearly half". (Source: "What They Do With Your Money", Davis, Lukomnik & Pitt-Watson, June 2016).

Many cost items currently sit outside of the Workplace Pensions charge cap, including transaction costs, other subsidiary items and now performance fees. The Charge Cap would effectively be undermined and we would question what level of cost would be inside the Charge Cap v what level of cost would reside outside of the Charge Cap. Will the majority of costs

reside outside of the Charge Cap? Given typical performance fee structures of 20% on gross returns above 7% combined with catch up, it appears possible in many circumstances that they would.

For the consumer, being able to access clear and accurate information on costs enables consumers to shop around and ultimately purchase a product or service that best fits their risk-return appetite and need. This is in line with the government's initiative on "levelling up" which is rising in importance due to the large increase in the cost of living. the cost of living. Allowing fund managers to appropriate uncapped performance fees from savers' pension pots in the vain hope that some small proportion of them will help level up poorer communities is not in line with that initiative.

Furthermore, should pensions ultimately pay out less than expected and less than the minimum standard of living (as defined by the state benefits level), then the government would be forced to make up this shortfall. This is in effect an implied state subsidy for the Financial Services sector when it doesn't deliver what is promised.

Questions arising here include:

- Has the possibility of this implicit state subsidy been considered as part of any Cost Benefit Analysis and Due Diligence process?
- What would be the impact on the UK's Balance Sheet in such a scenario?
- Given the availability of cheap money since 2008, many argue that private markets firms may have overpaid for any assets that they have acquired. This would mean that any assumptions on future returns are likely to be incorrect.

Are you already investing in assets like private equity and venture capital, and if so would this change increase how much you invest?

Yes, the lead author of this response, Sunil Chadda of Cairn Consulting's approach to pensions and lifetime savings includes investing in private equity and venture capital funds, albeit via the Investment Company (IC) sector.

He holds a number of Investment Trusts in his SIPP and has been happy at the returns delivered. His key area of concern is how costs are displayed to the investor. ICs have historically displayed the UCITS Ongoing Charges Figure (OCF) on Factsheets, despite not having any regulatory requirement to do so. Using the UCITS OCF has historically allowed investors to compare and contrast an Investment Company (i.e. investment trust) product with an Authorised Fund/UCITS product.

Since the introduction of the EU's PRIIPs (Packaged Retail and Insurance-based Investment Products) regime in January 2018, investment companies have had to use a new cost metric, the Reduction in Yield (RIY), which is calculated in a prescriptive manner.

However, serious flaws in the methodology used by PRIIPs for reporting Risk and Performance scenarios on the Key Investor Document (KID) meant that the FCA allowed investment companies to rightly publish a statement to the effect that investors should be aware of these flaws. This statement was to be carried next to the PRIIPs KID.

Due to the flaws on the PRIIPs KID, many ICs now make the KID hard to locate on their web-sites. Instead, prominence is given to the fund Factsheet, which carries the older and much lower UCITS OCF cost metric. This looks innocent enough until the investor realises that for many investment trusts, the difference between the UCITS OCF and the RIY can be tens of percent and in other cases can be a few hundreds of percent.

Investment Companies invested in private markets assets are displaying Factsheets (with lower costs using the UCITS OCF) in more prominent positions on their web-sites than the regulated PRIIPs KID (Key Investor Document) that contains the truer and higher PRIIPs RIY costs. It looks as though Workplace Pensions members - and indeed the trustees who make the decisions on their behalf - will be facing very similar issues with cost disclosures.

The framework, or lack thereof, proposed for Productive Finance and Workplace Pensions is nowhere near enough for us to want to invest in private markets. In fact, it has had the opposite effect.

ESG and The Moral Hazard

The Consultation Paper makes no mention of ESG and we would argue that the current approach, rides roughshod over environmental, social and corporate governance requirements and "Best Practice".

The types of Private Markets investments that could be considered for investment by Workplace Pension "default" funds has not been covered in this Consultation Paper. By way of an example, if a Workplace Pensions member invested in any of the PE investments outlined below, then that pension member would be extremely angry. The government has not considered Moral Hazards here at all and should any appear, the resulting scandal and Parliamentary inquiries which would follow it could mark the end of private markets investments in pensions overnight.

