Investment Consultants Market Investigation

Final Report

12 December 2018

The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Investment consultancy and fiduciary management are important services for their main customers, pension scheme trustees, helping them to manage over £1.6 trillion of investments on behalf of scheme members. These services therefore have a major influence on pension scheme outcomes, affecting up to half of all UK households. It is vital that competition within these markets works well.

We have found that there is an adverse effect on competition in the investment consultancy market and the fiduciary management market from which substantial customer detriment may be expected to result. We have greater concerns about the fiduciary management market due to the features we have found.

In **investment consultancy**, there is a low level of engagement by some customers in choosing and monitoring their provider. It is also difficult for customers to access and assess the information needed to evaluate the quality of their existing investment consultant and to identify if they would be better off using an alternative provider. This reduces their ability to drive competition and reduces providers' incentives to compete. In turn, this may be expected to result in substantial customer detriment in the market.

In **fiduciary management,** firms which provide both investment consultancy and fiduciary management have an incumbency advantage. This derives from low customer engagement at the point of first moving into the service, investment consultants steering their advisory customers towards their own fiduciary management service and the fact that prospective customers do not have access to comparable information on providers' historic performance, or clarity on their fees.

This means that some customers remain with the firm that is their investment consultant even if a better deal on fiduciary management is available elsewhere. This problem may be exacerbated by the relatively high costs of switching provider. In addition, it is difficult for many customers to access and assess the information they need on the fees of their existing fiduciary manager and to identify if they would be better off using an alternative provider. These features reduce customers' ability to drive competition between fiduciary managers and reduce providers' incentives to compete. In turn, this may be expected to result in substantial customer detriment in the market.

The nature of these markets means that the resulting detriment is likely to be substantial: investment consultants and fiduciary managers provide investment advice and related services to UK pension schemes with assets of at least £1.6 trillion. Any negative impact on scheme outcomes will be both significant and will accumulate and compound over the long time horizon in which pension assets are invested.

Our remedies address these problems in an effective and proportionate way. They are:

- The introduction of mandatory tendering when pension trustees first purchase fiduciary management services and a requirement to run a competitive tender within five years if a fiduciary management mandate was awarded without one.
- A requirement on investment consultants to separate marketing of their fiduciary management service from their investment advice and to inform customers of their duty to tender in most cases before buying fiduciary management.
- The Pensions Regulator to give greater support for pension trustees when running tenders for investment consultancy and fiduciary management services and guidance for pension trustees to support our other remedies.
- Requirements on fiduciary management firms to provide better and more comparable information on fees and performance for prospective customers and on fees for existing customers.
- A requirement for pension trustees to set objectives for their investment consultant, in order to assess the quality of investment advice they receive.
- A requirement on investment consultancy and fiduciary management providers to report performance of any recommended asset management products or funds using basic minimum standards.

We are also making recommendations to government to enable The Pensions Regulator to oversee our remedies on pension scheme trustees and to extend the Financial Conduct Authority’s regulatory perimeter to include all of the main activities of investment consultants.

Introduction

1. This report sets out the decision of the Competition and Markets Authority's (CMA's) market investigation into investment consultancy and fiduciary management services. The CMA has carried out this investigation following a reference from the Financial Conduct Authority (FCA) in September 2017 at the conclusion of its Asset Management Market Study.

2. The purpose of a market investigation is to decide whether any feature or any combination of features of a market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom; that is, whether there is an adverse effect on competition (AEC). Where the CMA finds any AEC, it is required to decide whether remedial action should be taken and if so, to identify effective and proportionate remedies.

The markets we have investigated

3. This investigation has covered two types of service: investment consultancy and fiduciary management. These were defined in the terms of reference[1] for the investigation as:

   (a) **Investment consultancy services** means the provision of advice in relation to strategic asset allocation, manager selection, fiduciary management, and to employers in the UK.

   (b) **Fiduciary management services** means the provision of a service to institutional investors where the provider makes and implements decisions for the investor based on the investor's investment strategy in the United Kingdom. The service may include responsibility for all or some of the investor's assets. This service may include, but is not limited to, responsibility for asset allocation and fund/manager selection.

4. The FCA's assessment of these services within its wider market study was necessarily less in-depth than a dedicated market study would have been. Overall, there has been very little previous work on the investment consultancy and fiduciary management markets, so we believe that this investigation plays an important role in shining a light on this very influential part of pension scheme investment.

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[1] FCA: *Asset Management Market Study, Final Decision: Market Investigation Reference (MIR) on investment consultancy services and fiduciary management services, Annex 1 Terms of Reference*, September 2017 (FCA Terms of Reference)

5. Investment consultancy and fiduciary management services are provided to different types of institutional investor, including pension schemes, charities, insurance companies and endowment funds. We have found that pension schemes represent over 90% of investment consultants' revenues, and we have therefore focussed on these.

6. Investment consultancy has been provided to many pension schemes for over twenty years. Fiduciary management is a more recent service and has grown significantly in the past ten years.

7. Investment consultants and fiduciary managers influence decisions affecting pension scheme assets worth at least £1.6 trillion. These services therefore affect the retirement incomes of millions of people and, if they are high quality, they have the potential to add considerable value to pension scheme outcomes.

8. The services are provided by a range of firms including some large, international firms and smaller, UK-only firms. We have identified 37 firms which offer investment consultancy services and 17 which offer fiduciary management to pension schemes in the UK.

9. The main type of customer for investment consultants and fiduciary managers are trustees of defined benefit (DB) workplace pension schemes. Defined contribution (DC) pension schemes are also customers for these services and, while they represent a smaller source of revenue today, they are growing rapidly as a part of the overall UK pensions landscape and may become a more significant customer group for investment consultants and fiduciary managers in time.

10. Pension trustees must act on behalf of the scheme members to ensure that the scheme is well run and members' benefits are secure. Since 1995, both DB and DC pension scheme trustees have been legally bound to take and consider 'proper advice' before taking investment decisions and this is seen by many to be the reason why they use an investment consultant.

11. Another driver of pension trustees' use of investment consultancy is the number and complexity of investment options they face and the challenge of closing the deficit gap which exists for many DB schemes between their liabilities and assets.

12. Pension trustees are fully accountable for the scheme assets and their investment. The duty to take proper advice on investment is just one of a wide range of legal and regulatory duties faced by pension trustees who are often unpaid lay people, rather than investment professionals (although the use of paid, professional trustees is growing). There is a complex legal and

regulatory framework for pension investment. The Pensions Regulator (TPR) is the main regulator of trust-based pension schemes and the FCA regulates some activities carried out by investment consultants and fiduciary management firms.

Our assessment of competition in these markets

Introduction

13. Our decision is based on a very large amount of evidence we have gathered from firms active in these markets including data, client documents and internal papers. We undertook a large-scale research survey of pension trustees to give us an understanding of them, and we held round table discussions with pension trustees, pension scheme in-house advisers and with asset managers. We have also examined relevant information from secondary sources.

14. The findings of our competition assessment are summarised below.

Market structure

Competitive landscape

15. We have defined separate relevant markets for the supply of investment consultancy services to pension schemes in the UK (the investment consultancy market), and the supply of fiduciary management services to pension schemes in the UK (the fiduciary management market).

16. We have found that the investment consultancy market is not highly concentrated, that concentration is particularly low for smaller schemes, and that a large number of providers are active in this market.

17. The investment consultancy market has doubled in size over the past ten years and generated revenue of around £337 million in 2017. During this time, we have found that concentration in the investment consultancy market has fallen.

18. We have found that the fiduciary management market is expanding rapidly with revenues more than quadrupling since 2011 and reaching around £255 million in 2017.

19. We have found that the fiduciary management market is also not highly concentrated. However, market shares of individual providers have changed considerably over the past ten years and the largest three investment

consultancy providers' combined share of the fiduciary management market has increased from under 10% in 2007 to around 54% in 2017.[2]

Barriers to entry and expansion

20. We have found that the barriers to market entry in investment consultancy and fiduciary management are low. In the last ten years, firms have entered the markets in a variety of ways, including by focussing on a particular customer type or service.

21. We have found higher barriers to entry in fiduciary management as there are likely to be both higher costs and greater economies of scale than in investment consultancy.

22. The barriers to expanding in investment consultancy or fiduciary management may be higher than those relating to entry, and they may be higher in fiduciary management. This is due to the importance of reputation and, more specifically, the incumbency advantage enjoyed by firms that offer both investment consultancy and fiduciary management services and barriers to switching fiduciary managers.

Demand-side assessment

Information on fees and quality

23. We have assessed whether customers are able to access and assess information about investment consultancy and fiduciary management services. In order for there to be effective competition, it is important that customers have access to clear and comparable information on fees and quality, so that they can assess whether they are getting a good deal from their current provider or whether another provider would give them a better deal.

Investment consultancy

24. We have found that information on investment consultancy fees is generally clear for current customers. However, we have found that customers do not have sufficient information to judge the quality of their provider. In particular, many customers do not set objectives against which the quality of their investment consultant can be judged.

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[2] In 2007, only one of the three largest investment consultancy providers offered fiduciary management. From 2010, all three of the largest investment consultancy providers offered fiduciary management and in 2010, their combined market share was approximately 30%.

25. We found there is limited information for prospective customers to compare investment consultants' fees and quality of service. The fee information in tenders is often limited, and it can therefore be difficult for customers to compare providers. It is also very difficult for prospective customers to assess the quality of different providers. For example, the different ways used by investment consultants to show performance of their recommended asset management products make this information difficult to compare.

Fiduciary management

26. We found that fiduciary managers' reporting of performance to current customers is mostly clear and detailed, with progress regularly shown against customers' objectives.

27. We are concerned however that investment performance is often reported on a gross of fees basis which does not reflect the real outcome for the pension scheme. We have also found that information on fees provided by fiduciary managers to current customers lacks sufficient clarity with fees for the fiduciary management service often bundled with the underlying asset management fees. This reduces customers' ability to assess the value for money of the fiduciary management service and of the underlying funds.

28. We have found that prospective fiduciary management customers find it difficult to compare quality across providers due to the nature and variety of the methods used by firms to calculate investment track records. As with investment consultants, the different methods used to show performance of recommended asset management products makes this information difficult to interpret and compare.

29. Comparing the fees of alternative providers can also be challenging. Although we saw examples of good practice in tenders, there is no consistent framework for reporting fees, there is wide variation in the reporting of asset management fees and the overall cost of service is often not indicated. Many customers do not see information on the costs of transitioning into and out of these services despite the fact that these can be considerable.

Trustee engagement

30. We have found substantial variation in the ability of pension trustees to monitor and assess their investment consultancy and fiduciary management providers. While many trustees are experienced, and the majority hold a relevant qualification, TPR research shows that many lay trustees do not meet TPR's standards of required knowledge and understanding.

31. We have measured trustee engagement by considering the following four indicators:

(a) Switching to another provider;

(b) Tendering and/or switching;

(c) Carrying out a formal review of fees and/or quality;

(d) Commissioning an external review of these.

32. We have found that levels of engagement in investment consultancy vary considerably across different types of pension schemes: small schemes and DC schemes are less engaged in this market based on a number of indicators. Our finding is that barriers to switching investment consultant are low.

33. We have found it difficult to assess levels of customer engagement in fiduciary management. While the CMA survey indicates that formal levels of engagement are lower in fiduciary management than in investment consultancy (with a lower switching rate, for example), we do not draw a firm conclusion from this, as fiduciary management is a relatively new service. However, we have found that engagement is low when customers first move into fiduciary management.

34. We have found that there are likely to be much higher costs and a greater time required to switch fiduciary management provider than investment consultancy provider, and that this may constitute a barrier to switching.

The sale of fiduciary management services by investment consultancy firms

35. We have considered whether there are competition problems arising from the sale of fiduciary management services by integrated investment consultancy and fiduciary management (IC-FM) firms.

36. Many pension trustees have concerns regarding this issue: our survey found that 30% have concerns about investment consultants using their position to steer clients into their own fiduciary management services and think more should be done to address this, while a further 30% think it is a concern but is generally well managed. These concerns were also expressed by trustees at our roundtable discussions.

37. In our view, whether to buy fiduciary management and which provider to appoint are very important decisions for pension scheme trustees as they are delegating significant control of the scheme's assets to the fiduciary

management provider. These decisions also have long-lasting consequences given the costs of switching provider or out of the service altogether.

Customer engagement when selecting a fiduciary management provider

38. We have found a low level of engagement when pension schemes first buy fiduciary management as indicated by levels of formal market testing. In 2016, just 34% of customers buying fiduciary management had carried out a formal tender. We found that tender rates were lower amongst customers who bought fiduciary management from their existing investment consultant: only 14% of these had formally tendered. We also found that half of pension schemes using fiduciary management appointed the firm that was already their investment consultant.

IC-FM firm behaviour

39. We have found that IC-FM firms have strategies and financial incentives to sell fiduciary management to their existing advisory clients.

40. These firms have significant interaction with existing advisory customers over the period in which they consider buying fiduciary management. We found that some of the ways IC-FM firms introduce and advise on fiduciary management has the effect of steering trustees towards the firm's own service and makes it less likely that customers consider alternatives and get the best value for money.

41. We have not found any evidence that there is an unmitigated conflict of interest here; that is, that firms are seeking to introduce fiduciary management services that they believe to be against their clients' interests.

Potential conflicts of interest

42. We considered some other potential conflicts of interest. These included:

- fiduciary management firms investing in their own asset management or investment products.
- business relationships that investment consultants have with asset managers or the receipt of gifts and hospitality from them that might affect the independence of the consultants' manager ratings.

43. We also considered submissions made to us that some other potential conflicts exist. For example, IC-FM firms said that investment consultants that do not offer fiduciary management face a conflict of interest as they would not

wish to recommend fiduciary management to their customers in case it replaced their own investment consultancy service.

44. We did not find evidence that any of these potential conflicts gave rise to a competition problem.

Employee benefit consultants’ provision of master trust pensions

45. Our terms of reference for this investigation also included the provision to employers of employee benefit consultancy in relation to the design and implementation of pension schemes by investment consultants. We considered whether there are competition problems arising from the sale of master trust pensions by investment consultants that also provide employee benefit consultancy services.

46. We did not find evidence that any of these potential conflicts gave rise to a competition problem. In particular, we found that the master trusts of investment consultants that also act as employee benefit consultants currently have limited take-up.

47. Our view, however, is that government may wish to consider whether employee benefit consultants’ provision of products, such as master trusts, to their customers raises any broader risks to the quality of employees’ pension benefits.

Market outcomes

48. We have concluded that some market outcomes mean that aspects of the investment consultancy and fiduciary management markets function well:

- Trustees are generally satisfied with the services they receive;
- Providers can achieve greater discounts from asset managers than schemes would be able to achieve themselves, particularly in fiduciary management; and
- Asset allocation advice is tailored to clients’ specific circumstances and advice on issues such as hedging of interest rate risks may have added value in recent years.

49. However, we have also concluded that these markets do not function well in other ways, and that low customer engagement and customer difficulty in accessing information are resulting in worse outcomes for some customers. In particular:

- In fiduciary management, we found evidence that more engaged trustees pay significantly lower fees than less engaged trustees when they remained with their existing investment consultant. There is some evidence that more engaged trustees pay less for investment consultancy too;
- Less engaged trustees are likely to get lower asset manager discounts negotiated by their investment consultant;
- Some less engaged trustees receive a lower quality of service, for example they may be served by a less experienced team;
- Investment consultancy providers with above average quality have persistently lower market shares.

50. Our quantitative analysis of investment consultants' recommended asset manager products found that, while they do appear to outperform benchmarks on a gross of fees basis, there is little evidence that they collectively outperform benchmarks net of fees. The evidence does not demonstrate whether providers collectively add value through this service, though some individual firms may do so.

51. Excess profitability can be an indicator of competition problems but we did not have the evidence to assess economic profitability in these markets. We found an aggregate net profit margin of [20 – 30%] in investment consultancy and fiduciary management markets combined.

Conclusions of our competition assessment

52. We have found that investment consultancy and fiduciary management are not highly concentrated markets, that barriers to entry and expansion are low in each and that both markets are growing. We found that customers have access to a sufficient number of providers in both markets.

53. In both markets, we have found that there are weaknesses in the demand side based on a low level of engagement by some pension trustees with investment matters. In addition, for those who engage with the market, the information that trustees need to assess the value for money of these services is difficult to access. These two factors reduce the competitive pressure on investment consultants and fiduciary managers.

54. We have stronger concerns about competition in the fiduciary management market. In particular at the point at which pension schemes first purchase

fiduciary management, IC-FM firms have an incumbency advantage with respect to their advisory customers.

55. We have also found that fiduciary management has higher ongoing and switching costs and, while we consider the service to be of potential benefit to some pension schemes, it represents a significant change in how those schemes govern their investments and can have lasting consequences. The initial purchase of the service should therefore be made with great care.

56. In fiduciary management, there has been a notable increase in the market share of the three largest IC-FM providers in recent years. In this context, our concern is that their incumbency advantage could contribute to further growth in their market share which would result in greater market concentration in the future. This could increase barriers to expansion for non-integrated fiduciary management providers, weakening competitive pressure on IC-FM firms and making it more difficult for customers to get a good deal.

DC pension schemes

57. Our investigation into investment consultancy and fiduciary management has covered both DB and DC schemes as they both use these services.

58. One of the key dynamics in the pensions industry is a move by employers away from DB towards DC schemes. This has been accelerated by the government's auto-enrolment requirement, whereby most employers have had to enrol employees into a workplace scheme. We recognise that DC schemes represent the future shape of pensions in the UK.

59. A defining feature of DC schemes is that individual members bear the risk of poor investment outcomes, rather than employers. This makes it even more important that DC schemes take good investment decisions. However, there are some indicators that DC pension scheme trustees spend less time on investment matters than those of DB schemes.

60. A potential indicator of this is that DC schemes' use of investment consultancy and fiduciary management is much lower at 38%, compared to 82% for DB schemes; and, when they do use them, we found that they have lower levels of engagement as measured, for example, by switching: 16% have switched in the past five years, compared to 28% of DB schemes.

61. We encourage regulators and policy makers to continue to consider how best to ensure that DC scheme trustees are sufficiently focussed on investment matters.

Our decision on competition

Investment consultancy

62. We have found that the following features, individually and in any combination, restrict or distort competition in connection with the supply and acquisition of investment consultancy services in the UK to and by pension schemes. Accordingly, there is an AEC in respect of investment consultancy services. The features are as follows:

    (a) Low levels of engagement by some customers;

    (b) Lack of clear information for customers to assess the quality of their existing investment consultant;

    (c) Lack of clear and comparable information for customers to assess the value for money of alternative investment consultants.

63. These features make it difficult for many customers to access and assess the information needed to evaluate the quality of their existing investment consultant and identify if they would be better off using an alternative provider. This in turn reduces the ability of customers to drive competition between investment consultants. It also reduces the incentives for investment consultants to compete for customers on the basis of fees and/or quality of service.

Fiduciary management

64. We have found that the following features, individually and in any combination, prevent, restrict or distort competition in connection with the supply and acquisition of fiduciary management services in the UK to and by pension schemes. Accordingly, there is an AEC in respect of fiduciary management services. The features are as follows:

    (a) IC-FM firms steering their advisory customers towards their own fiduciary management service;

    (b) Low levels of customer engagement at the point of first moving into fiduciary management;

    (c) Lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers;

    (d) Lack of clear information for customers to assess the value for money of their existing fiduciary manager;

(e) Barriers to switching fiduciary manager.

65. Features (a) to (c) above result in an incumbency advantage for IC-FM firms and they prevent, restrict or distort competition at the point at which customers first move into fiduciary management. This means that some customers remain with the firm that is their incumbent investment consultant even if a better deal on fiduciary management is available elsewhere. This reduces the ability of customers to drive competition between fiduciary managers. It also reduces the incumbent provider’s incentives to compete for customers on the basis of fees and/or quality of service.

66. Features (c) to (e) set out above prevent, restrict or distort competition once customers have bought fiduciary management services. They make it difficult for many customers to access and assess the information they need to evaluate the fees of their existing fiduciary manager, to identify if they would be better off using an alternative provider and to act on this information by switching. This reduces their ability to drive competition between fiduciary managers. It also reduces the incentives for fiduciary managers to compete for customers on the basis of fees and/or quality of service.

Customer detriment

67. We consider that the AECs we have found may be expected to result in substantial customer detriment in both the investment consultancy and fiduciary management markets. This detriment may be expected to manifest itself in terms of customers paying higher prices for these services and/or receiving worse outcomes in terms of service quality.

68. The following factors underlie our view that this detriment may be expected to be substantial:

(a) Investment consultants advise on, and fiduciary managers take decisions for, the investment of at least £1.6 trillion of pension scheme assets which affect millions of pension scheme members and their dependents;

(b) These investment decisions can have a major impact on pension scheme outcomes;

(c) Any negative impact on scheme outcomes will accumulate and compound over time, especially given the length of many investment consultant and fiduciary management appointments and the long time horizon over which pension scheme investment decisions are made.

69. In investment consultancy, the fact that customers face barriers in assessing the quality of their existing investment consultant and comparing it with

alternative providers makes it difficult for them to select the best provider for their scheme. This in turn means there are weaker incentives for firms to compete vigorously, as they may be less likely to lose customers if they offer a worse deal, and less likely to gain them if they offer lower prices or a higher quality service.

70. In fiduciary management the risk of detriment will be even greater, as these information and trustee engagement features are compounded by two further features. First, the behaviour of the incumbent IC-FM firm can make it even less likely that customers properly shop around, which may further reduce firms' incentives to compete vigorously. Second, the greater switching costs in fiduciary management mean that customers may not be able to renegotiate or readily switch to a better alternative, so the detriment may persist for a longer period of time.

71. As a result of these competition problems, customers may be expected to pay higher prices for investment consultancy and fiduciary management than they otherwise would.

72. The problems we have identified may also be expected to result in customers receiving a lower quality service and the magnitude of this detriment is particularly difficult to estimate. However, lower quality advice or implementation would be likely to result in an ongoing shortfall in investment performance which would be much greater in magnitude than the impact on prices.

Our decision on remedies

73. Having found an AEC, we have considered whether and what remedial action the CMA should take, or that it should recommend others to take.

74. We have chosen a package of remedies to address, in an effective and proportionate way, the AECs and the detrimental effect on customers which may be expected to result from them.

75. The remedies are as follows:

   (a) **Remedy 1:** we will place a duty on pension scheme trustees to carry out a competitive tender before awarding a fiduciary management mandate of 20% or more of their scheme assets for the first time. If they have already delegated this level of scheme assets to a fiduciary management provider, but did not carry out a competitive tender, then they must do so within five years. We will also prohibit fiduciary management firms from

accepting a mandate from a customer subject to this obligation unless the customer has confirmed that it was competitively tendered.

(b) **Remedy 2:** we will require investment consultancy firms that also offer fiduciary management services to separate their marketing of fiduciary management from their provision of investment consultancy advice, to identify the marketing of fiduciary management as such and remind pension scheme trustees of their duty to tender for this service in certain cases.

(c) **Remedy 3:** we recommend that TPR provides guidance to pension schemes on running competitive tenders for fiduciary management and investment consultancy services.

(d) **Remedy 4:** We will require fiduciary management providers to disaggregate fees for current customers, including providing enhanced disclosure of underlying investment fees.

(e) **Remedy 5:** fiduciary management providers will be required to provide more information about their fees to prospective customers, including costs relating to transition or exit.

(f) **Remedy 6:** fiduciary management firms will be required to report their performance track record to prospective customers using a standardised methodology.

(g) **Remedy 7:** pension scheme trustees will be required to set strategic objectives for their investment consultant so that they are able to judge the quality of their service.

(h) **Remedy 8:** investment consultants will be required to report the performance of any recommended asset management products and their own investment products to an agreed set of standards where reporting is not already covered by other regulatory requirements.

76. To support these remedies, we make the following recommendations to government and regulators:

(a) HM Treasury should pass the necessary legislation to extend the FCA's regulatory perimeter to include all of the main activities of investment consultants.

(b) TPR should develop guidance to support pension scheme trustees in asking for and using the enhanced information they will be able to access as a result of our remedies package.

(c) The FCA should maintain oversight of the transparency of asset management fee reporting, in order that the progress made by the Institutional Disclosure Working Group is maintained.

(d) The Department for Work and Pensions (DWP) should pass the necessary legislation to enable TPR to oversee the remedies which impose requirements on pension scheme trustees.

Effectiveness of the remedies

77. Having considered the factors which our guidance states are applicable, we are satisfied that our remedies are likely to be effective at addressing the AECs we have found and the customer detriment that may be expected to result.

Fiduciary management remedies

78. Our requirement on pension scheme trustees to tender for fiduciary management, together with the requirement for providers of the service to separate marketing from advice will address IC-FM firms' steering of their clients into their own fiduciary management service. Trustees will also have access to improved advice on tendering for and buying this service from TPR. The requirements on firms to provide improved information on fees and performance to prospective clients will also address this feature.

79. These remedies will also address the low level of customer engagement in purchasing fiduciary management. The requirement for pension scheme trustees to tender their existing fiduciary management mandate if they did not do so when purchasing it will address previous low levels of customer engagement.

80. These remedies, together with the requirement on fiduciary management providers to provide better information on fees and switching costs for prospective customers, will address the lack of clear and comparable information for customers and will therefore enable them to assess the value for money of alternative fiduciary managers.

81. The requirement on fiduciary management providers to provide better information on underlying fees to existing customers will enable them to monitor both the overall fees paid for their fiduciary management service, and the fees paid for the distinct elements of the service.

82. The recommendations to DWP and HMT respectively to pass legislation to enable TPR and FCA to oversee the remedies on pension scheme trustees

and investment consultants and fiduciary management providers respectively will make remedy oversight and enforcement effective and efficient as it will be part of broader regulation of these markets.

83. The recommendations to TPR to provide guidance for pension trustees and to FCA to maintain oversight of asset management fee transparency will improve information available to pension trustees to drive competition in these markets.

84. By tackling the underlying causes of the AEC, these remedies will also address the customer detriment that may be expected to result from it. They will enable pension scheme trustees to assess the value for money of their existing and alternative offers and will encourage both the incumbent and alternative providers to compete more vigorously for customers on price and quality.

Investment consultancy remedies

85. Our requirement on pension scheme trustees to set objectives for their investment consultant will address the low level of engagement we have seen and the lack of information for pension scheme trustees to assess the quality of their investment consultant. Guidance from the sector regulator on how to set objectives and on running competitive tenders, will also address this.

86. The requirement on investment consultants to report the performance of any recommended asset management products and in-house funds to agreed minimum standards will address the lack of information available for pension scheme trustees to assess the value for money of alternative investment consultants.

87. By tackling the underlying causes of the AEC, these remedies will also address the customer detriment that may be expected to result from the AEC by making it easier for trustees to assess the price and quality of their incumbent and alternative investment consultants. This will help trustees to more actively engage in the market and drive competition between providers.

Effectiveness as a package

88. We consider this to be a coherent package of remedies in which the various measures interact positively with each other.

89. We have considered the extent to which the remedies are capable of effective implementation, monitoring and enforcement; the timescales over which they will take effect; their consistency with existing and expected future laws and regulations and their coherence as a package. We have concluded that the

package is effective in these respects and we conclude that it represents an effective solution to remedy, mitigate or prevent the AECs and resulting customer detriment that we have found.

Proportionality

90. In assessing the proportionality of our remedies, we have considered alternative remedies and whether they may be as effective but less onerous than the remedies that we have decided upon. We consider that remedy 1, which requires pension scheme trustees to tender for fiduciary management, is as effective in driving competition between providers but less onerous than a remedy which would require pension scheme trustees to engage in ongoing tendering or switching providers.

91. We have also considered the design of each remedy to ensure that it is no more onerous than necessary to achieve its objectives. For example, we have decided that pension scheme trustees should not be required to conduct an open invitation tender, but to demonstrate compliance by showing that they have approached a minimum of three providers.

92. We have assessed the potential benefits of the remedies and concluded that there may be both direct financial benefits, in terms of lower fees being paid to providers and indirect, but potentially much greater, benefits to be derived from the quality of these services being higher.

93. We have assessed the potential costs of our remedies and concluded that they are not likely to impose significant costs on either pension schemes or providers.

94. We conclude that the potential benefits of our remedies package are likely to substantially outweigh the potential costs. Although many of the benefits are hard to quantify, the investment consultancy and fiduciary management providers influence decisions affecting at least £1.6 trillion of pension scheme assets and even small improvements in quality of these services or reductions in price will produce substantial benefits which will likely increase over time. In comparison, the likely cost of our remedies is small.

Remedy implementation

95. Our remedies will be implemented by way of CMA order(s) and as a result of the recommendations we make in this report. We expect most of our remedies to be in place by the end of 2019.

96. We consider that the sector regulators for pension scheme trustees (TPR) and for investment consultants and fiduciary management firms (the FCA) are best placed to oversee our remedies as part of their ongoing sector regulation. We expect that the necessary steps will be taken by government to enable this, including through passing legislation.

97. To the extent that the effect of the CMA's order(s) is incorporated into sector regulation, then the relevant provisions will cease to apply. If this does not happen and the CMA retains oversight of these remedies, then the order(s) will have a duration of ten years.

1. Our task

Introduction

1.1 On 14 September 2017 the Financial Conduct Authority (FCA), in exercise of its power under section 131 of the Enterprise Act 2002 (EA02),[3] made a reference for a market investigation into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK.

1.2 On 19 September 2017, the CMA appointed from its panel a group of four independent members to lead the investigation.[4]

1.3 On 18 July 2018, the group published its provisional decision report, including its provisional decision on remedies. This report sets out the final decision of the group.

Our statutory duties

1.4 The CMA is required to decide whether 'any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom'.[5] If the CMA, decides that there are such features or combination of features, then there is an adverse effect on competition (AEC).[6] A 'feature' of the market refers to:

(a) the structure of the market concerned or any aspect of that structure;

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.[7]

1.5 If the CMA finds that there is an AEC, it is required to decide:

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[3] As provided for by the Financial Services and Markets Act 2000, section 234I.
[4] Details of the members of the Group are on our website.
[5] EA02, section 134(1). For present purposes, 'relevant market' means a market in the United Kingdom for goods or services of a description specified in the reference made by the FCA (EA02, section 134(3)(b)).
[6] EA02, section 134(2).
[7] EA02, section 131(2).

(a) whether action should be taken by it, or whether it should recommend the taking of action by others, for the purpose of remedying, mitigating or preventing the AEC, or any detrimental effect on customers[8] so far as it has resulted from, or may be expected to result from, the AEC;

(b) and, if so, what action should be taken and what is to be remedied, mitigated or prevented.[9]

1.6 In deciding the above questions on remedies, the CMA must, in particular, have regard to 'the need to achieve as comprehensive a solution as is reasonable and practicable to the [AEC] and any detrimental effects on customers so far as resulting from the [AEC];[10] and the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market(s) concerned.[11]

Background to the reference

1.7 Prior to making the reference, the FCA had undertaken a market study into asset management.[12] As part of this study, it identified potential competition concerns relating to investment consultants who play a significant role in the market for institutional asset management.

1.8 In November 2016, the FCA consulted on its provisional decision to make a market investigation reference in relation to investment consultancy and fiduciary management. In response to this, the three largest investment consultants offered undertakings in lieu of a reference (UIL). The FCA rejected the UIL for the reasons set out in its final decision to make a market investigation reference; in particular, the FCA stated that it could not be confident that the UIL package would achieve as comprehensive a solution as was reasonable and practicable to the potential adverse effects on competition it had identified.[13]

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[8] A detrimental effect on customers (including future customers) is defined in section 134(5) EA02 as a detriment taking the form of: (a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market(s) to which the feature or features concerned relate); or (b) less innovation in relation to such goods or services.
[9] EA02, section 134(4).
[10] EA02, section 134(6).
[11] EA02, section 134(7).
[12] Asset managers manage investments on behalf of individual retail investors and institutional investors such as pension schemes – for more information see the FCA Asset Management Market Study launched in November 2015.
[13] FCA Reference Decision, paragraph 4.35.

1.9 The FCA concluded that a full investigation of the sector by the CMA would enable the identification of all the relevant issues and allow for appropriate remedies to be put in place if the CMA were to find any AEC.[14]

Scope and focus of the investigation

Terms of reference

1.10 The FCA's terms of reference said,[15] for the purposes of this reference:

(a) 'investment consultancy services' means the provision of a service to institutional investors where the provider advises the investor in relation to their investment strategy in the United Kingdom. This service may include, but is not limited to, advice on strategic asset allocation, fund/manager selection, advice on whether fiduciary management services are appropriate for the investor, and advice to employers in the United Kingdom; and

(b) 'fiduciary management services' means the provision of a service to institutional investors where the provider makes and executes decisions for the investor based on the investor's investment strategy in the United Kingdom. This service may include responsibility for all or some of the investor's assets and may include, but is not limited to, responsibility for asset allocation and fund/manager selection.

1.11 Under the terms of reference, the phrase 'institutional investors' means legal entities invested in funds or mandates, including pension schemes, charities, insurance companies, and endowment funds.

1.12 For the purposes of our remedies, we have consulted on more detailed definitions of investment consultancy services and fiduciary management services, which will be finalised in the CMA's remedies Order.

Focus of the investigation on pension schemes

1.13 Investment consultancy and fiduciary management services are provided to different types of institutional investors including charities, endowment funds, employers and insurance schemes. However, the core client base of providers of these services is occupational pension schemes.

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[14] FCA Reference Decision, paragraph 4.35.
[15] FCA Terms of Reference.

1.14 We decided to focus on the provision of investment consultancy and fiduciary management services to pension schemes which represent 90% of combined investment consultancy and fiduciary management revenues and 92% of combined assets under advice/management.

Pension schemes represent 90% of investment consultants' and fiduciary managers' revenues.

1.15 The FCA's work on investment consultants as part of its broader market study had also focussed on pension schemes.

1.16 Use of these services amongst other institutional investors such as charities, is limited. These other types of client represent just 10% of combined investment consultancy and fiduciary management revenues and 8% of the assets on which they advise or manage. Use amongst in-house and third-party insurance investors appears to be even smaller than for charities.

1.17 Most parties have supported our focus and have not raised any particular concerns that would warrant the CMA carrying out analysis on other types of institutional investors.[16]

Previous reviews and future developments

1.18 Pension scheme investment has been subject to several previous reviews by the UK government and other organisations.[17] While our investigation is focused on competition issues relating to investment consultancy and fiduciary management, these reviews have informed our work.

1.19 There has been relatively little previous work undertaken directly on investment consultancy and fiduciary management services. Therefore, one of the key functions of this investigation has been to 'shine a light' on these activities and their role within the wider pensions sector.

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[16] We consulted on our decision to focus on pension schemes in our progress update in February 2018.
[17] Including: HM Treasury (March 2001) – the Myners Review, *Institutional Investment in the UK: A Review*; OFT (September 2013, revised February 2014), *Defined contribution workplace pension market study*; The Law Commission (June 2014), *Fiduciary Duties of Investment Intermediaries*; The Law Commission (June 2017), *Pension Funds and Social Investment* (June 2017).

2. Our approach

Introduction

2.1 A market investigation is a detailed examination of whether there is an AEC in the markets under review. Investigations are carried out on the basis of information provided to the CMA by parties to the investigation and, throughout this investigation, the CMA has made extensive requests for information to many parties.

2.2 The CMA has also consulted extensively on its emerging findings in working papers, on its provisional decision report and on areas which have been updated since then.

Evidence gathering

2.3 In September 2017 we sent market and financial questionnaires to a wide range of firms who are active in the relevant markets and other key organisations. We made many further written requests and held telephone calls and/or meetings. This evidence helped us understand the relevant markets, suppliers and services, as well as providing much of the underlying data on which this report is based.

2.4 We also commissioned a large survey of trustees of UK occupational pension schemes (the CMA survey), which was undertaken by IFF Research. The survey aimed to gather evidence on how pension scheme trustees use investment consultancy and fiduciary management services and how they view these markets. The results of this survey were published on our case page in March 2018. Our assessment draws from the CMA survey alongside other evidence we have gathered.

Consulting on our analysis

2.5 We have consulted extensively on our analysis and provisional decision report:

(a) On 21 September 2017 we set out the areas on which we intended the investigation would focus in an issues statement. We received 32 responses from a range of stakeholders and we published non-confidential versions of these on our case page.

(b) Between March 2018 and May 2018, we published eight working papers presenting our analysis and emerging findings on a number of areas. We

published non-confidential versions of the responses we received to these on our case page.

(c) In March 2018, following publication of our working paper on asset management product recommendations,[18] we disclosed the underlying data by way of a confidentiality ring.

(d) On 18 July 2018, we published our provisional decision report, setting out our provisional decisions on both competition and remedies. We received 41 responses to the provisional decision report.

(e) In August 2018, we also disclosed additional underlying data to the provisional decision report in a confidentiality ring. The external advisers of four firms accessed this data.

(f) In October 2018, we published a working paper on additional analysis we carried out on market outcomes. This was undertaken following our consideration of responses to the provisional decision report. We also made a further disclosure of the data underlying this area of our investigation. We received four responses to this working paper and the external advisers of three firms accessed the underlying data.

(g) In November 2018, as part of our consideration of responses to the provisional decision report we consulted on draft definitions of investment consultancy services and fiduciary management services for the purposes of potential remedies. We received nine responses to this consultation.

Engagement with stakeholders

2.6 We have engaged with many stakeholders during the investigation to seek their input and views on the issues.

2.7 We have worked closely with relevant sector regulators, the FCA and The Pensions Regulator (TPR), and government departments, particularly the Department for Work and Pensions (DWP) and HM Treasury (HMT). The investigation has benefited from their knowledge of the sector and taken into account their ongoing work and policy developments.

[18] Working paper: Asset manager product recommendations, March 2018.

We have worked closely with the Financial Conduct Authority, The Pensions Regulator and the Department for Work and Pensions. The investigation has benefitted from their knowledge and taken into account their ongoing work.

2.8 At the outset of the investigation, we made site visits to three large investment consultants and fiduciary managers: Aon Hewitt Limited (Aon), Mercer Limited (Mercer) and Willis Towers Watson Limited (WTW).

2.9 We held two sets of hearings with parties to the investigation:

(a) From November 2017 to January 2018, we held hearings with 25 parties to discuss issues and potential remedies in the event that we were to find any AECs.

(b) Following publication of the provisional decision report, we held 12 hearings with parties to discuss the responses they had made.

2.10 We have also held five roundtables to seek views from asset managers, pension scheme trustees and pension scheme chief investment officers.

2.11 We have published summaries of these hearings and roundtables on our case page.

2.12 We also reached out more broadly to organisations heavily involved in this sector including the Pensions and Lifetime Savings Association (the PLSA), the Society for Pension Professionals, the Investment Association, the Association of Member Nominated Trustees, the European Pension Fund Investment Forum, the Transparency Taskforce, the CFA Institute and CFA Society of the UK.

2.13 We would like to thank all those who have assisted in our investigation.

3. The industry

- Pension scheme trustees are required by law to 'obtain and consider proper advice' before investing. This is often provided by investment consultants and fiduciary managers.
- Pension scheme trustees have significant assets to invest. Many schemes have a large funding gap; that is, their liabilities are greater than their assets.
- Investment consultancy and fiduciary management services provide advisory and investment services to help pension scheme trustees manage their assets.

3.1 This chapter gives an overview of the industry we are investigating and its main customers – pension schemes. It explains what investment consultancy and fiduciary management services are, who supplies these services, how the pensions sector has developed over time and gives an overview of the legal and regulatory framework in which these services operate. This provides relevant context for the competition and remedies analysis we have undertaken.

The need for investment advice

3.2 Investment consultants and fiduciary managers provide advisory and investment services to institutional investors, in particular pension schemes, to help them manage and invest their funds.

3.3 Institutional investment plays a significant role in the UK's economy. The Investment Association estimates that UK pension scheme assets were worth £3 trillion at the end of December 2017.[19]

3.4 The scale of assets affected by the advice and services provided by investment consultants and fiduciary managers is very large: we estimate that investment consultants potentially affect more than £1.6 trillion of assets[20]

[19] Investment Association (September 2018), *Asset Management in the UK 2017-2018, The Investment Association Annual Survey,* p56.
[20] This calculation is indicative. Of the £3 trillion UK pension scheme assets in 2017, the Investment Association estimates that £1.9 trillion was accounted for by DB pensions and £190 billion was accounted for by trust-based DC pensions (Investment Association (September 2018), *Asset Management in the UK 2017-2018, The Investment Association Annual Survey,* p56). The CMA survey indicates that 82% of DB pension schemes use investment consultants and 38% of DC schemes use investment consultants. We have assumed that investment consultancy providers advise on schemes' entire assets, and that schemes which purchase investment consultancy are on

through their advice and that fiduciary managers have assets of around £110 billion under mandate.[21] We estimate that over 73% of pension schemes use investment consultants and 13% use fiduciary managers.[22]

Investment consultants influence over £1.6 trillion of UK pension scheme assets.

Fiduciary managers have around £110 billion of UK pension scheme assets under management.

3.5 Therefore, although a relatively small sector, with estimated revenues of £337 million for investment consultancy and £254 million for fiduciary management in 2017,[23] investment consultants and fiduciary managers play a significant role within the wider institutional investment and asset management industry.

3.6 Investment consultancy services emerged in the 1980s with increasing demand by pension schemes and other investors for specialist advice, due to their growing awareness of the differences in returns across asset classes and between asset managers.

3.7 The Pensions Act 1995 (PA95), which was passed following the Robert Maxwell pension scandal, introduced various improvements to pension scheme governance and greater protection for pension scheme members; and these changes included a legal obligation for pension scheme trustees to obtain and consider 'proper advice' before making investment decisions.[24] This duty is often discharged by the use of investment consultants and fiduciary managers.

Pension scheme trustees have a legal duty to seek advice on investment matters and many obtain this from investment consultants.

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average no larger or smaller than schemes which do not. However, since the CMA survey shows that schemes which purchase investment consulting are likely to be larger than average, we consider that this is a lower bound.
[21] We cannot apply the same methodology here because the prevalence of partial mandates means the assumption that advice is taken across all assets will not be true for a very high proportion of schemes. We therefore summed the assets in the data provided to us by providers. This could overstate the figure if schemes use more than one provider, or understate them if we did not receive data from all providers.
[22] CMA analysis of CMA survey; we have treated schemes responding to the survey with 'don't know' as not purchasing the relevant services. Further details of how we have analysed our survey is set out in Appendix 4.
[23] These figures are upper bound estimates. See chapter 4 for more information.
[24] PA95, section 36(3).

3.8 From the early 1990s, pension scheme liabilities grew relative to their assets, and this resulted in some large deficits. The risk of not being able to meet their liabilities to pension scheme members underlies the need for pension scheme trustees to manage their investments well.

Customers of investment consultancy and fiduciary management: pension schemes

3.9 The main customers of investment consultancy and fiduciary management services are trust-based, workplace pension schemes. These are one of several different types of pension schemes which we outline below.

3.10 In trust-based occupational pension schemes, trustees have the task of ensuring that the scheme is well run and members' benefits are secure. In these schemes, the trustee(s) are responsible for determining how the assets are invested. Generally, the trustee(s) are fully accountable for the scheme and its investment; however, they can take investment advice (and in some cases must do) and may also delegate investment decisions.[25] Trustees play an important role as they act on behalf of, and protect the interests of, the end consumer (that is, pension scheme members).

3.11 Investment has also become increasingly complex and there are different strategies that pension scheme trustees can take when investing the scheme's assets, and many thousands of products they can invest in, including risk management products such as hedging. However, many trustees are not investment specialists, nor do they have professional experience or qualifications in investment. Therefore, they take advice to help them invest and manage these assets.

3.12 Many large pension schemes have in-house staff who help them manage their investments. They may also use investment consultants. The employer behind a workplace pension scheme will be responsible for the covenant[26] of a DB scheme and so may also use the services of investment consultants, although typically to a much lesser degree.

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[25] Where the power to make investment decisions is delegated, trustees may not be responsible for the default of a fund manager to whom powers have been delegated, provided that the trustees have taken reasonable steps to ensure that the adviser has appropriate knowledge and experience and is carrying out their role competently in accordance with relevant legislation. (PA95, section 34).

[26] The covenant is the employer's legal obligation and financial ability to support their defined benefit scheme now and in the future.

3.13 At present, occupational pensions arranged by an employer are typically of two main types, DB schemes and DC schemes:

- DB (defined benefit) schemes provide a pre-determined retirement income to all members, accrued on the basis of length of service and the member's final or career-average salary. Typically, both the employer and member will make contributions to the scheme. The employer acts as scheme sponsor and is responsible for ensuring that members receive their benefits, potentially by funding the scheme through a covenant. Therefore, ultimately the benefit that a member receives may not depend wholly on the performance of investments.

- DC (defined contribution) schemes are those where members (and employers) contribute an amount to be invested but there is no pre-determined benefit. The investment risks which determine the scheme benefit are borne by the scheme member rather than the employer. DC schemes give no certainty about the benefit the member will receive on retirement. DC pension schemes can be either contract-based or trust-based.[27]

3.14 In addition to these two main types there are also a variety of different pension schemes which typically offer a combination of DB and DC elements, which are known as 'hybrid' schemes. There are different variants of hybrid schemes but for example these can include schemes which are DB but have a DC top-up, DC schemes which also have a contracted-out DB element and separate DB and DC parts under one pension scheme trust.

3.15 The demand for investment consultancy and fiduciary management services is strongest amongst DB and Hybrid pension schemes which have financial liabilities. DB and Hybrid schemes make up about 90% of investment consultancy revenues derived from pension schemes, and a large majority of fiduciary managers' revenues. DC schemes also use these services but currently much less than DB schemes despite the fact that their membership has grown quickly.

3.16 In trust-based pension schemes, a pension scheme trustee is a person or company, acting separately from the employer, who holds assets on trust for the beneficiaries of the scheme. Most trustee boards include different types of trustees, such as: member nominated trustees, employer nominated trustees

[27] Contract-based: Group Personal Pensions are arranged by employers. However, the employer has no ongoing legal responsibility for monitoring the performance of the scheme once it is in place. Whereas in trust-based schemes these are set up by the employer and the responsibility for governing the scheme lies with a board of trustees.

or directors, professional trustees (who may work on a paid basis across several pension schemes) and corporate trustees.

Recent trends in pensions

3.17 There are some recent trends in workplace pensions which have some impact on the markets we are investigating. These include the growth in workplace pensions arising from auto-enrolment and the growth of DC pensions and master trusts; alongside the continued significance of DB pensions.

3.18 The membership and value of assets of occupational pension schemes have been growing rapidly within the UK due to recent legislative changes which have created new pension duties for employers. There has been particularly rapid growth in membership of DC schemes since the introduction of auto enrolment: from October 2012, UK employers have had a duty to enrol eligible employees automatically into a qualifying pension scheme.[28]

3.19 Membership of DC pension schemes has grown while the number of open DB schemes has fallen. Employers are now much more likely to offer a DC scheme than a DB scheme. The majority of DB schemes are now closed to new members. However, with around £1.5 to £2 trillion of assets and around 10.5 million scheme members,[29] they remain important to many working people and retirees.

Defined benefit pension schemes have around £1.5 to £2 trillion of assets and 10.5 million UK members.

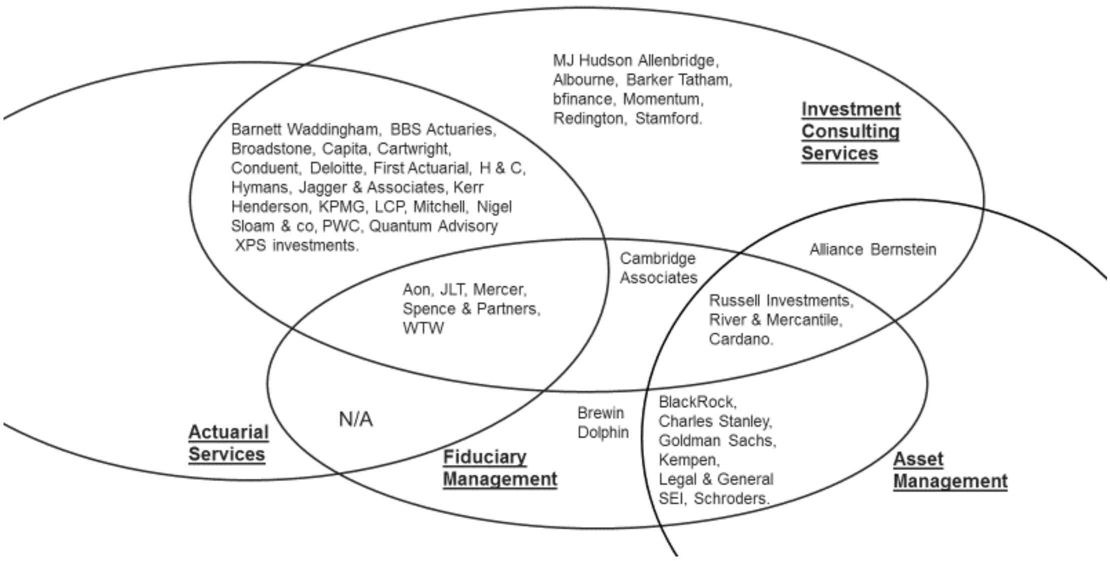
3.20 In recent years, master trust DC pension schemes have emerged as a way for employers to fulfil their auto-enrolment duties without having to set up their own bespoke scheme. A master trust is a form of multi-employer pension scheme, established under trust and intended for employers that are not connected with each other. Employers are able to select a master trust for their staff rather than needing to set up their own trust-based pension scheme or choose another arrangement.

[28] Pensions Act 2008, (PA08), section 3.
[29] Source: Department of Work and Pensions, March 2018 White Paper '*Protecting Defined Benefit Pension Schemes*' and footnote 20.

Suppliers of investment consultancy and fiduciary management services

3.21 Figure 1 shows the main firms which offer investment consultancy and/or fiduciary management services. The diagram also shows which of these firms offer actuarial services and/or asset management services as well, although these are outside the scope of our investigation.

Figure 1: Provision of key services to pension schemes by firm



Source: Parties' responses[30]

3.22 Figure 1 shows that there is a large group of firms which offer investment consultancy services to pension schemes (37 firms), and a moderate number which offer fiduciary management services to pension schemes (17).[31]

We have identified 37 firms which offer investment consultancy and 17 firms which offer fiduciary management in the UK.

3.23 A subset of each of these groups of firms also offer either actuarial services or asset management services, but none appear to offer both services in addition to investment consultancy or fiduciary management services.

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[30] Based on revenue data received by the CMA and parties' responses. For our purposes we have treated Fiduciary Management activities as distinct from Asset Management activities (although we are aware some firms do not make this distinction). The chart above shows merely whether the services are offered, some firms may offer very little of particular named services.

[31] On 18 September 2018 Marsh & McLennan, the owner of Mercer, announced an intention to buy JLT. The deal has not been completed so these firms are listed separately.

3.24 Several of the investment consultancy and fiduciary management firms are part of significant global companies offering a range of pension, professional or financial related services. For example, the investment consultancy firms, Aon, Mercer and WTW are global companies that offer a range of other consulting, risk management, insurance brokerage, actuarial and pension services.

3.25 There are also a number of smaller but still significant players in investment consultancy. Some of these firms are part of large multinational professional services firms and audit firms such as Capita and KPMG. There are also a number of investment consultants that are UK actuarial and consulting firms such as LCP, Hymans, JLT and Barnett Waddingham. There is a further range of smaller investment consultancy firms, many of which also offer other pension related services. Very few firms offer only investment consultancy.

3.26 We have identified nine firms which offer both investment consultancy and fiduciary management services to pensions schemes. A number of investment consultants told us that they had specifically chosen not to offer fiduciary management.

3.27 There are also a number of asset management firms which provide fiduciary management services. Some of these are significant global asset managers in their own right, such as Blackrock, Goldman Sachs and Schroders.

3.28 We consider market definition, market shares of different firms and concentration in chapter 4.

3.29 There has been a variety of new firms offering investment consultancy and fiduciary management services over the last ten years; including for example Momentum, Redington and Cardano. These firms have taken different routes to enter and grow their businesses, which we explore further in chapter 9.

Investment consultancy and fiduciary management services

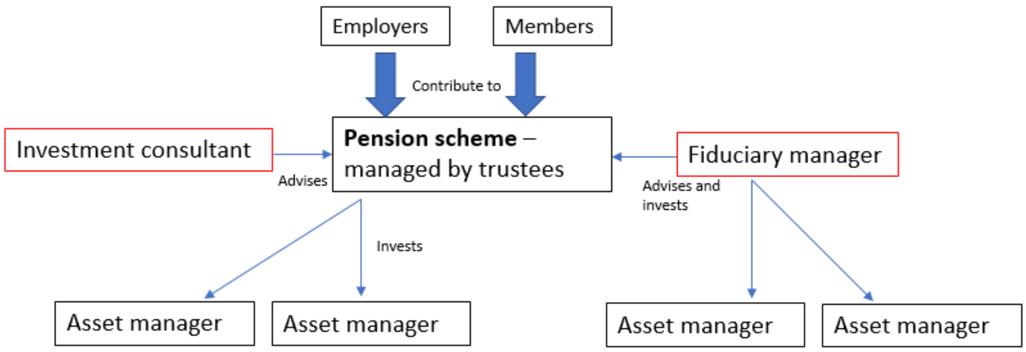
3.30 This section describes the services that are provided as part of investment consultancy and fiduciary management.

3.31 We note that, for both investment consultancy and fiduciary management services, there are no legal or regulatory definitions. There is also no standard use of the term ‘fiduciary management’ in the industry: it can also be referred to as discretionary management, implemented consulting or delegated solutions/consulting.

3.32 We have consulted on draft definitions of investment consultancy services and fiduciary management services and will take the representations made in response to this consultation into account when we set definitions of these services for the purpose of our remedies order.[32] In this report, we have retained the definitions we used in our investigation.

3.33 Figure 2 shows how pension schemes use investment consultancy and fiduciary management.

Figure 2: How pension trustees use investment consultancy and fiduciary management



Source: CMA

Investment consultancy services

3.34 Investment consultancy services are advisory in nature and primarily involve:

(a) The provision of advice in relation to matters such as investment strategy;

(b) Advice on strategic asset allocation – which includes advice on the different types of investments and the mix and proportion of different asset classes to invest in; and

(c) Advice on asset manager selection – which involves researching, rating and recommending asset management products or investment strategies.

3.35 Although investment consultants provide advice, the decisions on these matters are ultimately taken by the pension scheme trustees. The scope of investment consultancy will vary according to the needs of the investor. An investment consultant can be retained to provide ongoing advice, or may be

[32] Throughout this report we refer to 'order' in the singular. However, during remedies implementation, we may proceed by way of more than one order. The definitions of the services in question would be the same in any order.

hired for a specific, time-limited project. Some schemes use more than one investment consultant at the same time. Whatever the scope of services provided by investment consultants, the pension scheme trustees retain full accountability for the investment strategy and its outcomes.

Fiduciary management services

3.36 Institutional investment has become increasingly complex while the duties placed on trustees have increased. There has been a desire amongst pension schemes to find new ways to manage their investments. One way is to use fiduciary management services.

3.37 Fiduciary management involves the legal delegation by the investor to the fiduciary manager of some investment powers and decisions (unlike investment consultancy which is purely advisory in nature).

3.38 A fiduciary manager makes and implements investment decisions for the investor based on the investor's investment strategy, typically taking responsibility for the asset allocation, investment in particular products and the ongoing management and allocation of assets.

3.39 The level of delegation and discretion given to the fiduciary manager varies depending on the client's needs. Some schemes delegate the portfolio construction and management of all assets to the fiduciary manager, whereas others delegate the investment of some assets or asset classes only. Where only a proportion of assets are delegated, this is usually termed 'partial' rather than 'full' fiduciary management.

3.40 Fiduciary management also involves similar services to investment consultancy such as providing advice on investment strategy.

3.41 As with investment consultancy, when using fiduciary management services, the trustees remain responsible and accountable for the stewardship and outcomes of the scheme, including setting the overall investment strategy.

3.42 Fiduciary management has grown quickly: our analysis shows that the market size of fiduciary management was over three times greater in 2016 than five years earlier (in nominal revenue terms). This strong growth is consistent with evidence from other sources. KPMG's 2018 fiduciary management survey found that there were 61 fiduciary management mandates with £12 billion of assets under management in 2007 and 862 fiduciary management mandates with £142 billion of assets under management by 2018.[33]

3.43 Investment consultants and fiduciary managers may also provide a range of other services to pension schemes. This can include their own investment products. They may also provide other investment services including investment governance reviews and performance monitoring.

3.44 Investment consultancy firms may also provide pensions advisory services to employers known as employee benefit consultancy services, assisting in the design and set up of the pension schemes and other employee benefits. Some investment consultants also offer their own DC pension products and some now provide master trust pension schemes.

3.45 Some firms also advise on the selection of a fiduciary manager, acting as a third-party evaluator (TPE).

3.46 DB pension schemes are required to appoint a scheme actuary to provide advice on all aspects of the funding of the scheme.[34] Pension schemes also often employ a firm to administer the pension scheme for members. A number of investment consultants and fiduciary managers are also providers of actuarial services and scheme administration services in the UK. Pension schemes may obtain some or all of these services from the same firm.

3.47 Asset management, scheme actuarial and administration services are not in scope of this investigation.

The legal and regulatory framework for these markets

The regulation of investment consultancy and fiduciary management services

3.48 This section provides a high-level summary of how financial services regulation[35] maps on to the key investment consultancy and fiduciary management services.

3.49 The FCA regulates some, but not all, investment consultancy and fiduciary management activities. The current regulatory perimeter does not align

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[33] KPMG publication: *UK Fiduciary Management Survey 2018*, November 2018.
[34] PA95, section 47(1)(b).
[35] We focus on the regulatory regime established under the Financial Services and Markets Act 2000 and the EU MiFID II legislation.

perfectly with the mix of services offered by these firms. For example, in summary:

(a) Investment consultants provide a range of advice to their customers. Advice on particular investments may be regulated.[36] However, the provision of strategic advice (such as on strategic asset allocation) is unlikely to fall within the regulatory perimeter.[37] We have found that firms often provide to customers both regulated and unregulated advice.

(b) Similarly, advice on the suitability of a fiduciary management service or provider is generally not regulated, in so far as the fiduciary management service in question does not in itself constitute a specified investment to which the regulated activity of 'advising on investments' applies.

(c) For fiduciary management services, the most directly relevant regulated activity is 'managing investments' which covers the exercise of discretion in managing assets belonging to another person.[38] Fiduciary managers may also provide other services which are not a regulated activity.

3.50 We note also that whereas many investment consultants and fiduciary management firms are authorised and regulated by the FCA for some of their activities, others are not, because they are subject to the regulatory regime applied by a designated professional body of which they are members.[39] For investment consultancy, one of the main relevant bodies which is recognised in this way is the Institute and Faculty of Actuaries.

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[36] The regulated activity of 'advising on investments' covers personal recommendations made by an investment consultant in respect of specified investments. This is a highly simplified summary of Article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/516, as amended (the RAO). See also the related EU provisions on 'investment advice' in respect of financial instruments covered by MiFID II (Article 4(2), (4) and (15) and Annex I of MiFID II Directive and Article 9 of MiFID II Delegated Regulation).

[37] However, it could be covered by FCA regulation if, for example, it forms an integral part of another regulated activity (see, for example, the FCA's Perimeter Guidance Manual (PERG) 13.3 Investment Services and Activities, Q21).

[38] FCA Glossary and Article 37 of the RAO. See also the related EU provisions on 'portfolio management' in respect of financial instruments covered by MiFID II (Article 4(2), (8) and (15) and Annex I of MiFID II Directive). Other regulated activities that cover aspects of fiduciary management services include: 'dealing in investments as agent' (FCA Glossary and Article 21 RAO); 'dealing in investments as principal' (FCA Glossary and Article 14 RAO); 'arranging (bringing about) deals in investments' (FCA Glossary and Article 25(1) RAO).

[39] The MiFID II regime has various exemptions. For example, firms are exempt where they provide investment services in an incidental manner in the course of their main professional activity which is regulated by legal or regulatory provisions or a code of ethics which do not exclude the provision of investment services (Article 2(1)(c) MiFID II Directive, Article 4 MiFID II Delegated Regulation and PERG 13.5 'Exemptions from MiFID', Q39; see also the Financial Services and Markets Act 2000, Part XX in respect of designated professional bodies). Member States are also permitted not to apply the MiFID II Directive to persons where (among other matters) the activities of those persons are authorised and regulated at the national level, the persons meet a number of strict additional criteria and they are subject to requirements that are at least analogous to various requirements under the MiFID II Directive (Article 3 MiFID II Directive on 'optional exemptions').

The regulation of pension schemes

3.51 Trustees and managers of occupational pension schemes are subject to a wide range of legal duties and regulation. Broadly, occupational pension schemes and master trusts (schemes in scope of our investigation) are regulated by TPR. The FCA regulates the providers of personal and stakeholder pension schemes which are generally contract-based.

The Pensions Regulator

3.52 TPR was created to protect workplace pensions in the UK. It has statutory objectives including to protect member benefits under pension schemes and to promote and to improve understanding of the good administration of workplace pension schemes. Most trust-based workplace schemes are regulated by TPR.[40]

3.53 TPR has issued codes of practice[41] which provide practical guidance to trustees on how to comply with the requirements of pensions legislation. These include sections on investment governance and considerations for investment strategy.

The Pension Protection Fund (PPF)

3.54 The PPF is designed to protect members of eligible DB schemes if their employer becomes insolvent, and there are insufficient assets in the scheme to fulfil obligations to members.[42] DB pension schemes pay a levy to the PPF which provides some of the funding for such protection. There is no similar protection for DC schemes as members' benefits are not defined.

Trustee obligations

3.55 Trustees are subject to a range of legal requirements which, amongst other things, aim to ensure that they fulfil their duties to the scheme members and act in their best interests.

