

Institution: Newcastle University		
Unit of Assessment: 17 Business and Management Studies		
Title of case study: Shaping a regulatory framework for effective governance of pension funds and their investment intermediaries		
Period when the underpinning research was undertaken: 2012–2017		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Anna Tilba	Lecturer in Strategy and Corporate Governance	2012–2017
Period when the claimed impact occurred: 2013–2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact Dr Tilba's pioneering research, undertaken when an early career researcher, into the governance and investment practices of UK pension funds has had a significant impact on the regulation of pension funds and the organisations involved in pension fund investment chains. This impact has been achieved through 1) shaping the Law Commission's investigation of the fiduciary duties of investment intermediaries, and 2) influencing the recommendations of both the Financial Conduct Authority and the Competitions and Market Authority for the regulation of investment intermediaries. In addition to influencing regulatory policies, there is also evidence that Tilba's research has 3) influenced the behaviour of commercial organisations operating in the fields of fund management and investment advice.</p>		
<p>2. Underpinning research Dr Anna Tilba took up her first academic post at Newcastle University following completion of her PhD at the University of Liverpool. Her research examines how the practice of UK pension fund investment management informs the ownership behaviour of pension funds vis-à-vis the corporations in which they invest, and specifically how these practices are influenced by how pension fund trustees interpret their fiduciary duties (i.e. their legal obligation to take care of assets in their custody for the benefit of the beneficiaries). This research is significant; not only because investment consultants and fiduciary managers provide advisory services to UK pension schemes holding assets in excess of GBP1.6 trillion, but also because while there is general academic and policy concern in the UK that investor disengagement and short-term goals are damaging the economic health of the country, there has been very little qualitative research on governance of pension funds. Tilba's research was amongst the very first to address this significant gap.</p> <p>Using data from 35 in-depth interviews with pension fund trustees, executives, investment officers and financial intermediaries, Tilba found that pension fund trustees understood their fiduciary duties in a variety of ways, which underpinned the intensity and methods of their engagement with investee corporations (PUB1,2). She found that the majority of pension fund trustees interpreted their fiduciary duty narrowly as the duty to act in the best financial interest of beneficiaries. Thus they adopted disengaged practices, delegating contact to outside investment managers whose mandates were overwhelmingly oriented towards producing the investment returns (PUB1,2).</p> <p>Disengaged pension funds neither had direct relationships with their investee companies, nor did they to seek to influence their fund managers when it came to corporate governance or stewardship (environmental, sustainability and governance) issues. There appeared to be very limited monitoring by the trustees and no clear prescription about what engagement policy should look like or how it should be effectively communicated to the fund managers (PUB1).</p>		

Tilba found that a majority of trustees and pension fund managers referred to a lack of investment expertise on their boards. They attributed the consequent outsourcing to a range of financial intermediaries, and subsequent disengagement from their investee corporations, to their requirement to take appropriate investment advice to help formulate and implement their investment strategies. She also found there was a temporal dimension to this, with ‘disengaged’ interviewees’ accounts evoking an impression of increasing complexity and volatility in the pensions industry. This, she found, further detached pension funds from their investee corporations and caused trustees to focus on short-term returns within investment mandates (PUB2).

The uncovering of the variations in interpretations of trustees’ fiduciary duties, and the subsequent differences in pension fund approaches to equity ownership and stewardship (PUB1), led Tilba to conclude that there was confusion and uncertainty within the law. Thus, further clarification of the current law was needed, particularly given that UK pension fund trustees believed that the law precluded them from ‘unjustifiably’ spending pension fund resources on engagement, or considering non-financial factors. She argued that, particularly given the complex investment chain of intermediaries, more attention needed to be paid to the position of the pension fund trustee, in a capacity as a fiduciary, vis-à-vis the fund beneficiaries (PUB1). She found that trustees’ accounts of their fiduciary role contradicted the logic of engagement, because many trustees equated beneficiaries’ interests to financial interests and maximizing investment returns. This was also reflected in the contractual relationships with their investment fund managers and their mandates, which, she argued, discouraged investment fund managers from conducting stewardship activities (PUB2).

Subsequent research, specifically commissioned from Tilba by the Financial Conduct Authority due to her acknowledged research expertise in this area (Grant 1), with colleagues Michelle Baddeley and Yixi Liao (both then at University College London), identified a number of interlinking challenges to effective decision-making by institutional investors. These included behavioural biases within trustee boards and their members, complex and voluminous information with which trustees had to work, varying levels of investment knowledge and expertise, lack of ability to challenge consultants’ advice and monitor the quality of financial services, and constraints on switching services. There was evidence that the incentives of the lengthy ‘investment chain’ involved in overseeing, managing and implementing institutional investment strategies were not always aligned with the underlying beneficiary. Significantly, this research also highlighted that trustees tended to rely heavily on investment consultants, accepting their advice without challenge (PUB3).