These investments have got a pretty shocking ESG record, and if pension funds are found to be implicated in asset stripping companies and dumping workers on minimum redundancy after

bankruptcy, that is going to seriously damage the reputation of the asset class. The following (below) are examples of the types of private markets arrangements that will need to be avoided to protect pensions and to prevent the whole private markets initiative from being undermined and blowing up;

1. Comet Retail: [Comet closes remaining shops as losses hit £230m - Electricals chain collapsed into administration...leaving suppliers, customers and the taxman facing losses](#)

2. Heathrow Airport: [Heathrow pays £2bn to owners — and £24m tax | The Sunday Times \(thetimes.co.uk\)](#)

3. Corporation Tax: There are many examples of how private equity and VC firms limit their tax obligations. The investing public will not be sympathetic to these practices if they have invested in “default” funds where this is occurring.

4. Private Equity and Insolvent Pension Funds: [Layout 1 \(gmb.org.uk\)](#)

5. Global Infrastructure Management: [Global Infrastructure Management fined \\$4.5M for compliance failures | Article | Compliance Week](#)

6. US Office of Compliance Inspections and Examinations: Risk Alert – June 2020: [Private Fund Risk Alert_0.pdf \(sec.gov\)](#)

7. UK Violation Tracker - Private Equity (including portfolio companies): [Violation Tracker UK | Corporate Research Project of Good Jobs First](#)

The FCA hasn't completed a Market Study of Private Markets in recent times. A Market Study needs to be completed prior to this Consultation Paper being produced so that all issues can be identified and managed properly before Workplace Pensions invest.

We fail to see how private markets investments can be pushed into the wider investing domain without a full and proper due diligence process and accompanying improvements in transparency.

The lead author may consider increasing his allocation to private markets but this would be via the investment company route - this route is already open to workplace pension schemes, in the same way as other funds typically used by institutional investors, typically without the payment of performance fees which would breach the charge cap. It is therefore difficult to understand why the removal of the cap from performance fees is necessary.

If you do not currently invest in such assets would this change make it more likely for you to, and do you have an idea of, to what % of AUM that might be?

The lead author already invests in private markets but will not be making use of any Workplace Pensions “default” funds should they contain private markets investments, unless the offering is fully transparent, comes with true disclosure and is supported by a proper regulatory framework by a regulator who will regulate and not look the other way.

Question 1b

Would adding performance-based fees from the list of charges which are outside of the scope of the charge cap incentivise private equity and venture capital managers to change their fee structures?

We do not believe that moving performance-based fees outside of the Charge Cap would incentivise PE and VC managers to change their fee structures. From experience, we would suggest that this would have the opposite effect. A formal and fully regulated approach to private markets is required.

Whilst the intention is to introduce a “well-designed” performance fee, it is highly unlikely that anyone will know for sure if the performance fee was “well-designed” or not until the private markets investments mature – by which time it could well be too late to avoid an adverse and unexpected investor outcome.

‘Sunlight is the best form of disinfectant’, so ensuring that all costs are publicly reported (and are not opaque) will encourage trustee and investor challenge, so that the right questions are asked by governance professionals as part of any natural initial and ongoing due diligence process.

There are 3 Private Markets costs and charges templates that we are aware of, one from the Cost Transparency Initiative (CTI) that is used by the PLSA and the LGPS and two voluntary templates built by the BVCA (British Private Equity and Venture Capital Association) and ILPA (Institutional Limited Partners Association). We understand that use of the templates is not mandated by regulation or law.

Noted in the “Next Steps” section of the Consultation is the fact that the government plans to “shift the focus of DC schemes’ investment strategies away from cost and more towards overall value, including opening up private markets to DC savers”. The switch away from cost to value is completely and utterly unacceptable and is out of touch with what retail investors and the electorate want.

Moving retail pensions into opaque private markets products with no accurate initial or ongoing cost figures is a huge backwards step and is extremely disrespectful of the retail investor. It seems that the retail investor is going to be treated as a captive client who has no real alternative.

Question 1c

If you do not believe that the proposal outlined in this consultation is the right solution to the barrier posed by the regulatory charge cap, what might be a more effective solution?

A more sustainable solution would start with engaging with those who will be holding these private markets investments. At present we cannot see any engagement at all with the retail space and those actually holding Workplace Pensions.

Such a complex asset class cannot be put in front of retail clients without a full and proper level of consultation and due diligence. Furthermore, a detailed framework needs to be identified and followed to safely get these types of investments into the mainstream. The current short-term approach is going to lead to a major blow up which will damage the public's attitude to and confidence in saving for their pensions.

We must express our surprise and disappointment that the Bank of England, HM Treasury, the FCA and the 26 members of the Working Group have failed to identify many of the points raised in this Consultation response. The FCA seems to have abandoned its own Operational Objectives to;

- "Protect consumers – we secure an appropriate degree of protection for consumers
- Protect financial markets – we protect and enhance the integrity of the UK financial system
- Promote competition – we promote effective competition in the interests of consumers".