3.56 In DB schemes, the trustees seek to ensure the scheme can meet its projected liabilities as they fall due. Trustees are required to carry out actuarial valuations / reports at regular intervals in order to receive information on

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[40] See Pension Schemes Act 1993, section 111A and the Personal Pension Schemes (Payments by Employers) Regulations 2000 (SI 2000/2692), PA95, section 49 and 88 and PA04, section 228.
[41] Pensions Act 2004, section 90 – in particular section 90(3) contains a duty to issue codes dealing with certain specified matters.
[42] Where a qualifying insolvency event has occurred in relation to the employer in relation to an eligible scheme, the Board of the PPF must assume responsibility for the scheme in accordance with chapter 3 of the PA04

funding levels, prepare and maintain a Statement of Investment Principles (SIP),[43] and manage the scheme's investments. Trustees of DB occupational pension schemes (unless exempted) are subject to a statutory funding objective which requires it to hold 'sufficient and appropriate assets' to meet the scheme's liabilities.[44]

3.57 As noted previously a particularly significant legal obligation for all trustees of trust based occupational pension schemes is to obtain and consider 'proper advice' in writing for certain types of investment decisions.[45]

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[43] PA04, section 224 and PA95 section 35(1)(a). A SIP is a written statement outlining the principles and policies governing determinations about investments made by or on behalf of trustees in the management of the scheme's assets.
[44] PA04, section 222(1).
[45] PA95, section 36.

4. Competitive Landscape

Our main findings

- There are separate relevant markets for the supply of investment consultancy services to pension schemes in the UK (the investment consultancy market) and the supply of fiduciary management services to pension schemes in the UK (the fiduciary management market).

- The investment consultancy market is not highly concentrated, concentration is particularly low for smaller schemes and there are a large number of providers active in this market.

- The fiduciary management market is more concentrated than the investment consultancy market. However, the fiduciary management market does not appear to be highly concentrated and customers appear at present to have access to a sufficient number of suppliers.

- There has been a trend of increasing shares in the fiduciary management market for the three largest investment consultants, and concentration could increase in the future.

Introduction

4.1 Our guidelines for market investigations set out that any assessment of the working of competition usually begins with an overview of market structure.[46] In this section we set out our analysis of market definition, before then considering market structure; including our analysis of size and firms' shares, concentration levels and trends.

4.2 In Appendix 1, we provide supplementary analysis covering concentration within segments of these markets, and analysis in relation to customers who purchase these services jointly with actuarial and/or administration services.

Market Definition

4.3 Market definition is the process by which the CMA identifies the boundaries within which competition occurs for particular services, such as which firms compete for which customers' business.

[46] CC3 revised, paragraph 99.

4.4 Our market investigation guidelines state that defining the market helps the CMA to focus on the sources of any market power and provides a framework for the assessment of the effects on competition of features of a market.[47]

4.5 The guidelines also state that market definition is a useful tool, but not an end in itself, and that identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of our competitive assessment of a market in any mechanistic way. The competitive assessment takes into account any relevant constraints from outside the market, segmentation within it, or other ways in which some constraints are more important than others.[48]

4.6 Our starting point for assessing market definition was the terms of reference for this investigation, which are 'the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK'.[49]

4.7 We considered three possible dimensions of the definition of the market:

(a) the product market,

(b) the geographic market, and

(c) customer segments.

4.8 We address each of these in turn below.

Product market

4.9 We have examined whether:

(a) investment consultancy and fiduciary management services should be treated as part of the same or different product markets;

(b) whether advice from other professional advisors should be included in the markets, and

(c) whether advice from in-house advisors should be included in the markets.

[47] CC3 revised, paragraph 132.
[48] CC3 revised, paragraph 133.
[49] FCA Terms of reference, 14 September 2017.

Investment consultancy and fiduciary management services

4.10 There are some similarities between investment consultancy services and fiduciary management services. Investment consultancy services are predominantly advisory: firms advise their clients as regards investment decisions such as strategic asset allocation and manager selection. Investment advice is also a component of fiduciary management services. Because this component is common to both services, there will be a degree of substitutability between them for some schemes.[50]

4.11 However, there are also significant differences between them which are relevant for our assessment of market definition. These differences reduce the extent to which the two services will be seen as sufficiently strong substitutes to each other. In turn, these mean that fiduciary management providers may not pose a sufficiently strong constraint on investment consultancy providers' prices to place them in the same market, and conversely investment consultancy providers are not likely to pose a sufficiently strong constraint on fiduciary management prices. We discuss each of these in turn.

4.12 First, as regards the constraint fiduciary management providers place on investment consultancy providers, fiduciary management is an implemented service whereby providers put into action their advice and make decisions on each client's behalf. It will not therefore be perceived as an attractive option for trustees who wish to have greater direct control over their schemes' assets. In addition, the implementation aspect of fiduciary management services, which is not present in investment consultancy services, implies higher costs to providers. Therefore, a move to fiduciary management would have significant implications on fees.

4.13 In recent years there has been both a substantial movement of customers from investment consultancy to fiduciary management, and a significant number of customers who have begun purchasing fiduciary management for some asset classes alongside wider investment consultancy services.[51] However, this appears to be part of the emergence of fiduciary management as a service model, rather than customers switching in response to a small change in the competitiveness of investment consultancy services.

4.14 As set out in chapter 7, about half of customers who have moved to fiduciary management with a provider offering both investment consultancy and fiduciary management services were originally investment consultancy clients

[50] Investment consultancy and fiduciary management services include a range of distinct elements such as manager recommendations and strategic asset allocation advice. We consider that these elements are not likely to constitute separate economic markets in themselves and we cover these further in Appendix 1.
[51] CMA Analysis; Parties' Data. See also the KPMG UK Fiduciary Management 2018.

of that firm. This implies that firms are losing only a limited number of investment consultancy customers through switching to a fiduciary management service provided by rivals.

4.15 Second, regarding the constraint investment consultancy providers place on fiduciary management providers, we consider that many trustees using fiduciary management are unlikely to regard the investment consultancy model, in which they make decisions and implement the investment strategy themselves, as an effective substitute. In particular, this may be the case for trustees who do not consider themselves to have sufficient availability or practical expertise to move to the investment consultancy model. In practice, we have observed minimal switching from fiduciary management to investment consultancy in recent years.

4.16 It is therefore not clear that either service is a sufficiently effective substitute for the other, for us to treat the two services as part of the same market.

4.17 Several parties supported our view that there were separate markets for investment consultancy and fiduciary management. For example, LCP said 'We welcome and agree with the finding of the working paper that there is a clear distinction between [investment consultancy] services and [fiduciary management] services'.[52]

4.18 However, some parties told us that there were not clear distinctions between these services. For example, Redington said 'We do not see the [investment consultant] and [fiduciary management] markets as separate from each other, rather that there is overlap where such services may replace each other'.[53]

4.19 Hymans acknowledged that there are some distinct differences between these services, but in a similar vein told us that '[by] default, providers of [fiduciary management] will incorporate a material proportion of what would otherwise be considered investment advice within their proposition; thus they are competing directly with [investment consultancy] advisers'.[54]

4.20 We acknowledge above that the common advisory component of investment consultancy and fiduciary management means that there will be a certain degree of substitutability between these service types for some customers. Therefore, fiduciary management providers will exert some degree of competitive constraint on investment consultancy providers, and vice versa.

[52] LCP's response to the Competitive Landscape Working Paper, p5.
[53] Redington's response to the Competitive Landscape Working Paper, p1.
[54] Hymans' response to the Competitive Landscape Working Paper, p1.

4.21 Nevertheless, we consider that the factors we have discussed and clarified above imply that the services are not effective substitutes. Further, as set out above the boundaries of the market do not determine the outcome of our competitive assessment of a market in any mechanistic way.[55]

4.22 Our view is therefore that the provision of investment consultancy and fiduciary management services should be treated as separate markets for the purposes of this investigation, although providers of one service type may exert a degree of constraint on the other for some scheme types.[56]

Investment consultancy and fiduciary management should be treated as separate markets.

Other professional advisors

4.23 In response to the CMA survey, up to 15% of pension schemes reported that they do not purchase investment consultancy or fiduciary management services.[57] However, because trustees are required under the PA95 to obtain 'proper advice', they must be receiving this advice from other sources.

4.24 The PA95 makes clear that this advice can be provided by anyone 'who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.'[58] It is therefore not limited to advice from investment consultancy or fiduciary management providers.

4.25 The CMA survey shows that the schemes that were not purchasing investment consultancy or fiduciary management services were overwhelmingly small schemes.[59] These schemes rely on a range of other professional advisors such as wealth managers, independent financial advisors and actuaries.

[55] This is consistent with the approach set out in our guidelines, CC3 revised, paragraph 133.
[56] We have taken this into account in our analysis of competitive conditions for these services, and our consideration of remedies.
[57] CMA Survey. We have dropped schemes which don't know whether they purchase investment consulting or fiduciary management.
[58] PA95, Section 36(6).
[59] IFF Research Report on the CMA survey, published 29 March 2018, p10. Whilst around nine in ten large schemes purchase investment consultancy services, only around five in ten small schemes do so. Further, only about two in ten small schemes purchase fiduciary management services, some of whom also purchase investment consultancy services.

4.26 We considered whether these other professional advisors should be included within the relevant markets. However, these advisors have different areas of expertise, and are not focussed on the provision of investment consultancy or fiduciary management services to pension schemes, which require specialist expertise in investing with respect to a scheme's liability profile and cash flow requirements.

4.27 As a result, the fact that some very small pension schemes, which are more likely to have simple investment requirements, are able to use these non-specialist advisors, does not mean that these would be an effective competitive alternative for the large majority of pension schemes.

4.28 Our view is, therefore, that these other professional advisors should be treated as lying outside the relevant markets for the purposes of this investigation. However, where relevant, we have taken into account the fact they these may provide some competitive constraint for the very smallest schemes.

In-house advisors

4.29 Some pension schemes satisfy their duty to obtain proper advice by employing in-house advisors, often investment professionals with similar expertise to those working for investment consultants. We understand that some in-house investment teams (typically for the very largest pension schemes) effectively have a fiduciary management role. We therefore considered whether these should form part of the relevant markets.

4.30 Only the very largest pension schemes typically employ in-house advisors, usually when they have scheme assets of at least £1 billion, and this is even more common for schemes with assets over £5 billion. Even these large schemes typically still employ outside investment consultants because their in-house advisors are not able to replicate the entirety of their services, such as investment consultants' broad research into asset management products.

4.31 Our view is therefore that in-house advisors lie outside the relevant markets. However, in-house advisors are likely to play an important role in shaping competition between investment consultants to supply investment consultancy services to the largest pension schemes. They make it easier for these schemes to evaluate the quality of advice they are receiving and mean that schemes purchase less advice by doing more in-house.

4.32 Stakeholders told us that these in-house advisors often use a number of consultants simultaneously for different pieces of project work and are well placed to switch between them. Similar considerations may apply to the purchase of fiduciary management services for such schemes. We therefore consider these advisors an important part of our competitive assessment of larger schemes' purchasing behaviour.

Asset management and fiduciary management

4.33 We have treated asset management as a distinct service from fiduciary management.

4.34 Several parties have provided submissions which imply clear divisions between fiduciary management and asset management. For example, WTW has told us that 'The fiduciary management service … is not a (vertical) replacement for asset management'.[60]

4.35 In contrast, LCP told us that 'there is no clear distinction between fiduciary management services and asset management services' and that in particular, 'provision of [partial-fiduciary management] services – management of a sub-set of the assets of a pension scheme – is virtually indistinguishable from a fund-of-funds service offered by an asset manager'.[61]

4.36 Whilst some asset management offerings may contain advice on investment strategy and/or implementation of investment decisions regarding underlying products not offered by the asset manager, we understand that this is not the norm. By contrast, both are a key part of many fiduciary management offerings, including partial fiduciary management. A clear example is cases where the fiduciary management provider selects asset management products in which to invest their clients' assets; there is no such process involved in asset management.

4.37 As a result, trustees do not generally substitute fiduciary management for typical asset management offerings. Although some trustees who are prepared to 'unbundle' their purchasing decisions may be able to do so, and some asset management offerings may include these components and therefore be more substitutable.

4.38 For the purposes of our competitive assessment, we therefore consider that it is appropriate to treat fiduciary management as a separate market from asset management.

[60] WTW's response to the Issues Statement, paragraph 14.
[61] LCP's response to the Competitive Landscape Working Paper, p2.

Geographic market

4.39 Our terms of reference concern the supply and acquisition of the services in question within the UK.[62]

4.40 In addition, the supply and acquisition of investment consultancy and fiduciary management services is heavily shaped by the UK-specific regulatory and legal framework, such as the requirement under the PA95[63] for trustees to obtain proper advice.

4.41 Therefore, for the purposes of this investigation, we are taking the geographic market as the UK.

Customer segments

4.42 We considered whether the market should be subdivided:

(a) between pension schemes and other institutional investors, and

(b) between different types of pension schemes based on their characteristics.

Pension schemes and other institutional investors

4.43 Pension schemes appear to have different requirements for financial advice compared to other institutional investors. For example, DB scheme advisors need to work closely with actuaries to invest according to schemes' liabilities to help them reach their funding requirements, considering other scheme-specific factors such as trustees' investment preferences and the strength of the employer covenant. Moreover, this all takes place within the pensions regulatory and legal framework.

4.44 Other institutional investors also appear to have different requirements from pension schemes. In some ways, advice provided to them may be more complex: for example, we have been told that charities have specific tax treatment that leads them to take particular approaches in their investment strategies. In other ways however, advice may be simpler: we understand that complex liability modelling may not be required.[64]

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[62] Sections 131(1) and 134(3) of the EA02 provide that the market for the goods or services described in the reference is the market in the UK for those goods or services.
[63] PA95, section 36 and corresponding provision for Northern Ireland
[64] We have also been told that charities may have specific environmental, social and governance requirements. Insurers appear to have greater in-house expertise than almost all pension schemes, and different criteria for

4.45 The differences set out above mean that it may be challenging for firms supplying investment consultancy or fiduciary management services to other institutional investors to expand to supply pension schemes within a short period of time. Further, although a majority of firms providing services to pension schemes also supply at least one other category of institutional investors, many of these supply only a very small number of such customers.

4.46 Our view is therefore that UK pension schemes comprise a separate relevant market that does not include other institutional investors.

4.47 As set out in chapter 1 we have focussed on pension schemes as the main customer group for investment consultants and fiduciary managers. As such, we have not undertaken analysis to define the market in which other types of institutional investors purchase these services.

Pension scheme characteristics

4.48 There is substantial variation in the specific characteristics of individual pension schemes. Most obviously, this can be in terms of scheme type (DB, DC or hybrid) and scheme size, which can have assets ranging from the tens of millions to several billion pounds in value.

4.49 These characteristics can translate into differences in the advice that these schemes are looking to purchase: for example, larger schemes may seek more detailed and potentially complex advice. DC schemes may be more limited in the advice they seek, in part due to tighter financial constraints on spending linked to the DC charge cap.

4.50 However, each pension scheme has its own specific combination of characteristics, and many of these lie along a continuous spectrum. This means that no straightforward bright line can be drawn between different groups of customers.

4.51 Further, commonalities in the nature of advice across different pension schemes means that firms providing advice to schemes in one segment could expand into other segments quickly. In addition, a significant number of investment consultants and fiduciary managers offer services to (i) large, medium and small clients, and (ii) both DC and DB schemes, such that schemes of different sizes and types have many of the same options.

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investing given their specific regulatory environment. Investment consultancy services to employers appear rarely to operate on a retained basis and to be focussed on particular questions, such as supporting the triennial actuarial valuation of the scheme, whilst services for wealth managers appear to be highly bespoke and often step beyond the tasks required for pension schemes.

4.52 Our view is that all pension schemes purchasing investment consultancy services should be treated as part of the investment consultancy services market, and all schemes purchasing fiduciary management services should be treated as part of the fiduciary management services market.

4.53 Nevertheless, where necessary, we supplement our market-wide assessment with analysis of the various customer segments introduced above. We treat the segmentation as indicative only, and conduct this exercise to understand how competition might vary within the same market.

Conclusions on market definition

4.54 Based on the assessment set out above, our conclusion is that there are separate relevant markets for:

(a) the supply of investment consultancy services to pension schemes in the UK (**the investment consultancy market**), and

(b) the supply of fiduciary management services to pension schemes in the UK (**the fiduciary management market**).

4.55 However, in our assessment we have had regard to differences in competitive conditions within the same market, and potential constraints from services that we have treated as part of separate markets.

Analysis of market structure and concentration

4.56 Market concentration measures can provide background data for the assessment of the levels of firms' market power and may be relevant for the assessment of other sources of potential competitive harm.[65] Subject to the availability of data, the CMA normally calculates market shares for all firms currently producing products in the relevant market or in any market the CMA considers relevant to its investigation.[66]

4.57 Concentration measures can form a useful starting point for the assessment of the market as a whole. Although high concentration does not necessarily imply that competition is working poorly (or where there are low market shares, that it is functioning well).

[65] CC3 revised, paragraph 101.
[66] CC3 revised, Annex A: Market Characteristics and Outcomes, paragraph 1. Note that the 'relevant market' is defined in EA02 to mean the market in the UK for the goods or services described in the terms of reference given to the CMA for investigation (EA02, section 134(3)). The market definition(s) used by the CMA are in respect of the economic market(s) and need not always correspond with the relevant market(s) as used in the EA02 (CC3 revised, paragraph 26 and footnote 18).

4.58 Our guidelines set out that concentration is only one determinant of market outcomes, and that market shares must be interpreted alongside a range of other factors. For example, other factors include the stability of market shares, capacity constraints, product differentiation, demand and supply side factors.

4.59 We consider the stability of market shares and product differentiation in this section, and the factors relevant to the demand and supply side in the following sections.[67] As such, even in a market which is not highly concentrated, it is possible for a small number of suppliers to have market power. We have taken these other factors into account throughout our assessment.

4.60 We have undertaken analysis to calculate market shares for each of the markets defined above. We have also calculated shares for relevant segments of these markets which is set out in Appendix 1.[68]

4.61 Our primary metric for market shares is revenue. We have used revenue because we consider that it is the best proxy for the amount of advice or fiduciary management undertaken by firms. It also has the advantage of being a very standard metric.

4.62 Consistent with the practice set out in our guidance, we have also constructed other indicative measures to understand fully how the relevant markets are operating.[69] In particular, we have analysed market shares in terms of number of clients and assets under advice (AUA) / assets under management (AUM). However, in our view both measures have significant limitations, and as a consequence we have not relied on them for our analysis.[70]

4.63 We also use revenue market shares to assess concentration, calculating concentration ratios and the Herfindahl-Hirschman Index (HHI). The HHI is a common reference point in competition assessments. It is useful because it

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[67] CC3 revised, paragraphs 170 and 185. We have not undertaken an analysis of capacity constraints. We recognise the views of some parties that the best ideas of investment consultancy and fiduciary management firms might be available to a limited number of clients if Asset Management firms they recommend accept limited volumes of AUM in their products or increase effective prices for later adopters of their products. This could imply diseconomies of scale, although even if this is the case we consider that the way in which our assessment of market structure is conducted would not be different.
[68] We note that our figures differ from those published in the FCA's Asset Management Market Study and used in that context. Our figures include data from more firms, fiduciary management firms which do not offer investment consultancy, use more recent data, include a set of breakdowns relevant to our market investigation (such as for fiduciary management alone), and a longer timeseries.
[69] CC3 revised, Annex A: Market Characteristics and Outcomes, paragraphs 1 and 2.
[70] These measures have the advantage that each firm's share is not (directly) a function of the price it is charging, price itself being a measure of market outcomes rather than market structure. However, they are much more sensitive to the inclusion of particular types of clients. AUM/AUA based measures will be very sensitive to the distribution of a few very large clients, whilst number of clients bases metrics assign as much weight to clients which contribute large amounts of business to the firms as those which contribute very little business.

summarises all market shares in one single number. It is often more useful than the simple count of firms in the market, because it assigns less weight to firms which are very small and greater weight to firms which are larger.

4.64 The HHI is calculated as the sum of the squared market shares and takes a value between 0 and 10,000 points. A value of 0 can be thought of as a market in which an extremely large number of firms are active, and a value of 10,000 would indicate a complete monopoly.[71]

4.65 Our guidelines for market investigations state that the CMA is likely to consider any market with a HHI in excess of 2,000 as highly concentrated, and any market with an HHI in excess of 1,000 as concentrated.[72] The HHI is therefore a useful benchmark for assessment of concentration.

4.66 In order to construct these concentration measures we collected data from over 45 industry participants. We collected a snapshot of revenues for 2017.[73] For AUM, AUA, and number of clients we use data showing a snapshot from 2016. This was the most recent full year of data at the time our investigation began.

4.67 We split the snapshot by client type (eg pension or charity), as well as by client size (small, medium and large clients, respectively with under £100 million, £100 million to £1 billion and over £1 billion in AUA/AUM). We also collected historic revenue data going back to 2007.

4.68 Despite the very large-scale nature of our data collection exercise, it is possible that we have not obtained data from every conceivable supplier of investment consultancy and fiduciary management services. Our analysis of the CMA Survey indicates that we have covered approximately 85% of the market for investment consultancy services.[74] This relatively large percentage gives us confidence that the shares below do not omit any large providers. Based on the analysis that we have conducted over the course of the investigation, including extensive consultation with industry stakeholders, we

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[71] Values ranging between these two extremes represent a spectrum of concentration: for example, an HHI of 2,000 would imply a market structure equivalent to a market with five equal sized firms, and a HHI of 1,000 would imply a market structure equivalent to a market with ten equal sized firms.
[72] CC3 revised, Annex A, paragraph 7.
[73] We also collected data for 2018 covering quarter 1 and quarter 2. This is the most recent data available to the CMA at the point of updated data collection starting in September 2018.
[74] CMA analysis of CMA survey. This is the proportion of respondents who said they purchased investment consultancy services from a provider we have confirmed as offering investment consultancy services.

consider that we have covered practically all of the fiduciary management market.[75]

4.69 We have adjusted our investment consultancy market shares downwards by the proportion of respondents to the CMA survey who said they use an investment consultancy provider outside of those who we have confirmed provide these services. We do not make such an adjustment for fiduciary management, as we consider that our revenue data captures practically all of this market (see footnote 75).

4.70 In our view, this adjustment to the investment consultancy market shares is likely to overstate the significance of the 'unknown' providers, given that they are likely to be significantly smaller than average.[76] If this share is overstated, the market share of all the other providers will be understated. As such, we treat the adjusted market share figures as lower bounds, whilst we treat the unadjusted figures as upper bounds. We find these bounds are quite close together, and so using one rather than the other does not change our conclusions.

Investment consultancy market structure

4.71 In this section, we consider the market for investment consultancy services to pension schemes in the UK. We first set out statistics regarding the market as a whole, before considering breakdowns by scheme size, scheme type, and the level of individual services. We then present information on how the market has evolved through time, and likely future trends.

The market in aggregate

> **The investment consultancy market is worth up to £337 million in terms of revenues.**

[75] We understand that there are a number of asset management services which can fulfil a similar role (in some respects) to fiduciary management itself. To the extent that these services represent similar but distinct services outside of our definition of fiduciary management we do not include these services in our analysis. The survey provides no means to distinguish between those genuinely in fiduciary management and those who are not. There are some providers we have confirmed do not offer fiduciary management but others we cannot verify so we present fiduciary management shares without an adjustment. In not adjusting the fiduciary management shares we acknowledge that the shares presented in this report are an upper bound.
[76] As stated in footnote 73, we assume that the market share of the 'unknown' providers is the same as the proportion of respondents in the survey that used an 'unknown' provider (ie 15%). In practice, it is highly likely that the 'unknown' providers are smaller than average (in revenue terms), and so their market share will be lower than 15%.

4.72 Our analysis indicates that the market size has a lower bound of £286 million per year in revenue terms.[77] Adjusting for our estimate of the percentage of the market we have not covered gives an upper bound to the market size of around £337 million per year.

4.73 Our data gathering exercise revealed over 4,300 pension scheme-investment consultant relationships.[78] Because we collected data from investment consultants rather than schemes, this may understate the true number of relationships. Some pension schemes do not purchase investment consultancy services, and some purchase fiduciary management services as an alternative to investment consultancy services.

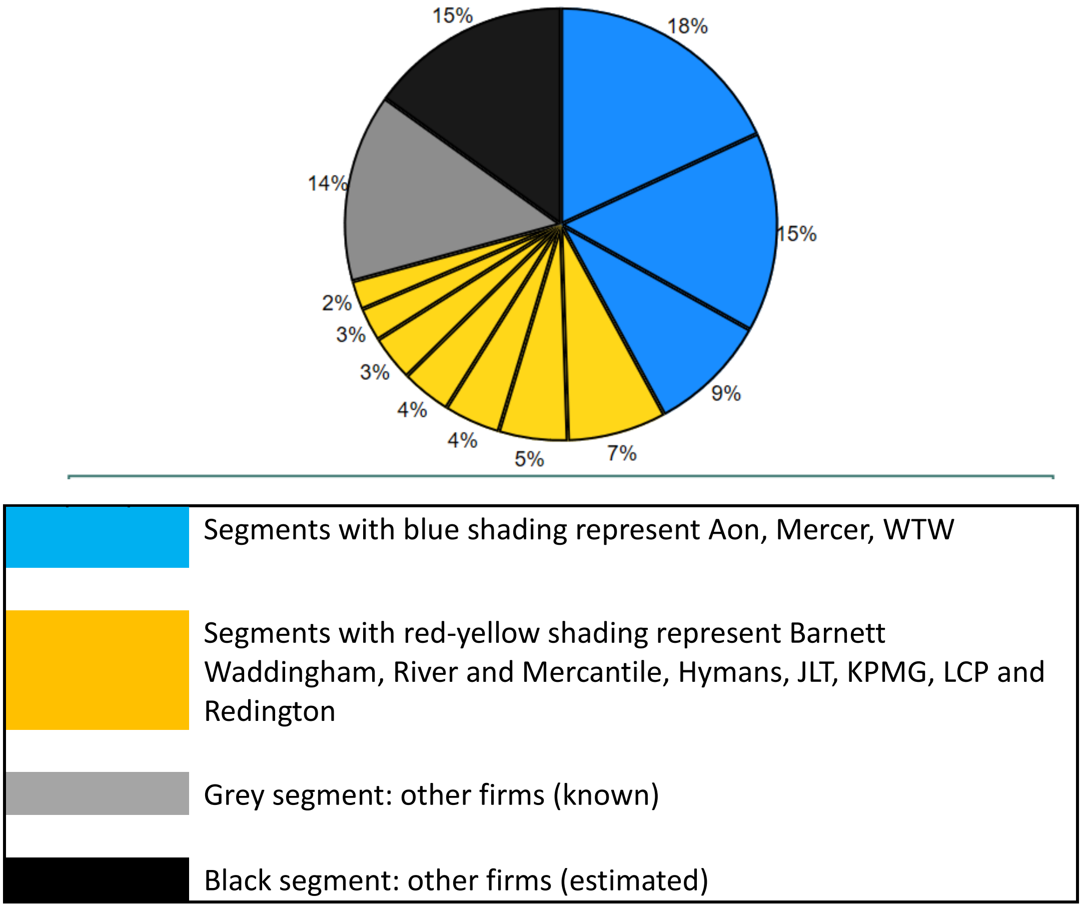
4.74 Figures collected by the Investment Association together with the CMA survey showed that investment consultants are likely to advise on over £1.6 trillion in assets (chapter 3).

4.75 Market shares by revenue are set out in Figure 3 below. This is a pie chart showing the shares of the largest three firms in the investment consultancy market in blue, and the shares of a set of other notable firms in yellow. We have split the market in this way because whilst the shares of the fourth largest firm and others are significant, we consider that they are of a different order to the largest three firms.

4.76 The chart also shows the aggregate share of all other firms we have received data from, and our estimate of the share of all firms from which we have not received data.

[77] This figure is calculated by summing all the revenues for investment consultancy suppliers from which we collected data.
[78] Some schemes have a relationship between more than one investment consultant, but we are not able to identify duplicate pension schemes across firms in most cases. This figure is likely to be a lower bound because we have not adjusted it for the proportion of the market not covered in our data collection exercise from investment consultants.

Figure 3: 2017 shares by firm of the investment consultancy market (by revenue)



Source: CMA Analysis, Parties' Data.[79] Parties listed alphabetically within groups.

4.77 Figure 3 shows that Aon, Mercer and WTW make up between 42% and 50% of the market in revenue terms for the supply of investment consultancy services to pension schemes in the UK.[80]

4.78 There are also several comparatively smaller, but nevertheless significant, players in the investment consultancy market. In particular, two further firms have over 5% of the market, two more have around 4% of the market, and others have a noteworthy share.[81] The ten largest players in combination constitute between 71% and 83% of the market, and there at least a further 25 suppliers who are active to some degree.

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[79] This chart shows individual market shares and identifies particular firms as belonging to two groups: those in the largest three firms, and others who have shares ranging between 3% and 8%. Individual firms are not matched to individual segments. We list firms alphabetically rather than in size order.

[80] Discrepancy between the lower bound figure and the sum of each firm's shares in the chart is due to rounding.

[81] Using 'lower bound' figures.

4.79 Drawing together the market shares in one summary measure of concentration indicates that the market for investment consultancy services to pension schemes has an HHI of up to 1,089 points.[82] As noted above our guidelines state that the CMA is likely to consider any market in excess of 2,000 as highly concentrated.

4.80 This picture is not dissimilar when we consider metrics other than revenue and these shares appear to be relatively consistent with those used internally by the parties. For example:

(a) A 2017 Mercer internal document states that they have a '[✂] market share[83] ([✂]) in their target market', and

(b) A 2017 WTW Board minute states that they have a [✂] share of the UK DB advisory market.[84]

4.81 When taken together, the overall picture is one of a large number of noteworthy suppliers where the largest firms have market shares that are significant but not suggestive that, in itself, concentration is likely to inhibit the functioning of competition.

The investment consultancy market is not highly concentrated.

Segmentation within the market

4.82 Appendix 1 sets our analysis of the sizes of and concentration within various segments of the market. In particular, we have considered how market structure breaks down across schemes of different sizes and types.

4.83 Our analysis shows that a few very large schemes comprise a high percentage of the market by revenue and AUM terms. It also shows that whilst the supply of investment consultancy services to smaller pension schemes is particularly unconcentrated, concentration is higher for the largest pension schemes.

[82] Given that we cannot estimate the market shares of each individual investment consultant firm which potentially exist in the market but from which we have not received data, and on a cautious basis, we have used the 'upper bound' market share figures to calculate this HHI.
[83] Mercer internal document. Mercer define their target market as [✂]. It is not clear whether these figures are common across advisory and fiduciary management.
[84] WTW Internal Document. Measured by AUM. The largest three IC-FM providers (Aon, Mercer and WTW), together with Hymans are stated to have a [✂]% market share.

4.84 However, larger schemes often employ in-house advisors, use external consultants for more limited pieces of project work, and sometimes employ multiple consultants simultaneously.[85] This will mitigate the impact of the greater concentration faced by these customers.

4.85 Our analysis also showed that the DC segment of the market is smaller and faces lower levels of concentration than the DB segment. Whilst there can be differences between the exact mix of services purchased within the investment consultancy market, there does not appear to be significantly higher concentration arising from differences in firms' exact offerings.

Historical evolution

4.86 We collected revenue data from each party through time. This allowed us to understand how both the size of and concentration in the market have evolved over the last 11 years.

The investment consultancy market has more than doubled in size in the past 11 years.

4.87 As regards the size of the investment consultancy market, we show in Appendix 1 that the total size of the market approximately doubled (in nominal revenue terms) over these eleven years.[86] DC revenues have grown significantly more than DB revenues, particularly within the last few years.

4.88 We analysed individually the market shares of the five largest investment consultant firms over the ten-year period. Our analysis showed that the shares of [✂] and [✂] have remained relatively stable through time, and the same is true for [✂] and [✂] as the fourth and fifth largest players. The share of [✂] has however decreased markedly over this period of time.[87]

4.89 Amongst other reasons, [✂] put this down to '[✂]'.[88] We note however that the decrease in share has occurred whilst many of its investment consulting clients have moved into fiduciary management; therefore a proportion of its apparent reduction in investment consultant client revenues in fact represents

[85] As set out in Appendix 1, this matches the views expressed by participants of pension scheme investment staff at our roundtable discussion.
[86] 'Real' growth, that is growth adjusted for the general increase in prices over this period for all services, will be slightly lower.
[87] In combination, the share of the three largest investment consultant providers fell slightly through time, with this fall attributable to [✂] decrease in share.
[88] [✂].

the conversion of investment consultancy clients to its own fiduciary management offering, rather than loss of clients to competitors.

4.90 We also assessed the evolution of the HHI through time. Our analysis showed that the HHI in 2007 was around 2000 points and had fallen to just over 1000 points in 2017. This represents a decline in this particular concentration measure, of which the decline in share of [✂] is likely to be a major cause.

4.91 In paragraph 4.64 above, we noted that our guidelines for market investigations state that the CMA is likely to consider any market with a HHI in excess of 2,000 as highly concentrated. Our analysis shows that the HHI has been clearly below this threshold since 2009.

Concentration in the investment consultancy market has fallen over the past 11 years.

Future trends

4.92 Parties' internal documents generally note a projected long-term decline in DB advisory revenues, and a growth in DC advisory revenues. This is consistent with views we have heard from the parties. It is also consistent with third party analysis showing the growth in DC. For example, in 2016 Spence Johnson analysis found that DC AUM will triple in size by 2025.[89]

4.93 The future size of the investment consultancy market as a whole will likely depend on the extent to which contract-based DC pension schemes expand, as these are generally associated with reduced purchasing of investment consultancy services. It will also depend on the extent to which the market for fiduciary management services to pension schemes increases in size at the expense of the investment consultancy market. We cover this further below.

Parties' views on investment consultancy market structure

4.94 Parties broadly agreed that the investment consultancy market was not highly concentrated. For example, Aon said that 'Aon agrees with the CMA's emerging finding that the [investment consultant] segment is not highly concentrated.'[90] Similarly, Russell Investments said that 'we agree with the

[89] Spence Johnson, Market Intelligence 2016, p104.
[90] Aon's response to the Competitive Landscape Working Paper, paragraph 1.1.

CMA's account of … market concentration in the supply of investment consultancy services…'.[91]

4.95 Mercer told us that the investment consultancy market 'cannot be considered to be concentrated'.[92]

Conclusions

4.96 There appears to be a large number of noteworthy suppliers in the investment consultancy market. Concentration levels are significantly below those at which our guidelines state we would typically consider the market highly concentrated, and our analysis shows that this has been the case for several years.

4.97 Taking this evidence together with the fact that no firm has a share above 20%;[93] the three largest investment consultancy firms make up less than a 50% share of the market in total; the market is characterised by a number of well-established mid-sized firms; and overall, ten firms make up around 80% of the market, our finding is that the investment consultancy market is not highly concentrated.

4.98 As such, current levels of concentration are not in themselves sufficient to lead to competition concerns.

Fiduciary management market structure

4.99 We have also undertaken analysis of the market for fiduciary management services to pension schemes in the UK. As with the investment consultancy market, we first assess the size of the market, before considering market shares. We then set out how market size and shares vary by customer segment and present analysis of trends through time.

The market in aggregate

The fiduciary management market is worth £254 million in terms of revenues.

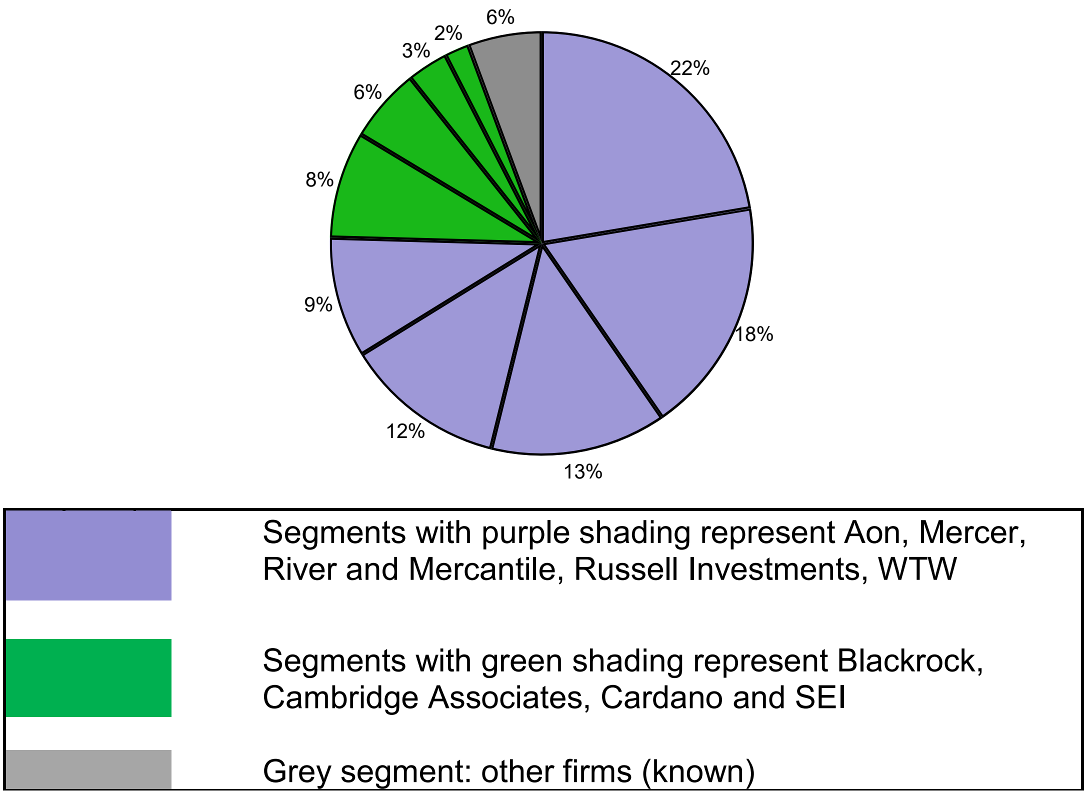
[91] Russell Investments' response to the Competitive Landscape Working Paper, paragraph 1.2.
[92] Mercer pointed in particular to the closeness of the HHI figure to the threshold at which the CMA is likely to consider a market as concentrated; the decrease in concentration in this market over time; and Mercer's expectation that the downward trend in concentration will continue. Mercer's response to the Competitive Landscape Working Paper, p2.
[93] This is true when accounting for the adjusted shares. The largest provider's share increases by four percentage points when using non-adjusted shares.

4.100 For the suppliers from whom we have collected data, our results show that the fiduciary management market was worth £254 million in 2017 in terms of revenues.

4.101 Providers we have confirmed as offering fiduciary management services manage over £110 billion in assets and have 741 clients.[94]

4.102 We have calculated the share of revenue for each firm within the fiduciary management market based on 2017 data. We show these shares in Figure 4 below.[95] We group together the largest five firms in the market, who have comparable shares, and the next largest four firms in the market who also have notable shares.

Figure 4: Shares by firm of the fiduciary management market



Source: CMA Analysis, Parties' Data. Parties listed alphabetically within groups.

[94] We have summed together the value of all assets in the data provided to us to give a total of £117 billion. We consider this has indicative value here but not in investment consultancy because few schemes have more than one fiduciary manager (whilst this is more common in investment consultancy). Therefore, we do not think there are such significant concerns about double counting scheme assets (as there would be for investment consultancy). This figure does not take into account the percentage of the market which may use a fiduciary manager from which we did not collect data.

[95] In Figure 3, we have 'deflated' the IC market shares to account for 'other (unknown)' providers. This is based on evidence from the CMA survey. We do not make an equivalent adjustment to the FM market shares in Figure 4. This is because the evidence we have gathered does not indicate that there is a tail of 'unknown' FM providers in the market. We consider that the firms included in Figure 4 capture the vast majority of all FM revenues.

4.103 Figure 4 shows that the five largest FM firms have a combined market share of around 75%. This is higher than in IC, where the five largest firms have a combined share of 59%. The share of the three largest IC-FM firms is also slightly higher in FM than IC: 54% compared to 43%.

4.104 As in the investment consultancy market however, there are also a number of players outside of the largest five. These include BlackRock, Cambridge Associates, Cardano and SEI Investments. However, in comparison to the investment consultancy market, these mid-size fiduciary management suppliers have a smaller share of the market relative to the largest firms in the market.

4.105 We have also calculated the HHI for the fiduciary management market as a whole. Our results show a value of 1,363. This figure is higher than that for the investment consultancy market as whole (1,089), however it does not meet the threshold set out in our guidance at which we would be likely to consider the market ‘highly concentrated’.[96]

4.106 The HHI is just one element of our assessment of concentration; we also place significant weight in particular on the individual market shares and the number of suppliers in the market. In our view, customers currently appear to have a sufficient degree of choice.

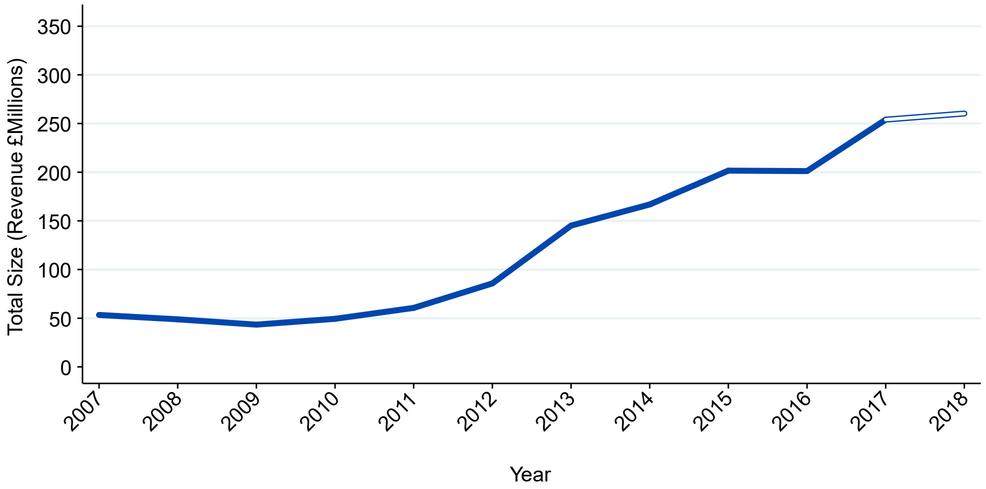
The fiduciary management market is not highly concentrated.

Historical evolution

4.107 As with the investment consultancy market, we collected revenue data from each party through time. This allowed us to understand how both the size of and concentration in the market have evolved over the last 11 years. We show the total size of the market (in nominal revenue terms) over these 11 years in Figure 5 below. The presentation of 2018 data uses hollowed lines to indicate that they are estimates.[97]

[96] CC3 revised, Annex A, paragraph 7.
[97] For 2018 we present revenue for Q1 and Q2 which has been doubled. This is a reasonable method to estimate for 2018 revenues, however this approach may be subject to data biases.

Figure 5: Total size of the market for fiduciary management services to pension schemes through time in revenue terms



Source: CMA Analysis, Parties' Data

4.108 Figure 5 shows that the size of the fiduciary management market has increased substantially in recent years. In particular, total revenue increased from £50 million in 2007 to £254 million in 2017. It more than quadrupled in size in the period following 2011. This significant growth is consistent with other sources of information, such as the KPMG fiduciary management survey, which analyses this growth in terms of the number of mandates and growth in assets under management.[98]

The fiduciary management market has quadrupled in size since 2011.

4.109 We also analysed changes in individual firms' market shares through time. We focussed on the largest five firms in this market (as of 2017). These results are shown in Figure 6 below.

Figure 6: Market Shares through time for the largest 5 fiduciary management providers

[✂]

Source: CMA Analysis, Parties' Data.

4.110 Figure 6 shows that the largest three providers of investment consultancy services have increased their shares of the fiduciary management market from relatively low levels in 2007 to become large market players in 2017. [✂].

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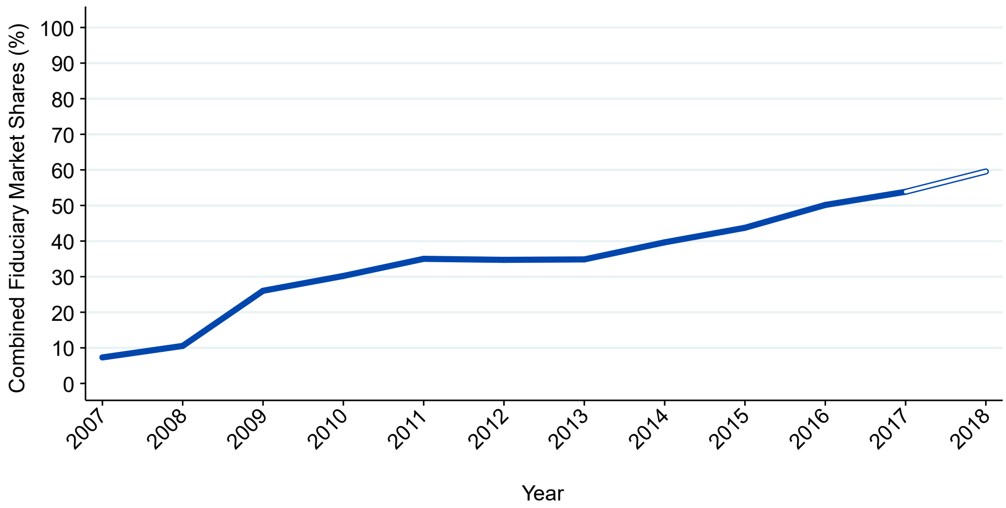
[98] KPMG, *KPMG Fiduciary Management Survey*, 2018.

4.111 Our data indicates that Russell Investments and River and Mercantile were previously the only two large providers of fiduciary management services in 2007. The entry and subsequent rapid growth of the three largest investment consultant providers resulted in a reduction in the HHI over this period from over 4,300 in 2007 to 1,363 in 2017.

4.112 However, we note that HHI is only one measure of concentration. We therefore considered the evolution of the combined shares in the fiduciary management market for the three largest investment consultancy providers through time. This consideration is particularly relevant given our assessment in chapter 7. This analysis is represented in Figure 7 below.

Figure 7: Combined share of the market for fiduciary management services to pension schemes for the three largest investment consultancy firms through time



Source: CMA Analysis, Parties' Data

The three largest investment consultancy firms have increased their share of the fiduciary management market by 45 percentage points since 2007.

4.113 Figure 7 shows that the largest three investment consultancy providers have increased their combined share of the fiduciary management market from under 10% in 2007[99] to around 54% in 2017.[100] The figure indicates that this trend has continued in 2018, although this is based on data for the first half of

[99] [✂] in 2010 [✂] all three providers were receiving revenue from fiduciary management.
[100] As explained in footnote 95, it is possible that there are some 'unknown' FM providers who are not captured in our market share data. These estimates may therefore be upper bounds. However, we consider that we have captured the vast majority of FM providers and revenues in our market share calculations.

the year only. This is a considerable upward trend and informs our assessment in subsequent chapters.

Future trends

4.114 Most evidence points to continued growth in the fiduciary management services market as time goes on. This is consistent with the growth in fiduciary management services revenues we observe in our own data in recent years, survey evidence, and the parties' forecasts.

(a) Aon's 2017 fiduciary management survey shows that 16% of those schemes who do not currently use fiduciary management plan to explore or are currently exploring it. A further 35% of those who do not currently use fiduciary management have decided against it for now, but say they may reconsider later.[101]

(b) A 2017 WTW document states that the UK fiduciary management market seems 'to be approaching the tipping point … where we move from early adopters to early majority and volumes increase sharply'.[102]

(c) A 2015 [✂] strategy document forecasts annualised AUM growth over the period 2014-2019. The 2017-2019 projected annualised growth rate is in the region of 12%.[103]

(d) Spence Johnson analysis forecasts continued fiduciary management growth until at least 2024.[104] Over the period 2017-2020, the projected annualised AUM growth rate is in the region of 11%. As the fiduciary management market increases in size beyond this, the forecast annualised growth rate falls.

4.115 In the context of the recent substantial growth in combined shares of the three largest investment consultancy providers in fiduciary management services, we have considered whether there is evidence that this trend will continue.

4.116 We reviewed some internal documents from the five largest fiduciary management providers in 2016. Whilst we can only place limited weight on these documents due to their aspirational nature, these generally show that

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[101] Aon Fiduciary Management Survey 2017, p9.
[102] WTW internal document, p9.
[103] [✂].
[104] Spence Johnson Institutional Insights, 'Fiduciary Management: Surging forward', 2016. p24.

each of these five large firms aims to achieve strong growth rates in its own fiduciary management offerings.[105]

(a) A 2017 WTW strategy document states a global 5-year growth target of 20% per annum for their global fiduciary management revenue, relative to their 2016 levels.[106]

(b) A 2015 Aon strategy document states that Aon sought to increase its AUM in corporate pensions delegated solutions (globally) at a faster rate than market growth [✂].[107]

(c) A 2015 River and Mercantile board strategy day document set out targeted growth of 15% p.a. in fiduciary management up until 2020.[108]

(d) A 2015 three-year strategy document from Russell Investments stated targeted revenue increases totalling $7.8 million across 2016, 2017 and 2018. This implies an annualised growth rate of around 11%.[109]

(e) A 2017 Mercer strategy document states that they will [✂].[110]

4.117 We received some evidence that forecasts that the market shares of the IC-FM firms could fall over the next few years due to factors such as market entry from asset management firms and an increased use of open tenders. In particular, [✂].[111]

4.118 Future concentration in the market for fiduciary management services to pension schemes of course depends on the prospect for future entry and expansion. We discuss this issue further in chapter 9.

Parties' views on fiduciary management market structure

4.119 Several parties supported our view that the fiduciary management market was more concentrated than the investment consultancy market and said that

[105] There are challenges in comparing and interpreting these as a set because the projections are not always comparable. For example (a) Achieving high growth rates in fiduciary management was easier when the fiduciary management market was smaller in 2015: as the fiduciary management market has grown, achieving the same growth rate requires winning more business. Figures forecast over different periods will therefore contain different annualised growth rates, (b) Several figures were presented at the global rather than the UK level and (c) Differences in rates of growth may be as much to do with differences about expected market growth as they are about expected ability to win business from others. Assumptions on market growth rates are usually not stated in these documents.
[106] WTW internal document.
[107] Aon internal document.
[108] River and Mercantile internal document.
[109] Russell Investment internal document. Figure uses 2016 revenue provided to the CMA as a base, and 2016 USD/GBP conversion rates. The calculation is only approximate.
[110] [✂].
[111] [✂].

concentration in the fiduciary management market could further increase in the next few years.

(a) LCP told us that ‘We agree that the CMA should have concerns that the concentration in the fiduciary management services market could further increase. In particular, given the way in which the market is currently structured, the combined IC-FM firms can be expected to grow and increase market share’.[112]

(b) Hymans said that ’there is a genuine concern that [the fiduciary management market] becomes more concentrated over time rather than more competitive’.[113]

(c) Russell Investments emphasised the trend in growth for the three largest fiduciary management providers and, acknowledging the difficulty in predicting whether it will continue, said that it is a reasonable cause for concern given … there is reason to suggest that the observed gains in these providers’ market share have been largely driven by conversion of investment consultant mandates to fiduciary management.[114]

4.120 However, the largest three investment consultancy providers challenged the evidence and inference underlying this view on a number of grounds. In particular:

(a) Aon and Mercer noted that any potential growth in combined shares was not certain and is difficult to predict.[115]

(b) Aon, Mercer and WTW submitted that ambitious growth plans demonstrated future vigorous competition, that such plans did not necessarily represent achievable plans for all firms and did not demonstrate that such growth would be realised in the future given the plans were aspirational. They also submitted that, if we had considered growth plans of firms outside the largest five fiduciary management players, similar ambitions would have been observed.[116]

(c) Aon, Mercer and WTW submitted that future entry and expansion (including that from established asset managers seeking to expand their

[112] LCP’s response to the Competitive Landscape Working Paper, p3.
[113] Hymans’ response to the Competitive Landscape Working Paper, p1.
[114] Russell Investments’ response to the Competitive Landscape Working Paper, p1.
[115] Aon’s response to the Competitive Landscape Working Paper, paragraph 2.2.
Mercer’s response to the Competitive Landscape Working Paper, paragraph 2.13.
[116] Aon’s response to the Competitive Landscape Working Paper, paragraph 2.3.
Mercer’s response to the Competitive Landscape Working Paper, paragraphs 2.11 and 2.12.
WTW’s response to the Competitive Landscape Working Paper, paragraph 1.11.

offering) would likely prevent increases in concentration in the fiduciary management market.[117]

(d) Aon and Mercer told us that even if concentration were to increase, the CMA had not provided any evidence as to why this would in itself lead to an AEC.[118]

4.121 We acknowledge the challenges in predicting future growth in shares. We also recognise that high rates of growth, and ambitious growth plans, could be competitive if reflecting a highly competitive service offering.

4.122 Nevertheless, we consider that an alternative hypothesis explaining at least part of this historical and planned growth, is that certain features of the investment consultancy and fiduciary management markets have favoured the growth of certain IC-FM firms. We discuss this more in chapter 7. This historical increase in share may in part be symptomatic of these features and could cause the observed historical trend to continue. Our analysis here is not intended to imply that future increases in concentration in the fiduciary management market would necessarily be considered problematic in themselves.[119]

Conclusions

4.123 Our analysis shows that concentration levels for the fiduciary management market are higher than that for the investment consultancy market as whole (1,363 compared to 1,089). However, it does not meet the threshold set out in our guidance at which we would be likely to consider the market 'highly concentrated'. We also found that:

(a) No providers have a market share above 25%, and only one provider has a share above 20%;

(b) there are five large firms in this market and several other notable players, and

(c) there has been recent entry into the fiduciary management market by a number of large asset management firms.

[117] Aon's response to the Competitive Landscape Working Paper, paragraphs 2.4 and 2.5.
Mercer's response to the Competitive Landscape Working Paper, paragraph 2.11.
WTW's response to the Competitive Landscape Working Paper, paragraph 1.16.
[118] Aon's response to the Competitive Landscape Working Paper, paragraph 2.
Mercer's response to the Competitive Landscape Working Paper, paragraph 2.10.
[119] We are not expressing a theory of harm around future concentration. We have considered the parties' views that entry and expansion are able to offset any increases in concentration separately, see chapter 9.

4.124 Our finding is that the fiduciary management market is not highly concentrated, and customers appear at present to have access to a sufficient number of suppliers.

4.125 As such, current levels of concentration are not in themselves sufficient to lead to competition concerns.

4.126 However, our analysis shows that the combined position of the three largest investment consultancy firms (Aon, Mercer and WTW) has grown substantially, having increased by around 45 percentage points in the last 11 years. This represents a significant upwards trend.

4.127 While it is difficult to predict whether this trend will continue, we see that these firms have ambitious growth plans in the fiduciary management market. There is also some evidence that barriers to expansion may be greater in fiduciary management than investment consultancy (see chapter 9).

4.128 Therefore, we conclude that there has been a trend of increasing shares for the three largest investment consultancy providers in fiduciary management, and that concentration in fiduciary management could increase in the future.

Conclusions

4.129 We have found that there are separate relevant markets for the supply of investment consultancy services to pension schemes in the UK, and the supply of fiduciary management services to pension schemes in the United Kingdom.

4.130 The investment consultancy market is not highly concentrated, concentration is particularly low for smaller schemes and there are a large number of providers active in this market.

4.131 The fiduciary management market is more concentrated than the investment consultancy market. However, it does not appear to be highly concentrated and customers appear at present have access to a sufficient number of suppliers.

4.132 We have also identified that there has been a trend of increasing shares for the three largest investment consultancy providers in fiduciary management, and that concentration in the fiduciary management market could increase in the future.

5. Information on fees and quality

Our main findings

Investment consultancy

- Fee information for current clients is generally clear, with trustees receiving simple regular invoices. Comparing the fees of alternative providers (eg at tendering) can be challenging however; information is often limited, and rival bids are not directly comparable.

- Trustees receive regular and generally clear information on the performance of their investments. However, we are concerned about certain practices such as the reporting of performance on a gross of fees basis.

- Very few performance reports demonstrate progress against the trustees' strategic objectives, which would help trustees to assess the quality of their provider's investment advice.

- For prospective clients, there is limited information to assess providers' investment abilities and performance information on their recommended asset management products and funds is not directly comparable.

Fiduciary management

- Many fee reporting practices for current clients (such as the 'bundling' of fiduciary management and asset management fees) prevent them from being able to fully assess the value for money of their service.

- Comparing the fees of alternative providers in tenders can also be challenging and there is wide variation in the reporting of asset management fees; the overall cost of service is often not indicated.

- Many tenders also include no information on the costs of transitioning into and out of these services, which can be considerable.

- Performance reporting for current clients is mostly clear and detailed. Progress is regularly shown against the trustees' strategic objectives.

- We are concerned however that performance is often reported on a gross of fees basis.

Introduction

5.1 This chapter, together with the following chapter on trustee engagement, considers demand side and information issues. Our issues statement summarises the potential concern in this area as follows:

> Difficulties in customers’ ability to effectively assess, compare and switch investment consultants result in weak incentives for investment consultants to compete for customers.

5.2 In considering the extent to which customers face difficulties in assessing, comparing and switching investment consultants, we broadly follow the conceptual framework outlined in our market investigation guidelines (‘the Guidelines’).[120] The Guidelines state that customers may face difficulties in each of the following areas:

(a) Accessing information (access).

(b) Identifying the best value for money (assess).

(c) Switching services and suppliers (act).[121]

5.3 This chapter is primarily concerned with the first two of these three areas: whether customers (pension scheme trustees) have access to the necessary information to evaluate investment consultants and fiduciary managers, and to assess the value for money of alternative providers.[122] The ability to access, assess and act on such information is critical in driving competition in the markets in question.

5.4 The chapter is structured as follows:

(a) We first present our broad conceptual framework.

(b) We discuss the evidence base for our analysis.

(c) We analyse the information on fees and quality (for both current and potential customers) in investment consultancy.

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[120] Guidelines for market investigations: Their role, procedures, assessment and remedies (CC3 (Revised), April 2013).
[121] (CC3 (Revised)), paragraphs 296 and 297.
[122] Chapter 6 and Appendix 3 (trustee engagement) covers the final area, ie whether trustees are able to act on the outcome of their assessment. This may be through switching provider, or through negotiating an improved deal with the incumbent provider.

(d) We then analyse the information on fees and quality (for both current and potential customers) in fiduciary management.

Conceptual framework

5.5 In order to drive effective competition, it is important that customers have access to information on both the fees and quality of alternative providers in the market.

5.6 As a guiding principle, we consider that this information should be both clear and provided regularly. Clarity is particularly important in an industry such as this, where much of the information is inherently complex and customers are (generally) not investment experts. Excess investment costs and poor investment decisions can have a substantial impact on scheme outcomes.

5.7 Regularity is important as both the absolute and relative levels of fees and quality can change over time. A service may represent good value for money at one point in time but not another; regular information enables trustees to assess this and prompts them to act if necessary. This is important in the context of this industry as firms are (generally) providing a long-term service with ‘evergreen’ contracts.

5.8 We note that different types of information are important in different contexts. In particular:

(a) Information provided to current clients should be clear and regular, but complete consistency across firms may not always be necessary or possible. Trustees should be able to assess their incumbent provider’s value for money but may choose to do so based on their own objectives and understanding of the industry, rather than by benchmarking against other schemes or providers.

(b) Information provided to prospective clients should be clear and, as far as possible, consistent across firms. Trustees should be able to compare competing firms on a like-for-like basis; this helps them to select the best provider for them and encourages competition on its merits. We recognise however that complete consistency can often be difficult to achieve, for example due to the use of alternative technical methodologies.

Evidence base

5.9 Our analysis in this chapter draws heavily on information received directly from parties. This includes written responses to our market questionnaire (issued to investment consultants and fiduciary managers) and related follow-up information requests. These information requests have covered fee reporting, performance reporting and the implications of regulatory developments such as MiFID II. We have also considered evidence provided by parties in hearings and in response to our issues statement, working papers and provisional decision report.

5.10 As part of our market questionnaire, we requested access to documents distributed by investment consultants and fiduciary managers to their clients over the last three to five years. These documents consist of:

(a) Information provided to current clients: we requested all documents distributed to a sample of current clients over the last three to five years. We have reviewed the documents of around 50 clients (across 15 firms) in detail, covering DB, DC and hybrid schemes; and advisory and fiduciary management clients.

(c) Information provided in tenders: we requested all documents submitted as part of a tender process over the last three to five years. We undertook a matching exercise to identify rival bids for the same tender, allowing us directly to assess the comparability of different bids. Overall, we have reviewed over 100 bids for around 25 unique tenders.

(d) Information distributed in 'marketing materials': we have reviewed hundreds of marketing materials distributed by 15 firms (large and medium-sized providers). These include brochures, flyers, presentations and information made available through firms' websites.

5.11 In analysing this evidence, we have had particular regard to recent developments and current practice. We consider that historical evidence is also informative however in indicating whether these practices are sufficiently well-established and embedded in the market. To fully understand the market, it is not sufficient to focus exclusively on one particular point in time.

5.12 Our analysis and findings also draw on the results of the CMA survey. We present and examine relevant survey results within each section below and consider this alongside the evidence. Overall, the results of the CMA survey show that a majority (and for some questions, a large majority) of trustees said that they found it very easy or fairly easy to monitor and/or compare fees or performance. In interpreting these results, we are mindful of the following factors:

(a) As we set out in chapter 10, this is a heterogeneous service and fees are negotiated on an individual basis in both investment consultancy and fiduciary management. Therefore, even if a majority of trustees consider

that there is sufficient information to assess the offers of different providers, the benefits that they receive from this (eg from lower prices) do not necessarily extend to those who experience difficulties in assessing offers.

(b) In many cases the reporting of fees or quality may be affected by methodological differences and technical assumptions. Understandably, trustees may not be fully aware of these issues or their potential impact on the comparability of information across providers.

(c) We have had access to a large number of documents from a wide range of schemes and providers. We have found that there is considerable variation in the level of detail and clarity in these documents. Trustees generally have access only to those documents relevant to their own scheme(s). As noted by PLSA, the survey results may therefore reflect that many trustees do not know 'what good looks like'.[123]

(d) Trustees are not the end consumers of these services and are ultimately acting on behalf of scheme members. There may therefore be some incentive for trustees to over-report their confidence in their ability to assess and compare offers.

5.13 In its response to the provisional decision report, Mercer submitted that 'the CMA is too sceptical of the survey on this issue – particularly given it relies heavily on the survey evidence elsewhere'.[124]

5.14 We emphasise, however, that the CMA survey is one part of our overall evidence base. Whenever we use the CMA survey as part of our assessment, we consider it in context and in conjunction with other evidence that we have weighed up in the round. This includes evidence from internal documents from a wide range of schemes and providers, trustee roundtables and submissions from a number of stakeholders. We used this approach consistently in relation to different issues in our final report.