3. References to the research

The research below spans outputs that have been rigorously peer-reviewed, and research that has been commissioned due to Tilba’s acknowledged expertise in this area. The 2014 paper won the Best Full Paper Award at the conference.

Publications

1. **Tilba, A.** (2014) ‘Stewardship and Fiduciary Duties: The Spectrum of Pension Fund Engagement’. In: *British Academy of Management Conference (BAM2014)*. Belfast: British Academy of Management. Available at https://eprint.ncl.ac.uk/file_store/production/199078/D59891C9-F216-4045-8E21-30C2D48F14C0.pdf.
2. **Tilba, A.** and Wilson, J. F. (2017) ‘Vocabularies of Motive and Temporal Perspectives: Examples of Pension Fund Engagement and Disengagement’, *British Journal of Management*, 28, 502–518. doi.org/10.1111/1467-8551.12225
3. **Tilba, A.**, Baddeley, M., and Yixi, L. (2016) Report for the Financial Conduct Authority. ‘The Effectiveness of Oversight Committees: Decision-Making, Governance, Costs and Charges’. UK Financial Conduct Authority. Available at: <https://www.fca.org.uk/publication/research/tilba-baddeley-liao.pdf>.

Grants and other funding				
	Grant Title	Sponsor/Funder	Dates	Amount GBP
1	Reviewing the Effectiveness of Oversight Committees	Financial Conduct Authority	March 2016 – May 2016	5,480
2	The True Cost and Value of Ownership and Financial Intermediation	ESRC Impact Acceleration Account	May 2015 – May 2016	4,230

4. Details of the impact

Tilba's pioneering research, which unearthed substantial concerns regarding the governance and investment practices of UK pension funds, has had a significant impact on the process of regulating pension funds and the organisations involved in pension fund investment chains. Her research has profoundly changed the understandings of regulatory bodies and influenced their recommendations to government. Tilba's research findings were influential throughout the Law Commission's investigation of the fiduciary duties of investment intermediaries, which reported in 2014. This led the Financial Conduct Authority (FCA) to conduct an Asset Management Market Study in 2015, to which Tilba actively contributed, to investigate concerns raised regarding the asset management market. This process led the Competitions and Markets Authority (CMA) to investigate investment consultancy and fiduciary management services. The CMA's final report (December 2018) made a significant recommendation to government, reflecting Tilba's research, to extend the FCA's regulatory remit over investment consultants. There is also evidence that her research has changed the behaviour of a range of organisations operating in the fields of fund management and investment advice. These impacts are detailed in turn below.

Shaping the Law Commission's investigation of the fiduciary duties of investment intermediaries

The Kay Review of UK Equity Markets and Long-Term Decision Making (2012) had recommended that the Law Commission be asked to review the legal concept of fiduciary duty within the investment chain. The Law Commission, conducting an initial search of academic literature, identified that Tilba's research was the first to look in depth at the investment chain, and they used it extensively to inform their consultation paper [IMP1].

As a result of her research, Tilba was invited to be a member of the five-person Advisory Committee for the Law Commission's review; the other four members were senior academics and industry experts. A testimonial letter from the Law Commission states, '*Drawing on her research findings Dr Tilba actively contributed to numerous roundtable discussions and advisory group meetings*' [IMP2]. The Final Report [IMP3] published following the review cites PUB 1 and refers to Tilba's role on the Advisory Committee. The testimonial from the Law Commission [IMP2] also states that '*Dr Tilba's paper addressed some of the key issues we were investigating*' and that '*Dr Tilba's research filled gaps in our knowledge about the contractual relationships between the various parties in the chain*'. The testimonial concludes, '*Overall, Dr Tilba's research has helped to shed light on pension fund investment practices, particularly around contractual relationships within pension fund investment chains*'.

The Law Commission Report's [IMP3] findings, and its clarification of fiduciary duties, particularly for pension fund trustees, informed by Tilba's research, generated wide support within the pensions industry. For example, the UK Sustainable Investment and Finance Association (UKSIF) coordinated a letter signed by investors from organisations with over GBP550,000,000,000 in assets under management endorsing the final report, stating that it did an excellent job of clarifying trustees' fiduciary duties, and asking the government to make those clarifications statutory [IMP4].

The Law Commission also consulted with Tilba during their review of Pension Funds and Social Investment, and cited her research in their report on Pension Funds and Social Investment [IMP5] presented to Parliament in 2017.