Source: The FCA: <https://www.fca.org.uk/about/the-fca>

Question 2

How can we ensure members of occupational DC pension schemes invested in default funds are sufficiently protected from high charges, whilst adding the

performance related element of performance fees to the list of charges outside the scope of the charge cap?

We believe that the Working Group should have looked at the following areas as part of their work. It is not just performance fees that are the issue;

- i. Costs and charges leak from investments via asymmetric contractual terms, asymmetric costs and charges reporting (i.e. cost items sitting outside of any cost reporting mechanism, in this case the Charge Cap and the resultant Workplace Pension “Reduction in Yield” (RIY) cost metric), poor market practice and poor firm-level practice. The more opaque the investment, the higher the level of potential cost leakage.
- ii. Lack of a regulated Costs and Charges template: This has been covered in an earlier section of this response.
- iii. Each Workplace personal Pensions provider has an Independent Governance Committee (IGC) who are responsible for oversight of the Workplace Pensions offerings from any one provider. IGCs will have to locate additional IGC members who have a deep understanding and experience of private markets in order to be able to do their jobs properly and provide a meaningful challenge when required.

We would suggest that IGCs may not be able to find independent private markets experts who could assist in product governance. There is a high chance that the private markets expert may be the pension provider’s Chief Investment Officer (CIO) or other senior investment staff member who will then go on to oversee their own products. This would be a serious conflict of interest that could easily result in the sub-optimal outcomes for Workplace Pension members.

If IGCs do feel that they might need a private markets expert who is independent of the pension provider, then they do not have the powers to go out and hire one. IGCs have to agree any expenditure with the pension provider first. Again, this is a potentially serious conflict of interest and is a major governance shortcoming.

iv. Identification of transaction Costs: Having worked on a Workplace Pensions transaction cost analysis project, it is obvious to the lead author that transaction cost items can be extremely difficult to identify, especially when the transactions are taking place in private markets. How are transaction costs defined for a private equity firm who identify and then acquire a target? Arguably, many specialists may be involved in the transaction, including lawyers, due diligence experts, consultants and accountants to

mention but a few. Costs related to travel, accommodation, consulting and subsistence etc for those working on the “transaction” are transaction costs and these could be considerable.

It is vital that these transaction costs are defined correctly and that transaction costs are reported accurately in their entirety. Any other approach may allow unexpected cost leakage and, therefore, a fair chance of an adverse outcome for the Workplace Pension member. Full transaction cost figures must be reported to those pension members who are having to pay for them and to those governance professionals on the IGC who are responsible for the governance of these complex products.

v. On the subject of Private Markets skills, will the DWP and the FCA be buying in these skills so that they too can properly monitor and enforce the applicable regulatory rules? It is essential that both regulators have experienced full-time private markets staff on board to provide the level of regulatory governance that we all expect when dealing with public pensions.

Given the asymmetries involved, we would argue that trustees of occupational schemes and IGCs are being set up to fail. IGC members should resign as IGC members if they were forced to oversee a complex pension product with one hand tied behind their back in this way.

vi. Fund liquidity issues have been in the financial news over the last 3 years, led by the collapse of Neil Woodford’s “Woodford Equity Income Fund”. A number of property funds had to freeze redemption requests over the Brexit period and since then other firms, including 7IM, have also had liquidity issues in their funds.

Liquidity Management was mentioned in the Consultation Paper but little was said about how any liquidity management mechanism might work. Any Workplace Pensions “default” fund holding private markets may well have to hold a large cash (or liquid assets) buffer to meet investor redemption requests, otherwise highly illiquid assets may have to be sold in order to meet redemption requests. As investors in the Woodford Equity Income Fund found, some illiquid assets were sold at fire sale prices which adversely impacted those still in the fund.

Investors in Workplace Pensions holding private markets are extremely unlikely to understand exactly what an illiquid private market investment is and how it works. Access to private markets investments must not compromise the pension saver’s ability to access their funds promptly when they need them. Locking in investors whilst these

investments mature will simply backfire due primarily to a lack of understanding of how private markets funds work.