5.15 This broad set of factual evidence allows us to have an overall picture of the market that goes beyond what a trustee might have reported as his or her own personal experience. In this context, having examined multiple internal documents, our view is that the claimed levels of ease of monitoring and assessment do not necessary imply that information provided by investment consultants and fiduciary managers is clear and comparable.

[123] PLSA response to the information on fees and quality working paper.
[124] Mercer response to the provisional decision report (paragraph 2.5).

Investment consultancy clients

Information on fees

Current clients

- *Fees paid to the investment consultant*

5.16 The most common fee structures for investment consultancy clients are a fixed retainer, hourly (or time-cost) fees and pre-agreed 'project' fees. Many clients use a retainer for basic regular services, such as attending meetings and reporting performance, with hourly or project fees used for additional work. Most firms offer their clients a choice between the above options.

5.17 Clients typically receive monthly or quarterly invoices. For those using a retainer or fixed fee, this usually consists of a single line specifying the amount due for the period.[125] For those using hourly or project fees, invoices are usually itemised. The level of detail varies from case-to-case, although we have reviewed several examples of very clear and detailed itemised invoices.[126]

5.18 For those clients using hourly or project fees, proposed changes to the investment strategy could result in additional revenues for the consultant. We would therefore expect that clients are given information in advance regarding changes to their fees. In our document review, we have seen several examples of good practice. In one case for example, a client was provided with a detailed spreadsheet itemising the consultant's expected fees over the coming year, benchmarked against the initial anticipated budget for each project.[127] In another case, the client was provided with a detailed itemisation of fees versus budget.[128]

5.19 Our analysis therefore shows that investment consultancy clients are generally provided with clear and regular information on the fees they pay to their provider. This is consistent with evidence from the CMA survey, which found that 56% of clients found it very easy to monitor the fees they pay to their investment consultant, and 33% found it fairly easy (7% found it not very easy and 1% found it not at all easy; 2% don't know, 1% not applicable).

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[125] See, for example, invoices provided to clients by [✂] (dated 20 September 2017) and [✂] (dated 31 October 2017).
[126] See, for example, invoices provided to clients by [✂] (dated 15 June 2017), [✂] (dated November 2017), [✂] (dated 31 March 2015), [✂] (covering Q3 2017), [✂] (dated 8 June 2017) and [✂] (dated 31 May 2017).
[127] Documents provided to a client by [✂] (dated May 2017 and November 2017).
[128] [✂] (dated 31 May 2017).

Investment consultancy clients are generally provided with clear and regular information on fees.

5.20 In its response to our working paper, bfinance submitted that different elements of the advisory services should be separately itemised in fee reporting. It submitted that this would enable investors to assess the cost and value for money of each aspect of the service.[129]

5.21 We have found however that, in many cases, invoices are already itemised at a granular level. This may include separate allocations to services such as asset allocation advice, risk management/hedging and manager selection. It may not always be possible however meaningfully to separate these different services. The decision of how to allocate fees and costs between them may therefore sometimes be arbitrary. Further, we have received no evidence that there is systematic demand from trustees for this particular breakdown of costs.

- *Fees paid to third parties*

5.22 In an advisory model, trustees enter into separate contracts with asset managers and other third parties. Information on such fees is therefore provided directly to trustees, although they may request that their investment consultant collates and summarises this information on their behalf.[130]

5.23 As trustees have direct access to such information, we would not expect investment consultants to provide invoices or fee statements covering third party fees. To assess the suitability of their clients' investments however, we would expect consultants to undertake periodic reviews of third party fees, particularly those paid to asset managers, and how such fees compare to market alternatives.[131] Regulatory guidelines for example state that trustees should consider the impact of fees on investment returns, and check that fee levels are competitive.

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[129] Bfinance response to the information on fees and quality working paper.
[130] Asset managers generally have an obligation (eg under MiFID II) to provide regular information to their clients regarding costs and charges. Trustees may request that such information is collected by their consultant on their behalf. We note that the institutional disclosure working group (IDWG) is currently creating templates for the reporting of asset management costs and charges. This includes both a granular disclosure and a high-level summary for investors. We would expect consultants to ensure that their customers receive this information in a suitable form and with appropriate regularity.
[131] We note for example that TPR's DB Investment Guidance states that trustees should 'consider the impact of [investment managers'] fees on investment return, as this affects the net return the scheme receives. You should check fee levels for competitiveness against appropriate market comparators for the size and type of mandate'.

5.24 For DB schemes, we found little evidence in our document review that investment consultants regularly undertake this kind of analysis for trustees. The main exception to this is when a consultant is recommending a change to the investment strategy or underlying funds. In such cases, clients are typically provided with the expected fees of alternative managers and an estimate of the transition costs.[132] From the documents we have reviewed however, it is not generally made clear how the client's overall fees are likely to be impacted by the change, or how this might impact overall net returns.[133]

5.25 For DC schemes, there are specific regulatory requirements regarding the reporting of fee information. In particular, trustees of DC schemes (unless exempt) are required to undertake an annual Value for Members assessment. This must be explained in the Annual Chair's Statement, together with a disclosure of member-borne costs and charges.[134] Additional requirements introduced in April 2018 have, generally speaking, strengthened the requirements over the reporting of costs and charges in relation to DC schemes.[135]

5.26 These requirements should ensure that trustees of DC schemes seek to receive clear and regular information on third party fees and their competitiveness. Indeed, we have reviewed a number of Value for Members assessments undertaken by investment consultants, and these include clear information on third party fees.

5.27 We note however that the level of analysis varies considerably across clients. In some cases, the Value for Members assessments we have seen (undertaken by investment consultants) explicitly compare the client's fees for each fund against relevant market benchmarks.[136] This allows trustees easily to assess the competitiveness of their investments. Other Value for Members assessments however include only a general statement on the suitability of fees.[137] This may simply note for example that fees are generally reasonable. We also note that TPR research conducted in 2017 found that only around half of small schemes have a 'documented process in place to assess, at least

[132] See, for example, documents provided to clients by [✂] (dated 9 January 2017 and 15 March 2017) and [✂] (dated 25 August 2016 and 1 July 2017).
[133] The documents cited at footnote 131 for example do not include information on the impact of the change to asset management products on overall fees or net returns.
[134] Regulation 25(1) Occupational Pension Schemes (Scheme Administration) Regulations 1996.
[135] The Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018, S.I 233/2018 require trustees of DC schemes to include information on the level of costs and transaction charges in the Chair's annual statement for both the default arrangements and self-select funds. This information must be made publicly available.
[136] See, for example, a document provided to a client by [✂] (dated May 2017).
[137] See, for example, a document provided to a client by [✂] (dated 6 November 2015).

annually, the extent to which member-borne charges and transaction costs represent value for members'.

5.28 Our document review therefore indicates that many clients (particularly DB and hybrid schemes) currently receive only limited information from their investment consultant on third party fees. In the CMA survey, 34% of trustees responded that they found it very easy to monitor third party fees based on the information received from their consultant. A further 40% found it fairly easy, although a significant proportion of trustees (16%) found it not very easy and 5% found it not at all easy (2% don't know, 4% not applicable). In view of the factors outlined in paragraph 5.12 above, we therefore consider that taken in the round the evidence shows that many schemes receive limited information from their investment consultant on third party fees.

5.29 Some parties have raised practical issues with the reporting and analysis of third party fees. Mercer submitted that the investment consultant may not have access to all of the necessary information, and LCP indicated that there may be contractual issues over securing data provision.[138] Redington submitted that for large and complex schemes the investment consultant does not have visibility over all costs, and even for small schemes the resource required to collect such information may detract from more important work (such as strategic asset allocation advice).[139]

5.30 WTW however submitted that more could be done to provide clients with information on third party fees, including the total expense ratio of underlying funds, as well as changes to third party fees resulting from portfolio changes.[140] They submitted that such information could be included in regular performance monitoring reports.

5.31 We recognise that there may be some practical issues with the reporting of third party fees, and trustees should have access to such information directly from underlying managers (and other third parties). We consider that the introduction of MiFID II and the related IDWG templates should significantly improve the availability and clarity of such information. Investment consultants can play an important role in assisting trustees in processing and understanding this information. From a competition perspective, this is important in helping trustees to assess the performance of their investments, and therefore the quality of investment advice they receive, and in turn to drive competition between providers.

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[138] Mercer and LCP responses to the working paper on information on fees and quality.
[139] Redington response to the working paper on fees and quality.
[140] WTW response to the working paper on fees and quality and WTW response to the provisional decision report. [✂].

MiFID II and the Institutional Disclosure Working Group templates should significantly improve the availability and clarity of information on investment fees.

Prospective clients

5.32 As set out in our conceptual framework at the start of this chapter, information on fees provided to prospective clients should be clear and, as far as possible, consistent across firms. Our document review indicates that although trustees are generally provided with clear and detailed information on the services that will be included as part of their contract with the investment consultant, it is often difficult to compare the overall fee for those services on a like-for-like basis.

5.33 There are two main reasons for this lack of comparability. First, different consultants often use different fee structures such as hourly rates and fixed fees. Where a hybrid approach is proposed, it is often unclear how the cost is split between fixed and time cost-fees.

5.34 One tender that we reviewed for example included a bid based on a retainer plus hourly fees,[141] and another bid based on a fixed price.[142] The former did not indicate an overall estimated cost, and the latter included a very large range for the likely overall cost. Based on these tender documents, it is therefore very difficult to compare the price of these two bids.

5.35 We recognise that pricing flexibility can be beneficial for trustees, and the use of different fee structures promotes innovation and competition. In some of the documents we have reviewed however, this can make the comparability of bids challenging. As outlined below, we have also reviewed cases in which fee comparability was relatively easy, despite the use of different structures. We therefore note that it is possible to maintain comparability whilst allowing trustees and firms to decide which fee structure is most appropriate for them.

5.36 Second, the fee questions asked by trustees in their request for proposals are often vague. For example, tenders often do not require firms to itemise their fees according to a list of specified services.[143] In many cases, the difference in the list of services included in estimates from firms leads to high variation in

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[141] [✂] response to an invitation to tender (dated [✂] 2017).
[142] [✂] response to an invitation to tender (dated [✂] 2017).
[143] For example, an invitation to tender from a DB scheme (dated 2014) submitted to the CMA by [✂], [✂] response to an invitation to tender (dated [✂] 2017).

the overall cost across responses.[144] Moreover, questions in tenders often do not indicate the metric (eg time-period) that firms should be using to estimate the cost of investment consultancy services. This can also hinder the comparison of rival bids.[145]

5.37 Overall, the quality and detail of fee information in tenders for investment consultancy services varies considerably. Some tenders are extremely short and ask very general, open questions. In some cases there are no direct questions regarding the proposed fees charged by the bidding firms.[146]

5.38 We have also reviewed some very structured and precise tender documents, which appear to be more common when the process is mediated by a TPE. Tenders mediated by TPEs typically require firms to provide a quote for a full list of services, specified in the tender, and to indicate how the fee is split between 'ongoing' and 'project' work. In the cases we have reviewed, this enabled a direct comparison of the competing bids.[147]

5.39 We have therefore found in our document review that it is often difficult to compare the fees of competing bidders. Aon, Hymans, Mercer and WTW however have submitted that the results of the CMA survey indicate that trustees are generally satisfied with the information that they receive.[148] The CMA survey found that 35% of trustees say they found it very easy to understand and compare the fees payable to the investment consultant in the proposals that they received; 46% found it fairly easy; 9% found it not very easy; and 2% found it not easy at all (6% don't know, 1% not applicable).

5.40 We agree that the CMA survey results indicate that trustees generally find it easy to compare the fees of rival bids when tendering. However, the survey is one piece of the overall evidence base, and our document review has shown that there is considerable variation in the quality of tenders and the comparability of information.[149] We have therefore seen that in some cases it is much easier to compare the fees of alternative providers than it is in others. We have been able to identify clear examples of 'good' and 'bad' practice.

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[144] For example, [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2015),
[145] For example, [✂] response to an invitation to tender (dated [✂] 2017), [✂] response to an invitation to tender (dated [✂] 2017).
[146] For example, an invitation to tender from a DB scheme (dated [✂] 2015) submitted to the CMA by [✂], an invitation to tender from a DB scheme (dated [✂] 2015) submitted to the CMA by [✂].
[147] For example, [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2017), [✂] response to an invitation to tender (dated [✂] 2017).
[148] Aon, Hymans, Mercer and WTW responses to the information on fees and quality working paper.
[149] We also note that at our trustee roundtables, price was a relevant factor for trustees when choosing an advisor, but several trustees had found it hard to understand whether proposed fees were like-for-like (trustee roundtable summary).

5.41 As set out in paragraph 5.12 above, trustees do not have the benefit of being able to directly compare the type of questions and information requested in such a wide range of tenders. We therefore consider that in this instance, the CMA survey results may reflect the fact that many trustees do not know 'what good looks like'.

5.42 Barnett Waddingham and KPMG submitted that fees are negotiated as part of an appointment process, and clients will challenge them if their fees are out of line with competitors'.[150] We recognise that fees may subsequently be negotiated downwards after tendering, although it is still important that fees are broadly clear and comparable at the point of tendering. This is important to put competitive pressure on fees by providing a counterfactual for what could be achieved elsewhere. By relying on negotiations at a later stage, trustees may be discounting providers that would have offered more competitive terms.

Information on quality

Current clients

5.43 Trustees receive information from their investment consultant on the investment performance of their scheme through regular performance reports (typically quarterly) and strategic reviews (typically every three years). Performance information can also be included in ad hoc pieces of analysis, for example when trustees are considering a change to their investment strategy, and through online monitoring tools.

5.44 The level of detail in regular performance reports varies considerably across clients, in part reflecting trustees' preferences. Many firms offer a basic report with further information available for an additional charge. Most reports include information on the performance of the underlying funds and overall scheme returns, whilst information on risk is generally an optional extra; many regular performance reports include little or no explicit analysis of risk.[151] This includes both 'pure' investment risk and investment risk relative to liabilities.

5.45 Fund-level performance information is generally clear and well presented. The format is largely standardised: returns are shown over the latest quarter and year (often longer) and are benchmarked against relevant market indices. We note that there is a lack of consistency across providers however as to

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[150] Barnett Waddingham and KPMG responses to the information on fees and quality working paper.
[151] See, for example, documents provided to clients by [✂] (covering Q2 2017), [✂] (covering Q4 2016) and [✂] (covering Q2 2017).

whether performance is reported gross or net of asset management fees.[152] Sometimes it is not stated whether returns are gross or net of fees.[153]

5.46 As highlighted in our analysis of asset manager product recommendations (Appendix 2), reporting on a gross of fees basis may give a misleading impression of the performance of a fund or investment product. Indeed, TPR guidance recommends that trustees of both DB and DC schemes consider the impact of asset managers' fees on investment returns.[154]

5.47 For DB schemes, overall scheme returns are compared to either an aggregate benchmark, based on the underlying fund-level benchmarks, or to the change in liabilities, ie the funding level progression. As the overall returns are based on aggregating the fund-level returns, there is again a lack of consistency in whether this information is presented on a gross or net of fees basis.

5.48 We note that the scheme's overall performance is not generally shown against the trustees' strategic objectives.[155] In addition, we have seen very few examples in which the investment consultant is set, and subsequently reports progress against, explicit performance targets. Regular access to such information would help trustees to fully assess their investment advisor's performance.[156]

5.49 For DC schemes, many performance reports include little or no information on overall scheme outcomes.[157] Although there is no statutory funding objective for a DC scheme, we would still expect trustees to monitor the overall performance of the scheme on a strategic level. This is consistent with TPR guidance, which states that trustees should consider the scheme's investment strategy rather than simply the performance of underlying funds.[158]

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[152] Information is provided on a gross of fees basis in, for example, a document provided to a client by [✂] (covering Q4 2016). Information is provided on a net of fees basis in, for example, documents provided to clients by [✂] (covering Q1 2017) and [✂] (dated May 2017). Information is provided on a gross and net of fees basis for different products/funds in, for example, documents provided to clients by [✂] (dated 2 February 2016), [✂] (dated September 2017), [✂] (dated November 2016) and [✂] (dated May 2017).

[153] See, for example, a quarterly monitoring report provided to a client by [✂] (covering Q2 2017).

[154] For DB schemes: TPR guidance on 'monitoring DB investments' (part of TPR's DB Investment Guidance), which accompanies Code of Practice 3 ('funding defined benefits'). For DC schemes: TPR guidance on 'investment governance', which accompanies Code of Practice 13 ('the DC code').

[155] Many regular performance reports that we have reviewed do not track progress against the trustees' strategic objectives. See, for example, documents provided to clients by [✂] (dated 14 November 2016), [✂] (covering Q4 2016), [✂] (covering Q2 2017), [✂] (dated September 2016), and [✂] (dated May 2017).

[156] TPR's DB Investment Guidance for example emphasises the importance of the scheme's longer-term investment strategy relative to short-term investment manager performance, and encourages trustees to 'focus on the long-term when monitoring investment strategy' p77.

[157] See, for example, documents provided to clients by [✂] (covering Q2 2017), LCP (covering Q2 2016) and [✂] (covering Q4 2016).

[158] TPR code of practice 13 ('the DC code').

5.50 TPR guidance also states that trustees of DC schemes should consider how investment performance has impacted different members of the scheme.[159] Our document review however indicates that the majority of schemes do not receive regular information on expected 'member outcomes'.

5.51 Beyond the regular performance reports, more detailed analysis is included in strategic reviews. For DB schemes this can include information on long-term funding level developments and an assessment of risk (such as scenario modelling and 'value at risk' analysis). Strategic reviews generally provide detailed analysis on suitable future investment strategies, including (in some cases) the projected flight plan and proposed asset allocation. However, they are generally forward-looking and do not typically analyse historical performance against schemes' strategic objectives.[160]

5.52 For DC schemes, strategic reviews can include detailed analysis of the scheme's funds and recent performance. This may include some simple assessment or discussion of projected member outcomes.[161]

5.53 A number of firms now provide online monitoring tools for their DB clients. A basic service typically enables clients to monitor daily funding levels, with some firms providing optional extras including risk analysis and scenario modelling. We note however that online monitoring tools are not currently provided as standard to advisory clients. Some firms do not provide this service, and clients are generally charged an additional fee or subscription for access.[162] Evidence collected from parties indicates that the number of clients using this service remains relatively low.[163]

5.54 Overall therefore, the evidence indicates that trustees generally have access to clear and regular information on the investment performance of their scheme. This is consistent with evidence from the CMA survey, in which 64% of trustees responded that it is very easy to monitor the overall investment performance of their scheme, and 30% responded that it is fairly easy (2% found it not very easy and 1% found it not at all easy).

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159 Code of practice 13 ('the DC code') for example states that trustees are expected to consider the scheme's investment strategy as a whole and not just the performance of underlying funds. The accompanying guide states that 'it is important to consider how the performance has impacted different members or groups of members' p24.
160 For examples of DB strategic reviews, see documents provided to clients by [✂] (dated 4 August 2017 and 17 June 2015), [✂] (dated 20 October 2016), [✂] (dated 22 October 2015), [✂] (dated 12 January 2015) and [✂] (dated August 2017).
161 For examples of DC strategic reviews, see documents provided to clients by [✂] (dated May 2016), [✂] (dated September 2016) and [✂] (dated November 2014).
162 Responses to CMA market questionnaire.
163 Around a third of [✂] and [✂], and a quarter of [✂], DB advisory clients currently use their online monitoring systems for example.

5.55 We have, however, identified some areas of concern, including reporting performance on a gross of fees basis and not explicitly monitoring performance against the trustees' strategic objectives. These practices may hinder trustees in accurately assessing the performance of their investments and, in turn, the quality of the advice provided by their investment consultant.

5.56 In terms of reporting gross of fees, Mercer have submitted that the decision to report gross or net of fees depends on client requirements, and that reporting on a gross of fees basis allows for comparison against the manager's stated performance targets. They also make it clear in their reporting whether returns are gross or net.[164] KPMG submitted that returns should be reported net of fees, in line with TPR guidance.[165]

5.57 We consider that even in cases where a manager's performance targets are stated on a gross of fees basis, information should also be available on a net of fees basis wherever possible, as this is the return that is received by the client. This is particularly true when aggregating across all managers to calculate overall scheme returns; that is, it is important that trustees have sight of overall returns on a net of fees basis. The ability to report in this way should be aided by the introduction of MiFID II and the IDWG fee templates.

5.58 In terms of monitoring performance against strategic objectives, WTW have submitted that in an advisory model, trustees may not have a set goal or objective for fund performance.[166] In WTW's view it is therefore challenging to provide performance information that allows trustees to track progress towards that goal.[167]

5.59 Our view however is that it should be incumbent on trustees to develop clear strategic objectives for their scheme. To assess the quality of their investment consultant's advice, we would expect trustees to have a clear sense of what they are trying to achieve, and how this will be measured. Part of the role of an effective investment consultant is in helping trustees to establish such parameters.

5.60 This is consistent with the views expressed by Cardano for example, who noted that a greater focus on outcomes, with clear objectives in place

[164] Mercer response to the fees and quality working paper.
[165] KPMG response to the fees and quality working paper.
[166] WTW response to the fees and quality working paper .
[167] Section 223 and section 244 of the PA04 require trustees to prepare, maintain and revise the Statement of Funding Principles (SFP) and the Statement of Investment Principles (SIP) respectively. The SFP should set the trustees' policy for meeting the statutory funding objective without specifying it. The SIP should cover trustees' policies relating to expected return on investments alongside other information on the current asset allocation and asset managers. Indeed, our document review indicates that the SIP often contains clear information on the expected investment return objectives. However, trustees rarely mention their long-term funding target.

including performance targets relating to liabilities, would help trustees to hold their managers and investment consultants to account.[168] TPR guidance also states that DC scheme trustees should assess advisors' and service providers' performance 'against documented targets, measures and/or objectives on a regular basis' (see Appendix 3).[169]

5.61 We note that in fiduciary management, providers may be set clear strategic objectives as part of the IMA.[170] This helps trustees directly to monitor and assess the performance of their provider. In many circumstances, we consider that performance-related targets would also be appropriate in investment consultancy. In other cases, eg if the investment consultant is hired to advise on a specific issue, broader qualitative objectives may be appropriate.

5.62 Some parties have submitted that investment consultants should provide more detailed performance information to current clients. The Investment Association submitted that performance reports should separately demonstrate the relative impact of strategic asset allocation advice and manager selection advice.[171] We have found however that it can often be very difficult to meaningfully separate these two components, and so estimating their individual contributions to overall performance can be extremely challenging.[172]

5.63 Bfinance submitted that we should clearly distinguish between information on scheme performance and consultant performance.[173] In our view, scheme performance can generally be used as an outcome measure against which the quality of advice provided by the consultant can be evaluated. As noted above, this is greatly facilitated if the trustees and their investment consultant have agreed a clear set of objectives that they are trying to achieve.

Prospective clients

5.64 When tendering for investment consultancy services, trustees typically ask questions relating to quality of service factors and for previous examples of successful investment advice or ideas. The level of detail in both the tender

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[168] Cardano hearing summary.
[169] TPR guidance on 'scheme management skills' (accompanying code of practice 13).
[170] See, for example, investment management agreements signed by [✂] (dated December 2016), [✂] (dated December 2014 and May 2016) and [✂].
[171] The Investment Association response to the fees and quality working paper.
[172] In our document review for example we have reviewed a case in which the consultant ([✂]) proposed that the scheme adopt an LDI strategy. As part of the move into LDI, the consultant provided details (and recommendations) on two alternative LDI managers. Such advice includes elements of both asset allocation and manager selection.
[173] Bfinance response to the fees and quality working paper.

and responses varies considerably, ranging from short descriptions to detailed case studies and client testimonies.[174]

5.65 The focus on these qualitative factors likely reflects trustees' preferences, and the factors that are most important to them. Trustees want to understand which firm best understands their needs and has a positive track record of working with similar clients. As noted by Mercer, some of the factors that are valuable to trustees are best demonstrated through case studies and client feedback.[175] The CMA survey results indicate that trustees generally feel that they can understand and compare the overall quality of each proposal when tendering for investment consultancy services.[176]

5.66 Qualitative responses and case studies however do not enable like-for-like comparisons across providers, particularly regarding the quality of their investment advice. In our document review we have seen very few tenders in which firms have submitted explicit quantitative evidence of their investment abilities.[177] In each case this has related to the performance of recommended asset managers.[178] This information (together with related information on proprietary funds or fund-of-funds) has also been distributed via marketing materials, such as magazine features and conference presentations, and is available on the website of some providers.[179] We consider the comparability and accuracy of this information below.

We have seen very few tenders in which firms have given explicit, quantitative evidence of their investment abilities.

Information on asset manager product recommendations

5.67 As noted above, it is not common for investment consultancy firms to submit quantitative evidence of their investment abilities in tenders. Where they have

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[174] For example, [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2017), [✂] response to an invitation to tender (dated [✂] 2017), [✂] response to an invitation to tender (dated [✂] 2017).
[175] Mercer response to the fees and quality working paper.
[176] 31% of trustees found it very easy to understand and compare the overall quality of each proposal and 51% found it fairly easy. 4% found it not very easy and 2% found it not at all easy (10% answered don't know and 2% not applicable).
[177] The CMA survey results indicate that many trustees find it difficult to compare the investment track record of rival consultants when tendering for investment consultancy services. Just 21% of trustees found it very easy and 35% found it fairly easy to understand and compare the investment track record of rival investment consultants when tendering. 19% found it not very easy and 7% found it not at all easy (11% answered don't know and 7% not applicable).
[178] For example, [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2017).
[179] Responses to CMA market questionnaire.

done so, this has related to the performance of their recommended asset management products. This information has also been used by firms in marketing materials and is relatively common in fiduciary management tenders. In a number of cases the firm has indicated that their recommended or proprietary funds have 'added value' or outperformed relevant benchmarks.[180]

5.68 There are three main approaches used by firms to present the performance of their recommended asset management products:

(a) A comparison of the aggregate performance of 'buy rated' products against their respective benchmarks over a specified number of years.

(b) A comparison of the performance of 'buy rated' products to 'sell rated' products over a specified number of years, and

(c) The construction of a 'model portfolio' to show the performance of products the firm's consultants would select if they had no constraints.

5.69 We note that a number of providers have also presented information on the historical performance of their 'multi-asset funds' (also known as 'portfolios', 'strategies' or 'fund-of-funds') in marketing materials and in presentations to clients.[181] This typically includes information on both the risk and return of the fund over a particular period, often compared to market benchmarks or similar funds offered by other providers.[182]

5.70 Based on our review of these materials, we have identified a number of factors that make it difficult for trustees accurately to assess each provider's ability to select asset management products that outperform their benchmarks. As identified by our empirical analysis (Appendix 2), a particularly important factor is whether information is presented gross or net of fees. The implied success of the product recommendations can be substantially affected by this distinction: gross returns are more likely to have beaten the benchmark, but it is net returns that are ultimately achieved by pension schemes.

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[180] See, for example, a document produced in 2016 by [✂] regarding the performance of their growth portfolio, [✂] response to an invitation to tender (dated [✂] 2017), a document produced in August 2017 by [✂] regarding the performance of their multi-asset growth strategy, a 2016 document produced by [✂] regarding their private market model portfolio.
[181] Responses to CMA market questionnaire and information requests.
[182] Multi-asset funds typically comprise products offered by a number of asset managers. Information on the performance of such funds is therefore conceptually similar to information on the performance of recommended asset management products. In some documents this link is made explicitly, for example by discussing the manager research capabilities of the firm and their interactions with managers.

It is important whether investment performance is presented net or gross of fees.

5.71 There is a lack of consistency across firms in this regard, and in some documents it is not clearly stated whether the information being presented is gross or net of fees.[183] If the fee basis is not clear, trustees may make investment decisions based on the incorrect belief that the (gross) returns represent the (net) returns that they would have achieved had they invested in the particular product or fund.

5.72 A number of parties have responded on the issue of gross versus net reporting of recommended products.[184] Mercer submitted that gross of fees information is more informative as it enables investors to assess whether the firm has a reliable system in place for identifying managers that can outperform a passive benchmark.[185] It is asset managers' fees that absorb outperformance, and consultants can help trustees to reduce those fees.

5.73 Additionally, Mercer, Redington and WTW all stated that there are complications with estimating average asset management fees.[186] WTW submitted that investment consultants do not have visibility over asset management fees in all asset classes, and therefore need to rely on assumptions that may not be correct. Hymans, Mercer and WTW all noted that fees vary considerably on a client-by-client basis for example, and some clients pay considerably lower fees than average (and lower than those applied in the CMA analysis).[187]

5.74 KPMG however submitted that net of fees information is more representative of the 'real world' experience of clients, and that fees can materially distort a product's apparent investment performance.[188] Redington submitted that

[183] This is the case for both marketing materials and tender documents. For example, a response from [✂] to a tender in March 2015 reported the performance of their recommended asset managers on a gross of fees basis. A response from [✂] to the same tender in [✂] 2015 did not state whether performance was gross or net of fees. A 2016 document produced by [✂] regarding their private market model portfolio did not indicate whether returns were gross or net of fees; a 2016 document regarding their growth portfolio was reported 'net of fees where available'; a 2016 document regarding the [✂] hedge fund composite was reported 'net of management fees [and others]' but 'gross of [✂] fees'. A document produced in August 2017 by [✂] regarding the performance of their multi-asset growth strategy was presented on a gross of fees basis.
[184] In this section we consider parties' submissions on asset manager product recommendations that relate to the way in which information is presented. In Appendix 2 we address submissions that relate to the technical aspects of our quantitative analysis.
[185] Mercer response to the asset manager product recommendations working paper.
[186] Mercer, Redington and WTW responses to the asset manager product recommendations working paper.
[187] Hymans, Mercer and WTW responses to the asset manager product recommendations working paper.
[188] KPMG response to the asset manager product recommendations working paper.

returns should be shown on a net of asset-weighted fees basis,[189] and PLSA submitted that an informative approach would be to deduct fees from both the return of the product and the benchmark.[190] PLSA note however that this would be complicated in practice. Bfinance and JLT submitted that information on both gross and net of fees performance should be presented.[191]

5.75 Aside from the issue of fees, we have identified several other factors that distort the reported performance of recommended asset management products. We summarise each of these factors here, and further details are provided in Appendix 2.

(a) **Survivorship bias**: Some of the methodologies used are subject to survivorship bias, as products that are not recommended for the entire period shown are removed from the analysis.[192] This may inflate the apparent performance of the recommended set of products.

(b) **Backfill bias**: This may occur if products are only added to a database after a certain period of time; those that perform well may be added, whilst those that perform poorly are unlisted. This may inflate the performance of products in the database.

(c) **Simulated returns**: The (hypothetical) historical performance of new products in the database may be 'simulated' using statistical techniques. Such techniques might be used to produce strong historical returns in order to attract prospective investors.

(d) **The inclusion of all recommended products and asset classes**: We have reviewed some tender documents in which a firm presented the performance of its recommended products in a subset of asset classes.[193] This may be misleading if firms only show those products or asset classes that have performed particularly well.

(e) **Time periods**: Different providers use a variety of different time periods over which they show the performance of their recommended products. This makes it more difficult for trustees to directly compare different providers.

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[189] Redington response to the asset manager product recommendations working paper.
[190] PLSA response to the asset manager product recommendations working paper.
[191] Bfinance and JLT responses to the asset manager product recommendations working paper.
[192] When presenting the performance of products over 10 years for example, some methodologies only consider a product to be 'recommended' if it was recommended for the entire 10-year period. This is likely to inflate the performance of the 'recommended' products, as those products that performed poorly are likely to have been removed from the buy-list during the 10-year period. We consider that some of the analysis submitted by [✂] to the CMA regarding the performance of its asset manager recommendations is likely to be subject to survivorship bias.
[193] See, for example, a bid submitted by [✂] to a tender in March 2015.

5.76 These factors, and the fact that different providers account for them in different ways, make it difficult for trustees to assess the ability of each provider to select the most competitive asset management products.

Fiduciary management clients

Information on fees

Current clients

5.77 Almost all fiduciary managers use some form of *ad valorem* pricing (ie in which fees are a percentage of assets under management). The most common fee structure is a flat percentage fee for the 'core' fiduciary management service – including investment advice and implementation – and variable percentage fees for asset management services. The latter will vary depending on the particular investments in the portfolio, and, in many cases, will ultimately be paid to third party asset managers.

5.78 Some providers instead offer their clients a completely fixed all-in fee, which is also typically charged as a percentage of assets. The all-in fee covers both the core fiduciary management service and asset management services. This pricing structure is more common amongst providers that are also asset managers.

5.79 The main sources of fee information for current clients are the initial contract signed by the trustees and the provider, often known as an IMA, and regular invoices or fee statements. Due to the coming into force of MiFID II on 3 January 2018, many providers are also introducing additional 'MiFID cost and disclosure statements' or equivalent for their clients. However, not all fiduciary management activities/providers are governed by the MiFID II regime.[194]

5.80 We cover each of these sources of information in turn. We concentrate in particular on DB clients, highlighting any significant differences for DC clients where relevant.

[194] The MiFID II regime applies only in respect of the financial instruments specified in the MiFID II Directive (paragraph 3.48(c) and footnote 37) and some firms are exempt from MiFID II as they are subject to the regulatory regime applied by a designated professional body (paragraph 3.49 and footnote 38).

Investment Management Agreements

5.81 The initial contract sets out the agreed fee schedule, with the level of detail reflecting the particular fee structure that is used.[195] Where the client pays an all-in fee for example, the contract may simply state the overall percentage figure. In other cases, the contract may state an agreed (fixed) percentage fee for the core fiduciary management service, and an approximate (variable) percentage fee for asset management products. In some cases, the IMA includes a list of charges on a fund-by-fund basis.

5.82 We note that MiFID II has implications for the information that providers must disclose prior to agreeing a contract with a new client. This is discussed in further detail below.

Regular invoices and fee statements

5.83 To the best of our knowledge, all firms now provide their fiduciary management clients with regular invoices or fee statements, although we note that some suppliers have only recently begun to do so.[196] There is significant variation across both firms and clients however in terms of the fees that are included in such statements, and the level of disaggregation.

5.84 In terms of the inclusion criteria, we note that many fees are deducted directly from the client's assets rather than invoiced separately. In many cases these deductions are not included in regular fee statements.[197] Such deductions often include some or all asset management costs, particularly if such costs are paid to third parties. We note that a number of firms also do not include performance fees and transaction costs in their regular fee statements to clients.[198]

Many clients are not regularly notified of the fees they pay their fiduciary management provider for investment products.

5.85 Many clients are, therefore, not regularly notified of the fees they pay their provider for the asset management products in their portfolio. Based on our client document review and information requests for example, we understand

[195] See, for example, investment management agreements signed by [✂] (dated [✂] 2016), [✂] (dated [✂] 2014 and [✂] 2016) and [✂].
[196] [✂] has recently updated its fee reporting practices, and previously did not provide its fiduciary management clients with regular invoices (as fees and expenses are deducted on a monthly basis from clients' assets and so clients are not required to make a separate payment). Source: responses to CMA information requests.
[197] Responses to CMA market questionnaire and CMA information requests.
[198] Responses to CMA information requests.

that many of [✂] and [✂] fiduciary management clients do not receive information on asset management charges in their regular fee statements. Further, [✂] and [✂] do not include information on all third-party management fees to all their clients in their regular invoices/fee statements.

5.86 In terms of the level of disaggregation, we have found that practice varies considerably across providers. For clients that pay an all-in fee for example, [✂] and [✂] do not itemise their fee statements; both the core fiduciary management fee and the asset management fees are included but are not disaggregated.[199] At our trustee roundtables, some trustees noted that bundled (all-in) fees are common for small schemes using fiduciary management.[200] In our document review we have also reviewed several cases in which the client receives aggregated invoices or fee statements.[201]

5.87 A number of providers (including [✂] and [✂]) itemise overall asset management costs in their regular fee statements for at least some of their fiduciary management clients.[202] Other providers (including [✂] and [✂]) provide partially disaggregated asset management costs.[203] [✂] for example disaggregates asset management charges into 'return seeking' and 'liability hedging' assets. This reflects the fact that the two types of asset can incur very different charges, with return seeking assets typically being costlier than liability hedging assets.

5.88 Finally, some providers itemise asset management fees on a fund-by-fund basis for at least some of their full fiduciary management clients. This includes [✂], [✂] and [✂].[204]

MiFID II requirements and implementation

5.89 A number of parties are in the process of updating their reporting practices to comply with MiFID II, which came into force on 3 January 2018. For firms subject to that regime, MiFID II has implications for both the ex-ante and ex post reporting of costs and charges.[205]

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[199] Responses to CMA information requests.
[200] Trustee roundtable summary.
[201] See, for example, invoices provided to clients by [✂] (dated 23 October 2017), [✂] (dated 12 October 2017), [✂] (dated 24 October 2017) and [✂] (dated 16 January 2017).
[202] Responses to CMA information requests.
[203] Responses to CMA information requests.
[204] Responses to CMA information requests.
[205] Article 24(4) MiFID II Directive 2014/65 and Articles 46, 50 and 60 MiFID II Delegated Regulation 2017/565.

MiFID II has implications for both the ex-ante and ex-post reporting of investment costs and charges.

5.90 The key requirements are summarised here:

(a) Firms must disclose, in good time, all costs and associated charges, including charges relating to investment services, the cost of any advice and the cost of financial instruments recommended or marketed to the client, also encompassing any third-party payments. Where applicable, such information must be provided on a regular basis, and at least annually, during the life of the investment.[206]

(b) All costs and charges must be aggregated, with an itemised breakdown being provided if requested by the client.[207] The aggregated costs and charges must be expressed both as a cash amount and as a percentage.[208]

(c) In both the ex-ante and ex post disclosure, firms providing investment services must provide an illustration of the cumulative effect of costs on the returns of the investment.[209]

(d) Any material change to the information provided on ex ante or ex post costs and charges must be notified to the client 'in good time'.[210]

5.91 We also note that additional ex post reporting requirements are imposed on firms offering 'portfolio management' services, which constitutes the core investment service provided under fiduciary management arrangements.[211] Firms that provide portfolio management services must provide each client with a periodic statement[212] that covers (among other matters) the performance of the portfolio during the reporting period and includes the total amount of fees and charges incurred during the reporting period, itemising at least (i) total management fees and (ii) total costs associated with execution; it

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[206] Article 24(4)(c) MiFID II Directive 2014/65.
[207] Article 24(4) MiFID II Directive 2014/65.
[208] Article 50(2) MiFID II Delegated Regulation 2017/565.
[209] Article 50(10) MiFID II Delegated Regulation 2017/565.
[210] Article 46(4) MiFID II Delegated Regulation 2017/565.
[211] 'Portfolio management' means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments that are covered by MiFID II (Article 4(1)(8) and (15) and Annex I, Section C MiFID II Directive 2014/65).
[212] Unless such a statement is provided by another person (Article 60(1) MiFID II Delegated Regulation 2017/565).

must also include, where relevant, a statement that a more detailed breakdown will be provided on request.[213]

5.92 Based on an information request issued to parties, there appears to be significant variation in how firms are proposing to implement the MiFID II fee reporting requirements.[214] A number of providers are planning to go beyond the minimum requirements set out above. [✂], [✂] and [✂] for example are all proposing separately to itemise the core fiduciary management fee and overall asset management fees (sometimes labelled as 'service costs' and 'product costs'). Within these categories, some providers will also indicate one-off charges, ongoing charges, transaction costs and incidental costs.

5.93 Other providers have indicated that they will comply with the MiFID II requirements by providing aggregated information on all costs and charges to their clients (with further information available upon request). This includes [✂] and [✂].[215] [✂] has submitted that they will comply with the reporting requirements as set out in the FCA Handbook.[216]

- *Our assessment of the evidence*

5.94 The evidence shows that many fiduciary management clients receive clear and regular information on the overall cost of the service they receive, although in many cases regular fee statements do not include all costs incurred by the client.[217] MiFID II ensures that most clients should receive this information at least annually. We note that MiFID II requires firms to provide a broad aggregation of *all* costs and charges – including transaction costs, performance fees and fees paid to third parties.[218]

5.95 The evidence indicates that there is no consistent approach to the itemisation of fees across providers, particularly asset management fees. Many clients receive aggregated fee statements, which include both the core fiduciary management fee and asset management charges.[219] A number of providers

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[213] Article 60(2)(d) MiFID II Delegated Regulation 2017/565. We understand that the reference to management fees covers the explicit fees of the fiduciary management provider and (as applicable) any asset management fees for the service of taking discretionary decisions in respect of the investment of the portfolio. We understand also that the reference to execution costs covers those costs incurred in giving effect to the discretionary decisions; that is, the implicit costs of processing client orders and making investments and these will vary by transaction.
[214] As MiFID II came into force in January 2018, the ex-ante reporting requirements should already have been complied with. As ex post information on costs and charges must be provided at least annually, however, some firms have indicated that they are yet to implement those requirements.
[215] Responses to CMA information requests.
[216] Responses to CMA information requests.
[217] See paragraphs 5.84 to 5.85.
[218] Article 24(4)(c) MiFID II Directive 2014/65 and Articles 50 and 60 MiFID II Delegated Regulation 2017/565.
[219] See paragraph 5.86.

have indicated that they will provide aggregated fee disclosures in order to comply with MiFID II.

5.96 We consider that aggregated (or 'bundled') fee statements make it difficult for trustees fully to assess the value for money of their provider. In particular, we consider that the core fiduciary management fee (covering advice and implementation) and asset management fees should be itemised separately in regular fee statements.

5.97 It is the role of the fiduciary manager to identify competitive asset management products, and to negotiate fees on behalf of their clients. Our analysis has found that in practice such discounts can be considerable.[220] Trustees therefore require access to information on the costs of their portfolio to be able fully to assess their provider's performance. Disaggregating each of the core fiduciary management fee, asset management fees and other charges would additionally help trustees to monitor the competitiveness of their fiduciary management service against (say) the alternative of a purely advisory arrangement.

5.98 The evidence has also shown that where asset management fees are itemised separately, or where firms are proposing to do so as part of their MiFID II reporting practices, such costs are not often disaggregated on a fund-by-fund basis.[221] Given the range of products in each client's portfolio, and the typically large variation in both performance and cost, this information is important to help trustees assess the quality of the portfolio selected by their provider.

5.99 We note for example that advisory clients are provided with this information directly from their asset managers, and the transparency of this information (for advisory clients) should be enhanced by MiFID II and the templates being produced by the IDWG. We consider that fiduciary management clients should have access to comparable information.

5.100 The CMA survey found mixed results in terms of the ease with which trustees can monitor the fees paid for their fiduciary management service:

(a) 45% of trustees found it very easy to monitor the fees paid to their fiduciary manager; 37% found it fairly easy; 11% found it not very easy and 2% found it not at all easy (4% don't know and 1% not applicable).

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[220] See chapter 9.
[221] See paragraphs 5.87 and 5.92.

(b) 24% of trustees found it very easy to monitor the fees paid to third parties; 40% found it fairly easy; 22% found it not very easy and 4% found it not at all easy (4% don't know and 5% not applicable).

Just 24% of trustees found it very easy to monitor investment fees paid to third parties – CMA survey.

5.101 WTW has submitted that the CMA survey results indicate that trustees generally find it easy to monitor fees. It has also stated however that more could be done to provide additional information with regard to third party fees.[222]

5.102 We agree that a large proportion of trustees responded that it is very easy or fairly easy to monitor the fees paid to their fiduciary manager. However, a quarter of respondents indicated that they did not find it easy to monitor third party fees. We consider this to be a relatively high percentage, and as noted earlier in this chapter, fees are set on an individual basis. Therefore, those who are not able to monitor the fees that they pay are not 'protected' from paying high prices from those who are able to monitor their fees.

5.103 Further, our document review and submissions from parties have demonstrated that many clients do not receive regular information on the fees they pay to third parties.[223] It is our view that all trustees should have insight into all fees paid throughout the value chain, in particular those paid for their asset management products.

5.104 This is supported by responses from a number of parties. Baillie Gifford and Hymans have both submitted that they are concerned about the 'bundling' of fees in fiduciary management.[224] Baillie Gifford submitted that providing aggregate costs without appropriate granularity prevents current or potential customers from assessing the value for money of all components of the service.[225]

5.105 Hymans submitted that unbundling fees for 'strategic advisory services' and asset management services is necessary to enable trustees to assess separately the provision of strategic advice and asset management, and to appoint separate firms for these two roles if they wish to do so. This is

[222] WTW response to the provisional decision report.
[223] See paragraphs 5.84 to 5.85.
[224] Baillie Gifford and Hymans responses to the information on fees and quality working paper.
[225] Baillie Gifford response to the information on fees and quality working paper.

important for retaining and enhancing the competitive landscape.[226] WTW has submitted that the bundling of fiduciary management fees with underlying asset management fees could create incentives for fiduciary management providers to appoint the cheapest (rather than best) asset managers to improve their fee share to the detriment of the client.[227]

5.106 To summarise, we have found that fee reporting practices vary widely in fiduciary management. Many clients receive regular information on the overall costs of the service, and we expect that shortfalls in this area will generally be covered by MiFID II. We have also found however that many clients do not receive clear and regular information on the fees they pay throughout the value chain, particularly for their asset management products and funds. Access to this information is important for trustees to assess whether their underlying funds are competitive.

In fiduciary management, fee reporting practices vary widely.

Prospective clients

5.107 Our document review indicates that, although fee information in fiduciary management tenders is generally more standardised and comparable across competing providers than in investment consultancy, there are some factors that make it challenging to compare fees on a like-for-like basis.

5.108 Fiduciary management tenders make widespread use of ad valorem pricing and the categorisation of services into the core fiduciary management elements of advice and implementation, and asset management elements. Common categories into which fiduciary management fees are itemised include (i) the core fiduciary management fee, (ii) the overall investment management fee, (iii) transition costs (discussed further below), (iv) custodian costs, and (v) other costs.[228]

5.109 The presentation of fees appears to be particularly clear when trustees use a TPE. In the cases we have reviewed, TPEs typically require firms to complete a specified table with well-defined breakdowns of their proposed fees. It is also explicitly stated which metrics (eg time-periods) should be used to complete

[226] Hymans response to the information on fees and quality working paper.
[227] WTW response to the information on fees and quality working paper.
[228] For example, [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2017), [✂] response to an invitation to tender (dated [✂] 2016).

the table.[229] This generally allows for direct comparisons of fees across the various bids. A stylised example of a fee table used in a tender run by a TPE is provided here.

Table 1: Fiduciary management fees in tenders – typical breakdown when using a TPE

	Fee (per annum)
Fiduciary management fee	
Investment management fee	
Transition fee	
Custodian fee	
Other fees	
Total	

Source: CMA tender documents review

5.110 Although we have reviewed some examples of good practice, we have identified several factors that could make it difficult for trustees fully to assess and to compare on a like-for-like basis the fees charged by each provider. First, we have found that the overall cost of the service is often not indicated in firms' responses.[230] This basic information is important to help trustees assess the full cost of the service they are purchasing.

Prospective customers often do not see the overall cost of a fiduciary management service in tenders.

5.111 As discussed earlier in this chapter, MiFID II requires this information to be provided to prospective clients prior to entering into the contract. This includes stating the fee in both cash and percentage terms and illustrating the cumulative effect of costs on the returns of the investment. We consider that this information would help trustees to make informed decisions at the point of tendering (including making an assessment of the overall value for money of a fiduciary relative to advisory arrangement).

5.112 We have also found that the level of detail on the underlying asset management fees can vary considerably across bids. We have seen examples where firms provide trustees with a detailed breakdown of the asset manager fees for the proposed portfolio.[231] In some cases however the bid

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[229] For example, [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2016).
[230] For example, [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2015).
[231] For example, [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2015).

included only an overall (all-in) fee for both fiduciary management and asset management services.[232] Some other bids have not indicated the overall asset management fees that the client will likely incur (some bids include no information on asset management costs).[233]

5.113 As asset management fees account for a considerable proportion of the overall fee, a lack of information on these fees makes it very difficult to assess the overall cost of the proposal. The use of different approaches across rival bids also makes direct comparisons of each element of the overall service more challenging.

5.114 Trustees at our roundtables who had bought fiduciary management services stated that good fee information was particularly important at the point of selecting a provider, and trustees supported standardisation of fee information at tendering. Trustees noted that they would like to know the total fee that would be paid. Many trustees also thought that this information should be provided on a regular basis and that this would particularly help schemes whose trustees did not have the expertise needed to demand this information.[234]

5.115 Although many tender documents request information on the estimated transition/entry fee into the proposed service (as indicated in Table 1), we have found that this can be interpreted by firms in a variety of ways. Some firms provide an estimate of the overall costs of transferring the underlying assets into the proposed portfolio.[235] Other firms indicate only the cost of the 'onboarding services' that they provide.[236] The difference in cost is significant. Whilst the cost of transferring assets could typically be in the range of 0.1% to 1% of assets (see chapter 6), onboarding services are usually included in the core fiduciary management fee.

5.116 Whilst we recognise that clients are generally provided with information on transition costs before assets are ultimately transferred, such costs are often not indicated in tenders.[237] Given that these costs are generally significant,

[232] For example, [✂] response to an invitation to tender (dated September 2015), [✂] response to an invitation to tender (dated April 2016), [✂] response to an invitation to tender (January 2016).
[233] For example, [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2015).
[234] Trustee roundtable summary.
[235] For example, [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2015).
[236] By 'onboarding services' we mean the explicit (one-off) costs that the firm charges the client. This could include fees charged to assist in the transitioning of assets or one-off advice. See, for example, [✂] response to an invitation to tender (dated [✂] 2015), [✂] response to an invitation to tender (dated [✂] 2015).
[237] We have reviewed examples whereby clients were provided with detailed information on such costs before the transition of assets took place, and examples where the client received a detailed ex post evaluation of the

and will vary depending on each provider's proposed portfolio, this is relevant information when choosing between alternative providers. If the client is moving into fiduciary management for the first time, an early indication of these costs can also help trustees to make an informed decision as to the relevant costs and benefits of the advisory and fiduciary models.

5.117 As discussed in detail in chapter 6, we also note that similar costs may be incurred when exiting a fiduciary management arrangement. However, these costs are not necessarily equivalent, and in some cases, may be higher than the costs of entry.[238] We consider that both the entry and exit costs are important pieces of information for prospective clients, although we have seen no instances to date in which firms indicate these potential exit costs when tendering for fiduciary management services. Some trustees at our roundtables were concerned that information on transition costs and exit charges was poorly disclosed at tendering.[239]

5.118 As was the case for current clients, the CMA survey results indicate that although many trustees found it very or fairly easy to compare fees, a relatively high proportion of trustees have difficulty in understanding and comparing the fees paid to third parties:

(a) 32% of trustees found it very easy to compare the fees payable to the fiduciary manager; 52% found it fairly easy; 11% found it not very easy and 1% found it not at all easy (3% don't know and 1% not applicable).

(b) 15% of trustees found it very easy to compare the fees payable to third parties; 50% found it fairly easy; 28% found it not very easy and 2% found it not at all easy (3% don't know and 2% not applicable).

5.119 Given that fiduciary management fees can represent a substantial proportion of a pension scheme's total costs, it is extremely important that trustee boards are easily able to assess and compare the fees of alternative providers. This includes assessing the value for money of different providers at each level of the value chain (eg both for the fiduciary management and asset management products/services). Our document review indicates that although there are many examples of good practice, in many cases it is difficult accurately to compare rival bids.

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transition process. See, for example, documents provided to clients by [✂] (dated January 2016), [✂] (dated November 2014) and [✂] (dated October 2016).

[238] We have heard for example that fiduciary managers may use more complex investment portfolios than those recommended by investment consultants which could increase the cost of switching (LCP response to the trustee engagement working paper).

[239] Trustee roundtable summary.

5.120 As discussed in chapter 6, we have also found that the cost of switching fiduciary management providers can be substantial, and the nature of the relationship (including the use of journey plans and long-term objectives) implies that most appointments can be expected to last for several years. It is therefore critical that trustees can make fully informed decisions when appointing a new provider.

5.121 Our views are supported by some parties: WTW submitted that some clients may find it difficult to compare the fees of alternative providers.[240] It stated that the bundling of the fiduciary management fee with third party fees and the use of performance fees can make it difficult for clients to gauge the cost of each provider. Aon commented that there is not a single approach to fee structure across the fiduciary management space and this makes it difficult for trustees to compare the fees of different providers.[241]

5.122 Charles Stanley submitted that fee illustrations for prospective clients should contain an accurate annual estimate of all fees to be paid by the client, including both those paid to the fiduciary manager and third parties.[242] Law Deb submitted however that it is generally becoming easier to compare fiduciary management providers' fees.[243]

Information on quality

Current clients

5.123 Performance information is similar in fiduciary management to investment consultancy, with clients receiving regular updates through performance monitoring reports, and more detailed analysis during strategic reviews. Further, many firms now include access to online monitoring tools as standard for their fiduciary management clients. These tools enable clients to monitor funding levels on an ongoing basis, with additional functionality including scenario modelling, risk analysis and asset valuation.[244]

5.124 Our document review indicates that the information included in regular performance reports is generally clearer and more detailed in fiduciary management than investment consultancy. For DB clients, there is a greater focus on long-term funding level developments, with many reports explicitly

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[240] WTW responses to the information on fees and quality working paper.
[241] Aon hearing summary.
[242] Charles Stanley response to the information on fees and quality working paper.
[243] Law Deb hearing summary.
[244] Responses to CMA market questionnaire.

tracking performance against the trustees' strategic benchmarks.[245] In some cases progress is tracked against explicit performance targets that the provider has been set.[246]

5.125 This 'strategic' overview of performance appears to be more common in fiduciary management than investment consultancy because clear investment objectives are typically set out in the initial contract (the IMA). This can include targets for the overall funding level development, often known as a 'flight path', and pre-agreed de-risking triggers. As fiduciary management is a delegated service, the provider is more directly accountable for the performance of the scheme; this accountability is reflected in many of the performance reports that we have reviewed.

5.126 Fiduciary management performance reports are also more likely to include information on both scheme risk and performance attribution (ie the contribution of different parts of the portfolio to overall returns). The former can include information on the tracking error, volatility, scenario analysis and hedging analysis.

5.127 Our document review indicates that trustees using fiduciary management services are generally provided with clear and regular information on the performance of their scheme. This is consistent with the results of the CMA survey, in which 63% of respondents found it very easy to monitor the performance of their scheme or investments, and a further 29% found it fairly easy (1% found it not very easy and 1% found it not at all easy; 4% don't know and 2% not applicable).

5.128 As in investment consultancy, our document review indicates however that some performance reports use gross of fees returns for the products or funds in the portfolio.[247] As discussed earlier in this chapter, this may give a misleading impression of the true performance of each fund once costs have been deducted. We note that TPR guidance states that trustees should consider the impact of asset managers' fees on investment returns.[248]

5.129 We consider that providers should report on a net of fees basis when tracking scheme performance against strategic targets (eg in quarterly monitoring

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[245] See, for example, documents provided to clients by [✂] (covering Q2 2017), [✂] (covering Q3 2017) and [✂] (covering Q4 2016).
[246] See, for example, a document provided to a client by [✂] (covering Q3 2017).
[247] See, for example, documents provided to clients by [✂] (covering Q2 2017) and [✂] (covering Q3 2016/17).
[248] For DB schemes: TPR guidance on 'monitoring DB investments' (part of TPR's DB Investment Guidance), which accompanies Code of Practice 3 ('funding defined benefits'). For DC schemes: TPR guidance on 'investment governance', which accompanies Code of Practice 13 ('the DC code').

reports), and when presenting the performance of the underlying funds in the portfolio.

5.130 Charles Stanley have submitted that performance information is currently provided in a variety of different formats by fiduciary managers.[249] They submit that it is important that two pieces of information are provided separately: overall scheme performance against target, and the performance of the growth and matching (eg hedging) portfolios against their respective benchmarks. The first allows trustees to assess whether overall performance is on track, the second allows trustees to assess how well the provider's investment team are performing.

5.131 We agree with the principle that disaggregated performance information is important in helping trustees to assess the quality of their provider. Our document review however indicates that information on the performance of the various components of the portfolio is already typically provided in regular monitoring reports.[250] We therefore do not consider that trustees currently lack access to the necessary information in this regard.

Prospective clients

5.132 Our document review indicates that the majority of fiduciary management tenders ask firms to provide information on their investment track record. The most common questions relate to the historical investment performance of the firm's full fiduciary management clients ('FM track records') and the performance of their recommended asset management products.[251]

5.133 We have found that the responses to these questions are not generally comparable on a like-for-like basis. There are two main reasons for this. First, performance-related questions in the tender are often insufficiently detailed to elicit comparable answers. Firms may be asked for example to 'demonstrate' how they have added value in manager selection, or for 'evidence' of their track record for 'relevant' mandates. Responses to such questions are typically descriptive, with technical aspects often not well defined or explained.[252]

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[249] Charles Stanley response to the information on fees and quality working paper.
[250] Performance reports include performance on a fund-by-fund or asset class basis.
[251] For example, [✂] response to an invitation to tender (dated [✂] 2016), [✂] response to an invitation to tender (dated [✂] 2014), [✂] response to an invitation to tender (dated [✂]2016), [✂] response to an invitation to tender (dated [✂] 2016).
[252] For example, [✂] response to the invitation to tender (dated [✂] 2014), [✂] response to an invitation to tender (dated [✂] 2014), [✂] response to an invitation to tender (dated [✂] 2014), [✂] response to an invitation to tender (dated [✂] 2015).

5.134 Second, firms use a variety of measures and methodologies to demonstrate their FM track record.[253] Table 2 summarises the methodologies used by the seven largest providers. Whilst most providers focus on the changes in the average funding level of their clients, the time period over which this is presented varies considerably. We also note that the calculation of the average varies across firms, with some taking a simple (equally weighted) average, and others taking a weighted average.

Fiduciary management providers use very different ways of measuring investment outcomes to demonstrate their performance to prospective clients.

5.135 There are therefore significant differences across providers in both the outcome measures used (such as the measure of 'success' and over what time period) and the specific steps taken to calculate such measures. We recognise that firms may use different approaches for valid reasons, although these differences can make direct comparisons across providers extremely challenging.

[253] We discuss the reporting of recommended asset management products in paragraphs 5.67 to 5.76.

Table 2: Comparison of 'FM track record' methodologies.

Firm	*Outcome Measure*	*Time-period*	*Weights*	*Fees*	*Comparators*
[✀]	Funding level	2008 -	Asset-weighted	Net	PPF Purple book schemes
[✀]	Funding level	Calendar year + each year over the past 6 years	Equal	Net	PPF 7800 schemes
[✀]	Funding level	2013 -	Asset-weighted	Net	1. FTSE 350 schemes. 2. PPF 7800 schemes.
[✀]	Funding level	2009 -	Equal	Net	PPF Purple book schemes
[✀]	Funding level	2003 -	Asset-weighted	Net	1. PPF 7800 schemes. 2. 'Diversified static' benchmark.
[✀]	Excess return vs liability benchmark	Calendar year + 3 and 5 years	Equal	Net	None
[✀]	Excess return of growth portfolio vs liability benchmark	Calendar year + 3 and 5 years	Asset-weighted	Net	None

Source: CMA analysis of the parties' submissions on the FM track records.

5.136 We requested the underlying data used by these seven firms to calculate their track record. Our analysis of this data has highlighted that the criteria used to include or exclude certain clients from the track record calculation vary considerably across firms.[254] Whilst the specific 'inclusion criteria' are generally disclosed by firms when presenting their track record, our analysis has found that, in practice, some methodologies can result in the exclusion of a large number of clients. We have found, for example, that for one firm, only around 60% of its full fiduciary management clients are included in its track record. Table 3 shows the inclusion criteria used by each firm.

[254] We also found that the construction of track records involves a number of technical assumptions, eg around actuarial valuations. This also applies to the comparator or 'average' pension scheme used by some firms as a benchmark. In practice, the performance of this average scheme may be heavily modelled.

5.137 Again, we note that the use of alternative methodologies can make direct comparisons across alternative providers extremely difficult. In cases where the inclusion criteria are very 'strict', there is also a concern as to whether the track record provides an accurate reflection of the firm's overall investment performance.

Table 3: Inclusion criteria used to produce FM track records

Firm	***Clients included in the track record***
[✂]	All full fiduciary management clients and Delegated Advisory clients, where [✂] provides directive advice.
[✂]	All full fiduciary management clients that have a full track record over the period in question.
[✂]	Full fiduciary management clients with 100% liability hedging of assets.
[✂]	All full fiduciary management clients.
[✂]	Full fiduciary management clients with 100% liability hedging of assets.
[✂]	Full fiduciary management clients excluding those who have • restrictions on the asset classes • liability hedging strategy that can be used, or, select a growth portfolio that differs from [✂] standard Growth Portfolio.
[✂]	Full fiduciary management clients who are deemed to follow the standard model portfolio.

Source: CMA analysis of the parties' submissions on the FM track records

5.138 The difficulty in comparing the track record of alternative providers is partly reflected in the CMA survey: 16% of trustees found it very easy to understand and compare the investment track record of alternative bids, 57% found it fairly easy; 20% found it not very easy and 1% not easy at all. In this situation there are complex methodological differences between providers of which trustees may not be fully aware. Many trustees may therefore believe that it is easier to compare alternative providers than it actually is.

Conclusions

Investment consultancy

5.139 Trustees are generally provided with clear and regular information on the fees paid to their investment consultant. Where hourly or project fees are used, we have found that invoices are usually itemised at a granular level.

5.140 We have found however that it can be difficult to compare the fees of alternative providers. The evidence shows that information in tenders is often very limited, and rival bids are not directly comparable. At the same time, we have reviewed some examples of clear and detailed tenders in which it was possible directly to compare bids. There is therefore significant variation across schemes, and it is possible to improve standards in this area.

5.141 Most schemes receive regular information on the performance of their scheme from their investment consultant. Whilst this information is generally clear, we are concerned at certain practices such as the reporting of performance on a gross of fees basis. We have also found that very few performance reports demonstrate progress against the trustees' strategic objectives.

5.142 When tendering, trustees typically rely on qualitative examples of performance and quality to compare providers. However, in some cases, firms present quantitative information on the performance of their recommended asset management products and funds; similar information is also included in marketing materials and is available on the website of some providers.

5.143 We have identified several factors that make it difficult for trustees accurately to assess and compare each provider's ability to recommend products that outperform their benchmarks. This includes the reporting of performance on a gross of fees basis, which can materially affect the implied returns of a product or fund. We also note that such details are not always clearly disclosed when presenting this information.