Shaping Financial Conduct Authority and Competitions and Market Authority recommendations for the regulation of investment intermediaries

In response to pension fund and financial services industry concerns, including those raised by the Law Commission's consultation and final report, the Financial Conduct Authority (FCA), the UK's independent financial services regulator, launched a comprehensive Asset Management Market Study to investigate concerns raised regarding the asset management market. On the basis of her research expertise, the FCA commissioned Tilba and colleagues (Grant 1, PUB3) to *'explore the dynamics of, and obstacles to effective investment decisions by oversight committees'* [IMP6, p. 68], with a particular focus on pension fund trustees. This research (PUB3) was cited in and published alongside the FCA Asset Management Market Study Interim Report [IMP6] as evidence that *'trustees have a tendency to rely heavily on investment consultants, Chairs of Trustees and/or professional trustees that they perceive as having greater investment knowledge. This dependency can result in trustees accepting proposed investment strategies without critique or challenge'* [IMP6, p. 68]. Also, *'trustees may be unwilling to challenge as a result of the fear of complexity and looking unknowledgeable in front of peers'* [IMP6, p. 167]. This influential research was also cited in the Financial Conduct Authority Final Decision in respect of the Asset Management Market Study [IMP7, p. 8] as evidence *'that trustees have a tendency to rely heavily on investment consultants'*, a finding which contributed to the FCA's Final Decision to make a Market Investigation Reference in relation to investment consultancy services and fiduciary management services.

As a result of the FCA's Final Decision, the Competitions and Markets Authority (CMA) launched an investigation into investment consultancy and fiduciary management services. CMA's final report, published in 2018 [IMP8, p. 121], also referenced Tilba's work, stating that *'Dr Anna Tilba submitted that her research into fund governance and trustee investment decision-making confirms this lack of challenge of the investment consultant(s)'*. It found adverse effects on competition in these markets, from which substantial customer detriment could be expected to result. The report recommended that the government should extend the FCA's regulatory perimeter to include the relevant services provided by investment consultancy and fiduciary management firms. In 2019, as a result of these recommendations, a package of measures passed into law to remedy, mitigate and prevent the adverse effects on competition and resulting customer detriment: this significant regulatory change reflects Tilba's research conclusions and recommendations.

Influencing commercial behaviour in the fund management and investment advice sector

The Chair of the European Federation of Financial Analysts Societies' Research and Bond Commission, which has 29 national member societies, which in turn have around 160,000 financial analysts as their professional members, wrote in a testimonial letter dated 1 December 2017: *'There can be little doubt that Dr. Tilba's research into pension fund investment practices has contributed to the changed behaviour of some commercial institutions operating in the fields of fund management and investment advice. This is true not just in the UK, but also in Europe and the US to my knowledge. There's absolutely no doubt that it has been a factor in the investigations and practices of the UK public regulatory and supervisory authorities'* [IMP9]. On the basis of her research, Anna has been an invited member of the Transparency Taskforce (TTF), a not-for-profit forum with the sole purpose of driving positive, progressive and purposeful finance reform, since its formation in 2015. It has 1,600 members and is growing globally, with members and ambassadors from 21 countries. In 2019 she became the first female academic to be awarded the Transparency Trophy in recognition of her commitment to improving governance, transparency and accountability standards within the UK's financial services sector through her role as a Transparency Ambassador and her policy impact. The award was presented by the former Pensions Minister, Baroness Ross Altman.

5. Sources to corroborate the impact

IMP1 Law Commission Consultation Paper No. 215: Fiduciary Duties of Investment Intermediaries. Available at http://www.lawcom.gov.uk/app/uploads/2015/03/cp215_fiduciary_duties.pdf

IMP2 Letter from Team Manager, Commercial and Common Law, Law Commission, dated 12 October 2015

IMP3 Law Commission's Report on Fiduciary Duties of Investment Intermediaries, 2014. Available at http://www.lawcom.gov.uk/app/uploads/2015/03/lc350_fiduciary_duties.pdf

IMP4 Reactions to the Law Commission's Final Report: Investors representing £550bn ask government for statutory clarification of fiduciary duty, UKSIF, 7 July 2014. Available at <http://uksif.org/wp-content/uploads/2014/07/UKSIF-Press-Release-4-July-2014-UKSIF-coordinated-letter-on-Fiduciary-Duty.pdf>

IMP5 Law Commission Pension Funds and Social Investment. Available at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/06/Final-report-Pension-funds-and-socia....pdf>

IMP6 Financial Conduct Authority Asset Management Market Study Interim Report. Available at <https://www.fca.org.uk/publication/market-studies/ms15-2-2-interim-report.pdf>

IMP7 Financial Conduct Authority Asset Management Market Study Final Decision: Market Investigation Reference (MIR) on investment consultancy services and fiduciary management services, p. 8. Available at <https://www.fca.org.uk/publication/market-studies/final-decision-market-investigation-reference.pdf>

IMP8 Competition and Markets Authority: Investment Consultants Market Investigation Final Report (2018) https://assets.publishing.service.gov.uk/media/5c0fee5740f0b60c8d6019a6/ICMI_Final_Report.pdf

IMP9 Testimonial letter from the Chair of the European Federation of Financial Analysts Societies: Research and Bonds Commission, dated 1 December 2017.