What happens with Workplace Funds when they have to hold large cash or liquid asset buffers? Returns will obviously be less than expected as cash currently offers extremely low or negative returns. Will management fees and performance fees be charged on any cash holdings? We understand that is typically the case. If so, this will further reduce expected returns.

vii. ACDs: Workplace Pensions funds may be controlled and operated by an Authorised Corporate Director (ACD). The role of the ACD has been in the news for all the wrong reasons, given the failings of Link (re. Woodford and Connaught) and 10 other ACDs (see: [FCA probes 11 ACDs in conflicts investigation | Money Marketing](#)). A lack of knowledge on behalf of the ACD and conflicts of interest have been inferred by the FCA as being the reason for these failings.

In June 2021, the FCA undertook a “Review of host Authorised Fund Management firms” and identified a plethora of issues with conflicts of interest being the most prominent (see: [Review of host Authorised Fund Management firms | FCA](#)). We understand that the FCA is still looking at the ACD issue, with the FCA’s final findings on Neil Woodford and the role of Link, the ACD, keenly awaited.

Larger pension providers will likely be using a wholly-owned subsidiary company as Internal ACD. The ACD is charged with acting in the investor’s interests but has, arguably, been more interested in increasing profits at the expense of the investor.

The ACD takes a major role in operating funds and given the many open issues identified by the FCA, we would suggest that investors in Workplace Funds investing in private markets may have a much higher chance of an adverse outcome than most would think.

viii. The Consultation Paper mentions the possibility of introducing alternative FCA rules and/or relaxing others, yet no mention is made of any new rules that protect the Workplace Pension members invested in private markets. No new rules or powers have been considered to assist trustees and IGCs in governing these funds. This is, therefore, an unbalanced and asymmetric approach that limits proper investor governance to the advantage of FS firms.

Question 2a

Do you have any suggestions for how we can ensure that the regulations ensure members are only required to pay fees when genuine realised outperformance is achieved?

We do not necessarily agree with this comment in the CP: “One impactful change that would significantly increase trustee confidence to invest in illiquids is to have performance fees not subject to the charge cap. In our view performance fees are more akin to a profit share mechanism and should not be categorised in the same way as other fees and charges within the cap.”

The true level of profit share can only be discerned by looking at the level of profitability of the part of the fund management business that manufactures private markets funds for the “default” Workplace Pensions. By looking at the wider picture, it becomes apparent how much asymmetric contractual terms, poor market practice, poor firm practices and opaque cost reporting all add to overall profitability. This would be a more equitable way to look at the issue of profit share because whilst it may be a profit share, a bigger slice is taken by managers than just the 20% fee. In fact the market characteristics mean that the share of the profits taken by the trustees is lower than they might otherwise think.

The FCA took this approach as part of the Asset Management Market Study when looking at asset management firms and the level of profit made by their DB Pensions fund management divisions.

Question 3

Which of these conditions should the government apply to the types of performance-based fees that are excluded from the list of charges subject to the charge cap? Are there other conditions we should consider? If supported by guidance on acceptable structures, would this give confidence to more schemes?

As stated previously, the issues in private markets investments are not limited to performance fees alone and nobody can state for sure what a “well-designed” performance fee looks like until a few of these funds have been launched and the private markets investments within them mature. This may involve a timescale of 5-10 years.

We would suggest no reform to the existing charge cap, other than to increase its coverage and close loopholes should take place for at least the next 3 years. With performance fees subject to the cap, pension funds are still increasing exposure to private markets and we expect this to continue. The issues relate to scale and lack of bargaining power on the part of pension providers. As pension providers increase in assets, we expect them to be better able to access these assets at low price and – subject to the active support of the regulators – with full cost transparency.

Question 4

Do you agree with our proposal to require disclosure of performance fees if they are outside the scope of the charge cap? If so, we propose this is done in a similar way to transaction costs – do you agree? Could you provide details of any new financial costs that could arise from a requirement to disclose performance fees? Please outline any one-off and ongoing costs.

All costs and charges involved in any investment, product or service must be disclosed to those who are paying for them and to those who are responsible for governance of the Workplace Pensions. Transaction costs and performance fees must, therefore, be transparent and accurately reported to all stakeholders. It is 2022 and nothing else is acceptable.

Question 5a

If we add performance fees to the list of charges which are not subject to the charge cap, do you agree that we should remove the performance fee smoothing mechanism and the pro-rating easement from the Charges and Governance Regulations 2015?

No comment provided.

Question 5b

Is there a need for transitional protection arrangements to be brought in for schemes that have decided to make use of the performance fee smoothing mechanism, and if so what do these transitional arrangements look like?

No comment provided.

Comments on the Working Group and Methodology Used

We have some serious concerns about the set up of the Working Group and the Methodology used to produce the “Enabling Investment in Productive Finance” Consultation Paper.