Fiduciary management

5.144 Fee reporting practices in fiduciary management vary widely. Many fiduciary management clients are provided with regular information on the overall fee they pay for their service, and this should be strengthened by the introduction of MiFID II.

5.145 We have found however that many trustees do not receive clear and regular information on the fees paid for their asset management products and funds. Some firms 'bundle' the fiduciary management and asset management fees for some of their clients. We consider that unbundling these fees is important in enabling trustees to assess whether their fiduciary manager has identified competitive asset management products; including securing a competitive price for these products. This also ensures that trustees have visibility over the costs paid for their core fiduciary management service (including advice and implementation). This is important in enabling trustees to benchmark the price paid for their fiduciary management service, and – importantly – to compare this price against a purely advisory model.

5.146 Although there are examples of good practice in tenders which ask for specific breakdown of fees across providers, the overall cost of the service is often not indicated in firms' responses. Given that fiduciary management fees can represent a substantial proportion of a pension scheme's total costs, we consider that it is extremely important that trustees assess the full cost of the service they are purchasing. Further, there is no consistent framework for reporting fees, and there is wide variation in the reporting of asset management fees (and in some cases these are 'bundled' with fiduciary management fees). In some cases, this can make it very challenging to compare the fees of alternative providers.

5.147 We have also found that many tenders include no information on the costs of transitioning into and out of these services. As we detail in the following chapter on trustee engagement, such costs can be considerable, and disclosure of these costs is important for trustees to be able fully to evaluate the potential costs of the service.

5.148 Finally, we have found that performance reporting for current clients is often clear and detailed, with the scheme's overall progress often tracked against the trustees' strategic objectives. We have concerns about certain practices such as the reporting of performance on a gross of fees basis however. For prospective clients, it is difficult to compare the performance 'track record' of competing providers. The methodologies used to produce such track records vary considerably, and it is extremely difficult to draw like-for-like comparisons.

6. Trustee engagement

Our main findings

Trustee bandwidth and capabilities

- There is substantial variation in the bandwidth and capabilities of trustees to monitor and assess their investment advisors.

- Whilst trustees generally are experienced and well-qualified, there is evidence that many trustees do not regularly challenge or scrutinise investment advice or have the knowledge and understanding that's expected.

- Therefore, a proportion of trustee boards lack sufficient bandwidth and capabilities to be able effectively to monitor and scrutinise the investment advice they receive. These issues are most prominent amongst small schemes and DC schemes.

Levels of engagement: investment consultancy

- Small schemes and DC schemes are less engaged in the investment consultancy market, whilst schemes with an investment sub-committee are more engaged than average. DC schemes in particular have considerably lower rates of switching and tendering than average.

- There are not material costs or barriers to switching investment consultant. A switch can occur at minimal cost and be completed within a few weeks.

Levels of engagement: fiduciary management

- It is difficult to assess levels of engagement in fiduciary management as this is a relatively new and growing market.

- Whilst most indicators of engagement, such as switching and tendering, are lower than in investment consultancy, it may be too soon for many schemes to have formally assessed the performance of their provider.

- However, the process for switching fiduciary manager typically takes several months and can incur significant costs.

- Therefore, in many cases there are likely to be material barriers to switching fiduciary manager.

Introduction

6.1 This chapter sets out our analysis of trustee engagement in the markets for investment consultancy and fiduciary management. It considers the extent to which trustees can assess the value for money of providers, and (where necessary) act on the outcome of that assessment. This may be through switching provider or improving the terms offered by their current provider.

6.2 The chapter is structured as follows:

(a) We first present our conceptual framework.

(b) We discuss the evidence base for our analysis.

(c) We present evidence on the ‘bandwidth and capabilities’ of trustees to assess their investment consultant or fiduciary manager.

(d) We then consider in turn the ‘formal’ levels of engagement in both investment consultancy and fiduciary management.

Conceptual framework

6.3 This chapter analyses whether trustees can and do assess the value for money of alternative investment consultants and fiduciary managers, and act on the outcome of that assessment. This builds on our analysis in the previous chapter, which considered whether trustees have access to the necessary information to assess their current and alternative providers.

6.4 To assess value for money, trustees require an understanding of the quality of service they receive, including the quality of investment advice, and whether the fees that they pay are competitive. This is not an easy task in a complex sector such as this, and lay trustees are not generally expected to be investment experts. We also recognise that trustees have a wide range of duties to fulfil and competing demands on their time.

6.5 We therefore first consider the extent to which trustees have the necessary **bandwidth and capabilities** to assess the value for money of investment consultants and fiduciary managers. We analyse trustee characteristics, including the typical experience of trustees on a board and the level of their investment expertise. We consider, for example, the use of investment sub-committees and professional trustees.

6.6 We also consider the extent to which trustees are able to challenge and scrutinise the investment advice that they receive. This is important both in assessing the quality of their investment advisor(s), and in ensuring that prudent investment decisions are made on behalf of underlying members. We analyse the role of the scheme sponsor and other advisors in assisting trustees in this respect.

6.7 In addition to these general capabilities, we analyse 'formal' **levels of engagement** in both investment consultancy and fiduciary management. This relates to both the 'assess' and 'act' strands of the demand - side framework set out in chapter 5.

6.8 In terms of 'assess', we consider rates of tendering as well as formal and external reviews of fees and/or quality. These indicators show the extent to which trustees are actively testing the market and assessing the alternative offers that are available.

6.9 In terms of 'act', we consider the frequency with which trustees switch provider, and the process for doing so. As highlighted in our Guidance, the ability to switch provider easily is critical in applying competitive pressure and ensuring that customers are able to obtain good value for money. We therefore analyse the process and costs of switching both investment consultant and fiduciary manager in detail.

Evidence base

6.10 Our analysis of trustee bandwidth and capabilities draws on both the CMA survey and third-party research. This includes TPR's 2015 Trustee Landscape Survey. This survey was based on 816 telephone interviews with trustees of DB, DC and hybrid schemes with 12 or more members.

6.11 Our analysis of the 'headline' levels of engagement, such as tendering and switching, is based primarily on the results of the CMA survey. We have also considered relevant input from the trustee and in-house investment staff roundtables, as well as submissions from parties. This includes responses to our trustee engagement working paper and our provisional decision report.

6.12 Our analysis of the switching process is based largely on responses to an information request issued to 14 investment consultants and fiduciary managers. In addition, we arranged follow-up conversations with the Investment Association, two fiduciary managers and three TPEs to further understand the process for switching fiduciary management providers.

6.13 We have also received input from trustees and in-house investment staff on the switching process through the CMA survey and roundtables. We issued some follow-up questions on the switching process to those trustees in the survey that use fiduciary management and indicated that they would be willing to take part in further research. We received eight responses to this request.

Trustee bandwidth and capabilities

6.14 In this section we analyse the extent to which trustees have the necessary bandwidth and capabilities to assess the value for money of investment consultants and fiduciary managers. We begin by considering the main reasons why trustees use investment consultants and fiduciary managers. We then consider the characteristics of trustee boards and the role of the scheme sponsor and other parties in assisting trustees in their role.

6.15 We present the evidence for each sub-section and discuss the overall findings and conclusions at the end of the section.

Reasons for using investment consultants and fiduciary managers

6.16 Figure 8 shows the main reasons that trustees provided for using investment consultants based on the CMA survey.[255] We note three points in particular:

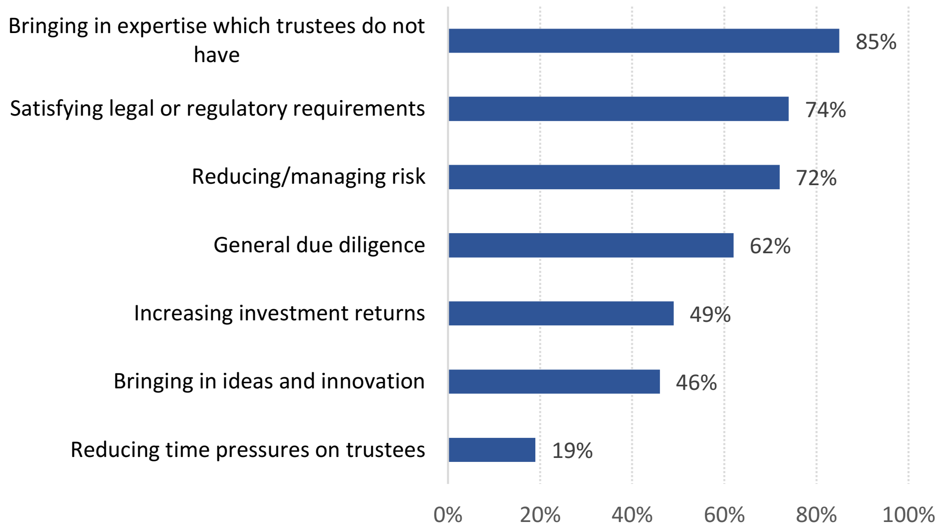
(a) First, the most important motivation for using investment consultants is to bring in expertise which the trustees do not have. This is an important motivation for all types of scheme, but particularly for DB schemes (87% consider it to be very important, compared to 78% of DC and 79% of hybrid schemes).

(b) Second, 'satisfying legal or regulatory requirements' is one of the key motivations for using investment consultants. Although not displayed in the figure, this percentage is even higher amongst DC schemes – 90% of DC scheme respondents stated that this was a 'very important' motivation compared to an average of 74%.

(c) Third, reducing or managing risk appears to be a more important motivation for using investment consultants (on average) than increasing overall investment returns. This is true across all types (DB/DC/hybrid) and sizes (small/medium/large) of scheme.

[255] This is based on the percentage of respondents stating that a particular factor is a 'very important' reason for using investment consultants.

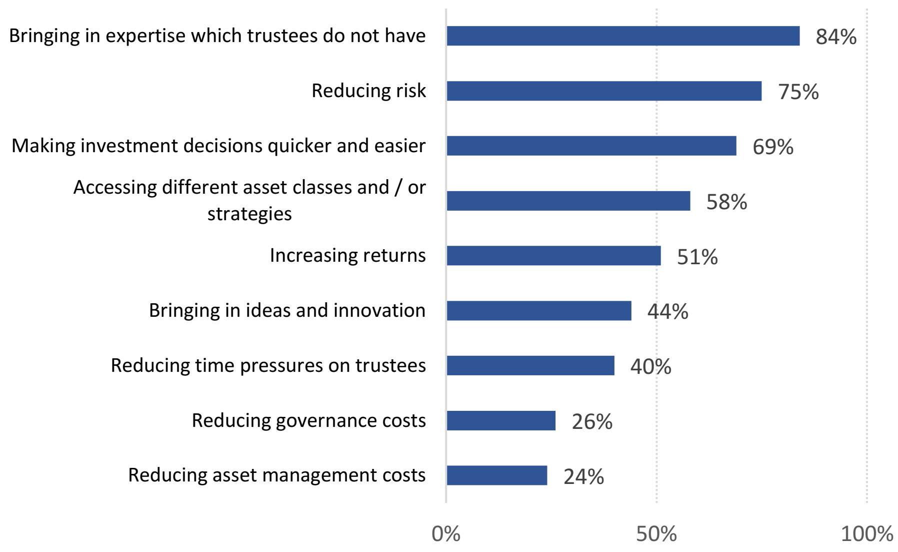
Figure 8: Reasons for using investment consultants



Source: CMA survey.[256]

6.17 As demonstrated in Figure 9, the motivations for using fiduciary management are broadly similar to those for investment consultancy. The two most important factors are to bring in additional expertise and to reduce risk. Trustees also value making investment decisions quicker and easier and gaining access to different asset classes and strategies.

Figure 9: Reasons for using fiduciary management



Source; CMA survey.[257]

[256] Question C1: 'So, how important is [...] as a reason to buy investment consultancy services?' Base: all (709). The chart shows the percentage that responded 'very important'.
[257] Question K1: 'How important is each of the following as a reason to [buy fiduciary management]?' Base: all (145). The chart shows the percentage that responded: 'very important'.

Trustee characteristics

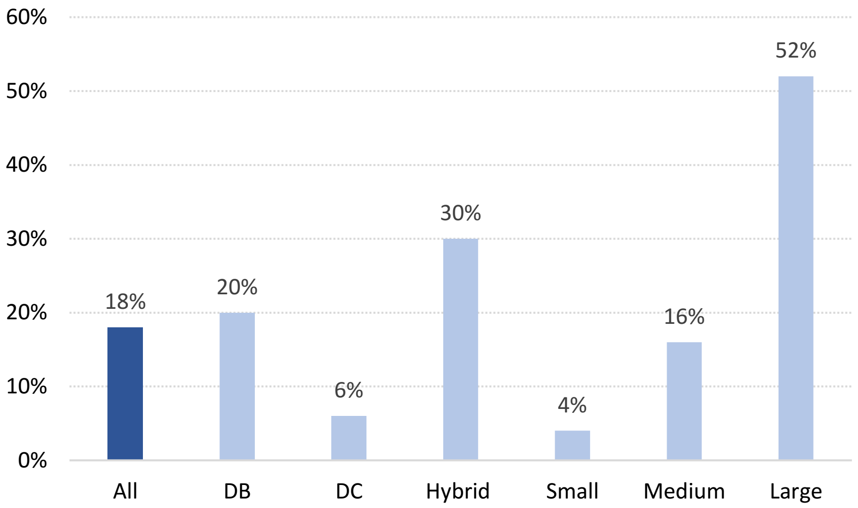
Trustee board composition

6.18 TPR's 2015 Trustee Landscape survey[258] found that the average trustee board includes three members. The vast majority of schemes (88%) have fewer than six trustees on the board, although boards with six to ten members are reasonably common amongst large schemes (22%).[259]

6.19 The Trustee Landscape survey found that just over half (52%) of schemes have a professional or corporate trustee on the board.[260] Around a quarter (27%) of trustee boards contain only professional or corporate trustees.

6.20 The CMA survey indicates that 18% of schemes have an investment sub-committee. As shown in Figure 10 however, this percentage varies considerably across schemes. In particular, both DC schemes and small schemes are considerably less likely to have an investment sub-committee than average.[261] More than half of large schemes have an investment sub-committee.

Figure 10: The prevalence of investment sub-committees



Source: CMA survey.[262]

[258] TPR Trustee Landscape Quantitative Research, 2015.
[259] TPR's research also found that almost a third (31 percent) of schemes have just a single trustee (which includes sole corporate trustees). In both the CMA survey and the TPR Trustee Landscape Quantitative Research, 2015, the size of the scheme is based on the number of members. Small schemes are defined as those with 12-99 members, medium schemes are those with 100-999 members, and large schemes are those with 1000+ members.
[260] TPR defines a corporate trustee as 'a company which acts as a trustee' (see TPR's glossary). This may be a professional trustee company, although the sponsor itself may be the corporate trustee.
[261] These findings are broadly consistent with evidence from TPR's Trustee Landscape survey, which found that 16% of schemes overall have an investment sub-committee, with 19% of DB schemes and 7% of DC schemes.
[262] Question B1: 'Does the scheme have an investment sub-committee?' Bases: all (966), DB (679), DC (125), hybrid (162), small (259), medium (454), large (253).

- *Frequency of meetings*

6.21 Based on the Trustee Landscape survey, the majority of trustee boards meet at least every quarter or six months (79%), and trustees spend around 11 days a year on average on 'trustee duties'.

Pension trustees spend 11 days a year on average on their duties. For DC schemes, the average is less than 5 days. *TPR research*

6.22 Both the frequency of meetings and the time spent on trustee duties are considerably lower than average for DC schemes and small schemes:

(a) Amongst DC schemes, just 62% of boards meet at least every 6 months.[263] Around half (49%) of DC scheme trustees spend less than 5 days a year on trustee duties.

(b) Amongst small schemes, 62% of boards meet at least every 6 months, and on average trustees spend 9 days a year on their duties.

6.23 There is limited evidence of the amount of time that trustee boards spend addressing investment issues. Aon's Mapping the Trustee Landscape survey however found that up to a quarter of time at board meetings is typically spent on 'investment matters'.[264]

- *Trustee experience, qualifications and training*

6.24 The CMA survey indicates that trustees have on average 11 years of experience.[265] The survey further found that two thirds of trustees sit on just one board. Professional trustees, accounting for 17% of our survey sample, on average sit on 16 trustee boards.

6.25 TPR's Trustee Landscape survey investigated the qualifications held by trustees and their recent levels of training. To summarise their findings:

(a) 70% of non-professional trustees have a 'relevant' qualification (as described by TPR), which is a professional qualification relating to finance, investments, pensions, law or actuarial science. Eighty nine

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[263] 6% meet less than annually and 9% have never met.
[264] Research undertaken by Leeds University Business School (LUBS) and Aon. This research is based on an online survey of 197 trustees and scheme managers.
[265] This is across all schemes rather than any given scheme.

percent of professional trustees or directors of corporate trustees have at least one of these qualifications.

(b) The average level of qualifications is lower for DC schemes and small schemes.[266]

(c) Half of all respondents stated that at least some of their non-professional trustees had undertaken formal, structured training within the last 12 months. This number was lower for small schemes (37%) and DC schemes (32%). The most common source of training was TPR's trustee toolkit.

6.26 Appendix 3 outlines TPR's codes of practice and related guidance that assist trustees in meeting their legislative requirements. We note that the Trustee Landscape survey found that only half of respondents stated that all non-professional trustees on their board met the standards set out in code of practice 7 ('trustee knowledge and understanding').

6.27 This number was substantially lower for small schemes (38%) and DC schemes (36%).

Challenging and scrutinising advisors

6.28 As noted below, it is important that trustees can understand and scrutinise the advice they receive to be able fully to assess the quality of service of their provider. This is also important because the investment decisions made by trustees can have a major impact on scheme outcomes and the retirement incomes of underlying members.

6.29 TPR guidance indicates that trustees should be able to scrutinise their investment strategy and the advice they receive (see Appendix 3 for details). Code of practice 3 ('funding defined benefits') states that 'trustees should have sufficient and appropriate knowledge and understanding to enable them to provide sound and prudent oversight of the investment strategy'. Code of practice 13 ('the DC code') states that the trustee board should have sufficient breadth of knowledge and understanding to 'fully understand any advice they receive' and to be able to 'challenge advice they are given'.

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[266] Amongst non-professional trustees/directors of corporate trustees, 39% of DC trustees/directors and 41% of small scheme trustees/directors do not have any of the above qualifications (compared to 30% overall). Amongst professional trustees/directors, 20% of DC trustees and 18% of small scheme trustees/directors do not have any of the above qualifications (compared to 11% overall).

6.30 Some of the asset managers who attended a CMA roundtable discussion which was held as part of this investigation told us that they believe that some pension trustees generally lack sufficient investment expertise to take complex financial decisions, although they noted that there are exceptions to this and that the presence of professional trustees can facilitate better decision-making.[267]

6.31 This view is supported by [✂] who submitted that 'trustees did not, in general, have the skills and knowledge to allow them to effectively challenge their advisors'.[268] Further, PLSA submitted that the UK has a highly fragmented pensions scheme sector, where many smaller schemes do not have the governance capacity and necessary investment expertise to deal with the many challenges facing both DB and DC schemes.[269]

6.32 In its response to the provisional decision report, WTW submitted that some trustees lack the resources and expertise to make informed judgements about risk management and investment.[270] It submitted that these problems have deepened as the investment consultancy industry has developed more sophisticated strategies. Further, 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).[271]

6.33 There is evidence from third party research that many trustees rarely disagree with the advice of their advisors. TPR's Trustee Landscape survey found that 11% of respondents never disagree with their investment consultant, and a further 57% rarely disagree; 26% sometimes disagree and no trustees responded that they often disagree (6% don't know). We note however that this is based on just 79 respondents, and higher proportions of respondents never disagree with the other categories of advisor included in the question.[272]

11% of pension trustees never disagree with their investment consultant and 57% rarely disagree. *TPR research*

6.34 Additionally, research undertaken in 2016 by Aon and Leeds University Business School found that 76% of trustees said that they do not often reject the recommendations of their investment consultant. In addition, almost 40%

267 Asset manager roundtable summary.
268 [✂].
269 PLSA issue statement response.
270 WTW response to the provisional decision report.
271 Dr Anna Tilba response to the provisional decision report .
272 The other categories, with the percentage that never disagree in parentheses, are auditor (41%), legal advisor (29%), IFA (27%), covenant advisor (19%), investment/fund manager (19%) and actuary (15%).

of trustees said that they ‘never’ or ‘not often’ consider alternatives to the investment consultant’s recommendations. This percentage was highest amongst small schemes (those with assets below £100 million).

6.35 In response to the provisional decision report, Aon submitted that these results may be in part due to the complex interaction between trustees and their investment consultants.[273] It submitted that the provision of advice is not a ‘one-shot’ process: in meetings with trustees, consultants will suggest investment strategies which are subsequently discussed as part of an iterative process. By the time the formal recommendations are made, clients are very likely to accept these, as they will have been tailored to meet the client’s needs and objectives.

6.36 However, Law Deb submitted that on some occasions trustees might accept advice without challenge simply because it is given by investment consultants.[274] BlackRock[275] also submitted that it is uncommon for trustees to act contrary to the PA95 advice they receive from their investment consultant.[276]

6.37 Several parties however submitted to us that they are frequently challenged by their clients. For example:

(a) BBS and Baillie Gifford submitted that given the increased use of professional trustees, trustee boards are now more likely to challenge the advice that their investment consultants provide.[277]

(b) Mercer submitted that it is frequently challenged by its clients and this is likely to increase further with the rise of professional trustees and recent initiatives by TPR (see Appendix 3 for a discussion of these initiatives).[278]

The role of the sponsor and other advisors

6.38 Trustees are supported in their role by the scheme sponsor and a number of other advisors and professionals. This can include actuaries, legal advisors, administrators, covenant advisors and internal pension teams. Here we focus

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[273] Aon response to the provisional decision report .
[274] Law Deb hearing summary.
[275] BlackRock issues statement response.
[276] Trustees have a duty under PA95, section 36(3), before investing, to obtain and consider written ‘proper advice’ on the question of whether the investment is satisfactory, so far as relating to the suitability of investments, and to the principles contained in the statement of investment principles.
[277] BBS and Baillie Gifford hearing summaries.
[278] Mercer response to the trustee engagement working paper.

on the role of these participants in monitoring and scrutinising investment consultants and fiduciary managers.

- *The scheme sponsor*

6.39 Scheme sponsors play a formal role in monitoring the investment advice that trustees receive, in that trustees are required to consult the sponsor when revising the scheme's Statement of Investment Principles (SIP), which must be done at least every three years.[279]

6.40 Sponsors can also play a more active role in monitoring the investment decisions of trustees. In our client document review for example, we have seen a case in which the sponsor asked to be updated on the impact of a proposed change to the investment strategy on fees,[280] and another in which the investment consultant wrote to the employer to explain recent developments in the investment strategy and funding level.[281]

> **74% of pension trustees say that their scheme sponsor and its advisers are important in monitoring and scrutinising their investment consultant. *CMA survey***

6.41 In the CMA survey, 42% of respondents stated that the scheme sponsor and its advisers are very important in monitoring and scrutinising their investment consultant; 32% said that they are fairly important, 13% said they are not very important and 5% said they are not at all important (2% don't know and 5% not applicable).

6.42 We note that trustees of DC schemes were considerably less likely to consider the sponsor and its advisors to be very important in monitoring and scrutinising their investment consultant – 30% compared to 42% overall.

- *The scheme actuary*

6.43 Broadly speaking, the role of an actuary is to analyse the liability side of a DB pension scheme, whereas the role of the investment consultant is to analyse the asset side of the scheme. Inevitably there is some overlap in these roles; based on responses to our information requests, we understand that it is

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[279] PA95, section S35(1)(b) and the Occupational Pension Schemes (Investment) Regulations 2005, SI 2005 No. 3378.
[280] An email sent by [✂] to a client (dated 20/12/16).
[281] A document from a DB client of [✂] (2015).

common for actuaries to have at least some involvement in the following work of investment consultants:

(a) **Journey planning**. This involves analysing how the funding level of the pension scheme is likely to change over time and setting appropriate targets. Actuarial input is particularly important in understanding future liability movements.

(b) **De-risking triggers**. A de-risking strategy requires input from the actuary on suitable long-term targets and timescales. De-risking triggers may also impact the actuarial assessment by altering the calculation of present-value liabilities.

(c) **Hedging strategies**. Actuaries can advise on the expected impact of interest rates and inflation on the funding ratio, and on the design of suitable hedging strategies.

6.44 Around half of the respondents to the CMA survey said that the scheme actuary was very important in scrutinising and challenging their investment consultant (49%); a further 22% said that the actuary was fairly important, 13% said the actuary was not very important and 7% said the actuary was not at all important (2% don't know and 7% not applicable).

6.45 We also note however that it is common for investment consultancy and actuarial services to be purchased from the same provider. The CMA survey indicates that 55% of schemes that purchase investment consultancy also purchase actuarial services from the same provider.

55% of pension schemes purchase actuarial services from their investment consultancy firm. *CMA survey*

- *Other advisors*

6.46 The CMA survey asked respondents how important other advisors, both internal and external, were in monitoring and scrutinising their investment consultant. Overall, fewer trustees see such advisors as important than the numbers who see the sponsor or actuary as important:

(a) On average, 14% of all trustees responded that in-house advisors were very important for monitoring and scrutinising their investment consultant. A further 21% responded that they were fairly important. We have found that only the very largest pension schemes typically employ in-house advisors, mostly those with assets above £1 billion.

(b) On average, 22% of trustees responded that external advisors were very important for monitoring and scrutinising their investment consultant. A further 24% responded that they were fairly important.

6.47 A number of schemes use dedicated TPEs when tendering, and/or to monitor their current provider. The CMA survey found that 31% of schemes used a TPE when tendering for investment consultancy services, and 59% used a TPE when tendering for fiduciary management (when moving into fiduciary management for the first time).

6.48 Figures from the latest KPMG FM Survey found that 66% of new fiduciary management appointments were advised by an independent third party in 2018. They also found that 21% of schemes use a ‘third party overseer’ in conjunction with their fiduciary manager.

- *Multiple investment consultants*

6.49 The use of multiple investment consultants can provide a competitive constraint on each provider by enabling trustees to compare the level of fees and quality, and through challenging and scrutinising each other’s advice. The CMA survey however found that the vast majority of schemes (91%) use a single investment consultant; 5% use two providers and just 1% use three or more.

6.50 We would expect that larger schemes are more likely to use multiple consultants than smaller schemes. This is partly reflected in the CMA survey, with 9% of large schemes using two or more providers, compared with 5% of small schemes.

Our assessment of trustee bandwidth and capabilities

6.51 The evidence in this section highlights that there is substantial variation in the governance structures of pension schemes and the bandwidth and capabilities of trustees to monitor and assess their investment advisors. The variation in the governance capacity of schemes has been noted in submissions from several parties.[282]

6.52 We have found that trustees tend to be experienced and the majority hold a relevant qualification (as defined by TPR). The CMA survey also shows that the scheme sponsor and other advisors can play an important role in supporting the work of trustees, and some large schemes are supported by

[282] Eg Aon, First Actuarial, SEI Investment and Spence & Partners IS issues statement responses. JLT, Russell Investment and Baillie Gifford hearing summaries.

sophisticated in-house teams. Around half of schemes have a professional trustee on the board.

The majority of pension trustees hold a relevant qualification, as defined by TPR.

6.53 On the other hand, a key motivation for using investment consultants is to satisfy legal and regulatory requirements, and there is evidence that the majority of trustees rarely disagree with or challenge their investment advisors. Research from TPR also indicates that a large proportion of lay trustees do not meet the minimum standards of 'knowledge and understanding' expected by the regulator.

6.54 We therefore consider that a proportion of trustee boards lack sufficient bandwidth and capacity to monitor and assess their investment advisors effectively. The evidence indicates that these issues are most prominent amongst small schemes and DC schemes:

(a) Small schemes and DC schemes are less likely than average to have an investment sub-committee.

(b) The trustee boards of small schemes and DC schemes meet less frequently than average.

(c) Trustees of small schemes and DC schemes are less likely than average to have a 'relevant' qualification.

(d) Trustees of small schemes and DC schemes are less likely than average to meet the standards of knowledge and understanding expected by the regulator, and

(e) Trustees of DC schemes are less likely than average to consider the scheme sponsor to be very important in monitoring and scrutinising their investment consultant.

Levels of engagement: investment consultancy

Headline indicators of engagement

6.55 We note that engagement is a broad concept and it is not feasible to measure all aspects of engagement. In this section, we have concentrated on four 'headline' indicators of engagement that (i) we are in a position to measure, and (ii) are important in driving effective competition between providers:

(a) **Switching from one provider to another**. As noted in the Guidance, the ability to switch provider is important in driving effective competition.[283] The CMA survey asked trustees whether they had switched within the last five years.

(b) **Switching and/or tendering.**[284] Even if a customer chooses not to switch, organising a tender may enable them to extract lower fees or a higher quality of service from their current provider. Tendering also enables customers formally to assess the alternative offers available in the market. The CMA survey asked trustees whether they had switched and/or tendered within the last five years.

(c) **A formal review of fees and/or quality**. This can be an important mechanism for ensuring that the incumbent provider is offering value for money. As a result of such a review, customers may be able to negotiate lower fees or an improved level of service. The CMA survey asked trustees whether they had undertaken a formal review of fees and/or quality within the last three years.

(d) **An external review of fees and/or quality**. This may be a more formal or rigorous assessment of the value for money offered by the incumbent provider. The CMA survey asked trustees whether they had undertaken an external review of fees and/or quality within the last three years.

6.56 Table 4 presents the levels of engagement across each of the four 'headline' indicators discussed above based on the CMA survey.

6.57 In each column, we first show (row 1) the percentage of all schemes that have undertaken the relevant action within the reference period.[285] Within each column, we then show how the level of engagement differs from average for different types of scheme. These numbers are percentage point differences – eg in column 1 the rate of switching across all schemes is 27%; the entry of '+1' in the row for DB schemes indicates that the rate of switching for DB schemes is 28%.

6.58 We have tested the statistical significance of these differences, and reported results at the 5% significance level – positive and significant differences from average are shown in green, and negative and significant differences are shown in red.

[283] CC3 (Revised), paragraphs 296 and 297.
[284] We consider switching and tendering jointly as this captures the overall group of trustees/schemes that have either changed provider or actively searched and considered the alternative offers available in the market.
[285] This is the last five years for switching and tendering, and the last three years for a formal or external review of fees and quality.

27% of pension trustee boards have switched investment consultant in the last five years. Amongst DC schemes, only 16% have switched.

6.59 We highlight the following results from Table 4:

(a) DC schemes are significantly less likely to have engaged on any of the four headline indicators of engagement. The rate of switching for example falls from 27% on average to 16% for DC schemes, and the rate of switching and/or tendering falls from 41% to 29%.

(b) There is some evidence that scheme size is correlated with engagement. Smaller schemes are less likely than average to have undertaken a formal review of fees and/or quality, whereas large schemes are more likely than average to have done so. Large schemes are also significantly more likely to have undertaken at least one of the four actions. Further, we note that although not all indicators are statistically significant, there is a clear and consistent pattern in that larger schemes are more engaged than average across each measure.

(c) There is some evidence that schemes with an investment sub-committee are more engaged than average. In particular, such schemes are more likely to have undertaken a formal review of fees and/or quality, and more likely to have undertaken at least one of the four actions.

(d) There is little evidence that bundling services (eg by purchasing investment consultancy and actuarial services from the same provider) reduces engagement. Customers who purchase 'nothing else' from their investment consultant for example are no more likely than average to switch and/or tender, and are less likely to undertake an external review of fees and/or quality.[286] Interestingly, those schemes that also purchase fiduciary management services from the same provider are more likely to undertake an external review of fees and/or quality of their investment consultant.

6.60 Table 4 also suggests that rates of switching, and rates of switching or tendering, are lower than average amongst clients of the three largest providers. This does not imply however that the clients of such firms are less likely to switch. This is because the survey asked trustees about their *previous*

[286] We have also tested whether schemes that specifically bundle investment consultancy, actuarial services and administration together are more or less likely to be engaged than others. We have found no evidence that this is the case.

switching patterns (whether they had switched in the last 5 years) and to identify their *current* provider.[287]

6.61 In Appendix 3 we have run some simple regressions to control simultaneously for the various scheme and provider characteristics analysed in Table 4. Doing so does not substantively change the main results highlighted above.

Table 4: Headline indicators of engagement – investment consultancy

	Obs.	*Switched*	*Switched and/or tendered*	*Formal review of fees and/or quality*	*External review of fees and/or quality*	*Any of these actions*
All schemes	**783**	**27%**	**41%**	**63%**	**15%**	**73%**
Type of scheme						
DB	567	+1	0	+1	0	+1
DC	70	-11*	-12*	-15*	-9*	-12
Hybrid	146	+2	+7	+5	+4	+5
Size of scheme						
Small	149	+3	0	-10*	-1	-8
Medium	396	-3	-1	+1	-1	-1
Large	238	+2	+2	+9*	+3	+9*
Investment subcommittee						
Yes	196	-5	-4	+11*	+1	+8*
No	587	+1	+1	-3	0	-3
Type of provider						
3 largest	194	-14*	-9*	-1	+1	-5
Other	589	+5*	+3	0	0	+2
Number of services purchased						
Fewer than 3	50	-2	-6	-15	-10*	-10
Between 3 and 5	289	-3	-3	-6*	-3	-4
Between 6 and 7	444	+2	+3	+6*	+3	+4
Other services purchased from investment consultancy provider						
Actuarial services	445	-3	-2	+1	-1	+1
Fiduciary management	99	+6	+9	+6	+11*	+5
Scheme administration	411	-4	-2	-2	-2	-2
Nothing else	189	+2	0	-4	-5*	0

Source: CMA analysis of CMA survey.
*Note: * indicates a statistically significant difference from 'all' (p<0.05). The numbers in each cell (unless a % is indicated) are percentage point differences from the overall percentage for the relevant column. We measure rates of switching and/or tendering over the last five years, and formal/external reviews of fees and/or quality over the last three years.*

6.62 The rates of switching and tendering in Table 4 are based on the CMA survey. In its response to the provisional decision report, Aon submitted that tendering is becoming increasingly common for the appointment of investment consultants.[288]

6.63 The evidence however does not indicate a general increase in tendering rates. The CMA survey indicates that the proportion of trustees who ran a tender or invited proposals as part of a switching process did not increase over the period 2011 to 2017.[289]

6.64 Moreover, IC Select submitted evidence on the switching and tendering rates of DB schemes based on data collected from 'major consultancy firms'.[290]The IC Select evidence indicates that there has been a notable decline in switching and tendering rates since 2007, with particularly low rates in 2015 and 2016. Their evidence also indicates that switching and tendering rates are much lower in general than those suggested by the CMA survey:

(a) Their data indicates a five-year switching rate of around 7 to 8% for DB schemes. This compares to 28% in the CMA survey (Table 4).

(b) Their data indicates a five-year tendering rate of around 10 to 12% for DB schemes. This compares to 26% in the CMA survey.[291]

6.65 Due to this discrepancy, we have sense-checked our survey figures using our client-level data collected from parties. Based on data from nine major investment consultancy firms, we have analysed the proportion of schemes that undertook a 'structured bidding process' over each of the last five years. This shows that on average around 5% of schemes undertook a structured bidding process each year; this indicates an overall five-year 'tendering' rate of around 25%. There is no evidence of a decline in 2015 or 2016.

6.66 This evidence is therefore much more consistent with the CMA survey results than the evidence presented by IC Select. We also note that the CMA survey is based on a weighted sample of almost 1000 trustees, which is not restricted to any subset of suppliers. We therefore consider that the CMA survey is the better evidence available on the rates of switching and tendering in the market.

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[288] Aon response to the provisional decision report.
[289] Questions F2: 'In which year did you last switch?' and F3: 'Did you run a tender exercise or invite proposals as part of this switching process?'.
[290] IC Select issues statement response. It is not stated exactly which firms are included in their analysis. However, they state that the number of schemes covered each year varies between 1,783 and 2,010.
[291] This figure is not shown in Table 4, which consider tendering and switching rates jointly.

6.67 Overall, we have limited evidence to determine long-term trends in tendering when appointing an investment consultant. The available evidence does not indicate however that there has been a material increase in tendering in recent years.

6.68 WTW have submitted that rates of switching and tendering are ‘not appropriate indicators’ of engagement as they do not indicate if trustees have difficulty in identifying the best value for money.[292] They submit that there are many reasons why trustees may decide not to switch or tender; they may be satisfied with their current service, and there are efficiencies generated from having a long-term relationship with a provider. The relevant indicator, it is argued, ‘should be the ability of trustees to make informed decisions on switching and to switch with ease’.

6.69 Aon submitted that ‘the CMA has not adequately explored the reasoning of trustees who have not switched’.[293] Further, Mercer submitted that our use of the survey evidence regarding trustee engagement downplays the evidence on trustee satisfaction.[294]

6.70 We agree that there may be perfectly valid reasons why some trustees have chosen not to switch provider. This includes satisfaction with the incumbent provider. Indeed, the CMA survey shows that the majority of trustees (75%) that did not switch or tender in the last 5 years chose not to do so because they were content with their current provider.[295]

6.71 However, we have analysed switching and tendering rates as they indicate the extent to which trustees actively test the market. They can also help to identify any barriers to switching; eg if switching rates are particularly low for certain types of scheme. We also agree that this should be complemented by additional indicators of engagement, as well as a deeper analysis of the switching process. Indeed, that is the approach that we have taken in our analysis, as explained in our conceptual framework. A number of parties have commented on our finding that the headline levels of engagement are lower for small schemes and DC schemes. Regarding small schemes, Redington submitted that lower levels of engagement are explained by governance capacity, with small schemes on average able to dedicate less time and resource to the management of their scheme.[296] PLSA submitted that a

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[292] WTW response to the trustee engagement working paper.
[293] Aon response to the provisional decision report.
[294] Mercer response to the provisional decision report.
[295] Question I1: ‘You said that you have not switched nor run a tender exercise or invited proposals for your provider of investment consultancy in the last 5 years. What were the board of trustees’ reasons for not doing this?’ Base = 308.
[296] Redington response to the trustee engagement working paper.

scheme's quality of governance is determined not only by its trustees, but also by the support structures and staff available.[297] By focusing on the 'day to day' tasks, support staff enable trustees to focus on strategic issues. PLSA submitted that 'a well-resourced executive function may be beyond the means of smaller schemes'.

6.72 Mercer submitted that small schemes and DC schemes are generally less complex than large schemes and DB schemes (respectively).[298] They also argued that [✄]% of DC members invest all of their contributions through default arrangements; frequent changes to the default strategy would have cost implications for members as well as communication and administration costs. Aon also submitted that DC schemes tend to be focussed on low-risk, low-volatility passive investments for which 'switching can incur costs disproportionate to gains'.[299]

6.73 We acknowledge these points, and recognise that in some circumstances it may be rational for trustees of DC schemes to make less frequent changes to their underlying investments than DB schemes. It is concerning however that, as shown in Table 4, trustees are less likely to be actively engaged in monitoring and assessing their investment consultant along a range of indicators.

6.74 In this context, we note that investment consultants provide a wide variety of services to DC schemes, including strategic asset allocation advice.[300] Even if less frequent changes are made to underlying investments, we would still expect trustees to monitor and assess the performance of their advisors regularly.

6.75 Smart Pension submitted that DC schemes that are professionally run are not less engaged than DB schemes in the investment consultancy market. It added that these schemes review their relationship with investment consultants and switch when necessary. However, it added that the same might not apply where a scheme is not professionally run or run by inexperienced trustees.[301]

6.76 WTW and PLSA submitted that lower levels of engagement amongst DC schemes may reflect the fact that investment risks are borne by the individual rather than the employer.[302] WTW stated that 'DC scheme trustees do not

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[297] PLSA response to the trustee engagement working paper.
[298] Mercer response to the trustee engagement working paper.
[299] Aon response to the trustee engagement working paper.
[300] Responses to the CMA market questionnaire.
[301] Smart Pension response to the provisional decision report.
[302] WTW and PLSA responses to the trustee engagement working paper.

need to worry about the scheme being underfunded' and so their need for investment consultancy services is therefore very different, as compared to DB schemes.[303] Similarly, PLSA noted that trustees may be more focused on reducing their DB scheme funding gaps (ie in hybrid schemes or amongst those trustees that sit on several boards).[304] This would be consistent with evidence from the TPR, which shows that hybrid schemes typically spend the vast majority of their time addressing DB-specific issues.[305]

6.77 In our view, the fact that investment risks are borne by individual members makes the lower levels of engagement amongst DC scheme trustees more concerning. As highlighted above, there is also evidence that the general bandwidth and capabilities of DC trustee boards are lower on average than those of DB boards.

The process for switching investment consultant

6.78 In principle, switching investment consultant can be achieved by signing an 'investment consultancy agreement' or 'engagement letter' with the new provider. This will set out the scope of the work and associated fees. Other than any legal costs incurred, the switch can occur at minimal cost.

6.79 In our view, therefore, there are not material costs or barriers to switching investment consultant. This is largely reflected in the results of the CMA survey, in which respondents who had switched investment consultant within the last five years were asked how easy they found the process. Overall, 47% of respondents said that they found the process very easy, 35% found it fairly easy, 9% found it not very easy and 2% found it not at all easy.

6.80 Redington submitted that some prospective clients find it hard to switch investment consultant, although they frequently anticipate that the costs and time taken to switch will be greater than they are in practice.[306] Aon submitted that transitioning an investment consultancy client takes no longer than a few weeks, and clients bear no significant fees for any transitional activities.[307] Barnett Waddingham also submitted that the switching process might take around one month.[308]

[303] WTW response to the trustee engagement working paper.
[304] PLSA response to the trustee engagement working paper.
[305] TPR Trustee Landscape Quantitative Research, 2015.
[306] Redington Issues Statement response.
[307] Aon Issues Statement response.
[308] Barnett Waddingham hearing summary.

Our assessment of engagement in investment consultancy

6.81 There is significant variation across schemes on our headline indicators of engagement. As we found in our analysis of trustee bandwidth and capabilities, levels of engagement for small schemes and DC schemes are lower than average across a number of indicators. This is particularly true for DC schemes, which are less likely to have engaged on any of our four headline indicators. We have also found that schemes with an investment sub-committee are more engaged than average.

6.82 Overall, in our view an average switching rate of 27% in and of itself does not raise major concerns about a lack of competition in this market. We recognise that investment decisions are made over a horizon of several years, and it is important to avoid an excessive focus on short-term performance. In addition, we have found that competitive pressure can be exerted in other ways than switching alone. For example, schemes may run a tender exercise or undertake a formal (internal or external) review of their provider. The evidence shows however that the extent to which schemes engage in these activities varies considerably.

6.83 We have not found that there are material costs or barriers to switching investment consultant. As noted in our in-house investment staff roundtable however, and in parties' submissions, the incumbent investment consultant acquires a detailed knowledge and understanding of the scheme over time. Trustees may not want to lose this knowledge, and it will take time for the new provider to develop a similar level of knowledge. This could act as an 'inherent barrier' to switching.

Levels of engagement: fiduciary management

Headline indicators of engagement

6.84 Table 5 shows the overall levels of engagement in fiduciary management across our four headline indicators, and compares these to the overall levels in investment consultancy. Due to the low numbers of observations for different types of scheme within fiduciary management, we are not able to replicate the disaggregated results in Table 5.

6.85 Table 5 indicates that the average rate of switching is lower in fiduciary management (9%) than investment consultancy (27%). This may reflect the fact that fiduciary management is an emerging service however. Indeed, the CMA survey found that the average tenure of current fiduciary management providers is six years, compared to eight years in investment consultancy.[309] In both cases however we note that these tenure rates should be treated with caution, as they are likely reduced by clients that have only recently begun using these services. The switching rates in both fiduciary management and investment consultancy imply average tenures that are considerably higher than those indicated here.[310]

6.86 To account for this growth in fiduciary management, we can adjust the switching rate by removing those schemes that have only recently started using the service. To do so, we remove schemes that have been with their current provider less than five years and have not switched within the last five years.[311] When we do this, the overall rate of switching increases to 17%. An equivalent exercise for investment consultancy services increases that switching rate to 30%.

6.87 There is therefore some evidence that overall switching rates are lower in fiduciary management than investment consultancy, although it is difficult to draw any firm conclusions on this because fiduciary management is an emerging market. Although we can 'mechanically' adjust the switching rate to account for this in a statistical sense, in practice it may be too soon for many schemes to have formally assessed the performance of their provider. As noted by Aon for example, fiduciary managers are generally appointed with long-term objectives that stretch beyond a five-year period.[312]

6.88 With the above in mind, we note that each of the other headline measures of engagement are lower in fiduciary management than investment consultancy, with the exception of an external review of fees and/or quality (which is 22% compared to 15%). The fact that fiduciary management is a relatively new market makes it difficult to draw firm conclusions from these findings.

6.89 We have not presented disaggregated results for fiduciary management due to small numbers within each category. Due to these small numbers, we do not place weight on the specific percentages, although we highlight the following results:

[309] Based on survey questions C3 and K3. Question C3: 'How long has the board of trustees bought investment consultancy from your investment consultant?' (base = 783). Question K3: 'How long has the board of trustees bought fiduciary management from your fiduciary manager?' (base = 145).
[310] A five-year switching rate of 27% implies that just over 5% of schemes change provider each year. Based on this rate of change, we would expect a scheme to remain with their current provider for almost 20 years.
[311] From the CMA survey, we do not know when a scheme first joined fiduciary management. Our approach removes schemes that, based on their survey response, have joined fiduciary management within the last five years. It is also possible that some of the schemes that switched also joined fiduciary management within the last five years. We do not have the information to remove such schemes.
[312] Aon submission to the trustee engagement working paper.

(a) There is some evidence that schemes with an investment sub-committee are more engaged than others. Such schemes are significantly more likely than average to have undertaken a formal review of fees and/or quality, and significantly more likely to have undertaken at least one of the four actions in Table 5.[313]

(b) Large schemes are significantly more likely than average to have undertaken a formal review of fees and/or quality.[314]

Table 5: Comparative levels of engagement – investment consultancy and fiduciary management

	Obs.	*Switched*	*Switched and/or tendered*	*Formal review of fees and/or quality*	*External review of fees and/or quality*	*Any of these actions*
Investment consultancy	783	27%	41%	63%	15%	73%
Fiduciary management	145	9%	37%	53%	22%	69%

Source: CMA analysis of CMA survey. We measure rates of switching and/or tendering over the last 5 years, and formal/external reviews of fees and/or quality over the last 3 years.

6.90 WTW have submitted that because many schemes have only recently moved into fiduciary management, it is likely that the evidence on switching rates actually captures schemes that moved from investment consultancy into fiduciary management.[315] In our view however the survey clearly asked trustees whether they had recently switched their *provider of fiduciary management services*.[316] We have received no evidence to indicate that, in responding to this question, trustees were referring to a switch from investment consultancy into fiduciary management.

6.91 WTW further submitted that by not explicitly analysing schemes that have switched from investment consultancy into fiduciary management, our analysis omits a ‘material category of engagement’.[317]

6.92 We agree that by separately analysing switches within investment consultancy and fiduciary management, we are not capturing those schemes that have switched between the two services. The aim of our analysis here is not to derive an overall ‘switching rate’ across pension schemes however. Instead,

[313] 37 of the 145 schemes have an investment sub-committee. For these schemes, the percentage that undertook a formal review of fees and/or quality increases to 75%, and the percentage that undertook none of the actions falls to 17%.
[314] 50 of the 145 schemes are ‘large’. For these schemes, the percentage that undertook a formal review of fees and/or quality increases to 69%.
[315] WTW response to the trustee engagement working paper.
[316] Question O1: ‘May I just double check, in the last 5 years, have you switched your [main] provider of fiduciary management services’
[317] WTW response to the trustee engagement working paper.

we are interested in levels of engagement and the ease of switching within each of the two separate markets. Switching rates are an important indicator of the ease of switching, although we recognise that additional qualitative work is also necessary.

6.93 We analyse those schemes that have moved from investment consultancy into fiduciary management in more detail in chapter 7.

6.94 In their responses to the provisional decision report, Aon and Mercer submitted that tendering rates have increased in recent years.[318] Aon stated, for example, that 'increased use of professional trustees, TPEs and the influence of other professionals on schemes means that tendering is becoming increasingly the norm for the appointment of IC and FM providers'.[319]

6.95 We have no direct evidence to determine long-term trends in tendering when switching fiduciary manager. We note however that whilst some providers may have experienced an increase in tenders, this is not necessarily true across the market.

The process for switching fiduciary manager

Overview

6.96 In this section we provide an overview of the process and costs of switching fiduciary management provider. A detailed analysis is provided in Appendix 3.

> **Switching fiduciary manager usually involves a considerable revision to the client's investment strategy.**

6.97 For context, we note that switching fiduciary manager typically involves a considerable upfront revision to the client's investment strategy and portfolio; this requires assets to be transferred from one set of funds to another. Due to this revision, and the potentially costly transfer of assets, the switching process usually involves both a 'planning phase' and an 'implementation phase'.

6.98 In the **planning phase**, the trustees and fiduciary manager develop the investment objectives, strategy and proposed portfolio. These investment

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[318] Aon and Mercer responses to the provisional decision report.
[319] Aon response to the provisional decision report.

guidelines will be included in the IMA. The completion of this agreement will involve a period of negotiation and legal review. As part of the planning phase, the provider will also devise a transition strategy to reallocate the client's assets into the proposed portfolio.

6.99 Estimates from parties indicate that the planning phase could last between a week and several months.[320] This will depend on the complexity of the scheme's investment strategy, negotiations between trustees and the provider, and the frequency of trustee board meetings. We understand that the main monetary costs incurred are legal fees, which will depend on each scheme's particular arrangements (eg the use of in-house or external legal advisors).

6.100 The **implementation phase** involves the transfer of assets from the current to the new portfolio. The timings and costs vary considerably on a client-by-client basis, depending in particular on:

(a) The client's current portfolio. If a client is invested in highly illiquid assets for example (such as infrastructure), there may be significant exit charges and lock-in periods. Transition costs may also be higher if the client has a very complex portfolio.

(b) The process for redemption and investment of assets. In some cases, it may be possible to simply 'novate' assets from one provider to another. This involves changing the contractual documentation and can occur at minimal cost. In other cases, it will be necessary either to redeem current holdings for cash, or transfer stocks and shares directly (an 'in specie' transfer). Both of these approaches can incur significant transaction costs.

6.101 Estimates provided by parties indicate that the implementation phase would typically take several months, although depending on the factors above, this could be considerably shorter. Typical transaction costs could be in the range of 0.1% to 1% of assets under management, although again there is considerable variation on a case-by-case basis.[321]

6.102 We note that these transaction costs are ultimately paid to the banks and brokers that trade the underlying securities, rather than the fiduciary managers themselves. We also recognise that the incoming fiduciary manager has an incentive to minimise transaction costs. This is due to the use of ad valorem pricing (whereby fees are directly related to the size of assets under

[320] Responses to CMA information requests.
[321] Responses to CMA information requests.

management), and the fact that the fiduciary manager agrees asset-based objectives with the client in the IMA.

6.103 We have not found that fiduciary management contracts typically include restrictive exit clauses or penalties. Most contracts include a minimum notice period, although this is considerably shorter than the length of time we would typically expect trustees to remain with their provider. The notice period is often set at 30 days (eg Mercer, Russell Investments, [✂]), [✂]. BlackRock submitted that notice periods are negotiated on a client-by-client basis.

6.104 WTW submitted that their standard template contract includes a [✂] minimum term, which is due to the significant upfront costs associated with taking on a client. [✂]. In any case, we would expect the vast majority of fiduciary management appointments to be made on a longer-term basis than [✂], and so in our view this is not a material barrier to switching.

6.105 To summarise the overall timings and costs involved in the switching process:

(a) The switching process typically takes several months. This is driven by the time taken to agree an investment strategy, review and sign contracts and transfer assets to the new portfolio.

(b) Monetary costs are mostly incurred in the transitioning of assets. These costs vary considerably on a client-by-client basis, although a reasonable range is 0.1% to 1% of assets. For a scheme with £100 million of assets, this implies transaction costs of approximately £100,000 to £1 million.

The costs of switching fiduciary manager can typically range from 0.1% to 1% of assets.

Our assessment of the switching process

6.106 Switching fiduciary managers is, in general, a time consuming and costly process. Whilst we recognise that this varies significantly on a case-by-case basis, the process typically takes several months and incurs costs in the range of 0.1% to 1% of assets.

6.107 To put these costs into context, we note that the annual cost of a full fiduciary management service (excluding asset management costs) might typically be in the range of 0.2% to 0.3% of assets.[322] Switching costs could therefore be equivalent to an additional year's worth of fiduciary management fees, and in some cases even higher. This is consistent with some of the input we have received from the trustee roundtables and in survey follow-up questions.

6.108 In responding to our analysis of switching costs, as set out in our working paper on trustee engagement, parties have made two related points:

(a) Our estimate of switching costs is driven by changes to the investment portfolio rather than the change in fiduciary manager per se. It is not always necessary to revise the portfolio when switching manager.

(b) The ultimate costs of switching are similar in fiduciary management and investment consultancy. The only fundamental difference is that there is an upfront revision to the investment portfolio in fiduciary management, whereas the portfolio is changed more gradually in investment consultancy.

6.109 We respond to these two points jointly as they are similar in essence. First, we have received feedback from several sources that, in practice, there will usually be a substantial revision to a client's investment portfolio when switching fiduciary manager.[323] There are several reasons for this:

(a) In practice, a switch will generally be triggered because trustees are dissatisfied with the investment performance of the incumbent provider. In switching, trustees are seeking a change in the investment strategy. A number of trustees at our roundtable strongly indicated that fiduciary management switching costs were high because the portfolio would almost always change when switching provider.[324]

(b) The new provider may have a preferred investment approach and funds. The provider may not want to transfer the existing holdings. We note for example that for schemes investing less than £[✂] of assets, investments into [✂] fiduciary management service must be made as cash.[325]

(c) Based on feedback from trustees and in-house pension teams, we understand that in certain cases it is not possible simply to transfer

[322] Ernst & Young, Fiduciary Management Fees Survey 2017. This estimates a median fee (excluding investment management costs) of around 0.2-0.3% of assets per year, and overall fees (including investment management costs) of around 0.5-0.7% per year (for assets up to £250 million).
[323] This includes submissions from parties, trustee roundtables and discussions with TPEs.
[324] Trustee roundtable summary.
[325] Response to CMA information request.

products or funds from one manager to another. One trustee at our roundtable for example stated that some providers insist that their own LDI product is used.[326] PLSA have also submitted that some investment 'vehicles' may be proprietary to the original fiduciary manager.[327] The client may therefore be forced to divest these funds, incurring transaction costs.

(d) TPEs have told us that trustees using full fiduciary management would typically prefer not to leave some assets with the incumbent whilst transferring others to the new provider. For many schemes a key rationale for using full fiduciary management is to simplify governance; having different assets with various providers complicates the investment strategy and creates practical issues (eg around monitoring).

6.110 This implies that in many cases there are likely to be significant upfront costs incurred when switching fiduciary manager. This is not generally the case when switching provider of investment consultancy services.

6.111 Second, costs may be incurred when switching fiduciary manager even if there are no substantial changes to the investment portfolio. If a client is invested in a provider's fund of funds (or 'multi-asset pooled fund') for example, underlying asset management fees are typically passed on to the client without any additional charge. In effect, the scheme receives a discounted price for investing in the fund-of-funds because they are a fiduciary management client of the provider.

6.112 If the client were to switch fiduciary manager, but remain invested in the funds, they would likely have to pay an 'access' fee to the provider on top of the underlying asset management fees. We understand from speaking to a TPE that a typical range for this fee could be around 0.1% to 0.3% of assets under management.

6.113 Switching fiduciary manager can therefore incur material costs even in the absence of changes to the underlying portfolio. We understand that this is not the case when switching investment consultant.

6.114 In its response to the provisional decision report, Aon submitted that the CMA is correct to observe that fiduciary management has higher on-going and switching costs. It added that there are valid reasons for this based on the need to change investment strategy. It would be wrong to draw simplistic

[326] Trustee roundtable summary.
[327] PLSA response to the trustee engagement working paper.

comparisons against the costs and the process of switching investment consultant. Aon concluded that this comparison fails to consider that much of costs of switching fiduciary manager are attributable to the costs charged by the underlying asset managers.[328] Further, WTW submitted that there is no evidence that the cost and time associated with switching fiduciary managers are key factors which influence a customer's decision to switch.[329]

6.115 In our view, as fiduciary management is a relatively new service, it may be too soon for schemes to have considered switching. We therefore have limited insight into the drivers of switching and the practical impact of high switching costs. However, trustees at our roundtables expressed concerns about the cost of being locked-in to fiduciary management funds and they noted that any change in fiduciary management provider would in practice trigger significant switching costs in the form of transaction fees associated with moving the assets in accordance with the new investment strategy.[330]

Our assessment of engagement in fiduciary management

6.116 Assessing levels of engagement in fiduciary management is challenging as this is a new and emerging market. Although the CMA survey indicates that engagement is lower than in investment consultancy on most of our headline indicators, in practice it may be too soon for many schemes to have switched or formally assessed the investment performance of their current provider. We therefore do not draw firm conclusions regarding levels of engagement in fiduciary management.

6.117 The process for switching fiduciary manager varies considerably across schemes. We recognise that there are some cases in which the switching process can be completed quickly and at minimal cost. We have found however that, in general, the process of switching fiduciary manager is lengthy – on a timescale of several months or longer – and incurs significant costs. This could act as a material barrier to some schemes in switching provider.

Conclusions

Trustee bandwidth and capabilities

6.118 The evidence shows that there is substantial variation in the bandwidth and capabilities of trustees to monitor and assess their investment advisors.

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[328] Aon response to the provisional decision report.
[329] WTW response to the provisional decision report.
[330] Summary of roundtable with Pension Trustees held on 3 October 2018.

Trustees typically have several years of experience and most hold a relevant qualification (as defined by TPR). At the same time however, there is evidence that many trustees do not regularly challenge the investment advice they receive or consider alternative options. Third-party research also indicates that many lay trustees do not meet the standards of 'knowledge and understanding' expected by the regulator.

6.119 We have found that governance is weakest in small schemes and DC schemes. This is reflected, among other indicators, in the fact that the trustee boards of these schemes are less likely to have an investment sub-committee, meet less frequently, and trustees are less likely than average to meet the standards of knowledge and understanding expected by the regulator. In DC schemes the scheme sponsor is less likely to play an important role in monitoring and scrutinising the investment consultant.

Levels of engagement: investment consultancy

6.120 In our view, in and of itself an average switching rate of 27% does not raise major concerns about a lack of competition in the investment consultancy market. We recognise that investment decisions are taken in order to achieve long-term outcomes, and we would therefore not expect all schemes to be switching every few years.

6.121 We have found however that levels of engagement, including switching, vary considerably across schemes. In particular, small schemes and DC schemes are less engaged in this market based on a number of indicators. DC schemes for example have considerably lower rates of switching and tendering than average and are less likely to have formally reviewed their provider. In the box below, we outline some of the broader concerns we have found regarding DC schemes.

6.122 In our view, there are not material costs or barriers to switching investment consultant. A switch can typically occur at minimal cost and be completed within a few weeks.

Levels of engagement: fiduciary management

6.123 It is difficult to assess levels of engagement in fiduciary management as this is a relatively new and growing market. Whilst most headline indicators of engagement, such as switching and tendering, are lower than in investment consultancy, in practice it may be too soon for many schemes to have switched or formally assessed the performance of their provider. In particular, we recognise that fiduciary managers are generally appointed with long-term objectives and so assessing their investment performance may require several years' worth of evidence.

6.124 Our analysis has shown however that the process for switching fiduciary manager typically takes several months and can incur significant costs. In many cases such costs could amount to approximately one year's worth of fiduciary management fees, and in some cases, costs will be even higher than this. We therefore consider that in many cases there are likely to be material barriers to switching fiduciary manager.

DC pension schemes

Our investigation into investment consultancy and fiduciary management services has covered both DB and DC schemes as both use these services.

We have observed that one of the key dynamics in the pensions industry is a move by employers away from DB towards DC schemes. We recognise that DC schemes represent the future shape of the pensions industry.

While our focus has been on assessing competition amongst the providers of services to pension schemes, this work has led us to have some broader concerns over the governance and financial prospects of DC schemes. We set these out below.

Our findings

We found that the use of investment consultancy and fiduciary management services is much lower amongst DC schemes than it is amongst DB schemes: the CMA survey found that only 38% of DC schemes use investment consultancy services and 5% use fiduciary management, compared to 82% and 14% respectively for DB schemes.

Our assessment shows that DC pension schemes are less likely to be 'engaged' customers of investment consultants and fiduciary managers: in particular, DC schemes have considerably lower rates of switching and tendering than average and are less likely to have formally reviewed their provider.

TPR research also gives some indications that the strength of governance of DC scheme investment is lower: the average level of trustee qualifications is lower for DC schemes; fewer DC trustees undertake formal training; and only around a third of DC trustees believe all members of their boards meet the standards required in TPR's code of practice. The

CMA survey found that DC schemes have fewer meetings and spend less time on their duties than DB trustees.

The CMA survey also found that trustees of DC schemes were less likely to consider the sponsor as ‘very important’ in monitoring and scrutinising their investment consultant. We have frequently been told by parties to this investigation that hybrid schemes typically devote much more time and attention to their DB element than their DC element. This is consistent with TPR research.[331]

Collectively, these points raise concerns about a lack of engagement and focus on members’ investment outcomes in DC schemes.

We recognise that there are some reasons that could explain why engagement may appear to be lower among DC schemes: many DC schemes are smaller than DB schemes, and all types of smaller schemes tended to exhibit lower engagement in investment consultancy. This may be because, if they have fewer assets to invest, they pursue simpler investment strategies and have less need for advice than a larger scheme would. The existence of investment fee caps on the default arrangements limit their choice of investments and so may also limit their need for advice. Also, as many DC schemes are less mature, it is possible that they are currently more focussed on member contributions and scheme design, rather than on member outcomes via their investment strategy.

Overall conclusions

In DC schemes, individual members, rather than sponsoring employers, bear the risk of poor investment outcomes. Yet we find that members are not engaged investors in these products, with the vast majority remaining in the default fund.

We think the indicators of low engagement with investment outcomes by DC schemes raise a risk to the financial outcomes for millions of DC scheme members in the longer term. We think that these schemes should be held to a very high standard of governance due to their responsibility to the interests of the end customer.

