FairPensions™
The campaign for **responsible** investment

Fairshare Educational Foundation
Trowbray House
108 Weston Street
London SE1 3QB
020 7403 7800
fairpensions.org.uk

The Bribery Act Implementation Team
Ministry of Justice
7.42
102 Petty France
London SW1H 9AJ

By email to Bribery.Act@justice.gsi.gov.uk

Thursday 28 October 2010

To whom it may concern,

FairPensions welcomes this opportunity to respond to the Ministry of Justice's *'Consultation on guidance about commercial organisations preventing bribery'*. FairPensions is a registered charity established to promote Responsible Investment by UK pension schemes and fund managers. Responsible Investment is defined as the active management of environmental, social and governance risks with the potential to affect long-term financial returns. We advocate a strategy of active engagement with investee companies (ie. the use of shareholder rights, including voting rights) to improve performance.

We are a member organisation, with a diverse membership including trade unions and others who represent pension fund beneficiaries, such as Unison, Unite and the National Federation of Occupational Pensioners; civil society groups such as Oxfam and WWF; and thousands of individual pension fund members.

We would like to offer a general response to the issues raised by the consultation; we do not comment individually on the specific questions posed in the consultation document.

Bribery as a business issue

Bribery is a clear example of a governance issue that poses significant business risks both to companies and to their investors. This is particularly true for those investors (such as pension funds) who are 'universal owners', with holdings across the economy. Such investors have a broader financial interest in the maintenance of a level playing field in which open competition is not distorted by bribery and corrupt practices – as well as in the growth of emerging markets, which is damaged by the negative impacts of bribery on development. This interest is likely to outweigh any short-term benefits that investors might accrue as shareholders of individual companies who gain business advantage by corrupt practices.

Indeed, bribery poses risks even on a narrow view which only takes into account the performance of these individual companies. The commencement of the Bribery Act 2010 will add the risk of prosecution and unlimited fines to existing risks including reputational damage and loss of contracts in other jurisdictions. Investors will therefore have a legitimate interest in the adequacy of their investee companies' procedures to prevent bribery as required by the Act.

Fairshare Educational Foundation is a company limited by guarantee registered in England and Wales number 05013662 and a registered charity number 1117244. *Printed on recycled paper*

Fairshare Educational Foundation
Trowbray House
108 Weston Street
London SE1 3QB
020 7403 7800
fairpensions.org.uk

The International Corporate Governance Network (ICGN)'s recently-published Statement and Guidance on Anti-Corruption Practices[1] provides a fuller explanation of "why anti-corruption is an issue of concern for shareowners", as well as an example of investor engagement with this issue. The ICGN is a forum for dialogue between investors, companies, academics and others with an interest in improving corporate governance practices.

Another good example of investor engagement on bribery is the recent initiative by 20 investors managing $1.7 trillion of assets (all signatories to the UN-backed Principles for Responsible Investment) asking 21 major companies to improve their disclosure of bribery and corruption risks and avoidance measures.[2]

The need to avoid loopholes

We welcome the passage of the Bribery Act, and urge the government to avoid any further delay in its commencement. Delays create uncertainty for both investors and send mixed signals about the government's commitment to tackling bribery.

It will be crucial to the success of the Act that this guidance supports the implementation of effective anti-bribery measures, rather than inadvertently creating loopholes which water down or frustrate the intent of the Act's provisions. We believe the current draft guidance achieves this objective. However, we are concerned that some interested parties see this consultation as an opportunity to re-open debates that were conclusively lost during the Bill's extensive consideration by parliament, with the aim of weakening the Act and allowing business as usual to continue. We would urge the government to resist industry proposals to amend the guidance, for instance to incorporate further guidance about hospitality, gifts and promotional expenditure, in ways that create scope for abuse.

We welcome the principles-based approach of the current guidance - which leaves businesses free to decide how best to apply the Act to their own particular circumstances - and its emphasis on implementation. It is in everyone's interests that effective anti-bribery measures are embedded in corporate practice. A more prescriptive approach which encouraged box-ticking rather than substantive action would result in the same regulatory burden without any of the benefits - to companies and to the wider global economy - that accrue from reducing bribery. It is also important that the guidance is not given a status that creates a 'safe harbour' defence, contrary to parliament's intent in passing section 7 of the Act. We believe the present draft strikes an appropriate balance - providing clear, practical and helpful guidance without restricting the scope of the legislation, or the discretion of the courts to decide whether the defence of 'adequate procedures' is made out in the circumstances of a particular case.

Transparency

We also welcome the suggestion that the body responsible for monitoring and reviewing anti-bribery policies might disclose their findings in a company's Annual Report. As discussed above, shareholders have an interest in information about the effectiveness of

[1] http://www.icgn.org/files/icgn_main/pdfs/best_practice/guidance_on_anti-corruption_practices/2009_anti-corruption_practices_%28march%29.pdf
[2] http://www.unpri.org/files/20100427_AnticorruptionPR_final.pdf

FairPensions™
The campaign for **responsible** investment

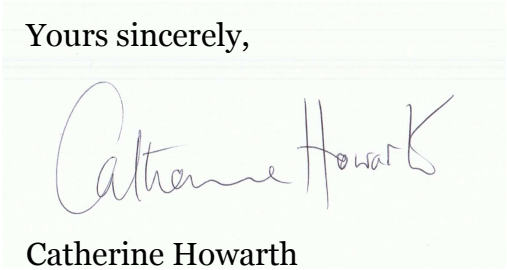
Fairshare Educational Foundation
Trowbray House
108 Weston Street
London SE1 3QB
020 7403 7800
fairpensions.org.uk

their investee companies' anti-bribery policies. Such information would allow institutional investors both to protect the value of their beneficiaries' investment (through assessing and managing all relevant risks), and to play a role in driving up standards of company behaviour (through engagement with companies whose practices are cause for concern).

More generally, transparency will be vital to the success of the Act. We agree with the consultation paper's observation that "secrecy within an organisation… can facilitate the payment, receipt and concealment of bribes." We would add that transparency is not only important *within* large organisations, but also *between* those organisations and the market as a whole. We suggest that the guidance could benefit from an enhanced focus on transparency, perhaps by promoting it to a separate principle in its own right. Failing this, relevant passages in the existing principles (for instance, Principles 2 and 6) could be amended to make clear that 'external actors' to whom policies might be communicated may include shareholders and other market participants. We would consider it best practice to make such policies publicly available in order to facilitate the flow of information to the markets.

We remain at your disposal and would be pleased to meet with you to discuss any or all of the above.

Yours sincerely,



Catherine Howarth
Chief Executive, FairPensions

Fairshare Educational Foundation is a company limited by guarantee registered in England and Wales number 05013662 and a registered charity number 1117244. *Printed on recycled paper*