The FCA’s New Consumer Duty (CP21-36) extends product and service governance requirements to FS firms via mandating product manufacturers to undertake a product approval process, identify a target market, and ensure appropriate distribution channels for their products. Has the Working Group itself followed an official Product Launch or other process here? We ask as those who are impacted by the consultation, the retail investor and Workplace Pension member, have been omitted from the process. Furthermore, the CP itself seems to be very light on the potential and material risks involved, having omitted to mention a number of them.

We note that the set up of the Working Group seems to be skewed in favour of Financial Services firms who offer these kinds of private markets products, firms who assist FS firms in launching them and the industry groups who represent them. We would also argue that the Bank of England, HM Treasury and the FCA are pro the concept of private markets investments in Workplace Pension funds holding them and look to be in a hurry to implement the idea.

Of the 26 Working Group members, it would be reasonable to believe that 23 represent the industry view and only 3 (the USS and two independent pension fund trustees) represent the individual investor. There is no representation on behalf of the retail Workplace Pension member or any industry group (such as UKSA, ShareSoc or ShareAction) who are dedicated to representing the retail investor.

The make-up of the Working Party may explain why so many important issues are missing from this Consultation Paper. How many individuals who sit on the Working Party are members of Workplace Pensions and how many of these individuals will be investing in Workplace Pensions ‘default’ funds with private markets holdings?

The interests of the Workplace Pensions member have not been properly represented or considered.

Comments on our concerns about the FCA’s “Assessment of Value” regime

The lead author analysed a number the Assessment of Value Disclosures in Year 1 and Year 2 and identified many failings (i.e. FCA rule breaches). From what we can discern, the FCA have not challenged any firms on these breaches.

Other serious deficiencies in this regime include;

- i. The fact that the Fund Board, who are responsible for declaring whether or not a share class in a fund represents “value”, is made up of a majority of fund management staff means that little or no proper challenge has taken place. Many fund share classes have been reported as having “value” by Fund Boards when the opposite looks to be true to us. After all, why would anyone rely on the person who sold you a service or product to tell you whether it represents “value” or not? Investors might be more trusting if these fund boards were fully independent of the fund manager.
- ii. The Assessment of Value Disclosures that the lead author has reviewed have all used the lower UCITS Ongoing Charges Figure (OCF) as the driving cost metric to determine “value”. The higher yielding MiFID II Ongoing Costs Figure (OCF) is available and has not been used, however. For one series of retail funds analysed, the true costs were between 40% to 54% higher when the MiFID II OCF was used. How can anyone purport to analyse “value” in anything using a set of artificial costs that are much lower than what was actually paid?
- iii. Many industry staff and investors alike consider the Assessment of Value a complete waste of time and money. Why has the FCA pushed a new regulatory regime, with considerable implementation costs, onto FS firms when they have not enforced with respect to rule breaches? The industry, and ultimately the investor, has been forced to pay more for absolutely no benefit.

The retail investor and governance professionals use the Assessment of Value Disclosure for the fund share classes that they are invested in when reviewing and making investment decisions, yet may not realise that some of the AoV Disclosures are either misleading or contain FCA rule breaches. Unintended consequences are sure to occur, with the governance professional and respective Board carrying the risk and ultimately the cost of putting it all right when something goes wrong.

Conclusion

The evidence suggests this consultation and the work leading up to it has not been done in a prudently governed way. We therefore challenge the legitimacy of this consultation.

There is a strong argument for allowing private markets investments into Workplace and other pensions. The benefits to the pension scheme member of potentially larger uncorrelated returns, whilst providing funds for infrastructure and other important UK-wide economic projects, cannot be underestimated.

However, the approach as defined in this Consultation Paper falls considerably short, especially when considering how the FCA has monitored and enforced their own rules in the last 2-3 years. The proposed overall direction of travel for the individual investor is now of extreme concern. We respectfully suggest that the interests of the end-user investor are authentically cared for especially when you remember that we form the entire electorate of this country and that the UK's balance sheet is at risk should these products not deliver what was promised to those relying on it for retirement.

Full and proper due diligence is required involving ALL stakeholders, as is a proper framework for governance, costs and the types of ESG-compliant private markets investments that will be invested in by Workplace Pension "default" funds.

If the UK government and UK FS sector can find a way to make the idea of Productive Finance work ethically, transparently and properly for pension funds, then we will have a financial product that actually works that can be exported all over the world as a shining example of UK FS innovation that benefits all in society - now that is a thought.