We invite DWP and TPR to consider what further measures may be necessary to achieve this.

[331] TPR Trustee Landscape Quantitative Research, 2015.

7. The sale of fiduciary management services by investment consultancy firms

Our main findings

- Decisions about using fiduciary management services and which provider to choose are important for trustee boards and could have long lasting consequences.
- Many trustees have concerns about integrated investment consultants ('IC-FM' firms) steering clients into their own fiduciary management services.
- Half of pension schemes buying fiduciary management services have appointed their existing investment consultant to supply these services.
- IC-FM firms have strategies and financial incentives to sell fiduciary management to their existing advisory clients.
- Some of the ways that these firms introduce and advise on fiduciary management steer trustees towards the firm's own service and make it less likely that they properly consider alternatives.
- Overall, steering behaviours of IC-FM firms and low engagement by trustees when first buying fiduciary management contribute to an incumbency advantage for IC-FM firms, such that pension schemes are less likely to get the best value deals.

Introduction

7.1 This section considers whether there are competition problems arising from the sale of fiduciary management services by integrated investment consultants, that is, firms providing both investment consultancy and fiduciary management services (IC-FM firms).

7.2 The main concern we investigated is whether trustee boards are being steered towards buying fiduciary management services from their existing investment consultancy firm, which is acting as their advisor, and as a result are not getting best value deals.

7.3 We also considered the related issue of whether IC-FM firms are failing to manage conflicts of interest effectively when introducing and selling fiduciary management to their existing advisory clients. For example, where a firm introduces a service when they do not believe that it is in a client's best interests.

7.4 The remainder of this section is structured as follows:

(a) We first present background on the growth of fiduciary management, relevant features of fiduciary management services and trustee concerns.

(b) We consider how pension scheme trustees make decisions around moving to fiduciary management and how they compare and select fiduciary managers.

(c) We then look at the practices of IC-FM firms when introducing and selling fiduciary management to trustees, alongside their strategies, incentives and conflict policies.

Background

7.5 This section sets out some background on fiduciary management services and the importance of this market for trustees. It explains that fiduciary management has grown strongly, sets out some relevant features of fiduciary management services and the IC-FM firm business model, and sets out the levels of trustee concern about these issues.

The growth of fiduciary management services

7.6 As set out in chapter 4 of this report, fiduciary management has grown strongly in recent years. The number of fiduciary management mandates and the value of assets invested through fiduciary management were over ten times higher in 2018 compared to a decade earlier. KPMG's survey indicates that there were 59 fiduciary management mandates (£12 billion of assets under management) in 2008 and 862 fiduciary management mandates (£142 billion of assets under management) by 2018.[332]

7.7 Based on CMA analysis of the CMA survey, 13% of UK pension schemes currently buy fiduciary management services.[333]

[332] KPMG: UK Fiduciary Management Survey (2018).
[333] This takes into account responses where the pension scheme was buying fiduciary management from a confirmed provider of fiduciary management services. Our list of confirmed providers of fiduciary management services includes 17 firms; a total of 145 respondents bought fiduciary management from one of these firms whereas 134 respondents said they bought fiduciary management from a firm that we were not able to confirm as a provider of fiduciary management services.

13% of pension schemes currently buy fiduciary management services.

About fiduciary management services

7.8 Fiduciary management involves a partial or full delegation of investment powers and decisions. When a fiduciary manager is appointed, the fiduciary manager makes and implements decisions for the investor based on the investor's investment strategy.

7.9 We have been told that fiduciary management services can bring benefits for pension schemes. For example:

(a) The PLSA submitted that 'Fiduciary management as an approach can offer many benefits to schemes, including the ability to take investment implementation decisions nimbly in response to market developments and a reduced governance burden more generally'.[334]

(b) Trustees, in-house investment staff, and asset managers that attended our roundtable events said that fiduciary management could be a beneficial service for pension schemes. Asset managers considered fiduciary management to be a method of pooling institutional investors' funds, which could achieve lower costs and fees, and provide greater exposure to different managers.[335]

(c) JLT submitted that '[fiduciary management] is often the quickest, most effective and efficient way for strategic ideas to be implemented by clients'.[336]

(d) WTW said that its fiduciary management clients had experienced significantly less volatility and stronger growth than the average UK DB scheme and that it expected that similar results applied across the FM industry.[337]

[334] PLSA response to the fiduciary management working paper.
[335] Summary of discussion with pension scheme in house investment staff held on 16 May 2018, summary of roundtable with Pension Trustees held on 1 and 2 May 2018, summary of roundtable with Asset Managers held on 12 February 2018
[336] JLT response to the fiduciary management working paper
[337] WTW submission to the CMA.

7.10 On the other hand, some parties said that independent investment advice (from a firm that doesn't offer fiduciary management) offers benefits such as objectivity and can deliver equivalent outcomes to fiduciary management.[338] Further analysis on fiduciary management services is also set out in chapter 10 on market outcomes.

7.11 Trustees who choose to delegate through fiduciary management arrangements generally receive more services (and pay fees that are higher) compared to those who only buy investment consultancy services.[339] In addition, trustees who delegate through fiduciary management arrangements become less involved in the investment decisions of the pension scheme.

7.12 As highlighted in chapter 6, the time and costs involved in switching fiduciary management providers can be considerable. We found switching costs to generally be in the range of 0.1% to 1% of assets; therefore, these costs could be equivalent to an additional year's worth of fiduciary management fees, and in some cases even higher.

Around two thirds of fiduciary management mandates are for all scheme assets.

7.13 At present, 61% of fiduciary management mandates are full mandates (where all assets are delegated) and around one-third are partial mandates (where less than 100% of assets are delegated).[340]

7.14 Where partial fiduciary management mandates are awarded, in some cases the size of the mandate will grow over time, either due to asset growth or due to trustees deciding to allocate more assets (or asset classes) to a fiduciary management provider.

7.15 Therefore, decisions about whether to buy fiduciary management services and which provider to appoint are very important decisions for trustee boards. These decisions may have long lasting consequences given the costs of switching fiduciary management provider or leaving fiduciary management altogether. This means that where a trustee moves from investment consultancy to fiduciary management with its existing investment consultancy

[338] For example: summary of hearing with Redington held on 13 November 2017.
[339] Source: CMA Analysis, Parties' Data.
[340] Source: CMA Analysis, Parties' Data. Analysis is for DB schemes moving into full fiduciary management services and does not control for any confounding factors.

provider, it is particularly important that the trustee has tested the market and considered alternatives.

7.16 We also recognise that there are potential benefits from integrated IC-FM business models, including the ability to tailor services to the scheme's needs, and economies of scale and scope. We were told by IC-FM firms and some other stakeholders that the IC-FM integrated business model brings synergies and benefits. For example, the PLSA submitted that 'There are also benefits to [fiduciary management] being offered by a scheme's incumbent investment consultant … as they may have a good understanding of the history and objectives of their clients.'[341]

Trustee concerns related to the sale of fiduciary management by IC-FM firms

7.17 The CMA survey asked trustees for their perception of potential conflicts of interest.[342] As shown in Figure 11 below, the survey found that:

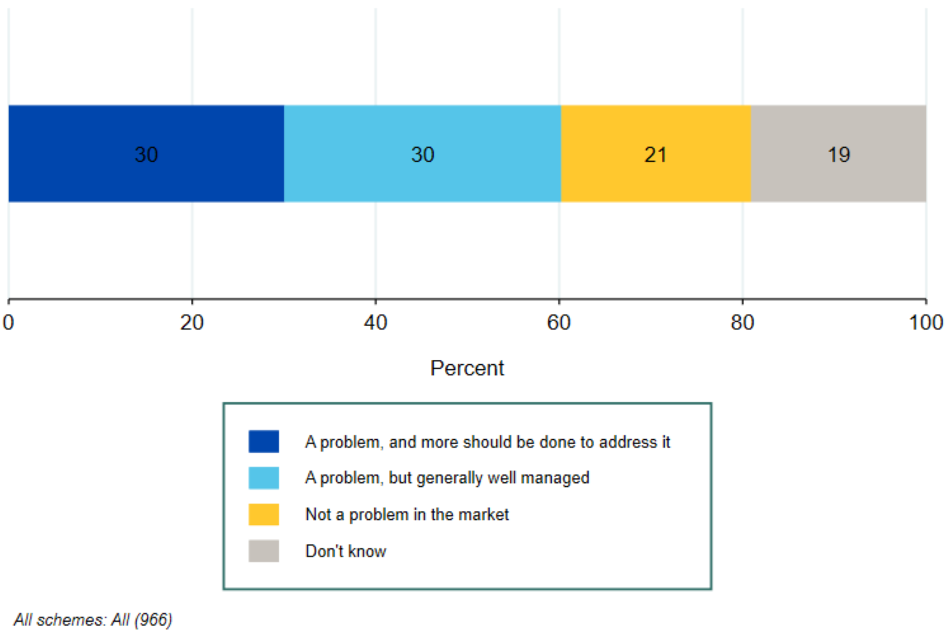
(a) 60% of trustees perceived that investment consultants steering clients into their own fiduciary management services was a problem;

(b) Of those trustees that perceived that it was a problem, half said that it was generally well managed (30% of all trustees), whereas the other half said that more should be done to address it (30% of all trustees).

> **60% of pension scheme trustees thought that investment consultants steering clients into their own fiduciary management services was a problem.**

[341] PLSA response to the fiduciary management working paper. See also Mercer response to the fiduciary management working paper, Aon response to the fiduciary management working paper and WTW response to the fiduciary management working paper.
[342] Based on all responses to the CMA survey.

Figure 11: Trustee perceptions of investment consultants using their position to steer clients into their own fiduciary management services



Source: CMA survey, question Q1_1 'Would you say investment consultants using their position to steer clients into their own fiduciary management services is…?'.

7.18 There were some notable differences in how different types of trustees perceived investment consultants steering clients into their own fiduciary management services:

(a) professional trustees were more likely to say that it was a problem and more should be done (62% of professional trustees, compared to 30% of all trustees);

(b) trustees of larger schemes were more likely to say that it was a problem and more should be done (42% of larger schemes, compared to 32% of medium schemes and 22% of smaller schemes).

7.19 We received a range of submissions and views on the CMA survey results. In their responses to the provisional decision report, Mercer and WTW submitted that the CMA survey included a leading question which may have biased responses, and Mercer stated that it was conducted against a backdrop of significant market commentary on the issue of 'steering'.[343]

[343] Mercer and WTW responses to the provisional decision report.

7.20 In designing and consulting on the survey questionnaire, we decided to seek views on specific potential conflicts that had been raised (for example, as part of the FCA's Asset Management market study), and it was therefore necessary to ask questions in a targeted way. To mitigate the risk of asking leading questions, we carefully considered (and consulted on) the wording of each question and the possible response options.[344]

7.21 When conducting the survey, we randomised the ordering of the sub-questions (regarding conflicts) and reversed the response scales for half the sample.[345] Overall, we consider that the CMA survey provides useful evidence on trustees' attitudes concerning potential conflicts in the markets for IC and FM services. We discuss the details of the survey further in Appendix 4.

7.22 In its response to the provisional decision report, Aon submitted that the CMA had interpreted the CMA survey results in a 'misleading fashion'.[346] It stated that the CMA survey asked respondents whether they believed steering to be a *potential* problem, and only 30% of respondents believed that more should be done to address the potential problem. Aon concluded that seventy percent of respondents were therefore 'comfortable with the effectiveness of the market' in dealing with this issue.[347]

7.23 Our view is that this is not an accurate representation of the questions that were asked regarding conflicts of interest. Whilst trustees were told that the 'following questions are about potential conflicts of interest', the word 'potential' was necessary to avoid prejudicing trustees' responses. For each potential conflict, trustees were asked to indicate their perception from a list of options: for example, whether they perceived there to be 'not a problem in the market', or 'a problem' with various permutations. Contrary to Aon's submission, respondents were not asked whether their perception was in respect of a '*potential* problem'.[348]

7.24 We recognise that whilst 60% of trustees perceived that investment consultants steering clients into their own fiduciary management services was a problem, half of those trustees considered it to be 'well-managed'. This still implies however that 30% of respondents – almost a third – consider that this

[344] As noted in Appendix 4, we invited comments from stakeholders to our investigation on the proposed survey methodology and draft questionnaire in October 2017. We received responses from 10 parties to the investigation; from TPR and the FCA; and from one stakeholder. We made a number of revisions to the questionnaire as a result.
[345] That is, when reading the possible response options, the interviewer reversed the options available.
[346] Aon response to the provisional decision report.
[347] Aon response to the provisional decision report.
[348] Question Q1: Some analysts have suggested that there may be potential conflicts of interest in the investment consultancy and fiduciary management markets. What is your perception of each of the following?' Response options: 'not a problem in the market'; 'a problem, but generally well-managed'; 'a problem, and more should be done to address it'.

is a problem 'and more should be done to address it'. We also note that this percentage rises to 62% amongst professional trustees (who have experience across a wider range of schemes) and several trustees have expressed concern about this issue at our trustee roundtable discussions.[349]

7.25 Some parties highlighted other survey evidence, including statistics showing that many trustees were satisfied with fiduciary management providers overall and that few trustees not buying fiduciary management identified conflicts of interest as the reason for the decision.[350] We note these points but nonetheless the results at Figure 11 show that a substantial proportion of trustees have concerns regarding steering behaviour by firms. We discuss trustee satisfaction further in chapter 10.

7.26 WTW said that 'it appears that larger pension schemes would be able to remedy the problem caused by potential conflicts of interests through the use of intermediaries'.[351] They also said: '[✂]'.[352]

7.27 We have not concluded on whether professional trustees and trustees of larger schemes are better placed to judge these issues. However, we note that professional trustees may have more visibility and understanding of investment issues.

7.28 Overall it appears that a substantial proportion of trustees, in particular professional and larger scheme trustees, have concerns regarding this issue. We consider below how trustees are buying fiduciary management services and how IC-FM firms are introducing and selling these services.

Demand side: How trustees consider and make decisions on fiduciary management

7.29 To drive competition, trustees who are prospective customers of fiduciary management services need to be willing and able to access information about alternative firms in the market; assess or compare their offers; and actively select their preferred supplier.

7.30 The following section sets out our assessment of the evidence provided to us in relation to the fiduciary management purchase decisions that trustees have

349 Summary of roundtable with Pension Trustees held on 1 and 2 May 2018 and summary of roundtable with Pension Trustees held on 3 October 2018.
350 For example, Aon response to the fiduciary management working paper.
351 WTW response to the fiduciary management working paper.
352 [✂].

made, and the actions that they have taken when selecting a fiduciary management provider.

Selecting fiduciary managers

7.31 We collected various data on the usage of fiduciary management and evidence from both the CMA survey and data submitted by the parties. This indicates that half of pension schemes buying fiduciary management have appointed their existing investment consultant to supply these services. In many cases these sources show similar results. The analysis of parties' data is based on a greater number of data points therefore we focus on this as our primary source of evidence.

Parties' data

7.32 We asked parties to supply us with data on their fiduciary management clients.[353] Of this sample:

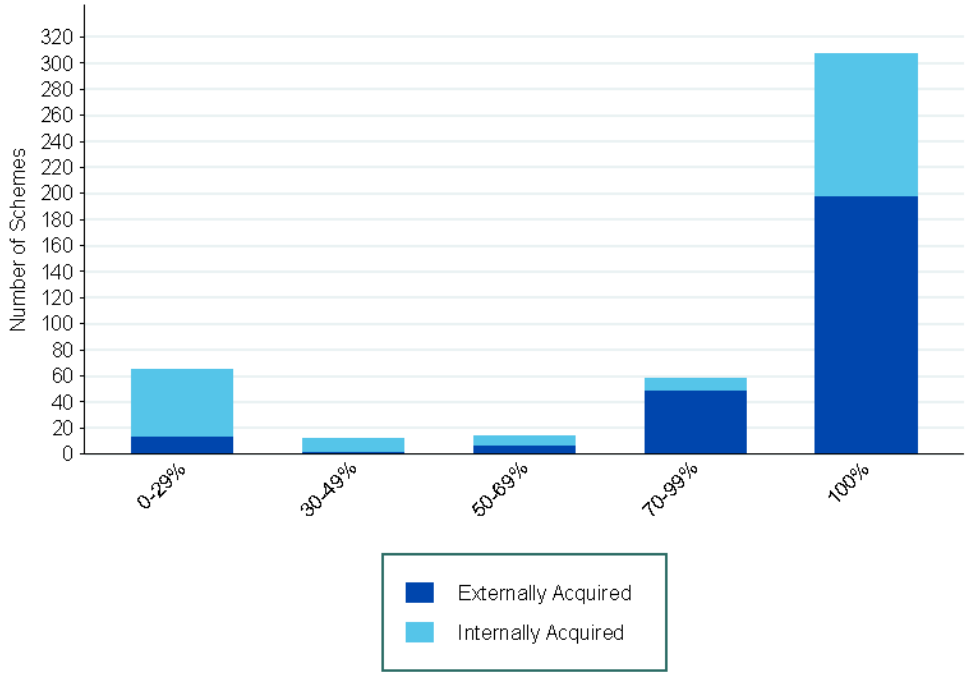
(a) the vast majority of customers (83%) bought fiduciary management services from an IC-FM firm;

(b) half (50%) bought these services from an IC-FM firm that was already supplying investment consultancy services to them.

7.33 Figure 12 below provides a breakdown according to whether the client delegated management of all assets to the fiduciary management provider, or only a proportion of assets. We distinguish between clients that were already buying investment consultancy services from the provider (these are 'Internally Acquired' schemes) and those that were not (these are 'Externally Acquired' schemes). In general, we note that the majority of schemes purchasing fiduciary management have delegated all or most of their assets: customers who are Externally Acquired tend to delegate more or all of their assets; those who only delegate a minority of their assets tend to be Internally Acquired.

[353] IC-FM and other fiduciary management firms provided us with detailed information on a total of 498 of their fiduciary management clients. See also Appendix 6 for more information on this data set.

Figure 12: Number of schemes analysed by level of delegation and source of acquisition



Source: CMA Analysis, Parties' Data

CMA analysis of CMA survey

7.34 The CMA survey asked trustees about the fiduciary management providers that their pension scheme first selected and that they currently used.[354] Our analysis of the survey results indicated that:

(a) when appointing their first fiduciary management provider, around half of all schemes buying fiduciary management appointed their existing investment consultant (47%), and

(b) as at the time of the survey, the majority of schemes buying fiduciary management also bought investment consultancy services from that provider (74%).[355]

[354] The CMA survey statistics presented in this section are based on responses where the pension scheme was buying fiduciary management from a confirmed provider of fiduciary management services.
[355] There are several possible explanations for the differences between the two statistics. Firstly, some schemes may have appointed a firm that was not previously their investment consultancy provider to supply investment consultancy and fiduciary management services through a single process. Secondly, some schemes may have appointed a firm that was not their investment consultancy provider to supply fiduciary management services, before subsequently also starting to buy investment consultancy services from that firm.

Around half of all schemes who have bought fiduciary management appointed their existing investment consultant.

7.35 Therefore both the parties' data and our analysis of the CMA survey indicate that around half of schemes buying fiduciary management have appointed their existing investment consultant to supply this service.

7.36 Several IC-FM firms said that that there were good reasons why trustees might want to buy from an existing service provider. For example:

(a) WTW said that 'it is altogether unsurprising that a good proportion…decide not to switch providers when moving from advisory to fiduciary management services. These are clients which are likely to have been with their advisory provider for many years and where a relationship of trust has been built'.[356]

(b) Aon submitted that 'In many instances, trustees will have already undertaken due diligence on their investment consultant firm's strategy, operational due diligence capability and manager selection expertise…so long as they are content with their existing investment consultant's strategy, it is natural for many trustees to conclude that their existing investment consultancy provider would be their best fit to provide fiduciary management.[357]

(c) In its response to the provisional decision report, Aon further submitted that 'no conclusions can be drawn from the fact that many existing IC clients opt to purchase FM services from the same provider'.[358] It stated that, in its experience, trustees are informed and are aware of a range of other FM providers, particularly given the increased use of professional trustees.

7.37 Cardano said that their interpretation of the evidence on fiduciary management purchasing patterns and market testing was that 'IC-FM firms have been disproportionately successful as a consequence of their clients *not testing the market*'.[359]

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[356] WTW response to the fiduciary management working paper.
[357] Aon response to the fiduciary management working paper.
[358] Aon response to the provisional decision report.
[359] Cardano response to the fiduciary management working paper.

7.38 We recognise that customers may have good reasons to select an incumbent investment consultancy firm to supply fiduciary management services. However, whichever provider they appoint, we would expect customers buying fiduciary management to test the market in order to get the best value that they can for their pension scheme.

Actions of customers when selecting a fiduciary management provider

7.39 We used several sources of evidence to assess the steps that trustees have taken when selecting a fiduciary management provider.[360]

7.40 We considered several indicators of engagement with fiduciary management selection, including usage of formal tenders, inviting proposals, usage of third party advice, and having a professional trustee on the trustee board. This work builds on chapter 6 of the report.

Parties' data

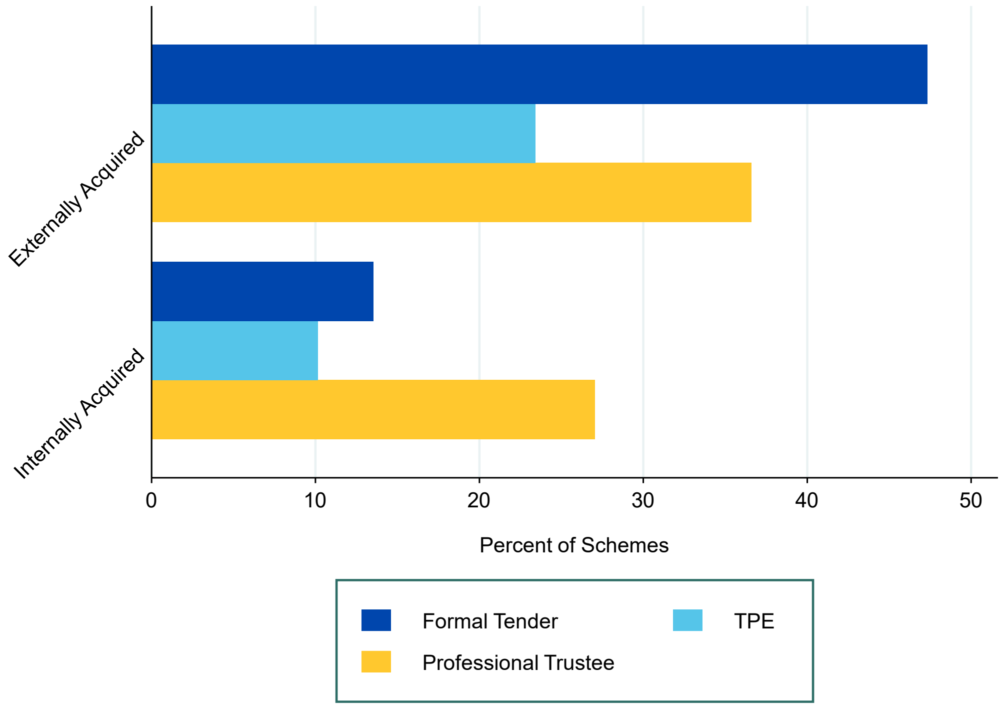
7.41 Based on data submitted by parties, average formal tender rates for all schemes buying fiduciary management are relatively low at around 34%.

> **Only 34% of schemes who bought fiduciary management had formally tendered.**

7.42 Figure 13 below focuses on pension schemes buying fiduciary management services from an IC-FM firm. It shows the percentage of customers exhibiting three indicators of engagement when buying these services.[361]

[360] The CMA survey statistics presented in this section are based on 145 responses where the pension scheme was buying fiduciary management from a confirmed provider of fiduciary management services.
[361] This dataset comprises pension schemes that were fiduciary management customers of Aon, JLT, Mercer, River & Mercantile and WTW as of 2016. The engagement indicators used are the use of a formal tender, the use of a TPE and having a professional trustee on the board of trustees.

Figure 13: Proportion of schemes buying fiduciary management from an IC-FM firm that exhibit engagement indicators



Source: CMA Analysis, Parties data

7.43 Figure 13 shows that, of Externally Acquired schemes, 47% of schemes used a formal tender process, 23% used a TPE and 37% had a Professional Trustee. Whereas for Internally Acquired schemes, only 14% of schemes had formally tendered, 10% used a TPE, and 27% had a Professional Trustee.

Only 14% of schemes which bought fiduciary management from their existing investment consultant had formally tendered.

7.44 These figures indicate that pension scheme engagement is substantially lower for Internally Acquired schemes compared to Externally Acquired schemes.

7.45 In its response to the provisional decision report, Mercer submitted that the CMA has been too narrow in defining a tender. It stated that the definition of tendering should include ‘structured processes’, which ‘cover situations where the client discussed propositions and fees with other providers, without necessarily running a full and formal tender process’.[362] It stated that ‘these

[362] Mercer response to the provisional decision report.

cases would therefore have involved at least some degree of market testing'.[363]

7.46 If we were to extend our analysis to include structured bidding processes, this does not fundamentally change our assessment of engagement levels. In particular, amongst Internally Acquired schemes, only 14% of schemes undertook a formal tender (Figure 13 above), and only an additional 18% undertook a structured bidding process (excluding a formal tender). We therefore still find that only around half of internally-acquired FM schemes undertook a formal tender, a structured bidding process or used a TPE.

7.47 Further, we have not placed significant weight on the figures relating to structured bidding processes, as the definition of this activity is broad and open to different interpretations across providers.[364] Given the importance of the trustees' decision to move into FM, for example in terms of scheme governance and costs, we consider that formal tendering is a more relevant indicator of engagement in this context.

7.48 In their responses to the provisional decision report, Aon and Mercer submitted that tendering rates have increased in recent years. Mercer stated that 'the CMA has materially understated the level of tendering and market testing that currently takes place' and 'the CMA should not place undue weight on backwards-looking evidence on levels of tendering'.[365]

7.49 We recognise that tendering rates may have increased since the period of the data provided to us (2010-2016), and this would be consistent with evidence from the 2018 KPMG FM survey regarding the use of TPEs (rather than tendering specifically – see below).

7.50 We do not have any direct evidence to support this however. First, we note that whilst some providers may have experienced an increase in tenders, this is not necessarily true across the market. Second, considering longer-term trends, there is little evidence of a general increase in tendering rates. Figure 14 below shows how formal tender rates have varied through time, broken down according to whether customers were Internally Acquired or Externally Acquired.[366]

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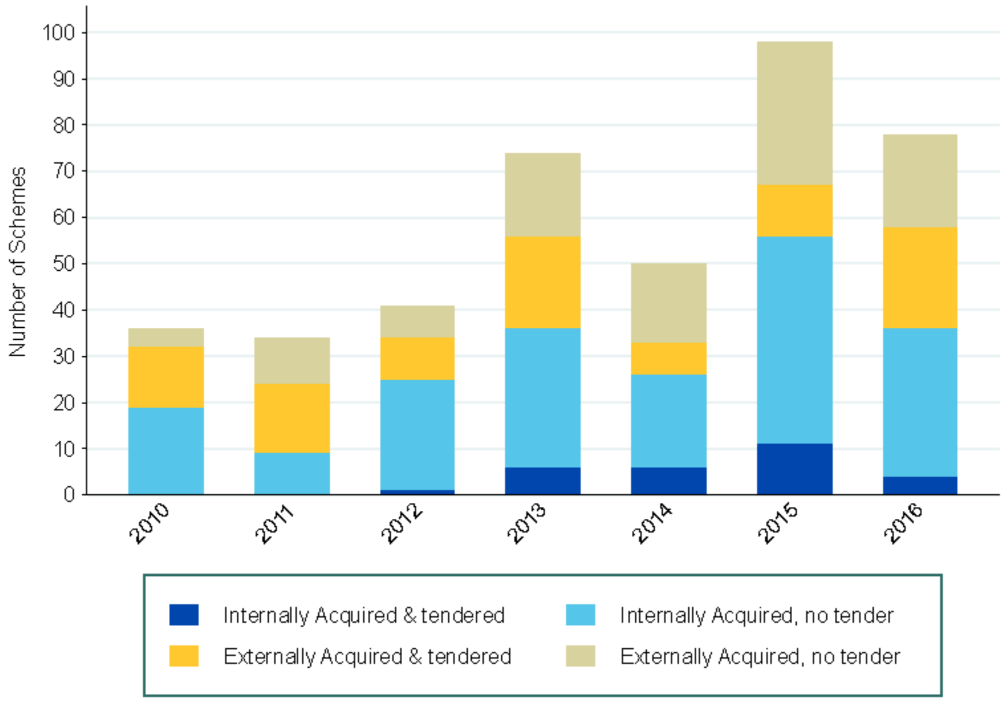
[363] Mercer response to the provisional decision report.
[364] In our client data templates (issued to parties), we stated that: '[a] structured bidding process should be interpreted as a formal tender exercise, or any other process by which you have put in a bid or costed plan which you have reason to believe may have been compared to other similar submissions from other firms'.
[365] Aon and Mercer responses to the provisional decision report.
[366] This dataset comprises pension schemes buying fiduciary management from Aon, JLT, Mercer, River & Mercantile and WTW.

Figure 14: Stacked bar chart showing the number of schemes buying fiduciary management from an IC-FM firm



Source: CMA Analysis, Parties' Data.

7.51 Figure 14 illustrates that the proportion of Internally Acquired schemes (shown in blues) has been relatively consistent through time at around 50% in most years. It also shows that no Internally Acquired schemes had performed a formal tender prior to 2012. After 2012, a greater proportion of Internally Acquired schemes undertook a formal tender, although those doing so still represented a minority of schemes.

7.52 The data set used above is likely to include some purchases where schemes were switching from one fiduciary management provider to another, as well as purchases where schemes were buying fiduciary management for the first time. However, as fiduciary management is a new market and only a small proportion of schemes have switched provider to date,[367] we consider the evidence above to be indicative of trustee engagement when first buying fiduciary management.

[367] As set out in chapter 6 we found the average rate of switching in fiduciary management to be 9% over the last five years.

CMA analysis of CMA survey

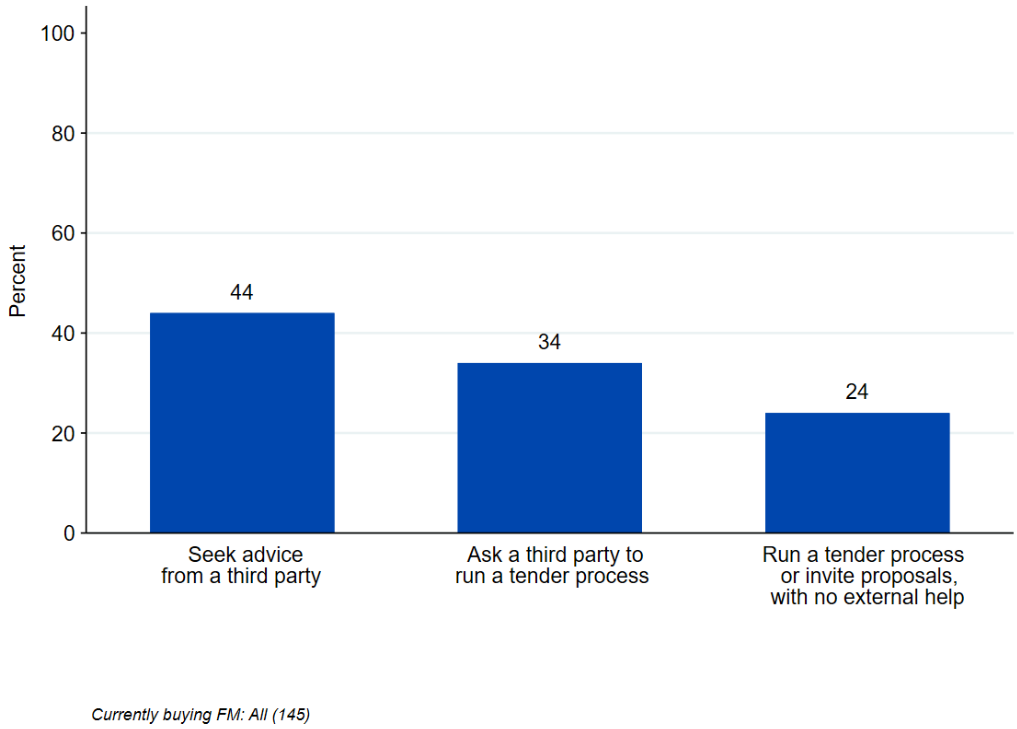
7.53 The CMA survey asked about the actions that pension scheme trustees took when first buying fiduciary management.[368] The chart below indicates that:

(a) fewer than half of schemes sought advice from a third-party when buying fiduciary management for the first time (44%);

(b) around a third of schemes asked a third-party to run a tender when buying fiduciary management for the first time (34%);

(c) around a quarter of schemes ran a tender process or invited proposals with no external help, when buying fiduciary management for the first time (24%);

Figure 15: Actions of customers when first buying fiduciary management



Source: CMA analysis of CMA survey data, question L5 'Which of the following, if any, did the board of trustees do when you were buying fiduciary management services for the first time?'.

7.54 Combining the results at (a) and (b) above, almost half (49%) of schemes received some form of third-party support (in the form of advice or running a tender) when buying fiduciary management services for the first time. We consider that asking a third-party to run a tender (as 34% of schemes were

[368] Source: CMA survey, question L5. '*Which of the following, if any, did the board of trustees do when you were buying fiduciary management for the first time?'.*

reported to have done) is likely to be a stronger form of market testing compared to only seeking third party advice.

7.55 In its response to the provisional decision report, WTW stated that the CMA had measured engagement at the point of first moving into FM only by whether customers 'formally test' the market and had narrowly defined a 'formal test' as a tender run by a third-party.[369]

7.56 Whilst we consider tenders run by third-parties in our analysis of engagement, this is not our only – or indeed primary – indicator. In Figure 15 for example we also consider tenders run without any external help, and in our analysis of the client data (for example in Figure 14) we consider formal tenders and the use of TPEs as separate indicators.

7.57 While these are based on different data sets, both the parties' data and our CMA survey analysis indicate that around a third to a half of schemes have undertaken a formal tender when buying fiduciary management. As noted at paragraph 7.26 we focus on the former source, as it is based on a greater number of data points.

Other evidence on trustee engagement

7.58 KPMG's recent surveys indicate that the proportion of new fiduciary management appointments in a given year that were advised by an independent third-party has grown from 23% in 2015 to 66% in 2018.[370]

7.59 Some IC-FM firms submitted that trustees often test the market when buying fiduciary management. For example, Mercer submitted that 'Trustees frequently test the market – and seek independent third-party advice – before appointing a fiduciary management provider'.[371] Several parties highlighted the upward trend in the use of third parties in KPMG's 2017 survey.[372]

7.60 Some other fiduciary management providers submitted that levels of market testing were limited in their experience. For example, Cardano said they had a one-in-three success rate but were asked to tender in only around one-sixth of the market. They said they 'strongly suspect that many of the five-sixths of the market that did not consider Cardano did not undertake a full review of the options available'.[373]

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369 WTW response to the provisional decision report.
370 KPMG: *UK Fiduciary Management Survey* (2016) and *UK Fiduciary Management Survey* (2018).
371 Mercer response to the fiduciary management working paper.
372 For example: WTW response to the fiduciary management working paper; Mercer response to the fiduciary management working paper, and Aon response to the fiduciary management WP working paper.
373 Cardano response to the fiduciary management working paper.

7.61 Some IC-FM firms highlighted the role of other forms of engagement in the process of buying fiduciary management. Aon submitted that where trustees first buying fiduciary management do not switch and do not use a TPE, this does not mean that they have not made an informed decision. It said that 'trustees challenge us when moving from Aon's investment consultancy product to Aon's fiduciary management product, and frequently take input from other sources in parallel, such as their sponsor, actuaries or lawyers'.[374]

7.62 In-house investment staff at pension schemes told us that they consider it best practice for schemes to tender when moving into fiduciary management. They also told us that the use of third party evaluators can be an effective way for schemes to ensure they get a good deal.[375] Some trustees felt that independent investment consultants and TPEs had been helpful in supporting trustee decision making when their scheme bought fiduciary management services.[376]

7.63 We consider that market testing exercises are likely to be stronger where they involve formal tenders, and that independent third-party advice can also play an important role for trustees.

Conclusions on how trustees consider and make decisions on fiduciary management

7.64 The evidence we have reviewed indicates that half of pension schemes buying fiduciary management services selected a provider that was also their existing investment consultant. Of itself, this does not necessarily imply there is a competition problem; incumbent providers would typically have scheme knowledge and may have demonstrated their skills to trustees in the course of delivering investment consultancy services.

7.65 However, given the importance of fiduciary management purchase decisions, we were concerned to find low levels of engagement among customers when first buying fiduciary management. For example, only 34% of all fiduciary management appointments followed a formal tender process. Moreover, only 14% of fiduciary management appointments for incumbent IC-FM firms followed a formal tender process; and only 10% of these appointments involved a TPE.[377]

7.66 According to the KPMG survey, the rate of TPE usage in fiduciary management appointments was twice as high in 2018 (66%) compared to

374 Aon response to the fiduciary management working paper.
375 Summary of discussion with pension scheme in house investment staff held on 16 May 2018.
376 Summary of roundtable with Pension Trustees held on 1 and 2 May 2018.
377 Source: CMA Analysis, Parties' Data.

2016 (33%). However, overall, the evidence that we have reviewed indicates that a significant number of trustees have not taken steps to test the market before buying fiduciary management for the first time. We consider that this contributes to an incumbency advantage for IC-FM firms compared to other providers of FM services.

Supply side: Firms' practices and incentives for selling fiduciary management

7.67 The way that IC-FM firms introduce, advise on and provide information relating to fiduciary management services can influence whether their advisory clients are able to make informed decisions about fiduciary management.

7.68 Therefore, in this section, we assess the strategies, policies and regulations that are relevant to the introduction and sale of fiduciary management, and evidence relating to how IC-FM firms behave in practice.

7.69 IC-FM firms supplying institutional investors in the UK include the following seven firms: Aon, Cambridge Associates, JLT, Mercer, River & Mercantile Russell Investments, WTW. In the section that follows we generally focus on these firms.

Firms' strategies and incentives

Evidence on strategies from internal documents

7.70 We reviewed a sample of internal strategy and board/committee documents produced by firms over the last five years. As part of this, we looked for evidence on firms' strategies for selling fiduciary management services.

7.71 These documents indicate that several IC-FM firms have actively sought to cross-sell fiduciary management services to their existing investment consultancy customers. For example:

(a) A strategy document (2017) contained a series of actions, including the following: 'Increase penetration of [fiduciary management] solutions within existing client base'.[378]

(b) A strategy document produced by another firm (2016) stated:[379]

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[378] Document submitted by [✄], July 2017, [✄].
[379] Document submitted by [✄], October 2016, [✄].

(i) ‘Cross sell [fiduciary management and other services] in the acquired client base’;

(i) [in relation to investment consultancy] ‘Cross selling [fiduciary management]’

(c) Another firm produced a document (2017) stating that: ‘Within the corporate pension fund segment, we will concentrate our direct sales efforts on a focused list of 40 - 50 accounts where we have already built brand recognition or have existing ties through advisory or implementation services’ [380,381]

7.72 We found statements where firms indicated that they took account of client needs and identified client benefits. For example:

(a) A strategy document (2017) said ‘There is an opportunity to grow assets where appropriate for client needs’.[382]

(b) A strategy document produced by another firm (2014) said: ‘[fiduciary management can] bring our best ideas to our clients more quickly and at lower cost than the traditional advisory model’.[383]

7.73 Some of the statements that we reviewed in internal documents indicated that some firms have had particularly strong cross-selling strategies. For example, in one document (2014) a firm indicated that it planned to pursue the cross-selling of fiduciary management even though this could damage client relationships: ‘Adopt a [fiduciary management]-first approach with more clients and accept the risk of relationship damage and loss’.[384,385]

Some IC-FM firms have had particularly strong cross-selling strategies.

7.74 We also found evidence that some IC-FM firms have sought to use their investment consultancy staff as a gateway for fiduciary management staff to

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380 [✂].
381 The firm told us that these accounts largely represented sources of new business and that the reference to existing ties was made with regard to a subset of these accounts [✂].
382 [✂].
383 [✂].
384 The firm told us that the ‘relationship damage’ referred to was that the client would be likely to go out to competitive tender which meant they would be lost as an advisory client [✂].
385 [✂].

sell fiduciary management services. For example, one firm produced a business plan document (2014) that said:[386]

(a) '[fiduciary management] Sales leads have regular meetings and 1:1s with our internal consultants;'

(b) 'Our internal consultants are still a barrier to raising [fiduciary management] (and [the fiduciary management] team accessing the client) however this has improved over the past year. Opportunities are still being missed', and

(c) 'A number of initiatives to continue to improve the flow of prospects from internal channels: Revenue generated in [the fiduciary management division] flows back to individual client teams in the [investment consultant division] – thus ensuring they do not feel they are cannibalising their own business'.

7.75 Mercer submitted that its experience was that 'cross-selling is not being pursued at inappropriate levels' and that evidence on cross-selling should be considered in the context of 'wider business plans that are implemented in an environment where the best interests of the client come first'.[387] WTW submitted that practices including strong and persistent cross-selling 'do not impact competition (and therefore cannot give rise to an adverse effect on competition)'.[388]

7.76 Aon, Mercer and WTW submitted in their responses to the provisional decision report that the CMA has found no evidence that clients were being introduced to fiduciary management against their best interests.[389] WTW said that the evidence collected by the CMA 'simply indicates that IC-FM providers attempt to cross-sell by raising the existence of other services they offer which would be beneficial to trustees'.[390] It further submitted that 'FM can be a more appropriate service model [than IC] for many pension schemes which in the long run provides a number of additional benefits' and that 'FM was developed by the market in response to the constraints on bandwidth and expertise faced by pension scheme trustees'.[391]

7.77 We recognise that firms have a legitimate interest in selling additional services and that none of the evidence above implies that firms are seeking to sell fiduciary management services that are against their clients' interests. We also

[386] Document submitted by [✂] 2015.
[387] Mercer response to the fiduciary management working paper.
[388] WTW response to the fiduciary management working paper.
[389] Aon, Mercer and WTW response to the provisional decision report.
[390] WTW response to the provisional decision report.
[391] WTW response to the provisional decision report.

recognise that fiduciary management can be an appropriate model for some pension schemes.

7.78 However, our assessment is that the evidence demonstrates that IC-FM firms have strategies to sell fiduciary management services to existing investment consultancy clients. The evidence from internal documents is consistent with evidence from the trustee roundtables.[392] A number of trustees had experienced IC firms persistently marketing their fiduciary management services. Trustees believed that individual consultants appeared to have strong incentives to move clients into fiduciary management.

7.79 This evidence is also consistent with evidence received from some TPEs. For example, in its response to the provisional decision report, XPS Investment stated that 'the CMA has correctly identified the most serious issue facing the industry; IC-FMs using their IC business to steer clients towards their own fiduciary management solution'.[393] Barnett Waddingham said in their response hearing that the trigger for a move towards a fiduciary management mandate is generally the client's IC introducing their fiduciary management offer.[394]

Evidence on profitability from internal document review

7.80 We also reviewed firms' internal documents and found statements made about the profit margins that they earn when providing investment consultancy and fiduciary management services.

7.81 We note that fiduciary management fees are around four to five times higher compared to investment consultancy fees.[395,396] Therefore, if net profit margins (in percentage terms) were equal across the two services, then firms would earn greater profit per fiduciary management client than per investment consultancy client.

Fiduciary management fees are four to five times higher than investment consultancy fees.

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[392] Summary of roundtable with Pension Trustees held on 1 and 2 May 2018, and summary of roundtable with Pension Trustees held on 3 October 2018.
[393] XPS response to the provisional decision report.
[394] Summary of response hearing with Barnett Waddingham on 1 October 2018.
[395] Source: CMA Analysis, Parties' Data.
[396] [✂].

7.82 We found several statements indicating that some firms have viewed fiduciary management as having higher profit margins than investment consultancy. For example:

(a) One firm produced a document (2013) that said: 'Our current [fiduciary management] margins are exceptional [sic] high and may not be sustainable in the long term.' The same document also noted that 'fee compression will occur as the market develops.'[397]

(b) The same firm produced a document (2014) that said: 'This growth [in the fiduciary management business] will come from converting existing [firm name] clients to this higher-margin product.'[398]

(c) [✄].[399]

7.83 By contrast, we found that another firm had projected that fiduciary management would have a lower profit margin than other services, but that margins would increase over time. The firm produced a 2013 business plan that included a table of 'business as usual financials' projecting that the division that includes advisory work would have higher margins than the division including fiduciary management work.[400]

Evidence on profitability from parties' financial information

7.84 We examined the profitability of six IC-FM firms who were able to provide us with net profit margin figures for investment consultancy and fiduciary management. Overall, the aggregate net profit margin for investment consultancy and fiduciary management combined for those six providers in 2016 was [20% - 30%]. The aggregate net profit margin for those six providers was [20% - 30%] for investment consultancy and [20% - 30%] for fiduciary management.

7.85 Several parties commented on the interpretation of these margin figures. For example:

(a) Hymans said that 'based on our experience…fiduciary management fees are much higher than advisory fees, with profit margins at least equal if not significantly higher than standalone investment consultancy work'.[401]

[397] Document submitted by [✄] 2013 [✄].
[398] Document submitted by [✄] 2014.
[399] Document submitted by [✄] 2014, [✄].
[400] Document submitted by [✄].
[401] Hymans response to the fiduciary management working paper.

(b) Russell Investments said that our analysis should 'also take into account the added accountability, risk and complexity of running a fiduciary management mandate versus an investment consultancy mandate'.[402]

(c) WTW said that 'fiduciary management services require higher average profit margins to compensate investment consulting firms for the higher operational and market risks associated with these services'.[403]

(d) Mercer said that 'any perceived incentive that potentially higher margins would encourage firms to raise fiduciary management with their clients is undermined by the potential risk of losing the client altogether'.[404]

7.86 Overall, we did not find much difference between investment consultancy and fiduciary management net profit margins. However, as fiduciary management mandates generate higher revenues than investment consultancy mandates, it follows that total profits per mandate are higher for fiduciary management than for investment consultancy.

7.87 In its response to the provisional decision report, WTW submitted that there is no evidence to suggest that fiduciary management services are more profitable than IC services on a risk-adjusted basis.[405] We were not in a position to assess whether the supply of fiduciary management services was more profitable than investment consultancy services on a risk-adjusted basis, as it would have been very difficult to calculate the cost of capital for investment consultancy and fiduciary management. Some parties claimed that running a fiduciary management mandate involved greater risk than an investment consultancy mandate, however no evidence was provided to support this.

Staff remuneration policies

7.88 We reviewed firms' staff remuneration policies in order to assess whether these incentivise investment consultancy staff to sell fiduciary management services to existing investment consultancy clients.

7.89 We asked IC-FM firms to provide us with details of their remuneration policies and to explain how staff are rewarded when existing advisory (ie investment

[402] Russell Investments response to the fiduciary management working paper.
[403] WTW response to the fiduciary management working paper.
[404] Mercer response to the fiduciary management working paper.
[405] WTW response to the provisional decision report.

consultancy) clients decide to purchase fiduciary management services from that firm. The submissions that we received[406] showed that:

(a) None of the IC-FM firms have remuneration policies that specifically reward advisory or fiduciary management staff for moving existing clients from investment consultancy to fiduciary management services.

(b) One of the IC-FM firms has a sales incentive plan that directly rewards certain fiduciary management sales staff with a monetary bonus when any customer (whether an existing advisory client or not) begins to buy fiduciary management for the first time. The bonus is based on a proportion of the expected revenue that will be earned from the fiduciary management client. This scheme is not available to advisory staff.[407]

(c) A second IC-FM firm said it was planning to setup a sales incentive plan that would directly reward certain fiduciary management sales staff through a monetary bonus when a customer (whether an existing advisory client or not) buys fiduciary management for the first time. This would apply only to sales staff, who are independent of the consulting teams.[408]

(d) Several IC-FM firms have bonus schemes under which advisory and fiduciary management staff may be eligible to receive a share of overall division profit, depending on how well they have performed in the year. Several firms said that advisory staff could therefore receive an indirect monetary benefit were they to play a role in facilitating the sale of fiduciary management services, where this increased firm revenue and where the sale was consistent with wider firm policy.[409]

7.90 Several parties have submitted that their remuneration policies do not create incentives to move investment consultancy clients towards fiduciary management services.[410] Aon submitted that the CMA's evidence showed that staff are not rewarded for selling fiduciary management services as an alternative to investment consultancy services.[411]

7.91 Our assessment is that firms' remuneration policies do not appear specifically to incentivise staff to encourage investment consultancy clients to move to fiduciary management.

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406 Responses to market information request and follow up request on staff incentives and internal controls.
407 [✂].
408 [✂].
409 [✂].
410 For example: Mercer response to the fiduciary management working paper and WTW response to the fiduciary management working paper.
411 Aon response to the fiduciary management working paper.

Trustee round tables

7.92 Some trustees said that they had direct experience of being subject to repeated approaches from their IC-FM firm encouraging them to adopt a fiduciary management approach. For example, one trustee said the trustee board had communicated a clear decision against fiduciary management in one board meeting, yet had been presented with a partial fiduciary management product by their investment consultant at the next meeting. Those trustees considered that the intensity of these approaches had recently increased and that there was a presumption from IC-FM firms that schemes would adopt fiduciary management as a matter of course.[412]

7.93 Trustees also believed that there were large financial incentives for firms to convert investment consultancy clients into fiduciary management clients in terms of greater firm profitability or individuals getting bonuses.[413]

Summary of findings on firms' strategies and incentives

7.94 Overall, the evidence that we have reviewed indicates that IC-FM firms have strategies to sell fiduciary management services to their existing advisory clients. We place particular weight on firms' internal strategy documents in reaching this conclusion.

7.95 Given that fiduciary management mandates generate higher revenues than investment consultancy mandates, and profit margins are similar across the two services, it follows that fiduciary management mandates generate higher profits than investment consultancy mandates and that IC-FM firms have financial incentives to sell fiduciary management to their existing advisory clients.

IC-FM firms have financial incentives to sell fiduciary management to their existing advisory clients.

Conflicts of interest

7.96 In this section, we consider the extent to which FCA regulation covers the introduction and sale of fiduciary management services to existing investment

[412] Summary of roundtable with Pension Trustees held on 1 and 2 May 2018.
[413] Summary of roundtable with Pension Trustees held on 1 and 2 May 2018.

consultancy clients. We also assess the extent to which firms' conflicts of interest policies and processes address potential issues in this area.

Regulation

7.97 As set out in chapter 3, some of the activities of investment consultancy and fiduciary management providers are subject to FCA regulation and are also covered by MiFID II. They are subject to many and varied rules on conduct, including rules on how they must identify and prevent or manage conflicts of interest. This includes conflicts between their own interests and those of their clients, as well as conflicts between one client and another client.[414]

7.98 Parties submitted mixed views as to whether activities relating to the introduction and sale of fiduciary management services are covered by regulation. For example:

(a) Barnett Waddingham said that: 'the perimeter of existing regulation may not sufficiently cover [advice on fiduciary management in general or advice on a provider's own fiduciary management product]'.[415]

(b) Aon said that: 'the scope of FCA regulation is sufficiently broad that the promotion/recommendation of in-house fiduciary management services by an incumbent investment consultant should be identified as a conflict of interest by the fiduciary manager'.[416]

(c) Mercer said that: 'while certain aspects of providing investment consultancy services may be strictly speaking outside the regulatory perimeter, in practice we apply a single approach to dealing with conflicts of interest'.[417]

(d) Russell Investments said that: 'We agree that the current definition of a personal recommendation does not include the suitability of a fiduciary management service'. They also said that: 'we believe that its current scope…is sufficient to cover the handling of potential conflicts of interest within the scope that it is designed to cover'.[418]

7.99 At our trustee roundtable, trustees said that they were not confident that FCA regulation, which requires authorised firms to act in their clients' best interests

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[414] See, for example, Principle 8, SYSC 10 and COBS 6 of the FCA Handbook, Article 23 MiFID II Directive 2014/65 and Articles 33 and 34 MiFID II Delegated Regulation 2017/565.
[415] Barnet Waddingham response to the fiduciary management working paper.
[416] Aon response to the fiduciary management working paper.
[417] Mercer response to the fiduciary management working paper.
[418] Russell Investments response to the fiduciary management working paper.

would be of any use if they were being steered towards products or services which were more clearly in the provider's interests than their own.[419]

7.100 Overall, in our view, not all the activities of IC-FM firms relating to the introduction and sale of fiduciary management are covered by the conduct rules applicable to FCA-regulated activities. Nonetheless, the IC-FM firms in our sample do have conflict of interest policies. We consider these below.

Firms' conflicts of interest policies

7.101 All seven IC-FM firms in our sample provided us with written conflict of interest policies.[420]

7.102 A common feature of these documents was that they set out general principles for staff to follow, such as the importance of being fair, impartial and acting in the best interests of clients.[421]

7.103 Several firms submitted documents that set out recommended conflict management strategies at a relatively general level. These strategies included: avoiding a conflict by not providing a service; putting in place information barriers on either side of a conflict; and disclosing a conflict to clients.[422]

7.104 Some firms submitted policy documents that specifically identify the sale of fiduciary management to an investment consultancy client as an example of a situation where conflicts might arise.[423]

7.105 Most of the firms that did so set out management strategies, for example a WTW document (2014) states that there is a possible conflict of interest when a fiduciary business exists within an investment consulting firm, given that when an investment consultant advises its client on governance arrangements, 'there is a danger that it could use this role as a way to advocate for a delegated service.' It also says, 'The conflict can be managed via the use of a third-party firm to advise on the selection process.'

7.106 Finally, several firms submitted policy documents that encouraged or required staff to notify others in the organisation when potential conflicts are found,

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419 Summary of roundtable with Pension Trustees held on 1 and 2 May 2018.
420 Responses to market information request.
421 For example, policies submitted by [✂] (2017), [✂] (2017), [✂] (2017) and [✂] (2013).
422 For example, policies submitted by [✂], [✂], [✂] (2017) and [✂].
423 For example, policies submitted by [✂] (2017), [✂] (2017) and [✂] (2014).

and/or specified sanctions that could apply to staff that fail to follow company conflict management policies.[424]

7.107 We consider that conflict policies that specifically cover best practice in relation to the introduction and sale of fiduciary management to advisory clients are more likely to play a role in addressing the risk that some clients are steered towards in-house products and do not get best value deals.

7.108 WTW said it would 'welcome suggestions to refine conflict policies and processes to make them more robust'.[425] Aon said it disagreed with any inference that high-level and principles-based policies result in poor compliance and said that they instigate regular conflicts of interest training.[426]

7.109 Several firms indicated in their Issues Statement responses that part of their conflict management strategy is to avoid providing advice in relation to their own fiduciary management service. For example, several firms said that they would introduce clients to fiduciary management but would not advise on or recommend their own fiduciary management product.[427]

7.110 We consider that policies to 'introduce' but not 'recommend' a firm's own fiduciary management services may leave grey areas where customers are not clear whether a firm is providing impartial advice on fiduciary management as a governance model, or whether the firm is promoting their own product.

7.111 In its response to the provisional decision report, Aon stated that it disagreed with the CMA's assessment that policies under which IC firms 'introduce' but do not 'recommend' their own fiduciary management service may create grey areas between advice and marketing. It submitted that its internal compliance documents state that clients must make their own decision whether to move into fiduciary management; clients have been directed to a TPE if they would like advice regarding Aon's fiduciary management services; and the vast majority of appointments are now made following a competitive review.[428]

7.112 Our view however is that, in practice, it is highly likely that in some circumstances there is a 'grey area' between introducing and recommending a service. This is supported by our review of client documents, which found examples in which IC-FM firms provided detailed information on in-house fiduciary management services as part of a wider advisory document, which

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424 For example, policies submitted by [✂], [✂] (2013), [✂] and [✂] (2013).
425 WTW response to the fiduciary management working paper.
426 Aon response to the fiduciary management working paper.
427 See for example: Aon Issues Statement response; Mercer Issues Statement response; summary of hearing with Cambridge Associates held on 12 January 2018.
428 Aon response to the provisional decision report.

may leave clients unclear as to whether they are being introduced to or recommended the fiduciary management service (see below).

Firms' independent review processes

7.113 We also asked parties whether they had independent review processes in place in order to ensure that client moves from investment consultancy to fiduciary management were in the best interests of the client and that any conflicts are appropriately managed. Based on six responses received:[429]

(a) Three parties said that they did not have an independent review process in advance of any move;[430]

(b) One party said that an independent review process was undertaken by compliance staff in advance of a move.[431]

(c) Two other parties noted that advice or documents supplied to clients were subject to independent peer review by investment consultant staff,[432] and

(d) Only one party said that it undertook retrospective client reviews. It said that these are undertaken periodically by investment consultancy staff that are independent of the client team to assess compliance with internal policies and procedures and include those instances where a client has moved from investment consultancy to fiduciary management.[433]

Conclusions on conflicts of interest

FCA regulation covers only some of the activities of IC-FM firms.

7.114 FCA regulation covers only some of the activities of IC-FM firms that are most relevant to the introduction and sale of fiduciary management to existing advisory clients.

[429] Responses to information request on staff incentives and internal controls.
[430] [✄], [✄] and [✄].
[431] [✄].
[432] [✄] and [✄].
[433] [✄].

7.115 IC-FM firms' conflicts of interest policies and processes have the potential to address, at least partly, the risk that trustee boards are steered towards buying fiduciary management services. However, we note that:

(a) Some of the guidance in these policy documents is high-level and principle-based, which could create some grey areas for staff and customers. For example, from our review, it was unclear how staff would assess what is in their clients' best interests.

(b) In addition, several firms say that they 'introduce' but do not 'advise' on their own fiduciary management products. This may leave grey areas where customers are not clear whether a firm is providing impartial advice on fiduciary management as a governance model, or whether the firm is promoting their own product.

7.116 We have not assessed firms' compliance with their conflicts of interest policies. We note that, as with other company policies, compliance may vary within and across firms.

7.117 In the next section, we consider the evidence provided to us on how IC-FM firms introduce and advise on fiduciary management in practice.

Conduct of firms when introducing and advising on fiduciary management

Review of documents supplied by firms to their clients

7.118 We have reviewed a sample of documents supplied by six IC-FM firms[434] to clients that were initially buying investment consultancy services and then subsequently bought fiduciary management services from the same firm. We have reviewed over 200 documents that were supplied by these firms to 27 clients over the last five years.[435] The sample mostly comprises DB pension schemes, but also includes some DC and hybrid schemes. Around half of these schemes bought partial fiduciary management services and around half bought full fiduciary management services.

7.119 From that review we identified examples of:

(a) the types of information and advice which firms provide to clients that are considering buying fiduciary management;

[434] These are six of the seven IC-FM firms referred to earlier in this section. The firm that is not included in the document review does not have any full fiduciary management customers that were previously advisory customers.
[435] Documents submitted in response to market information request.

(b) the way that this information and advice is presented;

(c) how conflicts of interest are handled in these documents.

We then assessed whether, and if so how, these practices affect the ability of trustees to make informed decisions about fiduciary management and get best value deals.

7.120 In undertaking this review, we did not seek to examine whether firms have complied with their conflict of interest policies.

7.121 We recognise that the firms will have also interacted with these clients through other channels of communication (for example, verbal exchanges) in addition to the documents that we reviewed. We also recognise that the examples presented in this section may not be representative of all the documents that IC-FM firms supply to their clients. Nonetheless, in our view the documents we have reviewed constitute relevant evidence covering a range of practices and firms.

7.122 Table 6 summarises some of the types of information and advice provided by IC-FM firms that may have a bearing on customer decisions to purchase fiduciary management services.

Table 6: Some types of information and advice provided by IC-FM firms that may have a bearing on customer decisions to purchase fiduciary management services

Stage of customer journey towards fiduciary management	*Types of information or advice*	*Example document types*
1. **Early consideration of fiduciary management:** customer is reviewing aspects of its strategy, developing its understanding of fiduciary management and deciding whether to explore further	General introductory information on fiduciary management.	• **Advisory presentations** to trustees or scheme sponsors explaining how fiduciary management works and the general advantages and drawbacks. The same documents may highlight current challenges facing the scheme, such as poor performance.
2. **Further assessment of fiduciary management:** customer is assessing whether fiduciary management would suit its needs and	Advice or information on how fiduciary management solutions fit with client needs	• **Advisory presentations** to trustees or scheme sponsors explaining how fiduciary management could work for the scheme in question. • **Asset allocation advisory reports** that advise on how a proposed

Stage of customer journey towards fiduciary management	*Types of information or advice*	*Example document types*
deciding whether to proceed with fiduciary management product selection		change in asset allocation strategy could be implemented, for example through fiduciary management and traditional advisory solutions. • **Other advisory reports** that explore aspects of investment strategy and provide information on implementation options, including fiduciary management options.
3. **Fiduciary management product selection decision:** customer is assessing specific fiduciary management products and making a purchase decision	Advice or information on specific fiduciary management products	• **Marketing presentations or reports,** setting out the features of the firm's own fiduciary management product. • **Manager/product selection advisory reports**, that compare a fiduciary management product to one or more alternative products or solutions. These are sometimes supplied as an input to a trustee meeting where the issue will be discussed and the decision taken. • **Formal advisory letters** regarding the suitability of the firm's fiduciary management product for the client.

7.123 Based on the documents that we have reviewed, the trustee customer journey from early consideration of fiduciary management through to final fiduciary management purchase decision can take several months or years. During this process IC-FM firms provide a range of information and advice. Given the nature and duration of this relationship, IC-FM firms will have a stronger competitive position with these clients, compared to other prospective providers of fiduciary management services who have not had the same degree of interaction.

The journey from initial consideration of fiduciary management to purchase can take months or years.

How firms introduce their own fiduciary management service

7.124 We reviewed documents in which firms provided early-stage advice on fiduciary management. In some cases, firms' documents mentioned their own fiduciary management service. In other cases, they only referred to fiduciary management in general terms, without mentioning any providers. For example:

(a) An investment strategy report (2013) mentions the firm's own fiduciary management solution.[436]

(b) An investment strategy review report (2015) includes strategic asset allocation advice and a comparison of two implementation options. It mentions that the firm has an in-house team that can take on the lower governance (fiduciary management) approach.[437]

(c) A training report for an Investment Sub-Committee (2014) sets out advantages, disadvantages and likely costs for various implementation models. It covers fiduciary management in general terms without reference to the firm's own fiduciary management product.[438]

(d) A report for trustees on investment strategy and governance (2015) covers fiduciary management in general terms without reference to the firm's own fiduciary management product.[439]

7.125 We did not find any examples in these early stage documents where firms mentioned the fiduciary management services of rival fiduciary management providers or highlighted that trustees may benefit from also considering alternative services to fiduciary management.

7.126 Aon submitted that not mentioning rival providers was not egregious.[440] Barnett Waddingham said that 'we are yet to see a case where an IC-FM firm has mentioned the fiduciary management services of specific rival fiduciary management providers'. However, over the last couple of years, we have noticed a trend for more IC-FM firms to suggest taking advice from an independent investment advisory firm (TPE)'.[441]

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436 [✂] 2013.
437 [✂] 2015.
438 [✂] 2014.
439 [✂] 2015.
440 Aon response to the fiduciary management working paper.
441 Barnett Waddingham response to the fiduciary management working paper.

7.127 WTW submitted that many examples of raising fiduciary management services with clients are ‘simply the expected commercial practice of firms seeking to introduce additional services to clients where this is appropriate’.[442] In its response to the provisional decision report, WTW further submitted that ‘in order for there to be an actual conflict, the IC provider would have to be holding itself out as acting as an ”independent advisor” in the selection process for fiduciary management services. This is a fundamentally different situation from merely mentioning the existence of the in-house service’.[443]

7.128 We recognise that there may be good reasons why firms would introduce additional services that they offer and would not highlight specific rival providers. However, where firms have a ‘trusted adviser’ role in relation to investment consultancy services, mention an in-house service to their existing clients, and do not prompt them also to consider other providers of that service, we consider that trustees would be less likely to properly test the market and end up with best value deals. This is the case even if the consultant is not acting as an ‘independent advisor’ in the selection process for the fiduciary management services.

How firms provide information on their own fiduciary management service

7.129 As trustees moved closer to the fiduciary management purchase decision, we found that IC-FM firms often provided more detailed information on their own fiduciary management service.

7.130 We reviewed some documents that appeared to have the main purpose of explaining or promoting the firm’s own fiduciary management service. For example:

(a) A fiduciary management training presentation (2015) was provided near to the date that the trustees chose to adopt fiduciary management. This includes an overview of the firm’s fiduciary management approach and an indication of the costs of these services. The title slide indicates that the document was prepared by the firm’s fiduciary management division. The footer also mentions the firm’s investment consultancy practice.[444]

(b) A presentation on a firm’s fiduciary solution (2015) was provided near to the date that the trustees chose to adopt fiduciary management. This document appears to have a sales/marketing purpose, in that the title

[442] WTW response to the fiduciary management working paper.
[443] WTW response to the provisional decision report.
[444] [✂] 2015.

and contents mainly relate to the firm's own fiduciary management product. However, the footer on each slide indicates that the presentation was produced by the firm's investment consultancy practice rather than its fiduciary management practice.[445]

(c) A fiduciary management suitability report (2015) presents information on a firm's fiduciary management solution.[446]

7.131 We also reviewed documents where IC-FM firms provided detailed information on an in-house fiduciary management service as part of a wider advisory document:

(a) A document on governance and implementation options (2015) includes a case study which mentions the firm's own fiduciary management product. The document compares several implementation options using characteristics such as estimated fees, degree of hedging, investment efficiency, and trustee time and expertise required. The document is authored by a senior investment consultant and a senior investment analyst and includes, in small print, a disclaimer at the end of the slide pack stating it is 'for training purposes only' and 'is not intended to provide any advice.'[447]

(b) A governance and portfolio health check presentation (2015) makes various recommendations, including a recommended change in asset allocation and a recommendation that trustees consider changing the governance model. The presentation also includes a one-page annex that compares the scheme's current portfolio to the firm's delegated service. The presentation does not include marking indicating whether it was prepared by investment consultancy or fiduciary management staff (although the firm said that client was fully aware of who the authors were).[448]

7.132 Aon submitted that firms producing more detailed information on their own fiduciary management service as trustees move closer to a fiduciary management purchase decision should not be considered egregious.[449]

7.133 WTW acknowledged our emerging finding that some investment consultancy firms do not distinguish sufficiently between providing impartial advice on

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445 [✂] 2015.
446 [✂] 2015.
447 [✂] 2015.
448 [✂] 2015.
449 Aon response to the fiduciary management working paper.

fiduciary management products and promoting their own fiduciary management products and said that ‘there is merit in ensuring that roles and responsibilities of investment consultancy firms and trustees are more clearly set out and that discussions [of fiduciary management services] with clients is not presented as advice’.[450]

7.134 Mercer said that ‘we also agree with the CMA about the importance of clarity for customers on the difference between advice and marketing.’[451]

7.135 We have concerns about documents in which firms combine strategic advice (for example, advice on asset allocation) with information on their own fiduciary management service and are unclear about whether the material on the latter is advisory or marketing in nature. This may cause trustees to conflate strategic decisions (such as whether to adjust asset allocation in line with the firm’s recommendation) with provider selection decisions (such as whether to use the firm’s fiduciary management service to implement the recommendation). Given the nature and duration of the relationship with their existing provider, trustees may develop a bias in favour of the provider’s own fiduciary management product and be less likely to test the market properly in order to identify best value deals for fiduciary management.

It is unclear whether some documents given to customers on fiduciary management are advisory or marketing.

How firms compare their own fiduciary management service to other options

7.136 Where IC-FM firms compared their own fiduciary management service to alternative options, in each case that we reviewed, these alternative options were variants of the traditional advisory model,[452] in which trustees would retain responsibilities for selecting underlying asset managers. For example:

(a) A strategy implementation presentation (2015) compares the cost of four options; the scheme’s current portfolio on an investment consultancy or fiduciary management basis and an ‘evolved portfolio’ on an investment consultancy or fiduciary management basis. The firm names itself as the fiduciary management provider for the fiduciary management options. A

[450] WTW response to the fiduciary management working paper.
[451] Mercer response to the fiduciary management working paper.
[452] In the examples that we reviewed, the firm recommended a shortlist of underlying managers that should be used, were the trustees to select an advisory option.

cost breakdown is provided for each option. The subtitle of the presentation is ‘trustee training’.[453]

(b) A manager selection report for trustees (2015) considers two approaches to implementing an asset allocation strategy. One of these is a fiduciary approach and the second is a ‘traditional’ advisory approach, with trustees retaining responsibility for monitoring and hiring/firing the underlying managers. The report compares the firm’s own fiduciary option with the two managers/funds that are shortlisted for the advisory option.[454]

(c) A strategy review presentation (2014) compares four implementation options. One of these is to delegate to the firm through fiduciary management, and three of these would see the firm continue in a ‘traditional consulting/investment advice’ capacity.[455]

7.137 We did not find any examples of IC-FM firms comparing their own fiduciary management services to those of rival fiduciary management providers.

7.138 Barnet Waddingham said that ‘the comparison of fiduciary management services to non-fiduciary management products could include inherent biases or behavioural ‘nudges’. For example, placing more emphasis on the merits of fiduciary management than [on] non-fiduciary management, or describing fiduciary management services using more positive wording’.[456]

7.139 Where IC-FM firms compare their fiduciary management services to non-fiduciary management products or services, this may provide useful information for trustees. However, the documents that we reviewed were not always clear about the nature and scope of these comparisons. Trustees receiving documents of this nature may overestimate the extent to which the advice covers other options in the market and be less likely also to consider alternative fiduciary management providers.

How firms disclose conflicts of interest

7.140 Across the documents that we reviewed, we observed a range of approaches to disclosing conflicts of interest.

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453 [✂] 2015.
454 [✂] 2015.
455 [✂] 2014.
456 Barnett Waddingham response to the fiduciary management working paper.

7.141 Most earlier stage documents that introduce or compare fiduciary management services either didn't mention conflicts of interest, or included a brief, general conflict statement. For example:

(a) A manager selection report (2015) that compares the firm's fiduciary option to advisory options does not mention conflicts of interest.[457]

(b) A report on investment strategy (2015) mentions the firm's own fiduciary management product and does not mention conflicts of interest.[458] A report on governance and implementation options (2015) for the same client mentions conflicts of interest in a general sense, but not in relation to advice on fiduciary management. The document includes, in small print, a disclaimer at the end of the slide pack stating it is 'for training purposes only' and 'is not intended to provide any advice.'[459]

(c) An investment strategy report (2013) that mentions the firm's fiduciary management product contains a notice saying that conflicts of interest disclosures can be accessed at the company's website or through the firm's representative.[460] A subsequent investment strategy and funding considerations report (2015) for the same client contains a notice saying that in certain circumstances the firm's advice will be limited to the solutions that it offers, and that the firm seeks to manage this conflict through procedures designed to protect the interests of clients.[461]

7.142 We reviewed several formal advisory letters to trustees, that were submitted close to the point at which trustees took a final decision to buy the firm's fiduciary management service. These letters generally contained a more specific discussion of potential conflicts related to supplying advice and offering an in-house fiduciary management service. For example:

(a) A letter providing 'confirmation of investment advice' (2016) says that the trustee is proposing to appoint the firm to provide fiduciary management services to the scheme. The letter contains advice under Section 34 of the Pensions Act 1995. The letter states that 'advising the Trustee in connection with [the firm's own fiduciary management service] raises a potential conflict of interest'. It says that the firm has drawn this to the attention of the trustee and discussed it with them. The letter says that, in

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457 [✂] 2015.
458 [✂] 2015.
459 [✂] 2015.
460 [✂] 2013.
461 [✂] 2015.

the firm's view, its fiduciary management division has the knowledge and experience to manage the investments of the scheme.[462]

(b) A letter entitled 'change of investment strategy' (2016) contains formal advice under the Pensions Act 1995. The letter contains a detailed section on conflicts and says that, when appointing an investment manager, consideration should be given to alternatives, or specific reasons agreed as to why not to review alternatives. The firm says it is 'comfortable in recommending that [its fiduciary management division] is suitably competent to undertake the…delegations'. The firm says it is not in a position to say whether similar services could be provided by another provider or what their costs and competency would be. The letter says that the fee range in an industry report 'should provide reassurance that the fees being proposed for the Plan are low compared to those offered by other Fiduciary Managers'.[463]

(c) A formal advisory letter to trustees regarding the suitability of its partial-fiduciary management product (2015) notes that: there is a potential conflict in that the firm is advising on a service for which it would receive a fee, that this has been explained and that the firm considers that trustees have adequately considered alternatives.[464]

7.143 Based on the documents that we reviewed, we note that where IC-FM firms did provide written descriptions of specific conflicts and raise the issue of considering alternative providers, this generally took place in later stage advisory letters, at which point trustees were already proposing to appoint the firm as a fiduciary management service provider.

7.144 We recognise that firms may disclose conflicts of interest through various means, including documents that we have not reviewed and through verbal exchanges.

7.145 Several parties said that they did not 'steer' customers towards fiduciary management services. For example, WTW submitted that 'if a client decides to move to fiduciary management, it enters an entirely new contractual relationship, so the ability to 'steer' is very limited, it is very obvious that such a change has taken place and lawyers and the trustees would be engaged in the negotiation of the new contract'.[465]

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462 [✂] 2016.
463 [✂] 2017.
464 [✂] 2015.
465 WTW response to the fiduciary management working paper.

7.146 However, at the trustee round table, several trustees said that their experience was that trustee boards sometimes purchased delegated products, not appreciating that these were fiduciary management solutions. They said this can cause trustees to 'slip' into using fiduciary management services.[466] In its response to the provisional decision report Aon submitted that it was 'surprised' at these comments, stating that there are various documents that must be negotiated and agreed prior to moving into fiduciary management, and 'the terms of such agreement make it clear that certain investment powers will be delegated to the fiduciary management provider'.[467]

7.147 In our view, even if trustees are aware that they are purchasing a firm's fiduciary management service, this does not mean that they have not been steered towards this purchase.

7.148 Overall, our assessment is that some of the ways that IC-FM firms introduce and advise on fiduciary management in documents steer trustees towards the firm's own service and make it less likely that trustees properly consider alternatives.

CMA survey

7.149 The CMA survey asked trustees a series of questions regarding what the incumbent investment consultant said and did in relation to fiduciary management.

7.150 Around a fifth of trustees (19%) said that their investment consultant had suggested that the scheme consider fiduciary management.[468] This increases to around a third of trustees (30%) when only considering those trustees currently buying investment consultancy services from IC-FM firms.[469]

7.151 This implies that investment consultancy firms that have a fiduciary management business are more likely to raise it than those that do not. We consider that firms may have legitimately different views as to whether fiduciary management is a beneficial service for pension schemes in general, and/or for particular pension schemes.

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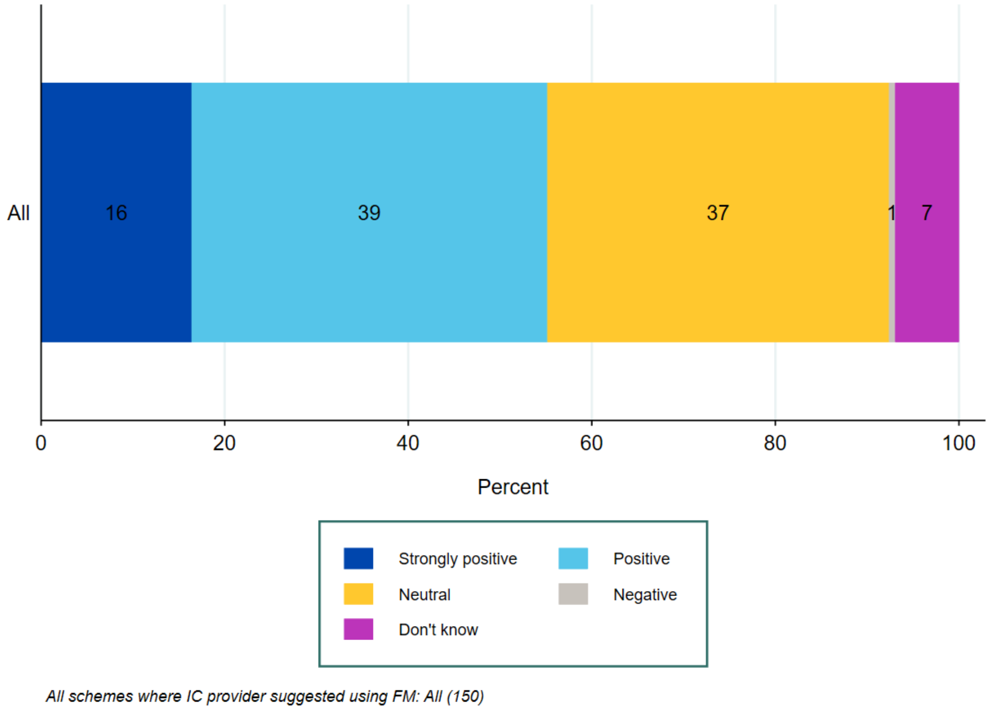
[466] Summary of roundtable with Pension Trustees held on 1 and 2 May 2018.
[467] Aon response to the provisional decision report.
[468] Source: CMA survey, question P5. 'Has your current investment consultant ever suggested that you consider fiduciary management for your scheme?', question L1 'Thinking back to when you first bought fiduciary management for your scheme, who, if anyone prompted you to consider buying these services? We mean the first time ever that you bought fiduciary management, which was not necessarily from your current provider.', and question L2 'You didn't mention them, so can you please confirm that your investment consultant at the time was NOT amongst those who prompted the board of trustees to first consider buying fiduciary management?'.
[469] Ibid.

7.152 Related to this, many IC-FM firms submitted that investment consultants that do not offer fiduciary management may be subject to a conflict, in that they may fail to introduce or recommend fiduciary management to their advisory clients in order to avoid losing advisory work. We cover this point in chapter 8.

7.153 As shown in Figure 16 below, in discussions about whether fiduciary management was right for the scheme, over half of trustees either said the investment consultant was positive (39%) or strongly positive (16%). 37% said that the investment consultant was neutral and less than 1% said that the investment consultant was negative. Therefore, based on the CMA survey, investment consultants appear to have very rarely been negative about fiduciary management services.

Figure 16: Attitudes of investment consultants towards fiduciary management in discussions with trustees



Source: CMA survey, question L4 ‘And in discussions with your investment consultant, at the time about whether fiduciary management was right for your scheme, would you say they were …?’ and P7. ‘And in discussions with them about whether fiduciary management was right for your scheme, would you say they were …’

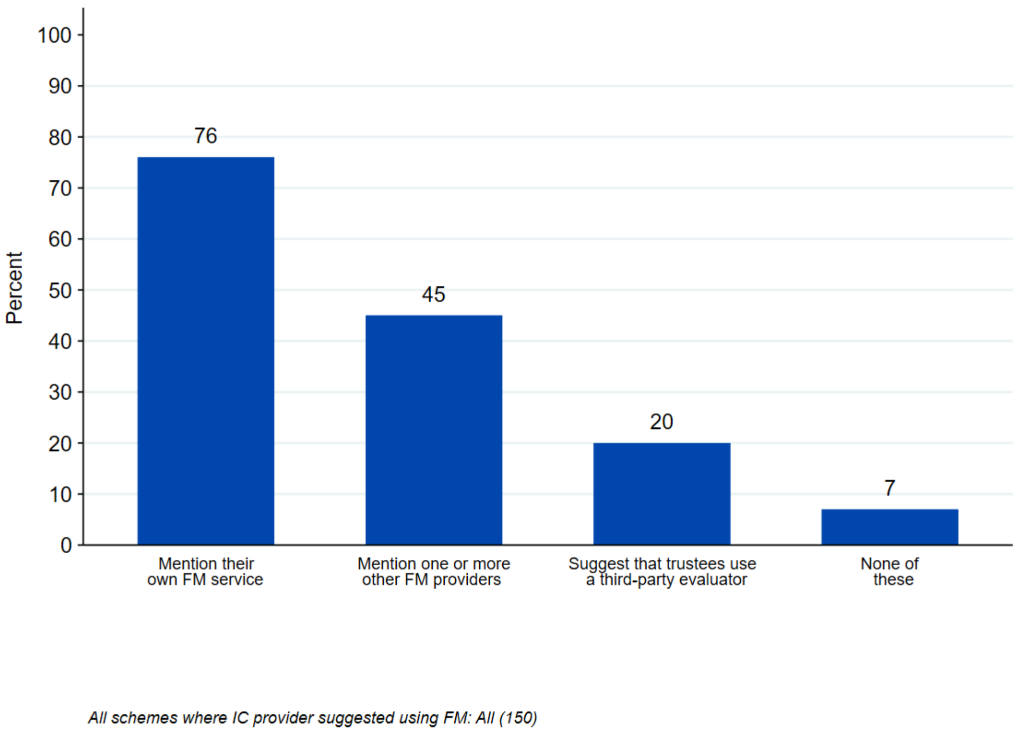
7.154 Where the investment consultant had suggested fiduciary management, we asked trustees what else the investment consultant did. Figure 17 below shows that:

(a) in the majority of cases the investment consultant also mentioned its own fiduciary management service (76%);

(b) in just under half of cases, the investment consultant also mentioned one or more other fiduciary management providers (45%), and

(c) in a fifth of cases, the investment consultant suggested that trustees use a third-party evaluator (20%).

Figure 17: Behaviours of investment consultants in discussions with trustees about fiduciary management



Source: CMA survey, question L3 'Which of the following things, if any, did your investment consultant do at the time you first bought fiduciary management?' and question P6 'In addition to suggesting fiduciary management, which of the following things, if any, did they also do?'.

7.155 We note that the CMA survey evidence above shows a higher incidence of investment consultants mentioning other fiduciary management providers, compared to the document review at paragraphs 7.118 to 7.148 above (which did not identify any examples of IC-FM firms mentioning alternative providers). One reason for this difference could be that some investment consultants mention other fiduciary management firms verbally, but not in documents.

7.156 Hymans said that fewer than half of investment consultants mentioning one or more other fiduciary management providers was 'not necessarily surprising, as it is perfectly understandable that an investment consultancy firm should consider that its own fiduciary management services reflect the ideal implementation of its best ideas'.[470]

[470] Hymans response to the fiduciary management working paper.

7.157 We recognise that IC-FM firms may view their own fiduciary management service as the best option for clients. However, as noted above, where firms have a ‘trusted advisor’ role in relation to investment consultancy services, mention an in-house service to existing clients, and do not prompt them to also consider other providers of that service, we consider that trustees would be less likely to test the market properly and end up with the best deal.

Summary of findings on firm conduct when introducing and advising on fiduciary management

7.158 Incumbent IC-FM firms have a strong position with existing advisory clients; these firms often present a variety of documents to their clients that relate to fiduciary management over the months or years before they take a decision to buy fiduciary management.

7.159 We have not identified any evidence that firms are seeking to introduce fiduciary management services that they believe to be against their clients’ interests.

7.160 However, some of the ways that IC-FM firms introduce and advise on fiduciary management steer trustees towards the firm’s own fiduciary management service and make it less likely that trustees properly consider alternatives. We consider that these practices contribute to an incumbency advantage for IC-FM firms compared to other providers of FM services. For example:

(a) Introducing in-house fiduciary management services in the course of giving strategic advice: In some documents, IC-FM firms provide strategic advice to trustees, mention their own fiduciary management service as a way of implementing the advice, and are unclear about whether the material is advisory or marketing in nature. Our concern is that this may cause trustees to conflate the strategic decision with the choice of service provider and develop a bias towards the provider’s own fiduciary management product.

(b) Comparing in-house fiduciary management services to other products/services: In some documents, IC-FM firms compare their own fiduciary management service to alternative, non-fiduciary products or services. The documents that we reviewed were not always clear about the nature and scope of these comparisons. We consider that trustees receiving documents of this nature may overestimate the extent to which the advice covers other options in the market and be less likely also to consider alternative fiduciary management providers.

(c) The timing and clarity of disclosures on conflicts of interest: We reviewed many documents that introduce in-house fiduciary management services or compare these to other (non-fiduciary management) solutions and do not mention conflicts of interest, or only mention these in a general sense. Where we found good examples of conflict statements, these were generally in later stage advisory letters, at which point trustees were already proposing to appoint the firm as a fiduciary management provider. Clearer and more timely statements about conflicts of interest could mean that trustees are more likely to test the market properly and end up with the best deal for their scheme.

Conclusion

7.161 The fiduciary management market has grown significantly in recent years. Integrated IC-FM firms have accounted for a large part of this growth; around half of pension schemes buying fiduciary management have appointed an IC-FM firm that was already acting as their investment consultant.

7.162 Decisions on whether to buy fiduciary management and which provider to appoint are very important decisions for trustee boards; buying fiduciary management services means handing over more control, receiving more services and paying more compared to buying only investment consultancy services. In addition, switching fiduciary management provider can be expensive, potentially costing pension schemes the equivalent of one year of fiduciary management fees.

7.163 The CMA survey found that a substantial proportion of trustee boards have concerns about investment consultants steering clients into their own fiduciary management services: 30% think that it is 'a problem, and more should be done to address it' and a further 30% consider it to be 'a problem, but generally well managed'. These concerns are even greater amongst professional trustees and larger pension schemes.

7.164 Therefore, it is particularly important that trustees are willing and able to access, assess and act upon good information about the options that they face when considering and buying fiduciary management.

7.165 In light of the findings above, we were concerned to find low levels of customer engagement at the point of first buying fiduciary management. For example, our analysis indicates that only 34% of fiduciary management appointments followed a formal tender process.

7.166 Based on a range of evidence including documents produced by firms, we have found that IC-FM firms have strategies and financial incentives to sell fiduciary management to their existing advisory clients.

7.167 We have not found any evidence that firms are seeking to introduce fiduciary management services that they believe to be against their clients' interests and therefore we have not found this to be a concern.

7.168 However, we have found that some of the ways in which these firms introduce and advise on fiduciary management (for example, comparing their own fiduciary management service to other options and not being clear about the limited scope of the comparison), steer trustees towards the firm's own fiduciary management service and make it less likely that they properly consider alternatives.

7.169 Overall, we have found that IC-FM firms steering customers towards their own fiduciary management service and low engagement by trustees when first buying fiduciary management services contribute to an incumbency advantage for IC-FM firms, such that pension schemes are less likely to get best value deals when buying these services.

8. Conflicts of interest

Our findings:

- Conflicts of interest between suppliers and customers are common in many industries.
- We considered several potential conflicts of interest in relation to investment consultancy and fiduciary management services.
- Overall, we did not find evidence that any of these gave rise to a competition problem.

Introduction

8.1 Chapter 7 analysed whether there are competition problems arising from the sale of fiduciary management services by IC-FM firms. As part of this analysis, we also considered whether IC-FM firms are failing to manage conflicts of interest effectively when introducing and selling fiduciary management services to existing clients.

8.2 In this section, we consider a number of other potential conflicts of interest in relation to investment consultancy and fiduciary management services and whether these are impacting competition, namely:

(a) fiduciary management firms investing in their own asset management or investment products;

(b) business relationships that investment consultants have with asset managers that might affect the independence of the consultants' manager ratings;

(c) the receipt of gifts and hospitality by investment consultants that might affect the independence of the consultants' manager ratings;

(d) the sale of master trusts by investment consultants who are also supplying employee benefit consultancy, which may steer customers towards their own master trust products;

(e) Other potential conflicts of interest relating to fiduciary management, including investment consultants failing to introduce or recommend fiduciary management services to their advisory customers.

8.3 Some of the activities of investment consultancy and fiduciary management providers are subject to FCA and MiFID II regulation, which contain extensive and detailed provisions in respect of conflicts of interest. For example, among other matters, FCA regulated firms must take appropriate steps to identify and prevent or manage conflicts of interest arising in the course of providing a regulated service and which may damage the interests of a client.[471]

Fiduciary management providers investing in their own asset management or investment products

8.4 Some fiduciary management firms offer asset management products and do not offer investment consultancy services; we refer to these as 'AM-FM firms'. Firms with this business model together account for around [10 - 20%] of the fiduciary management market.

8.5 IC-FM firms also offer fiduciary management services. Most of these firms do not invest directly in assets, but some offer 'fund of funds' that combine several underlying asset management products.

8.6 This section considers whether fiduciary management providers have incentives to invest in their own asset management products or funds, even when this could reduce overall value-for-money for customers. Our focus is on AM-FM firms, but we also consider IC-FM firms.

8.7 Fiduciary management firms could have incentives to invest in this way, if the potential for increased profit margins outweighed the potential for lost revenue, in the event that trustees choose not to buy fiduciary management from the firm as a result of this concern. This depends in turn on whether trustees are aware of how fiduciary managers use in-house products and whether trustees are able to understand the overall value-for-money of these fiduciary managers.

8.8 We start by considering the views of trustees and other stakeholders, we then consider firms' approaches to in-house managers and funds, and finally we review a sample of information that prospective customers have requested and received in relation to this issue.

Trustee and stakeholder views

8.9 The CMA survey found that trustees recognise this as a potential problem:

[471] See, for example, SYSC 10 (Senior Management Arrangements, Systems and Controls) of the FCA Handbook, Article 23 MiFID II Directive and Articles 33 to 43 MiFID II Delegated Regulation.

(a) in total 59% of trustees perceived that this was a problem;

(b) of those trustees saying there was a problem, just under half said that more should be done to address it (26% of trustees) whereas just over half (33% of trustees) thought that it was generally well managed;

(c) compared to other trustees, professional trustees were notably more likely to say that this was a problem and that more should be done to address it (47% of professional trustees versus 26% of all trustees[472]).

8.10 Based on the CMA survey, trustees therefore have some concerns about fiduciary management providers investing in their own products.

8.11 In its response to the provisional decision report, Aon submitted that the proportion of trustees that consider this to be a problem, and that more should be done about it, is 'essentially the same' as that for IC firms steering clients into their own FM service (26% and 30% respectively).[473]

8.12 We agree that the proportion of respondents to the CMA survey that consider these two issues to be problematic is very similar. However, we emphasise that the survey is only a part of a much wider evidence base provided to us.

8.13 Several IC-FM firms highlighted potential issues where fiduciary management services are provided by an AM-FM firm. For example: WTW said that, compared to integration between advisory and fiduciary management services, 'a more substantive vertical integration issue arises in relation to asset managers offering fiduciary management, but only using their own fund solutions (or very limited alternatives) to implement the mandate'.[474]

8.14 AM-FM firms submitted that they were transparent with customers in relation to their usage of in-house products.[475] For example, Legal and General said that 'it is clear in all our presentation materials that we do not sub-delegate to other asset managers, and indeed we champion this as one of the key differentiators of Legal and General's offering'.[476]

8.15 At the asset manager round table, asset managers said that investment consultancy firms with in-house funds or products may have incentives to select their own in-house funds or products, when other products would offer

[472] Statistically significant.
[473] Aon response to the provisional decision report.
[474] WTW Issues Statement response.
[475] Market information request responses.
[476] Legal and General market information request response.

better value-for-money for the client.[477] JLT expressed an opinion that in-house funds have the greatest potential for conflicts of interest. It said it has an in-house fund but this is now of insignificant size and is no longer being marketed.[478]

Firms' approaches to investing in in-house products

8.16 We asked AM-FM firms whether they invest in in-house products.

(a) SEI and [✂] said that they do not distinguish between internal and external products and simply choose the best option for the client.[479]

(b) BlackRock said that it subjects in-house and external products to the same due diligence.[480]

(c) Charles Stanley said that it generally only invests in external products.[481]

(d) Legal and General said it only invests in internal products.[482]

(e) Schroders 'building blocks' use internally managed solutions and externally managed solutions where there is no internal solution or it is not the most appropriate. They emphasised that they are clear about their approach in their pitch documents and other materials.[483]

8.17 Our assessment is that AM-FM firms investing in their own products is unlikely to be a problem where customers are aware of this. However, there could be concerns if prospective clients are unaware of the firms' approach to this and the fees charged for in-house products. We consider evidence on this below.

8.18 In this context, we note that FCA-regulated firms are subject to the following requirements. When investment advice is provided, the firm must inform the client or potential client, in good time before it provides investment advice, whether or not the advice is provided on an independent basis.[484] These firms must also take appropriate steps to identify and prevent or manage potential conflicts of interest (see paragraph 8.3 above). Where there remains a risk of detriment to the client's interests, there must be clear disclosure to the client of

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[477] Summary of roundtable with Asset Managers held on 12 February 2018.
[478] JLT hearing summary.
[479] SEI and [✂] market information request responses.
[480] BlackRock market information request response.
[481] Charles Stanley market information request response.
[482] Legal and General market information request response.
[483] Schroders market information request response.
[484] See, for example, Article 24(4)(a) MiFID II Directive and the additional requirements in Articles 52 and 53 MiFID II Delegated Regulation.

the general nature and sources of the conflict and the steps taken to mitigate the risk before undertaking business on behalf of the client.[485]

8.19 In view of the foregoing, we consider that clients and potential clients of FCA-regulated firms should be well-informed where AM-FM firms invest in in-house products.

> **As long as customers are aware of it, the fact that fiduciary managers invest in their own financial products is unlikely to be a problem.**

Review of information provided to prospective customers

8.20 We reviewed a sample of tenders in order to see how the issue of AM-FMs investing in their own products was being handled in practice and whether customers were being made aware of the firms' approach on this.

8.21 We reviewed seven invitation to tender (ITT) documents in which one or more AM-FM firms had participated and 38 proposals that had been submitted in response.[486]

8.22 As part of this review we considered:

(a) whether the tender had requested information from participants in relation to their approach to investing in in-house products;

(b) how participants had responded to this request or otherwise addressed this point.

8.23 We found that each of the seven ITTs included a specific question about the fiduciary management providers' approach to using internal and external funds and that fiduciary managers had complied with this request. We note that:

(a) Two AM-FM firms said that they used a mix of internal and external funds. and that some of the funds used included internal managers,[487]

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[485] See, for example, Article 23(2) MiFID II Directive and Article 34(4) MiFID II Delegated Regulation. We note also that disclosure of conflicts of interest should be treated as 'a measure of last resort' and that over-reliance on disclosure is treated as a deficiency in the firm's conflicts of interest policy (see Article 34(4) and (5) MiFID II Delegated Regulation).
[486] These documents were submitted in response to our market information request. [✂]. Of these seven ITTs, four had been issued by a TPE on behalf of a pension scheme and three had been issued directly by the scheme.
[487] [✂], Schroders.

whereas another AM-FM firm said that all security-level investment decisions were made by external underlying managers.[488]

(b) One AM-FM firm said that only one fiduciary client used its internal fund and that this would not be used unless the client expressed a particular interest in it.[489]

(c) Two IC-FM firms said that they used a mix of internal and external funds. However, these funds tended to be ‘wrappers’ or ‘fund of funds’, that were only populated with external underlying managers.[490] Another IC-FM firm said that it used funds that were mostly populated with external underlying managers.[491]

(d) Two IC-FM firms said that they invested in external third-party managers/funds only.[492]

(e) Several of the firms that used internal ‘fund-of-funds’ or ‘wrappers’ said that they did so as an efficient means of accessing external funds or managers, but that they did not benefit financially where these vehicles were used.[493]

8.24 Each of the seven ITTs also asked respondents to provide some form of breakdown between headline fiduciary management fees and underlying asset manager or fund fees.

8.25 We found that respondents generally complied with these requests, in varying levels of detail. In a minority of cases firms said that they couldn’t estimate underlying asset manager fees at this stage, as these would depend on the portfolio selected for the client.[494]

8.26 We reviewed some ITTs that included specific questions about how fund choices would impact the fiduciary management provider financially. For example, one ITT asked whether the fiduciary management provider would benefit financially from placing assets with particular managers.[495] Another ITT asked about the fee implications of a provider investing in its own funds and how disclosure would be made to the client.[496]

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[488] SEI.
[489] Charles Stanley.
[490] Aon, WTW.
[491] R&M.
[492] Cambridge Associates, Mercer.
[493] Aon, WTW, SEI.
[494] For example: [✂] and [✂] responded in this way to tenders for [✂] and [✂] respectively.
[495] [✂] 2015.
[496] [✂] 2015.

Conclusions

8.27 We found that some fiduciary management providers do have a policy of investing in in-house products. However, we consider that this is unlikely to be a problem unless customers are unaware of this and the implications for fees.

8.28 In our fiduciary management tender review, we found that trustees had in each case requested and received information regarding how each bidder used in-house products. Each ITT had also requested information on underlying fees as well as headline fiduciary management fees. These requests were generally complied with. Our view is therefore that trustees are aware of providers' policies in this regard.

8.29 In addition, we note that several AM-FM firms (including BlackRock and Legal and General) are part of well-known asset management groups.

8.30 Overall, the evidence does not indicate that the potential conflict of interest from fiduciary management providers investing in in-house products is leading to competition problems. This is because the evidence indicates that trustees would generally be aware of the firm's policy with regard to investing in their own products and should therefore be able to factor this into their decision on which fiduciary manager to appoint.

Business relationships between investment consultants and asset managers

8.31 Asset managers regularly purchase services from investment consultants, such as tickets for investment conferences, data and consulting services, or advisory services for their firm's pension scheme. Therefore, investment consultancy firms can generate potentially significant revenues from asset management firms whilst also advising pension schemes whether to invest in products or funds offered by these asset management firms.

8.32 This section considers whether the business relationships that investment consultants have with asset managers affect the independence of investment consultants' asset manager ratings.

8.33 Investment consultancy firms may lack incentives to maintain objective asset manager ratings, if the potential benefits from building goodwill with asset management firms (and selling more services to them and earning more revenue) outweigh the potential costs from fewer trustees buying their asset manager ratings services or wider investment consultancy services.

8.34 In the section below, we first consider the views of trustees and other stakeholders, we then assess the nature and size of relationships between investment consultancy firms and asset management firms, and finally we review processes and controls for making asset manager ratings.

Trustee and stakeholder views

8.35 In the CMA survey, a total of 54% of trustees perceived that business relationships with asset managers affecting the independence of investment consultants or fiduciary managers was a problem. Of those, around two-thirds thought it was generally well managed and a third thought that more should be done to address it.

8.36 We received only a limited number of submissions that there were problems in this area. For example, River and Mercantile submitted that 'where manager recommendations could be perceived to be coloured by other direct services or fees from such asset management firms, there are significant risks to the perception of impartiality'.[497] In addition, the Local Government Association said that they would welcome requirements for consultants to fully disclose business interests.[498]

8.37 We heard from many investment consultants that revenues received from asset management firms would not lead to conflicts in practice and several emphasised that their ratings processes are robust and independent. For example: Aon said 'the rating which Aon awards to asset managers is not connected either explicitly or implicitly to the levels of revenue that the Aon Group as a whole earns from them. Aon's manager research staff are subject to a number of controls to prevent any bias or undue influence from impacting their recommendations'.[499]

8.38 In addition, some investment consultants said that they did not directly offer services to the asset managers within asset management firms. For example, LCP said 'We do not offer services to asset managers in their capacity as an asset manager – we do have asset manager clients to whom we provide advice on their pension scheme or other areas not directly related to the products offered to pension scheme clients'.[500]

8.39 At our asset manager round table discussion, asset managers said that they do not consider that any business relationships that exist between themselves

[497] River and Mercantile response to issues statement.
[498] Local Government Association response to issues statement.
[499] Aon response to issues statement.
[500] LCP response to issues statement.

and investment consultants (such as an investment consultant advising an asset management firm's own pension scheme) would have influenced ratings given by investment consultants.[501]

Nature of business relationships

8.40 We consider that business relationships between investment consultancy and asset management firms are more likely to influence manager ratings where they are sizeable and where they involve parts of investment consultancy and asset management firms with a direct interest in asset manager ratings.

8.41 We asked investment consultancy firms about their relationships with asset managers. We found that investment consultancy firms received payments for a range of services, including investment advice to asset managers' pension schemes, employee benefit consultancy, actuarial services and pension administration services.

8.42 We focus below on two types of relationship that involve divisions within investment consultancy and asset management firms that have a more direct interest in asset manager ratings. These business relationships are 'pay-to-play' payments and payments for conferences.

Asset managers paying investment consultants in return for manager ratings (pay-to-play)

8.43 Under a pay-to-play model, an advisor (for example, an investment consultant) charges a product supplier (for example, an asset manager) a fee in return for being considered for recommendation. This model creates a direct financial link between asset managers and investment consultants.

8.44 Each of the ten largest investment consultancy firms[502] said that they do not take pay-to-play payments from the asset managers that they rate.[503] In addition, each of the smaller investment consultancy firms that we questioned said that they did not use a pay-to-play model. However, one of these firms said that in some asset manager selection exercises, it included an option where the winning manager would pay a fee.[504] Overall, however it is clear that this model is not commonly used amongst investment consultants.

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[501] Summary of roundtable with Asset Managers held on 12 February 2018.
[502] In alphabetical order: Aon, Barnett Waddingham, Capita, Hymans Robertson, JLT, KPMG, LCP, Mercer, Redington, and WTW.
[503] Market information request responses from the above ten firms.
[504] [✂] market information request response.

Asset managers paying investment consultants for conference attendance

8.45 Each of the ten largest investment consultancy firms that we questioned had organised one or more conferences in the last three years that was attended by asset managers.

8.46 Three of these firms had charged asset managers for attendance: Hymans, JLT, and Mercer.

(a) Hymans said that they charged £350+VAT per asset manager representative for their Investment Manager Conference in 2016. The revenues received amounted to £33,000 (+VAT) and did not fully cover the conference cost. Hymans say that they have no plans to organise similar conferences in the future.[505]

(b) JLT said that it organises investment conferences, to which managers are invited at a nominal fee.[506]

(c) Mercer organise a number of Global Investment Forums each year. Two of them have been hosted in London. The charge for attending the latest London conference in 2017 was $[✂] USD per asset manager representative. Mercer say that the total revenue received amounted to around £[✂]. Mercer said that the event was [✂].[507]

8.47 Capita has not charged asset managers to attend conferences. It received a financial contribution of £[✂] from life assurers to organise some conferences related to its employee benefit consultancy business in 2017.[508]

8.48 At our asset manager roundtable discussion, asset managers said that attending investment consultants' conferences helps them to understand investment consultants' thinking better and indicated that strong relationships with investment consultants benefit their clients. They did not see this as affecting the independence of decision-making on either side.[509]

8.49 We found that some investment consultants are charging asset managers to attend conferences and that the fees charged varied significantly.

[505] Hymans' response to follow up information request on outside business relationships.
[506] Summary of hearing with JLT held on 20 November 2017.
[507] Mercer response to follow-up information request on outside business relationships.
[508] Capita response to follow-up information request on outside business relationships.
[509] Summary of roundtable with Asset Managers held on 12 February 2018.

Size of business relationships

8.50 We asked investment consultancy firms to submit the total revenues that they had earned from asset management firms.

8.51 Table 7 compares total UK revenues earned by investment consultancy firms from asset management firms to the total investment consultancy and fiduciary management revenues earned by these firms.

Table 7: Comparison of total revenues from asset management firms (for all services) to total investment consultancy and fiduciary management revenues

	(A) Total revenues from asset management firms (for all services)	*(B) Total investment consultancy and fiduciary management revenues*	*Ratio of (A) to (B)*
[✂]	[✂]	[✂]	22%
[✂]	[✂]	[✂]	12%
[✂]	[✂]	[✂]	37%
[✂]	[✂]	[✂]	57%
[✂]	[✂]	[✂]	18%
[✂]	[✂]	[✂]	34%
[✂]	[✂]	[✂]	9%
[✂]	[✂]	[✂]	0%
[✂]	[✂]	[✂]	3%
[✂]	[✂]	[✂]	117%
Average	**£11,430,823**	**£33,130,060**	**20%***

Source: CMA Analysis, Parties' Data. All revenues are UK-only, for 2016 or the most recent available year if 2016 data was unavailable.
Note: * indicates median rather than mean
Note: One firm earns UK revenues from asset management groups that are higher than their total UK revenues for investment consultancy and fiduciary management services. This firm earns substantial revenues from services that are not related to investment consultancy and fiduciary management.

8.52 Table 7 shows that total revenues from asset management firms do appear to be material for some investment consultancy firms when compared to the revenues from their investment consultancy and fiduciary management practices. However, it should be noted that the revenues from asset management firms in Table 7 include payments for a range of services not directly related to investment consultancy or fiduciary management, such as payments for employee benefit consultancy and actuarial services.

8.53 Table 8 compares total UK revenues earned by investment consultancy firms from asset management firms for investment consultancy and fiduciary management services to the total investment consultancy and fiduciary management revenues earned by these firms.[510] Therefore, Table 8 focuses only on revenues earned by parts of investment consultancy firms that are more directly involved in manager ratings. For example, it includes payments for investment advice to asset management firms' pension schemes and attending conferences but does not include payments for wider services between these corporate groups such as employee benefit consultancy or actuarial services.

Table 8. Comparison of total revenues from asset management firms (paid to investment consultancy and fiduciary management practices) to total investment consultancy and fiduciary management revenues

	(A) Revenues from asset management firms (for IC and FM services only)	*(B) Total investment consultancy and fiduciary management revenues*	*Ratio of (A) to (B)*
[✂]	[✂]	[✂]	2%
[✂]	[✂]	[✂]	5%
[✂]	[✂]	[✂]	13%
[✂]	[✂]	[✂]	9%
[✂]	[✂]	[✂]	1%
[✂]	[✂]	[✂]	1%
[✂]	[✂]	[✂]	1%
[✂]	[✂]	[✂]	0%
[✂]	[✂]	[✂]	1%
[✂]	[✂]	[✂]	0%
Average	**£2,057,042**	**£33,130,060**	**1%***

Source: CMA Analysis, Parties' Data. All revenues are UK-only, for 2016 or the most recent available year if 2016 was unavailable.
Note: * indicates median rather than mean.

8.54 Table 8 shows that revenues from asset management firms, for parts of investment consultancy firms that are more directly involved in manager ratings, generally account for only a small part of the total investment consultancy and fiduciary management revenues earned by these firms.

Manager ratings processes and controls

Conflicts of interest management

8.55 Some investment consultants have conflicts of interest management policies that specifically mention business relationships with asset managers as an example of a situation in which conflicts of interest may arise. These firms

[510] In this analysis, we use revenues earned by investment consultants from the ten asset management firms from which they had earned the most revenues.

have established management strategies to handle the conflicts. Such management strategies include having separate manager research and investment consultancy divisions and ensuring that manager ratings are subject to appropriate procedures and peer reviews.[511]

8.56 As noted at paragraph 8.3 regulated firms are subject to extensive and detailed requirements in respect of conflicts of interest.

8.57 In the following sections we consider some of the processes and controls that investment consultants use when making manager ratings.[512]

Separation of manager research and investment consultancy activity

8.58 We found that manager research activities are generally undertaken by staff that sit within the investment consultancy division of investment consultancy firms.

8.59 Of the ten investment consultancy firms we looked at, six have dedicated manager research teams that are separate from the wider investment consultancy business,[513] whereas four have a model where the same staff undertake both manager research and wider investment consultancy work.[514]

Challenge and approval of manager ratings

8.60 Once research staff have developed proposed ratings for asset managers, we found that these proposals are generally submitted to a committee or panel for challenge and/or approval.

8.61 Six of the investment consultancy firms in our sample have rating review committees or their equivalents.[515]

8.62 Four investment consultancy firms said that they do not have a rating review committee and instead use alternative procedures to oversee and approve ratings.[516]

8.63 Overall, we found that investment consultancy firms have processes and controls in place that have the potential to help guard against the risk that

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[511] Based on responses to the market information request and the follow-up request on outside business relationships.
[512] Based on responses to the market information request and the follow-up request on outside business relationships.
[513] Aon, Barnett Waddingham, Hymans, Mercer, Redington, and WTW.
[514] Capita, JLT, KPMG, and LCP.
[515] Barnett Waddingham, Capita, Hymans, JLT, Mercer, and Redington.
[516] Aon, KPMG, LCP, and WTW.

manager ratings are not independent. We have not examined the effectiveness of these processes and controls.

Conclusions

8.64 Some trustees have concerns about business relationships, but fewer think that this is a problem compared to other conflicts that we asked about.

8.65 Of the two most direct revenue streams between asset managers and investments consultants, we found that none of the larger investment consultants receive pay-to-play payments in return for ratings, whereas several investment consultants charge asset managers to attend conferences. Asset management firms also make payments to investment consultancy firms for a range of other services.

8.66 We found that the total revenues from asset management firms are material, however revenues earned by parts of investment consultancy firms that are more directly involved in manager ratings appear to account for a relatively limited part of total investment consultancy and fiduciary management revenues.

8.67 Investment consultancy firms seek to maintain objective and independent manager ratings through a range of processes and controls.

8.68 Overall, we have not found evidence to indicate that ratings are influenced by business relationships with asset managers; investment consultancy firms generally have safeguards in place to seek to maintain objective and independent ratings, and overall revenues earned by investment consultancy and fiduciary management divisions from asset management firms account for a relatively limited proportion of total revenues.

Gifts and hospitality provided by asset managers to investment consultants

8.69 This section considers whether gifts and hospitality provided by asset managers to investment consultants affect the independence of investment consultancy firms' asset manager ratings.

8.70 Conceptually, this issue is similar to the business relationships issue that we assessed above.

8.71 In the section below, we first consider the views of trustees and other stakeholders, we then consider relevant regulations and conflict management policies, and finally we assess the level of gifts and hospitality that are provided by asset managers to investment consultants.

Trustee and stakeholder views

8.72 In the CMA survey, a total of 35% of trustees perceived that gifts and hospitality from asset management firms affecting the independence of investment consultancy or fiduciary management firms was a problem. Of those that perceived a problem, less than half thought that more should be done to address it.

8.73 Trustees found this issue to be the least concerning of the four conflicts that they were asked about.

8.74 Many investment consultancy firms said that gifts and hospitality levels have declined in recent years.[517] Some said that they have had clear gifts and hospitality policies in place for many years,[518] others indicated that they had updated or tightened their practices over time.[519]

8.75 Some investment consultants also indicated that the way that they determine manager ratings prevents gifts and hospitality from leading to concerns in practice. For example, [✄] said that ratings are conducted by a dedicated team and are subject to challenge and review.[520] As we describe above, investment consultants use various processes and controls when making their manager ratings, however we have not examined the effectiveness of these.

8.76 [✄].[521]

8.77 Asset managers who participated in our asset manager roundtable discussion stated that they did not believe that gifts and hospitality played a significant role in their relationships with investment consultants. They drew a distinction between gifts on the one hand and hospitality on the other. They indicated that gifts are not prevalent and have long been restricted. More generally, asset managers considered that changes to the regulatory environment and increased competition in the asset management industry have led to a decline in the level of gifts and hospitality across the industry.[522]

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[517] For example, summary of hearing with Redington held on 13 November 2017, LCP issues statement response.
[518] For example, summary of hearing with WTW held on 21 November 2017.
[519] For example, summary of hearing with Aon held on 22 November 2017, summary of hearing with Mercer held on 22 November 2017.
[520] [✄].
[521] [✄],
[522] Summary of roundtable with Asset Managers held on 12 February 2018

Regulation and guidance

8.78 As we have previously noted, some of the activities of investment consultancy and fiduciary management providers are subject to FCA regulation and MiFID II requirements. We briefly note below some of the rules and guidance that are relevant to gifts and hospitality, including giving or receiving monetary and non-monetary benefits.

8.79 MiFID II makes specific provision in respect of inducements (that is, commissions, fees or any monetary or non-monetary benefits). The provisions include restrictions on firms which provide independent investment advice and portfolio management accepting and retaining inducements, except where a limited exception applies. This exception is expressed in terms of minor, non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interests of the client.[523]

8.80 We also note that in 2016, the FCA published key findings from its thematic review of the benefits provided and received by firms conducting MiFID I business, and those carrying out regulated activities in relation to a retail investment product. One of the findings was that hospitality given or received such as attending or participating in sporting or social events (eg golf, tennis, concerts) did not appear capable of enhancing the quality of service to clients. The review concluded that these types of events were either not conducive to business discussions or the discussions could better take place without these activities.[524]

Firms' gift and hospitality policies

8.81 We found that each of the ten largest investment consultants in our sample[525] has a specific gifts and hospitality policy, as well as a general conflicts of interest policy.[526] Several firms had updated their policy during 2017.

8.82 We found some common ground in how these policies are specified. For example:

(a) All but one of these policies explicitly prohibits cash gifts;[527] and

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[523] Article 24(7) and (8) MiFID II Directive.
[524] FCA (2016), Inducements and conflicts of interest thematic review: key findings.
[525] Aon, Barnett Waddingham, Capita, Hymans, JLT, KPMG, LCP, Mercer, Redington, and WTW.
[526] Market information request responses from these ten firms.
[527] [✂].

(b) All of these policies place some further prohibitions on the type and/or value of gifts and hospitality that could be accepted.

8.83 We also found some variation across these policies:

(a) Only a minority of policies explicitly prohibit the receipt of any non-business (ie sporting/cultural/leisure) hospitality from asset managers;[528]

(b) Other policies set limits on the value of gifts and hospitality that can be accepted;[529]

(c) Other policies contain no explicit value limits but use reporting and approval processes.[530]

8.84 Some value limits operate on a cumulative basis over a period of time, whereas others operate on an item-by-item basis. By way of example, one policy prohibits receiving or offering any gift item worth over £30 and any hospitality item worth over £50, without prior approval.[531] Another policy requires pre-approval for any gifts or hospitality over £150 and prohibits any staff member from receiving more than one gift or hospitality item with a total value of over £250 in a one-year period.[532]

8.85 We also reviewed the policies of some additional firms outside of the sample of ten larger investment consultants that we refer to above. We found:

(a) One example of an investment consultancy firm that had no formal conflicts of interest policy;[533]

(b) Two further examples of gifts and hospitality policies that did not explicitly prohibit cash gifts.[534]

8.86 Each of the investment consultancy firms in our sample also told us that they maintain a gift and hospitality register. In some cases, this is used to facilitate approvals or to facilitate periodic review by a compliance team. We found that some firms do not record minor items that fall below a minimum threshold.

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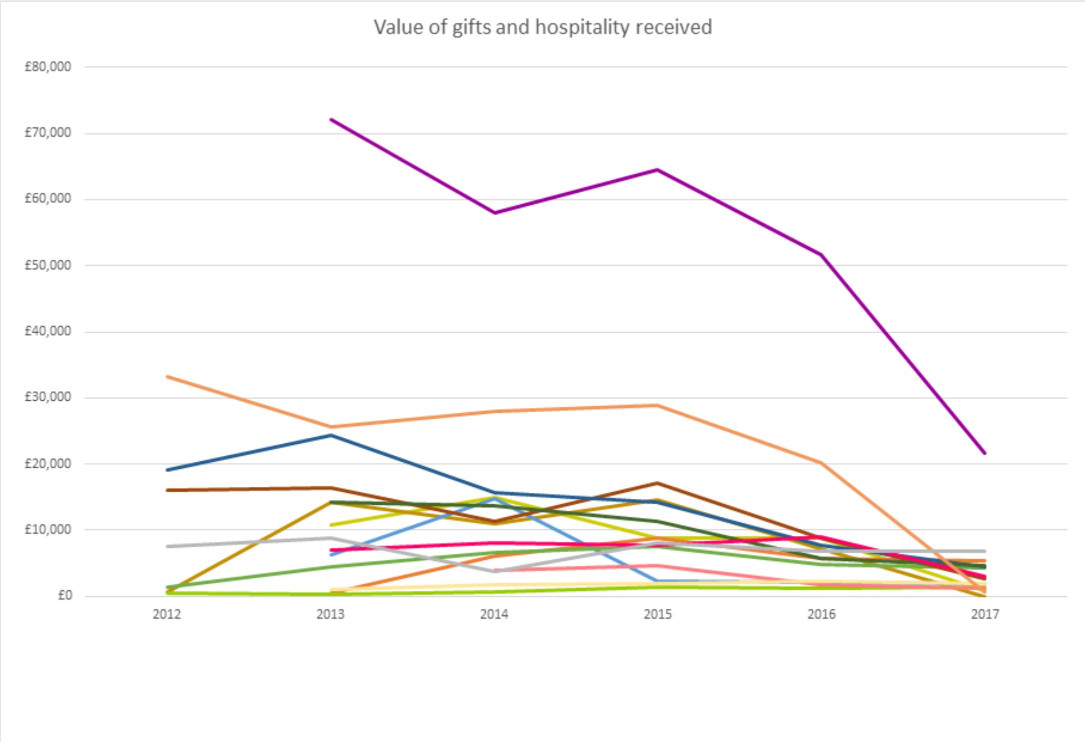
[528] Aon, Barnett Waddingham, Cambridge Associates, Hymans, Mercer, and WTW.
[529] For example: JLT, KPMG.
[530] For example: Capita.
[531] Hymans.
[532] Redington.
[533] [✂]. In July 2018, the firm said that it did have a formal conflicts of interest policy at the overall business level that it had updated recently.
[534] [✂] and [✂]. [✂] subsequently submitted an updated policy document in July 2018 which does explicitly prohibit the offering or accepting of cash gifts. In July 2018, [✂] said that a recent internal policy review had recommended that accepting cash should be explicitly prohibited.

The level and nature of gifts and hospitality

8.87 Figure 18 below shows the value of benefits that investment consultancy and/or fiduciary management staff[535] received from asset managers. Some of these figures understate the total value of gifts and hospitality received, as some of these firms do not record minor gifts below a minimum threshold.[536] The outlier firm that received the highest gifts and hospitality levels does not have a threshold.[537]

Figure 18. Value of gifts and hospitality received by investment consultancy and/or fiduciary management staff



Source: CMA Analysis, Parties' Data.

The value of gifts and hospitality has decreased since 2012.

8.88 This analysis shows that the total value of gifts and hospitality has followed a downward trend, with levels going down by 25% from 2015 to 2016 and decreasing even further by 39% from 2016 to 2017.[538]

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[535] The firms included are Aon, Barnett Waddingham, Cambridge Associates, Capita, Cardano, Hymans Robertson, JLT, KPMG, LCP, Mercer, Redington, River & Mercantile, Russell Investments, WTW, and Xafinity.
[536] For example, Aon has a £25 threshold.
[537] [✂].
[538] This is the mean of the annual changes in gifts and hospitality levels for the firms in the sample.

8.89 Total levels of gifts and hospitality now appear to be relatively modest for most firms; the median firm in our sample reported gifts and hospitality of £2,700 in 2017.[539]

Conclusions

8.90 Regulated investment consultancy firms are subject to specific rules and guidance relating to gifts and hospitality including MiFID II requirements.

8.91 We found that nearly all investment consultants have written gifts and hospitality policies, with several having updated these policies recently. Each of the ten larger investment consultancy firms in our sample keeps a gifts and hospitality register and nine of these firms have a policy that explicitly prohibits cash gifts. Some of these firms have policies that specifically define and prohibit the receipt of all non-business hospitality from asset managers. Each of these firms has processes and controls that seek to ensure objective ratings.

8.92 The data that we have reviewed indicate a downward trend in gifts and hospitality; the average decrease across firms was 25% from 2015 to 2016 and decreasing and a further 39% from 2016 to 2017.

8.93 Overall, we have not found evidence to indicate that ratings are influenced by gifts and hospitality; investment consultancy firms generally have safeguards in place to constrain gifts and hospitality and to seek to maintain objective and independent ratings, and the total value of gifts and hospitality appears to be relatively modest for most firms.

The sale of master trusts by investment consultants supplying employee benefit consultancy

8.94 Some investment consultants offer employee benefit consultancy services, including advising employers that are seeking to design or set-up pension schemes. As well as giving advice, some consultants also sell master trust pension products to employers.

8.95 This section considers whether there are competition problems arising from the sale of master trusts by investment consultants that also provide employee benefit consultancy services. For example, a potential concern here is that employers may be steered towards the master trust of their existing employee benefit consultant and as result may not get best value deals.

[539] Rounded to two significant figures.

8.96 In the section below, we first provide background on employee benefit consultancy and master trust pensions, we then review investment consultants' positions for both of these services, and finally we draw our conclusions.

Background

Stakeholder views

8.97 The submissions that we received in response to our issues statement contained relatively little in relation to the supply of master trusts by employee benefit consultants.

8.98 Some parties indicated that this issue was not a problem and/or questioned whether it should be an area of focus for our investigation. For example:

(a) Mercer said that 'switching to a master trust solution is not a decision that companies take lightly and tenders are absolutely standard around these decisions, often with the support of a third party'.[540]

(b) WTW said that its Master Trust 'is a new offering by our firm [✂], which has been launched into a market with a wide range of existing offerings'.[541]

(c) JLT said that the focus of our investigation should be on investment services and that consideration of all conflicts and vertical integration which exist throughout the wider employee benefits businesses would seriously distract from the main focus.[542]

8.99 Others indicated that these issues should be considered. For example:

(a) The PLSA said that 'some scheme members have raised concerns about the potential misalignment of interests where consultants offering investment advice also have an in-house fiduciary management or master trust offering'.[543]

(b) Hymans said that master trusts should be in scope of our investigation.[544]

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[540] Mercer Issues statement response.
[541] WTW Issues statement response.
[542] JLT Issues statement response.
[543] PLSA Issues statement response.
[544] Hymans Issues statement response.

(c) LCP said that it sees barriers to clients switching master trusts, as these products generally bundle administration and investment management services.[545]

8.100 We did not receive any submissions from employers or pension scheme members in relation to master trusts or employee benefit consultancy.

8.101 In its response to the provisional decision report, SEI Investments stated that there are 'similarities between the competition issues identified in relation to investment consultants offering fiduciary management and those that exist in investment consultants who have employee benefit practices offering master trusts'.[546] They stated that the CMA should take steps to address this issue 'to ensure that DC pension scheme members are protected from competition issues in the same way as those in the DB sector'.[547]

8.102 The Investment Association submitted that 'this issue should be kept under review as the potential conflict may create a competition issue in future if the consultants' share of the master trust market grows significantly'.[548]

Buyers of employee benefit consultancy services and master trusts

8.103 The vast majority of employers are now required to offer workplace pensions to their employees under auto-enrolment rules.[549]

8.104 Employee benefit consultants provide advice to employers on the design and set up of pension schemes, including whether to choose a master trust pension[550] and they may help employers select a pension product provider. This can involve running an evaluation exercise to compare different contract-based providers and/or different master trusts.

8.105 While employers are the buyers of employee benefit consultancy services and master trusts, the members of the employer's pension scheme are the ultimate beneficiaries.

[545] LCP Issues statement response.
[546] SEI Investments response to the provisional decision report (p.2).
[547] SEI Investments response to the provisional decision report.
[548] Investment Association response to the provisional decision report.
[549] From October 2012, UK employers have had a duty to enrol eligible employees automatically into a qualifying pension scheme. See the Pensions Act 2008, section 3.
[550] Contract-based schemes are individual contracts between members and a pension provider. Trust-based schemes include single-employer trusts, which are sponsored by an employer, and Master Trusts, which serve multiple employers at once.

Master trusts

8.106 Master trusts are a relatively new form of trust-based DC pension scheme.

8.107 In 2017, there were more than 80 master trusts operating in the UK.[551] Master trust providers include those that are:

(a) **Insurance providers:** including AEGON, Fidelity, Legal & General, SEI, Standard Life and Zurich;

(b) **Investment consultancy:** including Aon, Capita, Mercer and WTW;

(c) **Auto-enrolment focused**: including NEST, NOW and the People's Pension.

8.108 Investment consultancy firms' and insurance providers' master trusts target larger employers (broadly speaking, those with several thousand employees).[552] Insurance providers' master trusts also target medium employers (broadly speaking, those with more than one hundred employees).[553] Whereas auto-enrolment focused master trusts target medium employers and smaller employers (broadly speaking, those with fewer than one hundred employees).[554]

8.109 [✂], [✂] and [✂] told us that their master trusts are generally targeted towards employers that have previously offered workplace pensions, rather than smaller employers who are engaging with pensions for the first time as a result of auto-enrolment rules.[555]

8.110 At present, master trusts represent a relatively small part of the UK pensions sector. At the end of 2016, there were around £2.2 trillion of assets[556] in UK workplace pension funds, of which around £10 billion was in master trusts[557] and around £400 billion was in other DC schemes.[558] Therefore, master trusts accounted for less than 1% of total workplace assets and around 2% of workplace DC assets.

[551] The Pensions Regulator (2017), *DC trust: presentation of scheme return data 2016 – 2017.*
[552] Spence Johnson (2016) *UK Defined Contribution, Looking beyond the passive approach*, p53.
[553] Spence Johnson (2016) *UK Defined Contribution, Looking beyond the passive approach*, p53.
[554] Spence Johnson (2016) *UK Defined Contribution, Looking beyond the passive approach*, p53.
[555] Market information request responses from these firms.
[556] Investment Association (September 2017), *Asset Management in the UK 2016-2017, The Investment Association Annual Survey*, p12.
[557] The Pensions Regulator (2017), *DC trust: presentation of scheme return data 2016 – 2017.*
[558] Investment Association (September 2017), *Asset Management in the UK 2016-2017, The Investment Association Annual Survey*, p51.

8.111 Master trusts and other DC pension products are widely expected to grow over the coming years in terms of both assets and members.

Regulation of master trusts

8.112 Under the Pension Schemes Act 2017, the Pensions Regulator will be responsible for authorising and supervising all master trusts against criteria relating to systems and processes, financial sustainability and that people running the schemes are fit and proper.[559]

8.113 In its response to the provisional decision report, SEI Investments stated that ‘it is widely acknowledged that the new regulatory framework, which centres around a requirement for all master trusts to meet a series of standards including capital adequacy, will result in consolidation in the master trust market in the UK’.[560] It also stated that the new regulatory framework ‘is highly likely to lead to a significant increase in market share amongst investment consultants’.[561]

Investment consultants’ employee benefit consulting businesses

8.114 Aon, Mercer and WTW are the largest suppliers of employee benefit consultancy to customers with DC trust-based schemes.[562] These parties told us that they supply various types of employee benefit consultancy to employers that are looking to design or set up DC pension schemes. In some cases, they advise on the type of pension model to be adopted or retained (for example, whether to use a contract-based or master trust model). In some cases, this includes advice on product selection (for example, advice on which contract-based or master trust product to select).[563]

8.115 Aon and Mercer said that they do not advise on their own master trusts or run selection processes involving their own products.[564] WTW said that it would not typically carry out a selection/advice process where its master trust was on the shortlist, unless expressly requested to do so by the client.[565]

[559] House of Commons Library (March 2018), *Master Trust regulation,* p3.
[560] SEI Investments response to the provisional decision report.
[561] SEI Investments response to the provisional decision report.
[562] Spence Johnson (2016) *UK Defined Contribution, Looking beyond the passive approach*, p56.
[563] Market information request responses from these firms.
[564] Market information request responses from these firms.
[565] WTW market information request response.

Investment consultants' master trust businesses

8.116 Investment consultants' master trusts currently account for a small part of the overall provision of master trust pensions. As of 2017, we found that Aon, Capita, Mercer and WTW were supplying their master trusts to only 36 employers in total. Two of these firms started serving their first master trust client in 2017.[566]

8.117 Through these arrangements, Aon, Capita, Mercer and WTW are serving around 100,000 members[567] (around 1.4% of all members of UK master trusts[568]) and managing around £3.2 billion of assets[569] (around a third of assets in UK master trusts, or less than 1% of assets in workplace DC schemes[570]).

Conclusions

8.118 Master trusts are a relatively recent and growing part of the UK pensions sector. Some investment consultancy firms supply employee benefit consultancy services to employers and also sell master trust pension products.

8.119 Given the limited penetration that these firms currently have in the master trust and wider DC sectors, we consider it unlikely that any potential steering by these firms towards their own master trusts has had a material impact on competition to date.

8.120 Therefore, our view is that the potential conflict of interest for investment consultancy firms which offer master trust pensions and act as employee benefit consultants is unlikely to be leading to a competition problem at present.

8.121 We recognise however that, in principle, there is a potential conflict of interest for firms that supply employee benefit consultancy services and also sell master trust pension products. If the market shares of such firms in the master trust market were to increase, for example as a result of the new regulatory framework, this may give rise to competition issues in the future. Government may wish to consider whether the provision of pension products to employers

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[566] CMA analysis of parties' market information request responses.
[567] CMA analysis of parties' market information request responses.
[568] Based on 6,999,000 total master trust memberships taken from The Pensions Regulator (2017), *DC trust: presentation of scheme return data 2016 – 2017*.
[569] CMA analysis of parties' market information request responses.
[570] Based on around £10 billion total master trust assets according to the Pensions Regulator (2017), *DC trust: presentation of scheme return data 2016 – 2017* and around £410 billion assets in DC schemes according to Investment Association (September 2017), *Asset Management in the UK 2016-2017, The Investment Association Annual Survey*, p51.

by their employee benefit consultants raises any broader issues relating to the quality of employees' pension benefits.

Investment consultants recommending or marketing their own investment products

8.122 Some investment consultants offer investment products such as 'fund of funds' that combine several underlying asset management products. Some respondents to the provisional decision report raised concerns around the incentives for investment consultants to 'steer' their clients into their own investment products.

Trustee and stakeholder views

8.123 In its response to the provisional decision report, the Investment Association stated that 'further analysis is needed around the management of conflicts of interest in relation to the recommendation by investment consultants of their in-house products over those of competing external providers'.[571]

8.124 Bfinance stated that 'the CMA appears not to have addressed broader conflicts of interests that arise when investment consulting firms provide asset management services that do not constitute fiduciary management, although this is an increasingly widespread practice'.[572]

8.125 At our trustee roundtable, a number of trustees had experienced investment consultants persistently marketing to them investment products such as fund-of-funds.[573]

Our findings

8.126 We note that firms to which MiFID II applies are subject to the following requirements:

(a) When investment advice is provided, the firm must inform the client or potential client, in good time before it provides investment advice, whether or not the advice is provided on an independent basis.[574]

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[571] Investment Association response to the provisional decision report.
[572] Bfinance response to the provisional decision report.
[573] Summary of roundtable with pension trustees held on 3 October 2018.
[574] See, for example, Article 24(4)(a) MiFID II Directive and the additional requirements in Articles 52 and 53 MiFID II Delegated Regulation.

(b) Regulated firms must also take appropriate steps to identify and prevent or manage potential conflicts of interest (see paragraph 8.3 above). Where there remains a risk of detriment to the client's interests, there must be clear disclosure to the client of the general nature and sources of the conflict and the steps taken to mitigate the risk before undertaking business on behalf of the client.[575]

8.127 We therefore consider that MiFID II goes some way to addressing this potential conflict of interest. As noted in paragraphs 8.123 to 8.125 however, a number of parties and trustees have expressed concern about this issue.

8.128 We note that several parties consider investment via a fund-of-funds (or similar) products to be a form of partial FM. For example:

(a) Mercer has submitted that 'single sleeve' investment is one form of partial fiduciary management.[576] It submitted that this entails investment in 'multi-client pooled funds'.

(b) WTW has submitted that fiduciary management investment strategies may be implemented through their 'wholly-owned funds of funds'.[577] It referred to this as 'single sleeve' investment.

(c) In our client document review (chapter 7), we have reviewed several cases in which providers' partial fiduciary management service is implemented through a fund-of-funds (or similar) approach.

8.129 We have found that at least some of the investment products offered by investment consultants involve 'dynamic asset allocation', in which the provider can make changes to the underlying asset allocation (and underlying managers) of the fund without recourse to the client.[578]

8.130 We are of the view that the provision by investment consultants of a fund-of-funds (or similar) product to their clients constitutes a fiduciary management service and is subject to the remedies set out in chapter 12.

[575] See, for example, Article 23(2) MiFID II Directive and Article 34(4) MiFID II Delegated Regulation. We note also that disclosure of conflicts of interest should be treated as 'a measure of last resort' and that over-reliance on disclosure is treated as a deficiency in the firm's conflicts of interest policy (see Article 34(4) and (5) MiFID II Delegated Regulation).
[576] [✂].
[577] WTW Market Questionnaire response.
[578] For example, a 2015 marketing document referring to Mercer's diversified growth fund (DGF). For example, a 2016 marketing document referring to WTW's multi-asset growth fund.

Other conflicts of interest relating to fiduciary management

8.131 In the course of our investigation, we have received submissions highlighting a range of other conflicts of interest that may apply to some investment consultants and/or fiduciary managers. We consider some of these below.

Investment consultants not introducing or recommending fiduciary management

8.132 One of the most widely raised issues was that investment consultants that do not offer fiduciary management have incentives not to introduce or recommend the fiduciary management model, in order to avoid losing advisory business. This was raised by parties including Aon, Cardano, Mercer and WTW.[579]

8.133 At our roundtable event, asset managers agreed that firms which only provide advisory investment consultancy services may have incentives not to recommend fiduciary management services.[580]

8.134 We found that some trustee boards continue to buy separate investment consultancy services upon moving to fiduciary management, but the majority do not. This implies that advisory-only investment consultancy firms may lose revenues where their clients move to a fiduciary model.

8.135 The CMA survey indicates that IC-FM firms introduce fiduciary management services more than other investment consultants: overall 19% of trustee boards said their investment consultant had suggested fiduciary management, whereas 30% of those buying from an IC-FM firm said that their investment consultant had done so. As discussed in chapter 7, our assessment is that firms may legitimately have different views as to whether fiduciary management is a beneficial service for their pension scheme clients.

8.136 In addition, as noted in chapter 7, fiduciary management has grown strongly in recent years; the value of assets under fiduciary management was over ten times higher in 2017 compared to a decade earlier.

8.137 Where schemes were not buying fiduciary management services, the most common reasons given in the CMA survey were that trustee boards felt it was not appropriate for the scheme circumstances (20%); would not lead to better

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[579] See for example: Mercer issues statement response, summary of hearing with Aon held on 22 November 2017, summary of hearing with Cardano held on 15 November 2017, summary of hearing with WTW held on 21 November 2017.
[580] Summary of roundtable with Asset Managers held on 12 February 2018.

outcomes (17%); or that trustees did not want to delegate decisions (15%). Only 11% of trustee boards said that the reason was that they had not even considered buying the service. Finally, we note that asset managers told us that sponsoring employers have played an important role in the growth of fiduciary management.[581]

8.138 In its response to the provisional decision report, WTW stated that 'the CMA has unjustifiably downplayed concerns expressed by market participants about the behaviour of advisory-only firms in hindering the take-up of FM services'.[582] WTW stated that 'advisory-only firms have a clear incentive to prevent their customers from migrating to FM even if it would be highly beneficial for them to do so'.[583]

8.139 We do not accept that we have downplayed this potential conflict. First, we have received very little indication from trustees or industry organisations (such as PLSA) that this is an area of concern. In contrast, a wide range of stakeholders (including trustees) have expressed concern at the sale and marketing of fiduciary management to existing clients by IC-FM firms.[584] Second, fiduciary management has grown rapidly in recent years and for those schemes that do not purchase the service, the most common reason cited in the CMA survey is that trustees felt it was not right for the scheme circumstances (paragraph 8.137).[585] We therefore have no evidence that advisory-only firms are deliberately preventing the take-up of fiduciary management, or acting contrary to their clients' best interests.

8.140 Overall, the evidence that we have reviewed therefore does not indicate that investment consultants not introducing or not recommending fiduciary management gives rise to a competition problem.

Investment consultants acting as TPEs

8.141 A number of TPEs are also investment consultants.[586] In its response to the provisional decision report, Cardano submitted that this can lead to conflicts of interest. They stated that an advisor who is also a TPE and tenders for the same client has a competitive advantage as they have full insight into the

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[581] Summary of roundtable with Asset Managers held on 12 February 2018.
[582] WTW response to the provisional decision report.
[583] WTW response to the provisional decision report.
[584] See for example summary of roundtable with pension trustees held on 1 and 2 May 2018; summary of roundtable with pension trustees held on 3 October 2018; PLSA response to the issues statement (p4).
[585] We note however that at the trustee roundtable in October 2018, one trustee stated that some trustees may not know about FM (Summary of roundtable with pension trustees held on 3 October 2018).
[586] This includes Barnett Waddingham, LCP and KPMG.

services of FM competitors.[587] It also stated that an advisor might promote its own IC services when acting as a TPE. In a hearing with the CMA, Cardano stated that TPEs should be restricted from cross-selling to avoid potential conflicts, and at a minimum, TPEs should be clear to trustees about their potential conflicts.[588]

8.142 Stamford submitted that 'investment consultants that also offer fiduciary management oversight services' are 'seriously conflicted when competing in other guises with fiduciary managers'.[589] They stated that this conflict may stem the full flow of information to trustees. Stamford stated that it has therefore, to date, 'restricted itself to sharing information with a limited subset of fiduciary evaluators.[590,591]

8.143 Following the provisional decision report, we have sought views from several industry participants regarding this potential conflict of interest. We have not found that this is a widespread concern. For example, the issue was discussed in hearings with Aon and WTW and neither party expressed major concern with this potential conflict.[592]

8.144 Russell Investments stated that it has found that it faces firms acting as TPEs whom it also competes against for clients, but recognised that this was not an uncommon position in financial services.[593] It stated that TPEs are developing to be more independent of both investment consultants and fiduciary managers. It also stated that, in its experience, TPEs add significant value to tenders by, for example, helping clients negotiate better fee rates.

8.145 We have also spoken to investment consultants that act as TPEs to understand how they handle this potential conflict.[594] LCP stated that it has never pitched or bid for a full-service investment consultancy role from a client whilst acting as a TPE. Barnett Waddingham stated that if it is advising a client who is deciding between fiduciary management and investment consultancy, the expectation of their TPE service would typically be for them not to bid for any subsequent investment consultancy contract, and they would explain this to the client.

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[587] Cardano response to the provisional decision report.
[588] Summary of response hearing with Cardano held on 27 September 2018.
[589] Stamford response to the provisional decision report.
[590] Stamford defined a fiduciary evaluator as an investment consultant that also offers fiduciary management oversight services.
[591] Stamford response to the provisional decision report.
[592] Aon and WTW response hearing summaries. We also issued an information request to 12 investment consultants and fiduciary managers regarding the costs of our proposed remedies. As part of this request we asked about potential unintended consequences of remedy 1; no provider mentioned this potential conflict of interest.
[593] Russell Investments hearing summary.
[594] Barnett Waddingham and LCP response hearing summaries.

8.146 Overall, the evidence we have reviewed does not indicate that investment consultants acting as TPEs for fiduciary management services gives rise to a competition problem.

Other potential fiduciary management related conflicts of interest

8.147 Other potential conflicts of interest raised by parties included:

(a) Fiduciary managers may have incentives to discourage trustees from considering liability and asset transfers;

(b) Fiduciary managers which do not offer advisory services may have incentives to discourage fiduciary management clients from considering switching to an advisory-only approach;

(c) Fiduciary managers may have incentives to create complex or less liquid portfolios, in order to increase switching costs;

(d) IC-FM firms may have incentives to prioritise their fiduciary management clients over their investment consultancy clients, when allocating assets to preferred funds;

(e) IC-FM firms which provide fiduciary management and advisory services to the same client may have incentives to moderate their advice so as to favour their fiduciary management division. This could mean recommending that more assets are added to the fiduciary mandate; setting soft objectives for the fiduciary manager; or failing to highlight poor performance by the fiduciary manager.

8.148 These examples further illustrate the range of potential conflicts of interest that can exist for investment consultancy firms and fiduciary managers. However, we did not find widespread concerns in relation to these issues, nor did we receive evidence to indicate that these were giving rise to competition problems.

9. Barriers to entry and expansion

Our main findings

- There are a wide range of firms providing investment consultancy and fiduciary management; and a number of firms that provide both services (IC-FM firms).
- Firms have used a range of entry strategies including vertical and horizontal expansion, expansion into the UK from overseas, or by focussing on particular client types or asset classes.
- There may be some greater barriers to entry for fiduciary management firms; there are also likely to be both higher costs and greater economies of scale.
- Overall, we have not found high barriers to entry in investment consultancy or fiduciary management.
- We found that barriers to expansion are higher than those of entry particularly in fiduciary management;
  - The importance of reputation means that while new entrants can and do win clients, increasing a firm's client base may take time.
  - IC-FM firms with an established investment consultancy client base have an incumbency advantage in winning new fiduciary management clients.
  - There are material barriers to switching fiduciary manager.

9.1 This chapter sets out the evidence we have received and our assessment of potential barriers to entry and expansion in the investment consultancy and fiduciary management markets. This assessment focuses on the financial and other costs of entry and expansion.

9.2 We first set out our approach, before then assessing barriers to entry and then barriers to expansion. Lastly, we set out our conclusions.

9.3 We published a working paper on barriers to entry and expansion on 26 April 2018[595] and received six responses to this. The following findings and conclusions take into account these responses.

[595] Working paper on barriers to entry and expansion, April 2018.

Our approach to assessing barriers to entry and expansion.

9.4 CMA guidelines[596] state that entry or expansion by firms, or the prospect of entry or expansion by firms within a short time, will often stimulate competition and can sometimes countervail against features which might otherwise give rise to an adverse effect on competition. A significant source of competitive discipline may therefore be eliminated or reduced if there is any barrier to market entry and/or expansion, whether an absolute barrier or some other form of restriction such as aspects of the market that deter entry.

9.5 There are three broad categories of entry barrier: natural or intrinsic barriers; strategic advantages of incumbents or 'first-mover' advantages; and regulatory barriers. We discuss aspects of each of these in the relevant section below.

9.6 Our guidelines explain that to assess the impact of barriers to entry and expansion, we will consider how the competitive climate within a market affects the decisions of individual firms to enter or invest in that market, taking into account the advantages of established firms.[597]

9.7 We have considered entry and expansion in investment consultancy and fiduciary management services through two assessments – first, the barriers to setting-up a new business (either a new firm or service line), and second, the barriers to growing that business through winning clients.

9.8 Within each of these we assess investment consultancy and fiduciary management together. Although we note that parties disagreed on whether it is helpful to compare investment consultancy and fiduciary management when assessing barriers to entry and expansion.

9.9 For example, Mercer said that investment consultancy and fiduciary management were different service models and that there was no reason to think that they are a useful comparison for each other.[598] Other firms, however, said there was merit in considering the barriers to entry for investment consultancy and fiduciary management in parallel. JLT for example told us that fiduciary management is an extension of investment consultancy and Redington said that there was an interrelation between the two.[599]

[596] Guidelines for market investigations: Their role, procedures, assessment and remedies (CC3 (Revised)), paragraphs 205 – 236.
[597] Guidelines for market investigations: Their role, procedures, assessment and remedies (CC3 (Revised)), paragraphs 227 – 234.
[598] Mercer response to the Competitive landscape & Barriers to entry and expansion working papers.
[599] JLT and Redington response to the barriers to entry and expansion working paper.

Recent entry and expansion

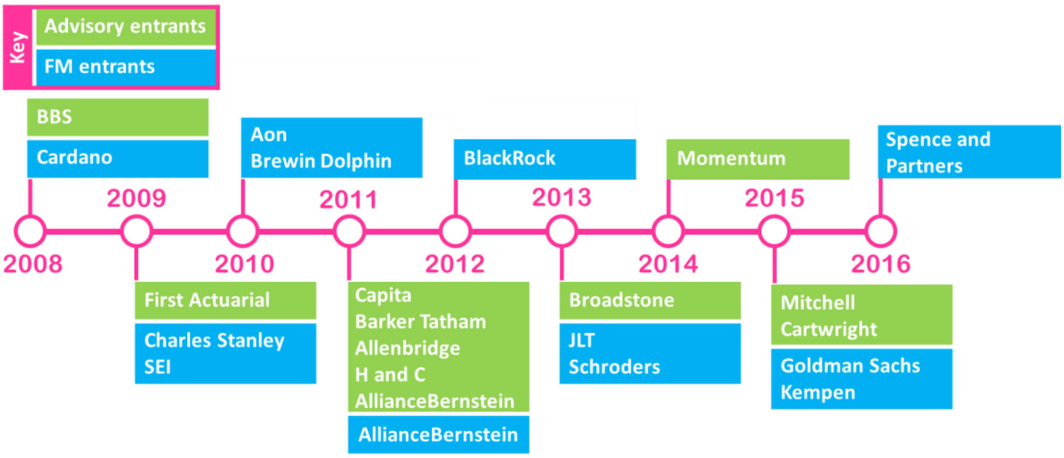
9.10 We have examined the number of firms providing fiduciary management and investment consultancy services and the scale of entry over the past ten years.

9.11 We have identified over 37 firms that offer investment consultancy services and at least 17 firms that offer fiduciary management services.

Over 37 firms offer investment consultancy and 17 offer fiduciary management services.

9.12 Figure 19 shows those firms that we are aware of that have started providing either investment consultancy or fiduciary management services since 2007. The number of firms active in providing investment consultancy and fiduciary management services appears to be growing and we have not noted firms exiting. It appears that 12 of the 17 fiduciary management firms currently operating in the UK have entered the market since 2007.

Figure 19: Timeline of market entry since 2007



Source: CMA Analysis
Note: Based on first year that revenues for relevant service recognised. CMA analysis of responses to CMA data requests and may not include all firms. Firms which first offered investment consultancy services before 2007 are not shown.

9.13 Fiduciary management is a relatively new service compared to investment consultancy and this has led to opportunities for entry over the last 10 to 15 years.[600] There has been sustained growth in the use of fiduciary management over the last ten years. KPMG's survey indicates that there were

[600] See further analysis in chapter 4.

61 fiduciary management mandates (£12 billion AUM) in 2007 and 862 fiduciary management mandates (£142 billion AUM) by 2018.[601]

Barriers to entry – setting up a new business

9.14 In this section we focus on the barriers to setting up a new business up to the point of competing for and winning the first client. This may be in the context of setting up a new firm, or the expansion into investment consultancy and fiduciary management service lines by a firm providing other existing services.

Natural or intrinsic barriers

9.15 We define natural or intrinsic barriers to entry as the costs that firms unavoidably incur when entering a market (ie the sunk costs of entry). These costs include setting up functions such as human resources, financial systems and payroll. In the following subsections we discuss the costs of developing a research function and operating a regulatory compliance function.

9.16 We have not identified any natural or intrinsic barriers that have acted as a significant barrier to entry. We note however, that where such barriers do exist, multi-disciplinary firms may be able to take advantage of economies of scale or reduced entry costs. Any such barriers would be common to both investment consultancy and fiduciary management firms but are likely to be greater for fiduciary management, as a result of the broader range of services provided.

9.17 Firms with existing relationships in adjacent or vertical markets may have a competitive advantage in entry.[602] Some firms, for example, have entered the investment consultancy or fiduciary management sectors through expansion from existing actuarial or asset management services (and from investment consultancy in the case of fiduciary management). This could reduce the cost of entry, as the firms will already have the necessary support functions.

Firms have entered through expansion from actuarial services or asset management.

9.18 The CMA survey of trustees found that 77% of schemes which bought investment consultancy services receive other services from the same

[601] KPMG publication: *UK Fiduciary Management Survey 2018*, November 2018
[602] Guidelines for market investigations: Their role, procedures, assessment and remedies (CC3 (Revised)), paragraphs 217 - 221.

provider, the most common service being actuarial services (55%) or scheme administration (52%). However, this in part may reflect the number of investment consultants that offer other associated services and that schemes may purchase services from multiple providers.

9.19 Aon said that 17 of 18 fiduciary management firms offer services in a number of adjacent markets which allowed those firms to develop commercial relationships with schemes regardless of investment consultancy provision.[603]

9.20 We have identified at least two firms which have entered the UK fiduciary management sector by expanding from overseas:

- Cardano was an established business in the Netherlands, with Cardano UK set up as a purpose-built fiduciary manager. It did not inherit any client relationships from its parent firm.

- Kempen also entered the fiduciary management sector from the Netherlands. However, it did not act as an investment consultant there, instead offering advice on pension fund strategies as an integral of Kempen fiduciary management services.[604]

9.21 A non-solicitation clause in employment contracts of many investment consultancy staff can prevent them from performing revenue-generating activities in the first year or so of moving to a new or competing firm. However, these individuals are then able to benefit from the reputation and relationships they had built up at their former firm. One entrant which had been subject to these restrictions said it was not an unreasonable imposition.[605]

Momentum – entry with a small established team[606]

Momentum has provided investment and asset management services in the UK since 1998. Momentum entered the investment consultancy sector in 2014 by recruiting a small established team of investment consultants from Mercer. Several of these staff were subject to restrictive covenants preventing them from soliciting clients for a year after they left Mercer.

Momentum acted as a sponsor for this investment consultant team when it entered the sector, providing it with business support in areas such as

[603] Aon response to the Competitive landscape & Barriers to entry and expansion working papers, paragraph 2.7
[604] Summary of hearing with Kempen held on Friday 24 November 2017.
[605] Summary of hearing with Momentum held on 12 January 2018.
[606] Summary of hearing with Momentum held on 12 January 2018.

compliance, legal, admin and payroll to help the investment consultant team enter the sector.

When it launched, the investment consultant team already had knowledge of a wide range of relevant asset managers and products. Momentum told us that this asset management research would be difficult for a new firm to replicate without extensive prior experience.

Research costs

9.22 To provide investment consultancy and fiduciary management services, firms need to have access to appropriate asset manager research to make recommendations to clients. The evidence submitted by parties indicates that developing research capability can be expensive but that firms have overcome this barrier in a number of ways.

9.23 We have been told that potentially significant resources are required for manager research in both investment consultancy and fiduciary management firms. Parties[607] have commented on the constraint that the lack of a research function poses on their firms. KPMG said however that research was critical to generate strategies for clients, determine which ones are likely to be successful and which fund managers would be best at implementing them. Research was therefore seen as imperative in order to serve client needs. It was also seen as needed to demonstrate credibility in the market. Costs of that research were therefore necessarily incurred.[608]

9.24 Spence & Partners said that the costs of undertaking extensive manager research are high and constitute a barrier for smaller firms entering the investment consultancy market as they would find it difficult to recoup across a small number of clients. However, they noted that some outsourced options are available and they could constitute effective solutions.

9.25 Different firms have taken a range of approaches. For example, new entrants or small firms can choose to buy research services or data from a third party initially but may develop a dedicated research function as they expand. Some firms such as KPMG and Momentum have chosen to embed their research function within the investment consultant team, with staff both conducting research and providing services to clients.

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[607] Momentum and Spence & Partners.
[608] KPMG response to the Competitive landscape & Barriers to entry and expansion working papers.

KPMG UK – expansion from pensions and professional services[609]

KPMG entered the investment consultancy sector in 2005 as an expansion of its pensions practice. KPMG said that it was not considering offering fiduciary management services to clients as it did not see fiduciary management having any fit with KPMG as an advisory firm. KPMG thought its independence as an advisor was important, especially as KPMG is the auditor of some fiduciary management firms.

KPMG told us that its approach to research was that it did not have a separate manager research team, instead all members of the investment advisory team spent 20 to 25 per cent of their time on research. KPMG believed this model meant that it was better able to communicate the advice it gives to clients. KPMG said that it did not seek to research all asset classes and did not, for example, conduct significant research on hedge funds. Its approach to research was to place more emphasis on finding the right asset class and having the right strategy in place for clients first, before helping clients through the process of selecting a fund manager to manage those assets.

9.26 Examples of the strategies that parties have adopted to develop research capabilities have included:

(a) Momentum told us that it started without a dedicated research team, instead using its consultants to conduct research.[610]

(b) Cardano commented that it needed to make considerable investment in manager research as this is resource-intensive.[611]

9.27 Several parties referred to the ability to buy in data or research services; although this was considered expensive, it was not considered prohibitively so.

[609] Summary of hearing with KPMG held on 14 November 2017.
[610] Summary of hearing with Momentum held on 12 January 2018.
[611] Summary of hearing with Cardano held on 15 November 2017.

Redington (pt. 1) – focusing research efforts[612]

Redington told us that not offering manager research was a significant barrier to its expansion and as a result it introduced its manager research offering during 2013.[613]

Redington's manager research was provided by a team of 15, which it said was one-tenth the size of some large investment consultants. It had consciously adopted this approach to manage the cost of research.

In developing its research function, Redington had chosen not to research the whole universe of managers. It instead developed criteria that would allow it to identify and focus on a smaller set of managers for each asset class. It would then issue a questionnaire to a long-list of firms before choosing those on which it wanted to conduct more detailed due diligence. This approach gave it sufficient breadth of coverage across asset classes whilst allowing it to spend sufficient time on the assessment of each of those managers.

9.28 In response to our working paper, WTW said that a full fiduciary management service needs to be capable of making informed decisions about a wide spectrum of investment opportunities, and needs to be supported by a full research function. Under an investment consultancy model, by contrast, providers have the option of offering 'niche' services that provide advice on certain types of investment, and so do not necessarily need to offer a complete spectrum of research.[614]

9.29 WTW noted that a number of new asset manager entrants in the fiduciary management sector have developed offerings focused on index tracking implementation which requires very low levels of investment.

Regulatory barriers

9.30 FCA regulation applies to the principal activities which are undertaken in the course of providing fiduciary management services, but covers only a more limited scope of the activities undertaken in the course of providing investment consultancy services.

[612] Summary of Hearing with Redington held on 13 November 2017.
[613] Redington response to the barriers to entry and expansion working paper.
[614] WTW response to the barriers to entry and expansion working paper, paragraph 1.6(a).

9.31 The need to comply with regulation and to maintain a compliance function, are likely to impose some cost on firms. Russell Investments, for example, told us that regulatory costs are the biggest barrier to entry for a new fiduciary management firm.[615] However, other firms have not stated that regulatory costs are significant. Aon said that regulatory costs may be greater for fiduciary management operations than investment consultant operations but that many firms which enter the fiduciary management market will already be well-used to regulatory compliance.[616]

Economies of scale

9.32 Our guidelines state that economies of scale in combination with sunk investment costs can constitute a barrier if these relate to the cost of entering or expanding in the market.[617]

9.33 The costs of providing advice (whether by an investment consultancy or fiduciary management firm) appear to be largely scalable as having more clients will generally require additional advisory support. However, fiduciary management provision appears to require a larger fixed cost base for a research function and this does not appear to grow in proportion to the number of clients. We note the cost of research, both in terms of establishing a sizeable research function to cover a suitable range of assets and keeping that research current. Increasing the assets under management for a fiduciary management firm will lead to higher revenue, but not necessarily proportionately higher costs.

9.34 In response to our working paper Russell Investments said its experience was that higher costs and greater economies of scale are achievable for fiduciary management versus investment consultancy but that the current barriers to entry in either market need not be cause for concern.[618]

9.35 Our view is that there are likely to be both higher costs and greater economies of scale in fiduciary management than in investment consultancy, and so greater barriers to a new entrant.

Barriers to expansion – winning clients

9.36 In this section we consider the barriers that firms may experience in winning new clients to expand their business. The extent to which these barriers affect

[615] Summary of hearing with Russell Investments held on 3 November 2017.
[616] Aon response to the Competitive landscape & Barriers to entry and expansion working papers, paragraph 1.8.2.
[617] Guidelines for market investigations: Their role, procedures, assessment and remedies (CC3 (Revised)), paragraphs 211 – 216.
[618] Russell Investments response to the barriers to entry and expansion working paper, paragraph 2.1-2.2.

firms may vary, particularly in relation to any existing client relationship acquired through the provision of other services.

Customer acquisition costs

9.37 Firms will need to incur various costs when competing to win new clients. These will include the cost of marketing and promotional materials, the time cost of staff preparing for and participating in tender processes and potentially a dedicated business development or bid support team.

9.38 The relative cost and importance of these activities will vary by firm and by client. We would expect that where a firm wins a new fiduciary management mandate from an existing investment consultancy client and where no formal tender process has been held, the marginal cost of winning that client would be lower than for other firms. In contrast, a smaller, less-well known firm might need to spend a greater amount of resource in developing a client's awareness of its services and reputation before being invited to participate in a tender process.

9.39 Although there are clearly costs to acquiring a customer, we received no evidence that these costs would be prohibitive in either investment consultancy or fiduciary management.

Brand recognition and reputation

9.40 Brand and reputation appear to be important factors in the ability of an investment consultancy or fiduciary management firm to expand.

9.41 Our analysis of information on fees and quality in chapter 5 identifies barriers that prevent customers from accessing the necessary information to assess value for money in investment consultancy and fiduciary management services. We consider that, as a result of these difficulties, brand and reputation may play an increasingly important role in choice of firm.

9.42 In the investment consultancy and fiduciary management sectors, larger firms are perceived to be more experienced and have greater brand recognition. We have heard from several parties that a pension trustee will often prefer to choose a large, well-recognised brand on the grounds that 'no-one ever got fired for choosing IBM'.[619]

[619] Summary of hearing with Momentum.

9.43 Russell Investments said that this can sometimes result in customers choosing deals which are not necessarily in their best interests or missing opportunities to obtain a better deal elsewhere.[620] Aon said that the IBM effect should not be overplayed and that there are many well-established fiduciary management firms and many more asset managers or investment consultancy providers that have solid reputations and are well-known to trustees. Aon further said that larger, better-resourced schemes may opt for the 'IBM' option but they do that as sophisticated purchasers with demanding requirements and strong countervailing buyer power.[621]

9.44 The extent to which brand recognition acts as a barrier will be determined by the behaviour of trustees when conducting tender processes. The CMA survey found that the median number of fiduciary management providers invited to submit a tender or proposal was three; as was the median number of fiduciary management providers who responded to the invitation.[622]

9.45 Barnett Waddingham told us that for them, the greatest challenge is getting invited to bid for, and subsequently to be awarded, larger contracts. They also said that trustees at the larger pension schemes appear to be more comfortable working with larger investment consultant firms.[623]

9.46 Momentum stated that they recognise that - as a small firm[624] - in order to be awarded new mandates, they had to convince potential clients that size didn't matter, and that the attributes of a smaller firm can sometimes be an advantage. It found that feedback from potential clients who did not award them the mandate was, most often, that the successful firm was a bigger or more experienced firm – and therefore perceived to be a safer option.[625]

9.47 Hymans said that a large brand name can also be associated with more generic less tailored advice, which does not suit all investment consultant advisory customers.[626]

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[620] Russell Investments response to the barriers to entry and expansion working paper, paragraph 3.2.
[621] Aon response to the Competitive landscape & Barriers to entry and expansion working papers, paragraphs 1.10-1.12.
[622] Source: CMA survey, questions L6. 'In total, how many providers did you invite to submit a tender or proposal?' and L8: 'How many tenders or proposals did you receive?'. Estimations are based on the sample of 119 fiduciary management clients who knew the number of fiduciary management providers they invited to submit proposals and the sample of 116 fiduciary management clients who invited proposals and knew how many fiduciary management providers submitted them.
[623] Summary of Hearing with Barnett Waddingham held on 12 December 2017.
[624] Momentum considered that: a small firm would have less than 50 investment staff; a medium sized firm would have between 50 and 200 and a large firm would have over 200 investment staff.
[625] Summary of hearing with Momentum.
[626] Hymans response to the barriers to entry and expansion working paper.

9.48 Russell Investments agreed with the view expressed in our working paper that there was less scope to demonstrate reputation in fiduciary management relative to investment consultancy given the lower number of discrete projects available for fiduciary management.[627]

9.49 Firms in adjacent sectors, such as asset management may be credible alternatives in future as a result of strong brand recognition and investment knowledge and expertise. As some parties have noted (paragraph 9.43 above) fiduciary management firms may have developed strong reputations in adjacent markets.

9.50 Our view is however that the ability to translate this reputation in one market into success in another will vary by the nature of that service and any pre-existing knowledge and commercial relationships of the trustees.

9.51 Recognition in the market place can also have a compounding effect. Once a large tender opportunity is won, a firm is likely to be able to attract further larger schemes to its client base. Redington, whose founding members specialised in risks to pension funds, established itself in 2006 and by 2010 had managed to secure some very large pension schemes as clients.[628]

Redington (pt. 2) – niche advice expanding over time

Redington was established just over ten years ago by two individuals working in the field of pensions risk management in an investment bank.

They established Redington having devised a framework for the intensive management of risk for pension schemes, with a specific focus on inflation and interest rate hedging. The founders felt that inflation and interest rates were the two largest inherent risks to pension funds but had not to that point received sufficient attention.

As a result of its clients being relatively well-hedged Redington believed its clients' performance through the financial crisis of 2008 had strengthened its reputation, allowing it to win larger clients than initially anticipated.

Its core client type was UK defined benefit pension scheme trusts. It initially worked with sponsoring employers, often looking at schemes in parallel to a scheme's own consultant. As the investment consultancy services grew in breadth, it began to tender for pension schemes.

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[627] Russell Investments response to the barriers to entry and expansion working paper, paragraph 3.2.
[628] Large Clients would typically be those with over £1 billion AUA/M.

Redington did not begin to fully expand its research function until some years after it had been established. As the firm developed its research capability to cover the full spectrum of asset classes, it was able to expand into a full-service investment consultancy. Redington told us this expansion allowed it to participate in a wider range of tender processes.

Redington told us that it had successfully won a range of business and believed that brand and trust are both important factors for successful firms in the investment consultancy sector. Redington's view was that, although there are some benefits arising from having scale, being a pure investment consultant firm gives it objectivity and independence.

Incumbency advantage

9.52 In addition to the general importance of reputation, incumbent firms (that is those currently providing any of a range of services to a given client) may experience a particular competitive advantage which potentially acts as a barrier to expansion for other firms.

9.53 In chapter 7, we found that IC-FM firms have a stronger competitive position with their existing advisory clients, compared to other prospective providers of fiduciary management, contributing to an incumbency advantage for IC-FM firms.

9.54 Russell Investments said that they have much less interaction with clients who have an existing relationship with an investment consultant which also provides fiduciary management services.[629] They believed that the most significant barrier to expansion of their fiduciary management activities is that access to clients is restricted due to the presence of IC-FM firms who have a 'trusted adviser' status.[630]

Cardano – international entry with experienced UK individuals

Cardano was established in the Netherlands in 2000 offering a combined investment consultancy and fiduciary management service before it entered the UK in 2007, at which point fiduciary management services were not widely offered by the larger firms. The firm has targeted its services exclusively to pension funds, and typically those schemes which

[629] Summary of hearing with Russell Investments held on 3 November 2017.
[630] Summary of hearing with Russell Investments held on 3 November 2017.

had assets of at least £150 million in fiduciary management and £2 billion in investment consultancy.

The UK firm was established by several experienced investment consultants, each with around 10 to 15 years of experience in the market. Cardano told us this experience brought credibility with it and that personal relationships, developed with prospective clients while working at previous firms, had helped Cardano to be invited to participate in tender processes.

It had however taken Cardano around two years before it tendered for its first full fiduciary management mandate. Cardano had won clients but had not to date replaced an incumbent fiduciary management provider.

9.55 In response to our working paper on barriers to entry and expansion, Redington raised concerns about the frequency with which an investment consultancy mandate held by an IC-FM firm may be replaced with a fiduciary management mandate without consideration being given to opening the existing mandate up to other investment consultancy firms.[631]

9.56 WTW said that an incumbent IC-FM firm may have an advantage for good reason. For example, the features that made a firm’s investment consultancy services attractive to the client will also make its fiduciary management features attractive. WTW gave the example of a client that originally chose WTW to provide its investment consultancy services because of the strength of its research base is also likely to see this as an attractive feature in WTW when selecting a fiduciary management provider.[632]

9.57 In response to our provisional decision report, Mercer said that in a market that is growing rapidly, it is difficult to see how there could be material barriers to expansion. Furthermore, Mercer said that there is third party evidence suggesting that the market shares of providers offering both investment consultancy and fiduciary management are likely to fall materially in the future as a result of factors such as market entry from asset management firms and an increased use of open tenders. Mercer concluded that there will be opportunities for smaller players to expand their position in fiduciary management, provided they offer a good service in a highly competitive market. [633]

9.58 Overall, as set out in chapter 7, we found that IC-FM firms steering customers towards their own fiduciary management service and low engagement by

[631] Redington response to the barriers to entry and expansion working paper.
[632] WTW response to the barriers to entry and expansion working paper, para 1.11(b).
[633] Mercer response to the provisional decision report, para 2.21 – 2,22.

trustees when first buying fiduciary management contribute to an incumbency advantage for IC-FM firms. This is likely to increase barriers to expansion in fiduciary management.

IC-FM firms have an incumbency advantage which is likely to increase barriers to expansion in fiduciary management.

Opportunities to participate in tender processes

9.59 The opportunity for investment consultancy and fiduciary management providers to bid for a tender can arise in two ways;

(a) firms may tender for services to ‘test’ the market against the incumbent investment consultancy or fiduciary management provider, with a view to potentially switching provider; or

(b) when procuring a service for the first time. The duration of any mandate is not usually fixed. It will vary from client to client, though Russell Investments and BBS told us that fiduciary management and investment consultancy appointments last for at least three to five years.[634,635] This is of particular relevance for fiduciary management.

9.60 As set out in chapter 6 switching rates are higher in investment consultancy than fiduciary management. But it is difficult to assess switching in fiduciary management as this is a relatively new market and so it may in practice be too soon for many schemes to have switched.

9.61 Table 9 below sets out the combined number of fiduciary management and investment consultancy tender processes that firms have participated in in the last three years. For the 21 firms for which we hold data, there is significant variation in the number of tender processes that the firms participated in. These ranged from fewer than ten to over 400.

Table 9: Fiduciary management and investment consultancy tender process participation in the last three years (in alphabetical order)

Firm	*Number of tenders*	*Firm*	*Number of tenders*
Aon	[✂]	KPMG	[✂]
Barnett Waddingham	[✂]	LCP	[✂]

634 Summary of hearing with Russell Investments. Russell Investments referred to fiduciary management.
635 Summary of hearing with BBS held on 7 November 2017, BBS referred to investment consultancy contracts ‘New contracts tend to be for a for a three to five-year timeframe. BBS stated that they had a duty to remind clients that they should regularly review their performance’.

Firm	*Number of tenders*	*Firm*	*Number of tenders*
BlackRock	[✂]	Mercer	[✂]
Cambridge Associates	[✂]	Redington	[✂]
Capita	[✂]	River & Mercantile	[✂]
Cardano	[✂]	Schroders	[✂]
Charles Stanley	[✂]	SEI Investments	[✂]
First Actuarial	[✂]	Spence & Partners	[✂]
Hymans	[✂]	WTW	[✂]
JLT	[✂]	Xafinity	[✂]
Kempen	[✂]		

Source: CMA Analysis, Parties' Data, listed in alphabetical order.

9.62 Our dataset does not allow us to identify whether a given tender process related to investment consultancy or fiduciary management services, nor the scale or scope of the engagement. It does however indicate that although firms may have opportunity to participate, it is the largest firms that participate most frequently.

9.63 The cost of bidding for tenders is not seen to be prohibitive to entry by parties but a firm's rate of expansion may be affected by its ability to finance and afford staff time in participating in multiple tenders. For fiduciary management mandates, the selection process could take up to a year and therefore the costs incurred may be considerable.[636] For smaller firms there will necessarily be greater restrictions on the number of tender processes that firms have the capacity to engage in.

9.64 Hymans said that the cost of participating in a tender is high relative to the revenues earned. Therefore, Hymans sought to participate in those which were driven by a need for change and the prospect of a long-term relationship, rather than simply for due diligence purposes where the client is entirely satisfied with the incumbent.[637]

9.65 Russell Investments said that the number of fiduciary management contracts being tendered had been growing in recent years.[638]

9.66 As more firms choose to adopt fiduciary management services, the number of opportunities to win a contract and the associated revenues available may also increase.

9.67 Our view is that the number of tenders that firms have participated in varies significantly. We are not in a position to ascertain the success rate in tenders for a given service. However, the number of tenders and the fact that the

[636] Summary of hearing with Punter Southall held on 23 November 2017.
[637] Summary of hearing with Hymans held on 15 November 2017.
[638] Summary of hearing with Russell Investments.

largest firms participate most frequently, are broadly consistent with our understanding of market shares.

9.68 WTW said in response to our working paper that tender success rates should be the focus of our analysis instead of the rate of participation in tenders.[639] We agree with WTW that the success rate is an important aspect of competition but consider that understanding the ability of firms to compete requires analysis of the opportunity to tender. WTW also said that there are stronger opportunities for new entrants to establish themselves and grow their client base in fiduciary management as a result of the growth of the market.[640]

Switching rates and costs

9.69 A further potential barrier to expansion is the rate of switching by clients with incumbent providers and the costs incurred in switching. The impact of this will, however, depend on the overall level of uptake of a given service in a market. Chapter 6 on trustee engagement sets out relevant evidence and indicators of engagement and switching costs in more detail.

9.70 In investment consultancy we found that average switching rates of 27% do not raise major concerns, although levels of switching vary considerably by type and size of scheme. Equally we do not consider that there are material costs or barriers to switching investment consultant.

9.71 In fiduciary management it is difficult to assess switching rates as this is a relatively new market, however we have found that there are material barriers to switching fiduciary manager (due to the time it takes and significant costs which can be incurred).

9.72 Hymans said that switching costs in fiduciary management will increasingly be a barrier in future for large DC schemes and especially if they have different DC admin providers.[641] Within DC, it said that there would be additional barriers to switching relating to any pre-retirement strategy developed by a fiduciary management provider.[642]

[639] WTW response to the barriers to entry and expansion working paper, paragraph 1.12.
[640] WTW response to the barriers to entry and expansion working paper, paragraph 1.3(b).
[641] Hymans response to the barriers to entry and expansion working paper.
[642] Should a scheme decide to switch to another fiduciary management provider or back to an investment consultancy provider, [✄]. These types of challenges and decisions are likely to lead to fewer decisions to switch fiduciary management provider within DC.

Perceptions of conflicts of interest and benefits of bundling

9.73 There are some potential barriers which may act in opposite directions depending on client preference. We note the potential tension between the perception of any potential conflict of interest arising from offering both investment consultancy and fiduciary management and the potential benefits of offering multiple, possibly bundled, services.

9.74 For example, some parties[643] believe that their clients prefer that they do not offer fiduciary management in addition to their investment consultancy service, as this reduces the conflict of interest possibility. This could then limit a firm's willingness to expand into fiduciary management services, given the potential conflicts associated with offering both investment consultancy and fiduciary management services to a client.

9.75 KPMG said[644] that it was not considering offering fiduciary management services to clients as it did not see fiduciary management having any fit with KMPG as an advisory firm. KMPG said that its independence as an advisor was important, especially as KPMG is the auditor of some fiduciary management firms.

9.76 Several firms offer a range of service lines to clients which allow bundles of services to be purchased from the same provider, either incrementally or at the same time. Some firms, such as SEI offer an integrated IC-FM service whereas many firms providing both investment consultancy and fiduciary management to a client have separate agreements in place for each service.

9.77 Any client-perceived benefit of obtaining multiple services from the same firm could however act as a barrier to expansion. First, firms which do not offer multiple services may find themselves at a competitive disadvantage in tenders. Second, the costs of entry to multiple service lines will be greater and expansion may be slower than for established multi-service line firms. Third, where clients have a preference for buying multiple services from the same firm, the aggregate switching cost will likely be greater than the switching cost of any given services.

9.78 Parties provided views on the preferences of trustees in relation to bundling or the potential ability to purchase multiple services:

(a) Russell Investments said that the ability to provide multiple services or a 'one-stop shop' was not a particularly significant barrier to expansion. It

[643] Momentum and Punter Southall.
[644] Summary of hearing with KPMG held on 14 November 2017.

found in many cases that clients prefer to keep separate providers in order to reduce the perceived conflict of interest. However, where providers have pre-existing relationships with clients, it can influence the client's decision to expand the relationship across other service lines.[645]

(b) LCP said that clients can value the independence of investment consultancy only providers but that this was not a barrier for IC-FM firms winning business.[646]

(c) Hymans noted that bundling would attract schemes according to size and position in their lifecycle. For example, smaller schemes and mature schemes and those in run-off would perceive greater benefit from bundling or overlap of service provision (including investment, actuarial and administration services).[647]

(d) Aon said that trustees value and encourage the additional options that are available to them by being able to purchase both investment consultancy and fiduciary management services from a single firm.[648]

(e) JLT said that its experience was that fiduciary management is often seen by clients as merely an extension of investment consultancy, enabling efficient implementation of the preferred investment managers, and for clients using trigger based de-risking strategies, the rapid implementation of pre-agreed strategic changes.[649]

Conclusions

9.79 Our finding is that barriers to market entry in investment consultancy or fiduciary management are not high.

(a) There are over 37 firms providing investment consultancy services and at least 17 providing fiduciary management services in the UK.

(b) Firms have used a range of entry strategies including vertical and horizontal expansion, and expansion into the UK from overseas.

(c) Firms can choose to enter by focusing on particular client types, asset classes or strategic advice.

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645 Russell Investments said that in its view the ability to provide multiple services under one roof was largely separate from the issue of incumbency in terms of competitive advantage. Russell Investments response to the barriers to entry and expansion working paper.
646 LCP response to the barriers to entry and expansion working paper.
647 Hymans response to the barriers to entry and expansion working paper.
648 Aon response to the Competitive landscape & Barriers to entry and expansion working papers, para 3.6
649 JLT response to the barriers to entry and expansion working paper.

9.80 There may be some greater barriers to entry in fiduciary management; in particular there are likely to be both higher costs and greater economies of scale. We have not however assessed these quantitatively.

9.81 We find that barriers to winning clients are greater than those of setting-up a new firm or service line, particularly in fiduciary management.

(a) The importance of reputation means that while new entrants can and do win clients, increasing a firm's client base may take time.

(b) IC-FM firms with an established investment consultancy client base have an incumbency advantage in winning new fiduciary management clients, as explored further in chapter 7.

(c) There are material barriers to switching fiduciary manager.

10. Market outcomes

Our main findings

- Some outcomes indicate that aspects of the investment consultancy and fiduciary management markets function well. Trustees generally are satisfied with their providers, providers can achieve significant discounts from asset managers for their customers, and asset allocation advice appears to be tailored and may have added value in recent years through the hedging of interest rate risks.
- However, we have found that these markets do not function well in other ways, and that the issues of low customer engagement and difficulties accessing information we identified in previous sections are resulting in worse outcomes for some customers. In particular:
    - In fiduciary management, we found evidence that less engaged trustees (defined as those that did not run a formal tender) pay significantly higher prices than more engaged schemes, when they remained with their existing investment consultant. There is some evidence that less engaged schemes in investment consultancy pay more too.
    - Less engaged schemes are likely to receive lower discounts from asset managers negotiated by their investment consultant.
    - Less engaged customers in some cases receive a lower quality of service, for example a less experienced consultancy team.
    - There is evidence that investment consultancy firms with above average quality have persistently lower market shares.
- Our quantitative analysis of investment consultants' recommended asset manager products found little evidence that these products collectively outperform benchmarks net of fees. However, they do appear to outperform on a gross of fees basis. Therefore, the evidence does not demonstrate, one way or the other, whether providers collectively add value through this service, though some individual firms may do so.
- We found that the aggregate net profit margin for investment consultancy and fiduciary management combined was [20% - 30%]. We have not undertaken an economic assessment of profitability.

10.1 In this chapter we consider whether customers are getting good outcomes from the investment consultancy and fiduciary management markets, both in terms of prices and several aspects of quality.

10.2 Assessing outcomes in these markets is complicated because there are many different aspects to quality, such as asset allocation and discounts obtained on asset manager fees, and several of these are very difficult to measure. Investment consultancy services in particular are differentiated, with customers purchasing different ranges of services, meaning that it is difficult to compare outcomes across schemes.

10.3 As a result, a fully comprehensive assessment of market outcomes is not feasible. We have therefore considered a range of key indicators, with a particular focus on prices, though we have also examined various elements of quality.[650] In undertaking this assessment, we consider whether some of the issues identified in previous sections, in particular low trustee engagement, are leading to some customers receiving worse market outcomes than others.

10.4 This chapter is structured as follows.

(a) First, we present our assessment of prices, including a detailed analysis of whether more engaged schemes get lower prices than less engaged schemes.

(b) Second, we present our assessment of quality, which includes:

(i) providers' impact on schemes' asset management costs.

(ii) the quality of individual services, in particular asset allocation and manager recommendations.

(iii) evidence in relation to overall scheme-level performance; and

(iv) other broader parameters, such as satisfaction and quality of service.

(c) Third, we consider indicators of profitability for these markets.

(d) Finally, we present our conclusions.

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[650] A number of parties expressed concern that focussing on price, to the exclusion of other outcomes was not appropriate (see Appendix 6). As noted above we have also looked at other factors, however we have focussed on price as this is a meaningful metric and one which can be more easily measured than quality.

10.5 Further details of our analysis of each topic can be found in Appendices 2, 5, 6 and 7.

Price outcomes

10.6 Here, we set out our analysis of investment consultancy and fiduciary management fees and prices.[651]

10.7 We have focussed our analysis on the extent to which providers charge customers different prices for a similar level of service. Significant variation in prices could mean that some customers are receiving worse value for money than others. This could indicate that the market is not working well in terms of its outcomes, if the reason some customers receive worse value for money is linked to aspects of the market which prevent, restrict or distort competition.[652]

10.8 Indeed, we have concluded in chapters 5, 6 and 7 that there are various aspects of these markets which are impacting competition. In particular, we identified that some schemes have low levels of engagement in these markets. In this section we have therefore analysed whether customers who are less engaged pay more. As in earlier sections, we use the term 'engagement' to refer to customers' willingness and ability to access information, assess offers and act to secure the best value deals.[653]

10.9 Our analysis in this section is structured as follows.

- *(a)* First, we set out some context on the importance of investment consultancy and fiduciary management fees, in particular by reference to asset management fees.
- *(b)* Second, we outline our qualitative assessment on whether providers give some customers, particularly engaged customers, a better deal.
- *(c)* Third, we summarise our quantitative analysis on whether there is any variation in fees or prices and links between the level of engagement and prices.

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[651] We generally use the term 'fees' to mean the total amount paid by schemes. Following industry practice however, we sometimes use the term 'fees' to describe the total amount paid expressed as a percentage of AUM. Whenever we refer to 'prices' we mean the total amount paid per hour of the provider's time (in IC) or the total amount paid per unit of AUM (in fiduciary management).
[652] In its market investigation reports, the CMA uses the term 'a well-functioning market' in the sense, generally, of a market without features causing an AEC, rather than to dente an idealized, perfectly competitive market (CC3 (Revised), paragraph 30).
[653] The access, assess, act framework is set out in our guidance in reference to customers getting a better deal when they are willing and able to 'access information about the various offers available in the market; assess these offers to identify the …service that provides the best value for them; and act on this assessment [for example] by switching to purchasing the good or service from their preferred supplier'; CC3 Revised, paragraph 296.

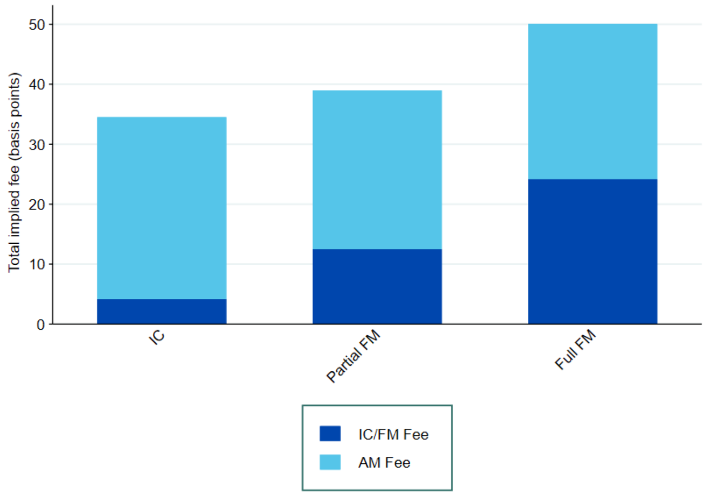
Context on fee levels

Fees for investment consultancy and fiduciary management together cost schemes around £591 million every year.

10.10 In chapter 4, we found that investment consultancy and fiduciary management fees together cost pension schemes as a whole around £591 million in 2017. Together with asset manager fees, schemes pay well in excess of a billion pounds every year in investment-related fees.[654,655] Investment consultancy and fiduciary management fees are therefore material.

10.11 It is common practice to express fees in basis points, that is as a percentage of assets under management, multiplied by 100. We show in the chart below an estimate of the average breakdown between investment consultancy/fiduciary management fees and asset management fees.[656]

Figure 20: Median investment consultancy/fiduciary management fees and asset management fees by service



Source: CMA Analysis, Parties' data[657]

[654] In our dataset which covers only a subset of schemes at a limited number of providers and drops potential outliers (which are mostly on the right tail of the distribution), we find that asset management fees exceed £669 million. This is likely to be a significant underestimate.
[655] According to a TPR survey conducted in 2013, investment costs constitute an average of about 20% of the running costs for most DB schemes (and constituting the highest cost category, except for administration). Source: TPR DB Scheme Costs Research 2013. We have not quoted the figure for 'very large' pension schemes as it is out of line with others and may not be representative.
[656] That is, as a percentage of schemes' assets multiplied by one hundred.
[657] In this chapter, we draw on parties' data which contains information on the large majority of their pension scheme customers. Our primary dataset is described in Appendix 5 however for statistics relating to asset management pricing we also draw on a secondary dataset described in Appendix 6.

10.12 Figure 20 shows that investment consultancy fees are, on average, approximately one tenth of a pension scheme's combined investment consultancy and asset management costs. By contrast, fiduciary management fees constitute around half of combined fiduciary management and asset management costs.[658] Median fiduciary management fees are around five times higher than median investment consulting fees.

10.13 Asset management fees are also significant, and are influenced by investment consultancy and fiduciary management firms through negotiation. Our analysis of asset management discounts is set out in our assessment of quality further below.

Qualitative analysis of pricing

10.14 We have analysed parties' responses and their internal documents to understand whether they monitor levels of customer engagement, whether price and service factors are personalised to individual schemes, and whether this is driven by customer engagement.

10.15 Providers generally told us that their fee levels varied between schemes. They also appeared prepared to negotiate on fees in order to secure appointments and will revisit fees for existing schemes. In addition, one provider told us they monitored trustees' satisfaction at least in part to 'provide more pre-emptive action where a client appears at risk'.[659]

10.16 This is consistent with evidence from internal documents, which is set out in more detail in Appendix 6. It appears from these documents that several providers carefully monitor their existing customers, and record information on who they consider to be 'at risk' of switching provider.[660] This process also appears to be linked to firm-led negotiations on fees, targeted improvements in service quality, and other efforts to improve outcomes for such customers. There were references in the documents to concerns that otherwise these customers would switch.

10.17 In addition to improving customers' initial terms through more effective negotiations, engagement also appeared to be a key reason why schemes

[658] Whilst schemes that use fiduciary management services appear to pay more overall, the data is not fully comparable because implementation costs (as well as potentially other bundled service costs) are included in the fiduciary management fee but not in the investment consultancy fee: these services would be purchased separately or at least split out from the investment consultancy fee. Further, we note that the average analysis above indicates that asset management costs are *lower* in fiduciary management, which may indicate an ability to offset these fees.
[659] [✂] response to the market information request, paragraph 56.
[660] In a more general way, investment consultants and fiduciary managers told us that they undertake client surveys and interview processes in order to understand trustees' perceptions of the service qualities and value for money that they are receiving. Some parties conduct these anonymously, others in an attributable way.

would be considered ‘at risk’ by firms. Improvements in terms appeared to be linked to the ‘at risk’ registers. This also implies that customers which are less engaged may receive comparatively less favourable outcomes.

10.18 Parties’ disputed the inference we drew from the above documents. Aon and Mercer said that the small number of documents and firms involved raised doubts about their broader applicability.[661] Mercer told us, amongst other points, that the evidence was consistent with highly competitive markets, and that improvements driven by the most engaged clients are shared by a wider group.[662]

10.19 We have addressed these comments in full in Appendix 6. In summary, while this documentary evidence is not exhaustive we nonetheless consider that it is illustrative of market practices. It demonstrates that more engaged schemes can and do obtain better outcomes than less engaged schemes. Whilst this is not problematic in itself, as set out in chapters 5, 6 and 7 we have found that there are some issues in these markets that are inhibiting engagement and the ability for customers to assess value for money.

10.20 In addition to the documentary evidence above, we have also received statements from Parties which indicate that engaging in the market (eg through tendering) can result in lower fees:

(a) XPS said that they had plenty of examples of pension schemes receiving a poor outcome as a result of not going through a competitive tender. XPS described examples where they had seen reductions of up to 50% as a result of tendering; they expanded on this saying that these cases were not in isolation and that a reduction of around 25% is common.[663]

(b) EY submitted that they concur that pension schemes which have undertaken formal tenders have benefitted from lower fiduciary management fees, but recognise that all investment costs should be considered rather than fiduciary managers’ fees alone.[664] They state that running an exercise that introduces competitive tension into the process often results in a lowering of the fiduciary management fee. They additionally identify a set of non-price parameters in relation to investment and operational risk management which providers could improve in response to a tender, noting that these are very important.

[661] Aon’s response to the Gains from Engagement Working Paper, p9-10
[662] Mercer’s response to the Gains from Engagement Working Paper, paragraph 3.6.
[663] XPS response hearing summary
[664] EY Response to the Market outcomes: updated results working paper

(c) In submissions on the remedies package in the provisional decision report, most responses noted that they would expect tendering to be beneficial and for the most part either endorsed mandatory tendering (to varying degrees) or supported the implementation of guidance which supports tendering. The commonality of the view among so many respondents that tendering can be beneficial is a matter to which we have given some weight in assessing whether tenders (as a means of engagement) are expected to lead to gains in terms of price and/or quality of service.

Quantitative analysis of pricing

10.21 We have also conducted more detailed quantitative analysis to understand whether there is a link between customer engagement and price levels.[665]

10.22 Specifically, for both investment consultancy and fiduciary management we examined data on the amount schemes paid for these services and analysed whether this is related to whether schemes ran a formal tender. For fiduciary management we also compared outcomes for those schemes which stayed with their existing investment consultant ('Internally Acquired') to schemes that moved to a different provider ('Externally Acquired').

10.23 We acknowledge that engagement is a matter of degree, and that a binary measurement will not be a perfect proxy for engagement as there are other aspects of engagement which it is not possible to measure. Nevertheless, our view is that schemes which have undertaken a formal tender are more likely to have higher engagement levels than schemes which have not. We therefore refer to schemes which have undertaken a formal tender as 'more engaged' in what follows.

10.24 In response to comments on the provisional decision report, we made some changes to the underlying dataset used to conduct this analysis. These changes can broadly be classified as follows:

(a) The status of some customers has changed, with some customers being reclassified as 'engaged' (having previously been classified as 'disengaged'), and some customers being reclassified as 'Internally Acquired' (having previously been classified as 'Externally Acquired').

(b) The number of firms included in the analysis has been increased. For the fiduciary management analysis, we have processed the relevant data of

[665] This analysis is based on client-level data collected from parties. The analysis is primarily based on 2016 data, although the 'FM transition' analysis relies on data over 2011-2016.

an additional IC-FM provider, enabling us to include this provider in the analysis. We have also expanded the dataset to include 4 fiduciary management-only providers.

(c) Some technical issues were raised regarding the dataset and coding, which we have addressed on a case-by-case basis.

10.25 We have also updated our analysis to focus on the effect of formal tendering as our sole indicator of engagement.[666]

10.26 All of these changes were incorporated into an updated working paper on market outcomes that was published in October 2018.[667] Following publication of this analysis, we operated a confidentiality ring and published responses from parties.[668]

10.27 Our analysis is set out in full in Appendix 5, and we summarise the key points here.

Investment consultancy analysis

10.28 We assessed the variation in 2016 investment consultancy prices across clients. We compute 'price' as the total spend per hour of advice received from the investment consultancy provider, which reflects a very common charging structure.

10.29 To account in part for some key confounding factors, we split schemes into sub groups depending on their size and whether they purchase liability hedging advice.[669] Within each category we compared the median price between more engaged (blue) and less engaged (orange) schemes. This is shown in Figure 21 below.

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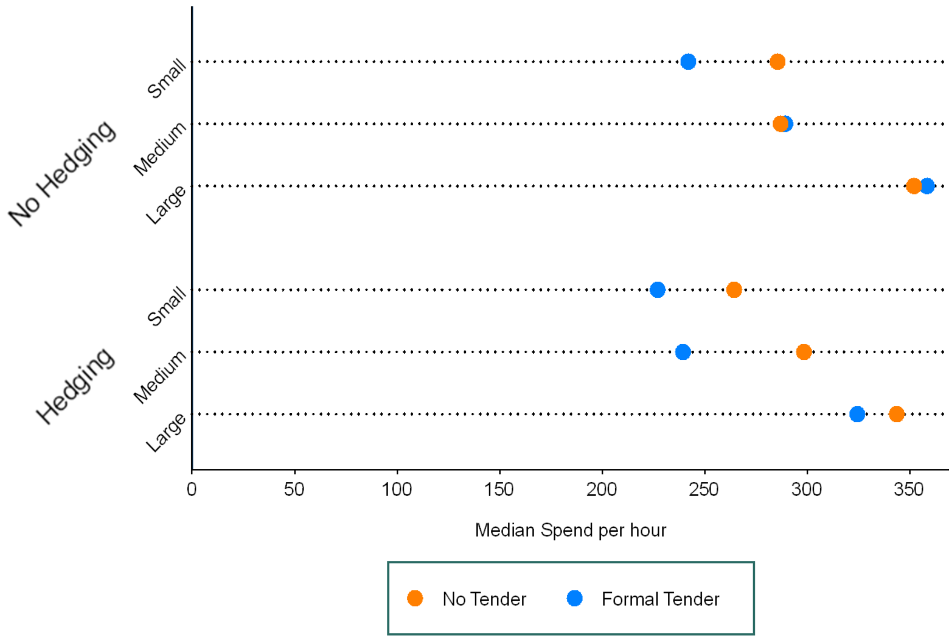
[666] In the provisional decision report we examined a broader measure of engagement, defined as running a formal tender and/or using a TPE and/or having a professional trustee. In Table 26, Appendix 5, of the provisional decision report we presented results of the 'FM Static analysis' when these three indicators were examined separately. We note that only the indicator for formal tendering was statistically significant.
[667] Updated working paper on market outcomes.
[668] Responses to updated working paper on market outcomes.
[669] Schemes with less than £100 million in AUM are categorised as 'Small'; schemes with AUM of £100 million to £1 billion are categorised as 'Medium'; and schemes with AUM of over £1 billion are categorised as 'Large'. Bespoke liability hedging is an optional service which requires significant provider input and therefore adds cost.

Figure 21: Median investment consultancy prices split by engagement



Source: CMA Analysis; Parties Data

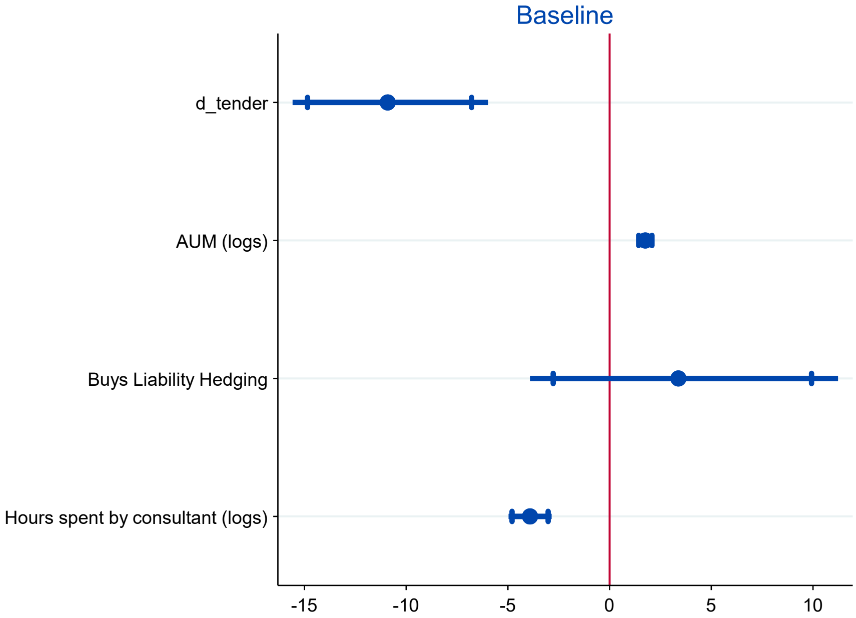
10.30 Figure 21 indicates that, in four of the six customer groups, more engaged schemes pay less than schemes which are less engaged and that in the two others engaged schemes pay marginally more.

10.31 However, this analysis does not account for potentially confounding factors or tell us whether the results are statistically significant. We therefore conducted a regression analysis.[670] Our baseline model controls for size; the purchase of bespoke liability hedging; and the number of hours purchased.

10.32 In Figure 22, each horizontal line is a different variable we have entered into the model, and the horizontal position of the solid blue dot relative to the red vertical line indicates the magnitude and direction of the effect. The 95% confidence interval around each blue dot is shown by the solid blue lines, and the 90% interval by the blue tick-marks on that line.

[670] We restrict our regression to only those who purchase strategic asset allocation and manager recommendations to rule out cases of project work from our analysis, which might be incomparable with retained work.

Figure 22: Baseline investment consultancy regression specification



Source: CMA Analysis, Parties' data

10.33 Looking at the first line, the chart shows that more engaged schemes pay around 12% less per hour than less engaged schemes. This result is robust to the inclusion of additional control variables and changes in the specification (Appendix 5).

10.34 When we control for average price differences between different investment consultants however, using 'provider fixed effects', this effect becomes statistically insignificant (Appendix 5). Intuitively, this means that when we compare schemes that use the *same* provider, we do not find evidence that engaged schemes pay lower prices.

10.35 We therefore find evidence of gains from engagement when looking across all schemes, but not when comparing schemes that use the same provider. This could indicate that more engaged customers select cheaper firms.

10.36 There is therefore evidence that schemes which are more engaged pay lower prices in investment consultancy. Specifically, we find evidence of gains from engagement across, but not within, providers.

There is some evidence that less engaged schemes in investment consultancy pay higher prices than more engaged schemes.

Fiduciary management analysis

10.37 We have undertaken a more in-depth assessment of pricing in fiduciary management. Full details are provided in Appendix 5.

10.38 We have conducted two different assessments which we address in turn:

(a) a 'static' approach, which compares the *level* of prices across schemes depending on whether they are engaged, as we did above for investment consultancy; and

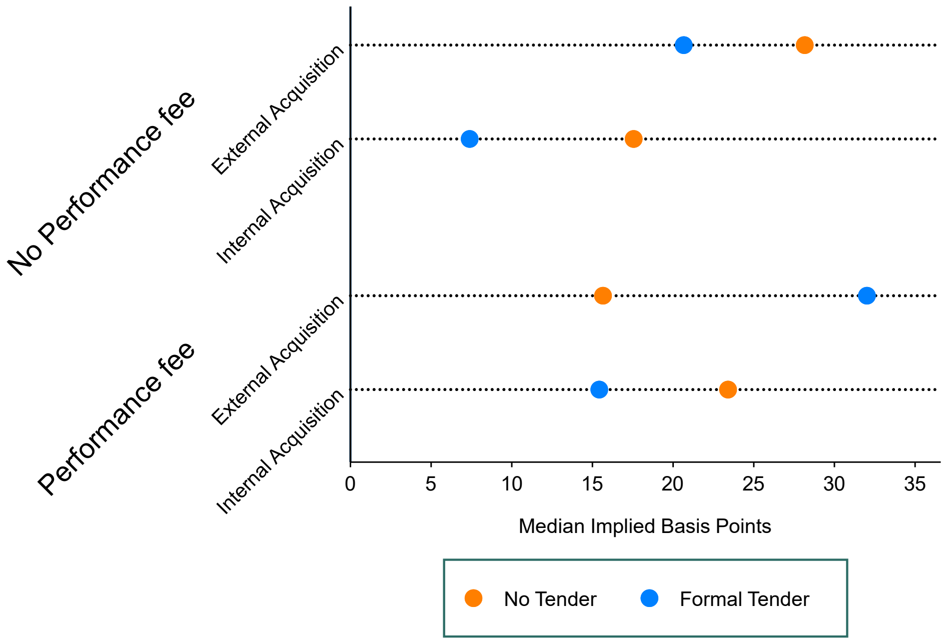
(b) a 'transition' approach, which assesses the *change* in prices when schemes moved into fiduciary management with their existing provider of investment consultancy, depending on whether they are engaged.

'Static' approach

10.39 We calculated prices as the spend of each client per unit of assets under management, which reflects the most common charging structure for fiduciary management clients.

10.40 A simple comparison of the prices paid by schemes that tendered and those that did not is presented in Figure 23. We distinguish between Internally Acquired and Externally Acquired clients, and whether the scheme uses performance fees. It is important to account for the use of performance fees as they could have a material impact on the overall fee paid, and the determinants of the overall fee may be different when performance fees are used.

Figure 23: Fiduciary management prices split by engagement



Source: CMA analysis, Parties' data

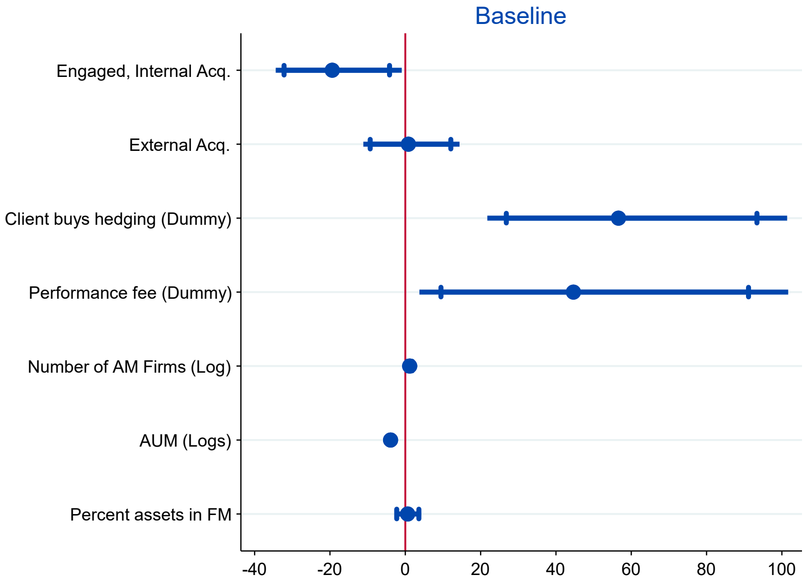
10.41 Figure 23 indicates that, amongst Internally Acquired clients, more engaged schemes (on average) pay lower prices than less engaged schemes irrespective of performance fees. In respect of Externally Acquired schemes, the evidence is more mixed. More engaged schemes pay lower fees than less engaged schemes if they do not use performance fees, but pay *higher* fees if they do use performance fees.

10.42 Our view is that performance fees add 'noise' (ie random variation) into the data which it is difficult to fully control for. For example, a scheme that had strong investment performance in a particular year will pay higher fees than an otherwise equivalent scheme that had weaker investment performance. This variation can make it more difficult to identify the true impact of engagement and other potentially relevant variables on the overall fee paid. We have therefore run some regression models (presented in Appendix 5) which exclude schemes that use performance fees.

10.43 Our regression model extends the simple analysis above by controlling for other potentially important determinants of the overall fee paid. Our key test is whether (i) engaged Internally Acquired schemes, and/or (ii) Externally Acquired schemes, pay lower fees than Internally Acquired schemes that are less engaged. We control for a range of confounding factors including (but not limited to) whether the client buys hedging, whether the scheme has a performance fee, scheme AUM, the number of asset managers used by the client (as a proxy for the complexity of investments), and the proportion of assets delegated to the fiduciary manager.

10.44 The results of our main specification are displayed in Figure 24 below. For each row the blue dot represents the percentage impact of this factor on prices, as measured on the horizontal axis. The blue lines represent the confidence interval around these estimates at both the 90% (tick-marks) and 95% (full line) levels.

Figure 24: Fiduciary management pricing regression



Source: CMA Analysis, Parties' Data

10.45 Looking at the first row, the figure shows that Internally Acquired schemes who are more engaged pay around 20% less than Internally Acquired schemes who are less engaged. The fact that this whole blue line is below zero demonstrates that this effect is statistically significant.[671]

In fiduciary management, more engaged schemes pay around 20% less than less engaged schemes, when they remained with their existing investment consultant.

10.46 Looking at the second row, Externally Acquired schemes do not pay significantly lower fees than Internally Acquired schemes that are less engaged (ie did not run a formal tender). In relation to this point, Aon submitted that our analysis shows that when moving from investment

[671] Note that we measure both Internally Acquired and engaged schemes, and Externally Acquired schemes, relative to Internally Acquired, less engaged schemes.

consultancy to fiduciary management with the same provider, trustees are either better off (or at least not worse off) than if they switched to another provider. This is because 'disengaged' trustees that stay with the same provider do not pay more than those who switch to another provider.[672]

10.47 We acknowledge that the results above do not indicate that schemes which switched provider (ie Externally Acquired schemes) pay lower fees than those that did not (ie Internally Acquired schemes). However, we are cautious in interpreting this result for the following reasons:

(a) Our model tests whether there are differences in the fees paid by different types of schemes to the *same provider*. By definition, Externally Acquired schemes switched from another provider, therefore we do not know what fee they would have paid had they not switched. They may or may not have achieved lower fees by changing provider.

(b) Related to this point, we find that many of the 'provider fixed effects' in our model are statistically significant.[673] This means that on average, some providers charge a higher price than others, controlling for scheme characteristics. It is therefore likely that some schemes would benefit from switching provider.

10.48 In its response to our updated working paper on market outcomes, Mercer stated that on the basis of the CMA's data, trustees do not achieve materially lower average prices if they run a formal tender.[674] It submitted that there is no statistically significant difference in fiduciary management price linked to a formal tender compared to other ways of engaging and challenging fiduciary management prices.

10.49 We agree that we do not find a statistically significant effect of tendering on prices when we do not distinguish between Internally Acquired and Externally Acquired schemes.[675] We interpret our results carefully with this point in mind – ie our evidence indicates that tendering lowers prices amongst Internally Acquired schemes only.

10.50 In our view it is relevant to make this distinction however. First, for the reasons outlined in chapter 7, we are particularly interested in outcomes for 'disengaged' schemes that stayed with their existing provider of investment consultancy services.

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[672] Aon response to the updated working paper on market outcomes.
[673] These are not presented in figure 24 for brevity and confidentiality.
[674] Mercer response to the updated working paper on market outcomes.
[675] This result is presented in Appendix 5.

10.51 Second, the distinction between Internally Acquired and Externally Acquired schemes allows more flexibility in the model; in general we find different effects of tendering for the two sets of schemes. Further, it is difficult to interpret the results of the model for Externally Acquired schemes, as we do not know what the appropriate counterfactual is for such schemes (see paragraph 10.45). It is therefore meaningful to allow the effect of tendering to vary for the two different types of scheme.

10.52 The estimated impact on fees of the other control variables set out in Figure 24 are consistent with what we might expect. For example, customers who buy hedging services pay more, schemes with performance fees pay more, and larger schemes pay less (per unit of AUM). This gives us additional confidence that the regression is capturing the main factors that affect pricing, and that the estimates it provides are reliable.

10.53 Some parties said that our econometric approach should undertake a different comparison; should introduce more control variables or was not robust to some specifications. We respond to these points in Appendix 5.

10.54 We have checked the robustness of these results to a large range of sensitivities in the control variables, data, and model specification. Whilst there was some variation in the exact effects shown across the sensitivities, the price difference between more engaged and less engaged schemes was fairly robust.

10.55 Overall this analysis shows that when schemes go into fiduciary management with their existing investment consultant, those that are more engaged pay less on average than schemes which are less engaged.

‘Transition’ analysis

10.56 Fees for fiduciary management are higher than those for investment consultancy because the former involves more services being provided. Schemes in full fiduciary management on average spend about five times as much as those in investment consultancy.[676]

10.57 In light of this, we have undertaken an additional analysis of these price increases for schemes entering fiduciary management with their existing provider. We have analysed whether those which were more engaged saw their fees increase less than those which were less engaged.[677] The

[676] For DB schemes only. See Figure 20.
[677] Due to data limitations we were not in a position to analyse price changes for schemes which moved into fiduciary management with a provider other than their investment consultancy provider.

advantage of this approach is that it allows us to control implicitly for other factors that may affect the amount that schemes pay, such as the complexity of their investments. Whilst the sample size is smaller, this analysis therefore provides an important check on our static analysis.

10.58 We used a regression analysis to control for other factors. We found that more engaged schemes had prices increases which on average were over 30% lower than the price increases of less engaged schemes. We have responded in detail to Parties' comments on this analysis in Appendix 5.

10.59 Having undertaken two sets of analysis on fees in fiduciary management, our view is that the results from both pieces of analysis demonstrate gains from engagement in terms of price in fiduciary management. We also note that the two pieces of analysis are broadly consistent with each other and with qualitative evidence received from some parties (paragraph 10.20).

Conclusions on price outcomes

10.60 Our conclusions from this work are that schemes of similar types pay very different fees in both investment consultancy and fiduciary management.

10.61 In investment consultancy, there is some evidence that more engaged schemes pay lower prices than less engaged schemes.

10.62 In fiduciary management, there is evidence that more engaged schemes pay lower prices than less engaged schemes, when they remained with their existing investment consultant.

Quality outcomes

10.63 The CMA survey showed that quality is also an important aspect of investment consultancy and fiduciary management services. This ranges from the effectiveness of investment advice, to the extent to which firms aid trustees in executing their duties.[678]

10.64 In the rest of this section we therefore assess investment consultants and fiduciary managers in terms of:

(a) Their effectiveness in negotiating discounts from asset managers.

(b) The quality of their investment advice, including both asset allocation and manager recommendations.

[678] CMA analysis of CMA survey questions C1 and K1.

(c) Their overall quality of service, including less tangible measures of quality such as satisfaction.

Investment consultancy and fiduciary management impact on asset management fees

10.65 In addition to investment consultancy and fiduciary management fees, another important cost for schemes is asset management fees.[679]

10.66 These costs are impacted by investment consultancy and fiduciary management providers in several ways, most importantly through the negotiation of discounts with asset management firms on behalf of customers. This is often achieved in part by aggregating together their clients' assets, particularly in fiduciary management. Moreover, in some cases, investment consultancy or fiduciary management providers make claims to clients about the discounts they are able to achieve.

10.67 We have therefore assessed the impact of investment consultants and fiduciary managers on asset management discounts and fees. This is structured as follows:

(a) First, we consider how important discounts are in general.

(b) Second, we assess how far investment consultancy and fiduciary management providers impact and reduce asset management costs for their clients.

(c) Third, and related to the above, we assess whether there is evidence that the outcomes they achieve are linked to the functioning of the market and the strength of engagement.

Importance of discounts and the role of investment consultancy/fiduciary management providers

10.68 Our analysis in Figure 21 showed that asset management fees are generally much larger than investment consultancy fees, and are generally similar to full fiduciary management fees. Actual asset management prices paid by clients

[679] Asset management costs are significant in the context of pension scheme investment costs. In monetary terms, we have found that the median pension scheme using investment consultancy pays just under £400,000 per year in asset management fees. The median full fiduciary management scheme pays just under half of this, at just under £200,000 per year. Based on data provided by investment consultancy and fiduciary management firms to the CMA, excluding DC schemes from this analysis given that the data contains only a small number of the highest paying schemes, which may not be representative. These are simple averages: for example, large schemes pay significantly more.

differ substantially from the rack rate asset management prices, particularly for fiduciary management clients. Therefore, the effectiveness of investment consultancy and fiduciary management providers in getting discounts could materially influence scheme outcomes.[680]

10.69 Investment consultancy and fiduciary management providers emphasised that discount negotiations were typically closely linked together with their manager recommendations services and teams.[681] Some providers said that clients are able to, and do, negotiate discounts on their own behalf. However, responses indicated that these represent a minority of cases and tend to be clients that would be able to achieve good discounts anyway, such as larger schemes.

Investment consultancy and fiduciary management providers' impact on asset management fees

10.70 We compared discounts achieved by clients who use investment consultants' manager recommendations with those who don't, in order to understand whether investment consultancy and fiduciary management firms help their clients to obtain higher discounts.

10.71 We found that clients using manager recommendations have a higher overall discount rate of 17%, compared to 11% for those not using manager recommendations. We also found that they have a greater proportion of 'material' discounts.[682] The median discount increases with the size of the provider's investments, both in investment consultancy and fiduciary management. This might imply that a strategy of aggregating together assets is effective in increasing discount rates.

10.72 However, there is a range of potentially confounding factors which could influence discount rates, such as the asset class and identity of the asset manager. We therefore used a regression approach to control for these factors, and also to test whether the level of discounts is linked to customer engagement, in the same way we did for investment consultancy and fiduciary management pricing. Full details are provided in Appendix 6.

10.73 We found that investment consultancy clients that purchase manager recommendations obtain discounts which are around 2-5 percentage points

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[680] The level of the discount also has other drivers. These include whether the fund is nearing a capacity limit, the newness of a fund; the prestige of an opportunity, whether there have been certain recent changes at the asset manager (eg underperformance, change of staff); and the level of investment in the fund.
[681] These services are purchased, potentially implicitly, by a large majority of schemes in fiduciary management as a consequence of delegating decision making to the fiduciary management provider.
[682] Our analysis considered the proportion of investments with a discount rate of at least 10%.

higher than schemes that do not purchase this service, but only where these schemes are 'engaged'.[683] Less engaged schemes purchasing manager recommendations do not have higher discount rates than schemes which do not purchase this service.

10.74 Schemes in fiduciary management receive discount rates which are as much as 20-25 percentage points higher than schemes in investment consultancy that do not purchase manager recommendations. This effect does not appear to vary by whether the scheme is more engaged.

Engaged customers who use their investment consultants' asset manager recommendations service get a bigger discount on investment fees.

10.75 In its response to the provisional decision report, WTW stated that schemes that the CMA has classified as 'disengaged' are typically smaller in scale and therefore less well placed to secure significant fee discounts from asset managers when negotiating individually.[684] Further, it stated that such schemes are also more likely to face constraints in terms of limited bandwidth and capabilities, meaning that they are less likely to consistently follow through on their investment consultant's asset manager product recommendations.[685]

10.76 We recognise that schemes using investment consultancy that are 'disengaged' are likely to be smaller, and this may affect their ability to secure discounts from asset managers. In our baseline regressions however (Appendix 6), we control for the size of the client's investment. We have also undertaken some sensitivities in which we control for client size in other ways. Doing so does not materially affect our results.

10.77 As described in Appendix 6, we conducted a range of further sensitivities and alternative analyses to address potential limitations to this analysis. These did not alter our conclusions.

[683] We have defined engaged here as running a formal tender, using a TPE or having a professional trustee. As for our gains from engagement analysis, we have also tested this model when we restrict 'engagement' to running a formal tender. This does not materially affect our conclusions: we found that in IC, only schemes that tendered obtain significantly higher discounts (around 7 percentage points) than those that do not purchase manager recommendations.
[684] WTW response to the provisional decision report.
[685] WTW response to the provisional decision report.

Conclusions on asset management fees

10.78 We found that investment consultancy and fiduciary management providers can achieve higher asset manager discounts than schemes would be able to achieve themselves. Discounts are substantially larger in fiduciary management.

10.79 We also found evidence that asset manager discounts are lower for less engaged clients in investment consultancy.

The quality of asset allocation advice, manager recommendations, and other services focussed on investment returns

10.80 There are several key investment services given by investment consultancy and fiduciary management firms, most notably asset allocation and asset manager recommendations. As set out in Appendix 6, our review of the academic literature and the CMA survey showed that both services play an important role in determining scheme outcomes. We therefore consider both of these in turn.

Asset allocation advice

10.81 Asset allocation advice is concerned with which types of assets schemes should purchase to meet their investment objectives.[686] Asset allocation is therefore a central aspect of any decision to invest.

10.82 Many parties told us that it is very difficult to precisely measure the impact of asset allocation decisions. We therefore conducted some more high-level analysis to assess the quality of these services.

10.83 First, we considered what asset allocation advice involves. A broad range of parties submitted evidence demonstrating that asset allocation advice often involves undertaking sophisticated analysis, and submitted examples of the modelling they have undertaken for their clients.

10.84 Parties told us that asset allocation advice is highly scheme-specific, in that advice is tailored based on factors such as the strength of the employer covenant; investment risk appetite; funding position; scheme maturity; the

[686] At a high level, schemes will consider their risk and return objectives, and choose an appropriate mix of equities, bonds, alternative investments and investments in other asset classes to meet these objectives. Each of these could be broken down further, for example providers may advise on the merits of Global Equity, Sub Investment Grade Debt and Property investments. By contrast, manager (product) selection is concerned with selecting the asset manager and investment product in the chosen asset class to carry the investment. In practice, these two services feed into each other because finding no suitable managers in the chosen class may require a scheme and its investment consultancy or fiduciary management provider to revisit the asset class decision.

level and profile of contributions; cash flow demands and liquidity; correlation of asset class returns with sponsor health; and schemes' appetite for and tolerance of complexity. Parties also told us that asset allocation is often arrived upon as part of a conversation with trustees.

10.85 To verify this, we first assessed whether advice is tailored to scheme characteristics by examining the bond/equity ratio of schemes receiving services from four large providers of IC and/or fiduciary management services (Appendix 6).[687] We found significant variation in asset allocation across schemes, and there was a clear relationship between funding level and a tilt towards bonds.

10.86 We then sense-checked this analysis using data provided by TPR and the PFF (Appendix 6). This analysis showed that several other factors also influenced asset allocation positions, and therefore likely asset allocation advice. These factors included scheme maturity and scheme size.

10.87 Our analysis therefore indicates that asset allocation advice is not 'one-size-fits-all' but rather is tailored to reflect scheme-specific factors.

Asset allocation advice appears to be tailored to reflect the needs of the pension scheme.

10.88 We next considered whether there was qualitative evidence that parties' asset allocation advice had produced good market outcomes for their clients.

10.89 Advice in relation to hedging can be considered a form of asset allocation advice. Many investment consultancy and fiduciary management firms have recommended that schemes increase their levels of hedging. Our analysis found that schemes purchasing either fiduciary management or strategic asset allocation advice were much more likely to purchase liability hedging.[688]

10.90 Investment consultants and fiduciary managers[689] told us that hedging has been used to manage risk but has also significantly boosted pension schemes'

[687] We consider that asset allocation positions are a good proxy for the advice that schemes will have received.
[688] For example, Aon has stated that 'Aon Hewitt's analysis suggests that on average, closed and frozen schemes should be protecting against at least 70% of their interest rate risk. Instead, the average amount hedged is thought to be nearer 30% to 40%' Source: http://www.aon.com/unitedkingdom/retirement-investment/investment/hedging.jsp. In particular, a logistic regression of whether the scheme purchased hedging on whether the scheme purchases strategic asset allocation showed an extremely significant correlation.
[689] For example, WTW told us that 'It seems that many fiduciary managers have been able to hedge client interest rate risk to a more significant degree than the average UK pension fund which led to above average outcome', Source: WTW's response to the Market Information Request, paragraph 22

returns. This view was supported by other evidence: the 2017 update to TPR's annual funding statistics for UK defined benefit (DB) and hybrid schemes stated that 'schemes with hedged positions may have fared better overall'.[690]

10.91 Whilst we have not undertaken detailed analysis of this issue, the evidence indicates that providers' asset allocation advice with respect to hedging decisions may have produced value for their clients in recent years.

Manager recommendations

10.92 Pension schemes' investments are typically made with asset managers. Investment consultants often advise clients on the suitability of various asset management / investment products, and in fiduciary management they implement investment decisions in relation to such products.[691]

10.93 We have undertaken quantitative analysis to assess whether investment consultants improve schemes' investment returns by recommending asset management products that outperform their respective benchmarks. In doing so we recognise that manager recommendations is only one of the services provided by investment consultants. However, it is an area of their work that can be measured and where some firms claim that they add value by outperforming benchmarks (chapter 5).

10.94 The full details of our analysis are set out in Appendix 2. We cover a number of important caveats, in particular that the available data covers only a subset of firms' recommendations. In brief, we examined ratings from eight investment consultancy and fiduciary management firms over the period between 2006 and 2015.[692]

10.95 The results of our quantitative analysis indicate that on a gross of asset manager fees basis 'buy-rated' products outperform their respective benchmarks by approximately 23 bps per quarter on average. These results are generally highly statistically significant.

10.96 We note the following when interpreting these results however:

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[690] TPR: Scheme funding statistics: Valuations and recovery plans of UK defined benefit and hybrid pension schemes, June 2017, p6

[691] When developing their lists of recommended products, investment consultancy and fiduciary management providers typically combine both quantitative and qualitative research considering, among other factors, 'investment organisation', 'investment staff', 'investment process', 'risk', 'performance' and 'terms and conditions'. It is also common for due diligence on asset managers to be carried out as part of this process.

[692] We have not been able to incorporate Mercer into our aggregate analysis as it does not subscribe to eVestment and we could not match its ratings data to returns data from eVestment. We have therefore conducted a standalone analysis for Mercer, using Mercer's proprietary database (GIMD).

(a) On a gross of fees basis, *all* products in our (cleaned) sample outperformed their respective benchmarks by 17 bps per quarter on average over the period we studied.[693] This result is also highly statistically significant.

(b) On a gross of fees basis, buy-rated products do not generally outperform non buy-rated products (on average) to a statistically significant extent.

10.97 On a net of asset management fees basis, we have found little evidence that buy-rated products significantly outperform their respective benchmarks. We did however find evidence that two individual providers of investment consultancy and/or fiduciary management services recommend net outperforming products.

10.98 We have performed a number of extensions and sensitivities, several of which were proposed by the parties, to test whether our results were robust to the way the analysis was conducted. These sensitivities are presented in Appendix 2, and include the following:

(a) Incorporating passive fees into the analysis.

(b) Assuming a higher average fee discount rate.

(c) Using an alternative approach for correcting for backfill bias.

(d) Using alternative statistical models to conduct the analysis.

10.99 The large majority of these sensitivities produce results that are consistent with our main analysis.

10.100 Based on the subset of recommendations we have been in a position to examine, there is therefore little statistical evidence that investment consultants collectively outperform benchmarks on a net of fees basis. However, there is evidence that some individual firms outperform benchmarks.

10.101 As a result, this analysis does not demonstrate one way or the other whether investment consultants collectively add value through this service, though some individual firms may do so.

[693] This result is true for our cleaned sample - ie the data set resulting after we have implemented the data cleaning and the data restrictions that are detailed in Appendix 2.

Analysis of overall investment performance

10.102 Asset allocation advice and manager recommendations are two of the key services which are offered by investment consultancy and fiduciary management providers. However, they are not the only services: in particular, implementation is a key aspect of fiduciary management.

10.103 Some parties, in particular Aon, Mercer and WTW, submitted statistics and analysis regarding the historical performance of their fiduciary management clients compared to a representative of the average pension scheme or other benchmarks. These parties told us that since full fiduciary management is not as susceptible to the difficulties around attributing performance between decisions made by the trustees and the provider, the performance of their fiduciary management schemes is representative of their investment consultancy abilities. They submitted that these analyses demonstrate that their fiduciary management services are adding substantial value to their clients.

10.104 In its response to the provisional decision report, WTW further stated that evidence on the investment performance of its fiduciary management clients demonstrates that (i) the funding ratio has improved to a greater degree than the average scheme, and (ii) there is less volatility in the funding ratio of its fiduciary management clients than the average scheme.[694] It stated that 'it is highly concerning that the CMA hardly considers this evidence in its provisional decision report'.[695]

10.105 As noted in chapter 7, we recognise that fiduciary management can be an appropriate model for some pension schemes. In our view, however, it is for trustees to decide the relative merits of an advisory or fiduciary management model for their scheme. To compare the investment performance and value for money of these two models is beyond the scope of this inquiry.

10.106 Although it is not practicable for us to fully assess the quality of investment advice that trustees have received, we have considered relevant (subjective) evidence from the CMA survey. Trustees were asked how important their investment consultancy and fiduciary management services were in helping them achieve the scheme's objectives.[696]

10.107 Regarding investment consultancy services, three quarters of schemes thought buying these services was very important to achieving the scheme's

[694] WTW response to the provisional decision report.
[695] WTW response to the provisional decision report.
[696] CMA analysis of CMA survey, question C6.

objectives, and over 95% of schemes rated investment consultancy as either 'very important' or 'fairly important'. These statistics were very similar for trustees in fiduciary management.[697]

10.108 Trustees therefore consider investment consultants and fiduciary managers to be important in helping them to achieve the scheme's objectives.

Conclusion on the quality of asset allocation advice, manager recommendations, and other services focussed on investment returns.

10.109 Our assessment has shown that both asset allocation advice and manager recommendations are important for schemes.

10.110 The evidence indicates that asset allocation advice is tailored to individual clients' circumstances. There is some evidence that this may have produced value for schemes in recent years, principally through the hedging of interest rate risks. Further, the CMA survey indicates that trustees consider investment consultants and fiduciary managers to be important in helping them to achieve the scheme's objectives.

10.111 Our analysis of investment consultants' asset manager recommendations does not demonstrate one way or the other whether providers collectively add value through this service, though some individual firms may do so.

Analysis of broader quality factors

10.112 Beyond the quality of investment advice, there are other aspects of service quality which are important to customers of investment consultancy and fiduciary management providers, such as clarity of advice and the experience which providers and individual consultants bring to trustee decision making.

10.113 The importance of quality of service was highlighed at the trustee roundtable, where trust and credibility were found to be key aspects of service provision. Similar factors were also emphasised by attendees of our roundtable with pension scheme in house investment staff, who said that the investment consultant-client relationship was key and that investment consultants should understand the needs of the scheme.[698]

10.114 Our assessment of broader quality is structured as follows:

(a) First, we consider overall satisfaction rates.

[697] CMA analysis of CMA survey, question K6.
[698] Summary of discussion with pension scheme in house investment staff: 16 May 2018, paragraphs 3 & 4

(b) Second, we assess whether there is evidence that less engaged schemes receive lower quality of service.

(c) Third, we assess the link between providers' quality and their market shares.

Indicators of overall quality of service

10.115 Given the weight that trustees place on quality of service factors, one informative measure to consider is satisfaction.[699] The CMA survey found that a substantial proportion (57%) of trustees who purchase investment consultancy were very satisfied with their investment consultant and 95% of trustees were either very satisfied or fairly satisfied.[700] These percentages were similar for schemes which purchase fiduciary management.

95% of investment consultancy customers are satisfied with their provider. *CMA survey*

10.116 Whilst there are challenges in interpreting these statistics (as discussed further in Appendix 6), these statistics indicate that trustees consider that they are receiving positive outcomes.

Link between overall quality of service and engagement

10.117 We analysed whether there is likely to be a link between engagement and the quality of service received by trustees. To do this, we considered whether parties' submissions and documentary evidence indicated that more engaged schemes could be offered better terms.

10.118 Quality of service is monitored frequently by most consultants and they each focus on various aspects of service provision in monitoring their performance.

10.119 Parties' submissions highlight the following areas of quality that they monitor on an ongoing basis: overall satisfaction; relationships of the client team; market intelligence reports; communication; previous errors and omissions. This shows that firms monitor the quality of service perceived by their clients, often at client level.

[699] Satisfaction will also be in part determined by returns, risk and other investment-relevant quality factors we have discussed above.
[700] CMA analysis of CMA survey, questions J1 (Investment Consulting) and O6 (Fiduciary Management).

10.120 In internal documents we found evidence that engagement could lead to improved service quality outcomes for customers (Appendix 6). We found evidence that providers monitor client engagement, as well as evidence that providers have improved their quality of service in response either to client pressure or having identified clients as being 'at risk' of switching.

10.121 Relevant quality of service parameters appeared to include team proactivity; innovation on risk management; investing more time or resources and the experience of the consultants allocated to clients.

10.122 We have therefore found that, at least in some cases, less engaged customers receive a lower quality of service.

10.123 In its response to the provisional decision report, WTW stated that the practices that the CMA has identified are entirely in keeping with the practices one would expect to observe in a well-functioning market where (i) customers are engaged and (ii) providers face strong competitive pressure to provide a high quality of service to all their customers.[701]

10.124 We recognise this point and agree that this evidence does not imply (in and of itself) that the market is not well-functioning. In chapter 6 however, we have found that there are some issues that are inhibiting engagement by some customers, which is most prominent amongst small schemes and DC schemes. The evidence presented in this chapter (and Appendix 6) indicates that this low engagement can have an impact on outcomes, with less engaged schemes receiving a lower quality of service.

Relationship between overall quality of service and market success in investment consultancy

10.125 In a well-functioning market, we would expect providers offering a higher quality of service to have high – or at least rapidly growing – market shares, all else being equal. Evidence to the contrary could imply that the market does not function well.

10.126 We have analysed this for the investment consultancy market using data on service quality provided by Greenwich Associates (GA). GA's quality of service research is based on in-depth interviews with the largest institutional funds in the UK[702,703] to produce the Greenwich Quality Index (GQI). The measure is widely used in the investment consulting market.

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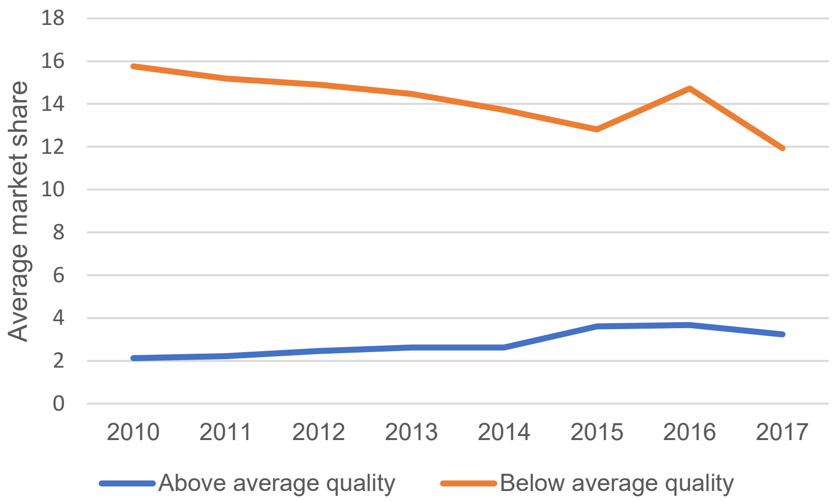
[701] WTW response to the Provisional decision report.
[702] Institutional investors with over £100 million in assets under management.
[703] Institutional funds include Corporate pension, Local Authority Pension and other institutional funds.

10.127 For market shares, we used our data gathered directly from investment consultants. Our analysis covers the period 2010-2017.

10.128 In Figure 25 we show the average market share for schemes of above average quality, and separately the average market share for those of below average quality, in each year.[704]

Figure 25: Average market share over time, split by quality levels



Source: CMA Analysis; Parties Data; GA Data.

10.129 We have found that for each year from 2010 to 2017, those firms that provided a higher quality of service had persistently lower market shares. The difference in shares ranges from 14 to 9 percentage points over the period, and is therefore substantial.

Providers with above average quality had persistently lower market shares in investment consultancy.

10.130 Figure 25 also indicates however that the market shares of the two groups have been converging over time. The average market share of the below average quality firms fell from 16% in 2010 to 12% in 2017. The share of the above average quality firms increased slightly over the same period.

[704] Average quality is calculated as firm specific mean relative to the sample mean. Therefore, if a firm has below average quality in any single year but across the sample has above average quality, we treat them as an above average quality firm. We do not have data on all firms for all years, so some year-on-year differences in the analysis could be a result of a sample composition effect.

10.131 In its response to the provisional decision report, Aon submitted that the CMA should consider changes in the *combined* market shares of the two groups of firms, rather than the *average* market shares.[705] As we show in Appendix 6, this approach indicates that the convergence in the market shares of the two groups is stronger than shown in Figure 25. The combined share of the above average quality firms increased from 11% to 29% over the period for example.

10.132 In our view it is more meaningful to compare changes in the average share of each group rather than the combined share.[706] Under either approach however, it remains the case that lower quality providers have a substantially higher market share than higher quality providers. Even in 2017 there was a strongly negative and statistically significant relationship between market share and quality (see Appendix 6). This is not an outcome that we would expect in a well-functioning market unless the lower quality providers are also lower cost. As we show in Appendix 6, we find no evidence that this is the case.

10.133 Some providers submitted that the GQI quality score is not suitable for the statistical purposes for which it has been used here. We address these comments in detail in Appendix 6. We recognise that it is not possible to perfectly capture all aspects of a provider's quality, and the quality of investment advice is particularly hard to measure. We also recognise that some providers' quality scores are based on small numbers of survey responses.

10.134 We therefore interpret these results cautiously. As discussed in Appendix 6 however, we consider that the GQI quality score conveys useful information on the quality of competing providers. In particular, we note that the GQI is well respected across the investment consultancy industry as a survey to monitor the quality of competitors. A range of substantial players in the market participate in and access the survey, and many providers use the GQI score to evaluate their quality of service or benchmark their competitors.

10.135 In Appendix 6 we cover the data in further detail and present the results of sensitivities and extensions to our baseline results in Figure 25. We also respond in detail to comments made by parties in response to the provisional decision report.

10.136 Overall, whilst we recognise the caveats set out in paragraph 10.119, the evidence presented above indicates that firms with higher quality (measured

[705] Aon response to the provisional decision report.
[706] The average share is less susceptible to changes in the number of firms in each year and to large changes in the share of a single firm.

on this particular indicator) typically have lower market shares than those with lower quality. Whilst the higher quality firms have gained some market share over the period, Figure 25 shows that these gains have been modest. As of 2017, there was still a clear and statistically significant negative relationship between market share and quality.

Conclusion on overall quality of service

10.137 Broader service quality factors are important to trustees. We found that trustees generally appear to be satisfied. However, we also found evidence that, at least in some cases, less engaged customers receive a lower quality of service, such as the experience of the team and the amount of resources dedicated to that customer.

10.138 Furthermore, we found evidence that firms with high quality have lower market shares. This is not what we would expect in a well-functioning market and is consistent with the issues we have set out in the preceding sections, such as low trustee engagement, and insufficient or incomparable information on fees and quality.

Profitability

10.139 We examined profit margins to inform our understanding of competition: an examination of relative profits may provide useful information in examining firms' incentives, for example in seeking to sell fiduciary management services to their existing advisory clients (see chapter 7).

10.140 We examined the profitability of the three largest combined providers of investment consultancy and fiduciary management services in the UK (Aon, Mercer and WTW) as well as three smaller providers of investment consultancy and fiduciary management services who were also able to provide us with net profit margin figures for investment consultancy and fiduciary management ([✂], [✂]and [✂]).

10.141 We found the following:

(a) Overall, the aggregate net profit margin for investment consultancy and fiduciary management combined for the six providers in 2016 was 26% [20% - 30%]

(b) For investment consultancy, the aggregate net profit margin for the six providers was [20% - 30%] and [20% - 30%] for fiduciary management.

The aggregate net profit margin for investment consultancy and fiduciary management was [20 - 30%] in 2016.

10.142 These margins are lower than the margins the FCA found for asset managers, but higher than the average operating margins in the FTSE All Share sample created by the FCA. However, in our view, a comparison with the FTSE All Share index would not be meaningful because the index is an average of margins across a wide range of industries, subject to, among other things, different degrees of risk and capital requirements.

10.143 Our usual approach in market investigations would be to compare an economically meaningful measure of profitability, usually in terms of rates of return on capital, with the cost of capital of the firms involved.[707] In this market investigation we found a number of difficulties in calculating the capital base.

10.144 We considered that it was very resource intensive, and practically and conceptually difficult, to attempt to calculate the capital base relating to the investment consultancy and fiduciary management businesses. Even if we could have calculated the capital base, it was unlikely to be robust enough for us to draw any conclusions from it. As a robust assessment of the capital base is essential to the return on capital employed calculation, we were not in a position to calculate this.

10.145 We set out the results of our analysis and our findings in Appendix 7.

Conclusions

10.146 In some respects, outcomes indicate that the investment consultancy and fiduciary management markets function relatively well:

(a) Trustees generally are satisfied with the services they receive.

(b) Providers can achieve greater discounts from asset managers than schemes would be able to achieve themselves, particularly in fiduciary management.

(c) Asset allocation advice is tailored to clients' specific circumstances and may have added value in recent years through the hedging of interest rate risks.

[707] CC3 Revised, paragraph 114 – 126.

10.147 However, there is evidence that the investment consultancy and fiduciary management markets are not functioning well in other respects. In previous sections we have found that there are problems of low trustee engagement, and of trustees facing difficulties in accessing the information they need to select the best provider. We examined the impact of these on outcomes and found evidence that less engaged schemes obtained worse prices and quality of service.

10.148 In terms of prices:

(a) In investment consultancy, we found some evidence that less engaged schemes pay higher prices than more engaged schemes.

(b) In fiduciary management, we found evidence that less engaged schemes pay significantly higher prices than more engaged schemes, when they remained with their existing investment consultant.

10.149 Further, in relation to quality we found evidence that:

(a) Asset manager discounts are lower for less engaged schemes in investment consultancy.

(b) Less engaged customers in some cases receive a lower quality of service, such as the level of experience of the consultancy team and amount of resources dedicated to that customer.

(c) Investment consultancy firms with higher quality have lower market shares than lower quality firms.

10.150 Our quantitative analysis of investment consultants' recommended asset manager products found that they generally outperform benchmarks gross of fees, but not net of fees. Therefore, the evidence does not demonstrate one way or the other whether providers collectively add value through this service, though some individual firms may do so.

10.151 Overall, we conclude that whilst the investment consultancy and fiduciary management markets are meeting customers' expectations in some respects, there is evidence that the aspects of the markets identified in previous chapters are resulting in some customers receiving significantly worse outcomes in terms of price and quality, than they would in a well-functioning market.

11. Conclusions

Overview of our competition assessment

11.1 We find that there are AECs in both the investment consultancy and fiduciary management markets. This decision is set out below, but first we set out our general view of competition in these markets.

11.2 We find that both investment consultancy and fiduciary management are markets which are not highly concentrated and where barriers to entry and expansion are not high. We find that customers have access to a sufficient number of providers in both markets. Both markets are growing, although investment consultancy is already used by the vast majority of pension schemes, while fiduciary management is used by a fast-growing minority of them.

11.3 However, in both markets, we find there are weaknesses in the demand side based on a low level of engagement by some pension scheme trustees. In addition to this, for those who engage with the market, the information that trustees need to assess the value for money (by which we mean both fee levels and quality) of these services is difficult to access. These two factors reduce the competitive pressure on investment consultants and fiduciary managers.

11.4 We have identified additional, particular issues in the fiduciary management market which lead us to have stronger concerns about competition in that market, both overall and in particular at the point at which pension schemes first purchase fiduciary management. These are that:

(a) IC-FM firms have an incumbency advantage in selling fiduciary management to their advisory customers. This advantage derives from the demand-side weaknesses described above, IC-FM firms steering their advisory customers into their fiduciary management service and the lack of clear and comparable information for customers to assess the value for money of alternative providers.

(b) Fiduciary management has higher ongoing and switching costs for pension schemes, and it represents a significant change in how those schemes govern their investments which can have lasting consequences. Therefore, the initial take-up of the service is a change which should be made with great care.

11.5 There has been a notable increase in fiduciary management market share by the three largest IC-FM providers in recent years. In this context, our concern is that their incumbency advantage could contribute to further growth in their market share, which would result in greater market concentration in the future. This could increase barriers to expansion for non-integrated fiduciary management providers, weakening competitive pressure on IC-FM firms and making it more difficult for all fiduciary management customers to get a good deal.

Decision on competition

Investment consultancy

11.6 We have found that the following features of the investment consultancy market, individually and in any combination, restrict or distort competition in connection with the supply and acquisition of investment consultancy services in the UK to and by pension schemes. Accordingly, there is an AEC in respect of investment consultancy services.[708] Those features are as follows:

(a) **Low levels of engagement by some customers**. Some pension trustees lack the necessary time and capabilities to monitor and scrutinise effectively the investment advice they receive. These issues are most prominent amongst small pension schemes and DC schemes, which are also less likely to switch, tender, or formally review their investment consultancy services.

(b) **Lack of clear information for customers to assess the quality of their existing investment consultant.** Customers do not set, and investment consultants do not agree with their customers, sufficiently clear objectives against which providers can demonstrate their performance. Furthermore, the information provided by investment consultants to pension trustees makes it difficult for trustees to evaluate the quality of service of their provider.

(c) **Lack of clear and comparable information for customers to assess the value for money of alternative investment consultants.** The nature of fee information provided by investment consultants in tenders is often limited and customers do not seek and obtain comparable information. It is also very difficult for customers to assess and compare the quality of the advice they would get from different providers. In particular, the ways used to calculate the performance of consultants'

[708] EA02, sections 134(1) and (2).

recommended investment products makes it difficult to interpret and compare the quality of advice across providers.

11.7 These features make it difficult for many customers to access and assess the information needed to evaluate the quality of their existing investment consultant and/or identify if they would be better off using an alternative provider. This in turn reduces the ability of customers to drive competition between investment consultants. It also reduces the incentives for investment consultants to compete for customers on the basis of fees and/or quality of service.

Fiduciary management

11.8 We have found that the following features of the fiduciary management market, individually and in any combination, prevent, restrict or distort competition in connection with the supply and acquisition of fiduciary management services in the UK to and by pension schemes. Accordingly, there is an AEC in respect of fiduciary management services.[709] Those features are as follows:

(a) **IC-FM firms steering their advisory customers towards their own fiduciary management service.** IC-FM firms have strategies to sell fiduciary management to their existing advisory customers. Some of the ways that these incumbent firms introduce and advise on fiduciary management steer customers towards the firm's own service and make it less likely that those customers properly consider alternatives at the point of first moving into fiduciary management.

(b) **Low levels of customer engagement at the point of first moving into fiduciary management**. A substantial proportion of customers do not formally test the market prior to moving into fiduciary management. As a result, many take this service from their incumbent IC-FM firm without considering alternatives.

(c) **Lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers**. The nature of fee information provided by fiduciary managers in tenders is often limited and customers do not seek and obtain comparable information. Many providers also do not provide any information on the potentially high costs of transitioning into and out of their fiduciary management service. The nature and variety of the ways used by firms to calculate the track

[709] EA02, sections 134(1) and (2).

records of their fiduciary management customers make it difficult for potential customers to compare quality across providers.

(d) **Lack of clear information for customers to assess the value for money of their existing fiduciary manager**. Many customers do not receive clear fee information from their provider, with fees for the fiduciary management service often bundled with the underlying investment fees. This limits customers' ability to assess the competitiveness of the fiduciary management service they are receiving, and the underlying funds that their fiduciary manager is investing in on their behalf.

(e) **Barriers to switching fiduciary manager.** The process of switching fiduciary manager generally requires substantial time and can incur high costs, which is likely to deter some customers from changing provider.

11.9 Features (a) to (c) result in an incumbency advantage for IC-FM firms with existing customers; and they prevent, restrict or distort competition at the point at which customers first move into fiduciary management. This means that some customers remain with their incumbent investment consultancy provider even if a better deal on fiduciary management is available elsewhere. This in turn reduces the ability of customers to drive competition between fiduciary managers. It also reduces the incumbent provider's incentives to compete for customers on the basis of fees and/or quality of service.

11.10 Features (c) to (e) prevent, restrict or distort competition once customers have bought fiduciary management services. They make it difficult for many customers to access and assess the information needed to evaluate the fees of their existing fiduciary manager, to identify if they would be better off using an alternative provider, and to act on this information by switching. This in turn reduces the ability of customers to drive competition between fiduciary managers. It also reduces the incentives for fiduciary managers to compete for customers on the basis of fees and/or quality of service.

Customer detriment

11.11 We have decided that the AECs we have found may be expected to result in substantial customer detriment in both the investment consultancy and fiduciary management markets.

11.12 This detriment may be expected to manifest itself in terms of customers paying higher prices for these services and receiving worse outcomes in terms of service quality. The detriment is likely to be substantial because:

(a) Investment consultants and fiduciary managers provide investment advice and related services to UK pension schemes with assets of at least £1.6 trillion, affecting millions of pension scheme members and their dependents.

(b) The services they provide can have a major impact on pension scheme outcomes through their influence on overall investment strategy, asset allocation and risk management.

(c) Any negative impact on scheme outcomes will accumulate and compound over time, especially given the length of many investment consultant and fiduciary manager appointments, and the time horizon over which pension scheme investment decisions are made.

11.13 In investment consultancy, the fact that customers face barriers in assessing the quality of their existing investment consultant and comparing this with alternative providers makes it difficult for them to select the best advisor for their scheme. This in turn means there are weaker incentives for firms to compete vigorously, as they may be less likely to lose customers if they offer a worse deal, and less likely to gain them if they offer lower prices or a higher quality service.

11.14 In fiduciary management the detriment will be even greater, as these information and trustee engagement features are compounded by two further features:

(a) The behaviour of the incumbent IC-FM firm can make it even less likely that customers properly shop around, which may further reduce firms' incentives to compete vigorously.

(b) The greater switching costs in fiduciary management mean that customers may not be able to renegotiate or readily switch to a better alternative, so the detriment may persist for a longer period of time. In this context, we note that switching costs could typically be in the range of 0.1% to 1% of assets (see chapter 6). For a scheme with £100 million of assets, this equates to £100,000 to £1 million.

11.15 As a result of these competition problems, customers may be expected to pay higher prices and/or receive a lower quality of service for investment consultancy and fiduciary management than they otherwise would.

11.16 We have assessed evidence on prices in chapter 10. In investment consultancy, we found some evidence that engaged customers pay significantly lower prices than disengaged customers. We also found that engaged customers receive higher asset management discounts negotiated by their investment consultant. In fiduciary management, we found that more engaged customers pay significantly lower prices than less engaged customers, when they remained with their existing investment consultant.

11.17 However, we emphasise that the impact on prices represents a lower bound for the total detriment, which may be significantly higher. This is because, in addition to the impact on prices, the problems we have identified may also be expected to result in customers receiving a lower quality service.

11.18 For the reasons outlined in paragraph 11.12, lower quality investment advice or fiduciary management implementation may be expected to result in an ongoing shortfall in investment performance which would be substantially greater in magnitude than the detriment from prices paid.

11.19 It is extremely difficult to assess the investment consultancy and fiduciary management markets in this regard. Investment performance is affected by a wide range of factors, including the macroeconomic environment, and different pension schemes have different investment objectives.

11.20 It is therefore not practicable to fully assess the extent to which schemes have received poorer quality investment advice than they would have done in a ‘well-functioning market’. We have found however that in both the investment consultancy and fiduciary management markets there is a lack of clear and comparable information for customers to assess the investment capabilities of alternative providers.

11.21 We have also found that there are low levels of engagement amongst some customer groups in investment consultancy, and when customers first move into fiduciary management. In this context, we note that in 2016 just 34% of customers that bought fiduciary management had carried out a formal tender, and just 14% of those who bought fiduciary management from their existing investment consultant had done so (see chapter 7).

11.22 These features can prevent customers from selecting the best provider and reduce the incentive of providers to compete vigorously on the basis of quality or price. Given the importance of the investment advice and fiduciary management implementation that these firms provide, as outlined above, this may be expected to result in substantial customer detriment.

11.23 In their responses to the provisional decision report, Aon and Mercer submitted that the CMA has produced no robust evidence of material customer detriment.[710] We do not agree with this assessment. For the reasons

[710] Aon and Mercer responses to the provisional decision report.

outlined in paragraphs 11.11 to 11.22 above, we have demonstrated that the AEC features may be expected to result in substantial customer detriment in both the investment consultancy and fiduciary management markets. This detriment would be in terms of customers paying a higher price and/or receiving a lower quality of service than they would in a well-functioning market.

11.24 In its response to the provisional decision report, WTW stated that 'the CMA's reasoning that detriment is more likely to be concentrated in FM services than IC services is flawed'.[711] It submitted that, even if barriers to switching were higher in fiduciary management than investment consultancy, this would only constitute an AEC if (i) switching costs were artificially high, or (ii) customers would be better off not taking up fiduciary management or switching their fiduciary management provider in the first place. Further, it submitted that 'there is no evidence that IC-FM providers are giving customers misleading information about the relative quality of their FM service or the availability of competing services'.[712]

11.25 In our view, the evidence indicates that detriment may be expected to be greater in fiduciary management than investment consultancy for the reasons outlined above.[713] Whilst we have not concluded that fiduciary management switching costs are 'artificially high', we have demonstrated in chapter 6 that such costs can be substantial, and could prevent some customers from changing provider if they would otherwise wish to do so. We have also found that many customers lack clear information on these costs, which makes it difficult for them properly to evaluate the full cost of a fiduciary management provider's service. We have found that switching costs are materially lower in investment consultancy.

11.26 Further, whilst we have not directly assessed whether IC-FM firms have given their customers misleading information on their fiduciary management service, we have found that some of the ways in which these firms advise their customers about fiduciary management makes it less likely that they properly consider alternatives at the point of first moving into fiduciary management. Coupled with low levels of customer engagement when first moving into fiduciary management, this gives IC-FM firms an incumbency advantage.

[711] WTW response to the provisional decision report.
[712] WTW response to the provisional decision report.
[713] We also note that median fiduciary management fees are around five times higher than median investment consultancy fees (chapter 10) and so any deviation from a well-functioning market may be expected to have greater cost implications for customers in FM than in IC.

11.27 In its response to the provisional decision report, Aon submitted that our analysis of customer detriment places undue weight on a small number of negative findings regarding quality of service and largely ignores a number of positive findings.[714] Similarly, WTW submitted that a balanced assessment of the evidence that the CMA has considered demonstrates that providers create significant value for customers in a number of ways.[715]

11.28 In chapter 10 we have presented evidence on several ways in which investment consultants and fiduciary managers might add value for their clients. We found that they provide bespoke asset allocation advice for example and negotiate fee discounts with asset managers. We also found that customers are generally satisfied with the service that they receive.

11.29 In making our competitive assessment however, we note that the relevant counterfactual is not one in which market participants do not add any value, but that of a 'well-functioning market'. As stated in our guidelines, this term refers, generally, to the market in question without the features causing the AEC, rather than an idealised, perfectly competitive market.[716] As outlined above, we have identified several features of each market that prevent, restrict or distort competition. We have therefore found that the market is not performing as well as the relevant counterfactual, and this may be expected to result in substantial customer detriment.

[714] Aon response to the provisional decision report.
[715] WTW response to the provisional decision report.
[716] CC3 revised, paragraphs 30 and 320.

12. Remedies

Introduction

12.1 In chapter 11, we set out our view on competition in the markets for investment consultancy and fiduciary management and our final decision on AECs. We consider that the nature of the AECs and the extent of the resulting customer detriment means that it is necessary to remedy the AECs and that detriment. In this chapter, we set out an overview of our remedies package and describe each individual remedy we have decided upon, including its main components and our assessment of its effectiveness and proportionality.

12.2 We will implement certain of our remedies through CMA order as the most effective and comprehensive way of addressing the AECs and the resulting customer detriment we have found. We are also making recommendations to government (DWP and HMT), TPR and the FCA.

12.3 The structure of this section reflects the order of remedies set out in Figure 26. For each sub-section (that is, promoting trustee engagement when buying fiduciary management, fiduciary management performance reporting and investment consultancy fees and performance reporting), we list the remedies which will be discussed in more detail later in this chapter.

Figure 26: Our remedies package

Fiduciary management AEC

Investment consultancy AEC

Promoting trustee engagement when buying fiduciary management

1) Mandatory competitive tendering for pension schemes first buying fiduciary management services or if they have not tendered previously

2) Separation of advice and marketing by IC-FM firms on fiduciary management services

3) Recommendation to TPR to provide enhanced trustee guidance on competitive tender processes

Fiduciary management fees and performance reporting

4) Requirement on fiduciary management firms to report disaggregated fees to existing customers

5) Requirement on fiduciary management firms to disclose fees to prospective customers

6) Requirement on fiduciary management firms to report their past performance to prospective customers by reference to a standardised methodology and template

Investment consultancy performance reporting

7) Duty on trustees to set their investment consultants strategic objectives

8) Requirement on investment consultants and fiduciary managers to report performance of recommended asset management 'products' or 'funds' using a basic minimum standard

Supporting remedies

A) Recommendation to HMT to extend the FCA's regulatory perimeter to cover activities of investment consultants

B) Recommendation to TPR to provide enhanced trustee guidance

C) Recommendation to the FCA that it maintains oversight of transparency of asset management fee reporting

D) Recommendation to DWP to pass the necessary legislation to enable TPR to oversee remedies 1 and 7

Source: CMA

Remedies for the fiduciary management market

12.4 We have found that there are greater competition problems in fiduciary management than in investment consultancy. Therefore, in this section, we deal first with our remedies which cover fiduciary management, before turning to those which cover both fiduciary management and investment consultancy or only the latter.

Promoting greater trustee engagement when first buying fiduciary management services

12.5 We have found an AEC in relation to fiduciary management. We have found that IC-FM firms steer their advisory customers towards their own fiduciary management services. Furthermore, we have found low levels of customer engagement at the point of first moving into fiduciary management and lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers. These features result in an incumbency advantage for IC-FM firms; and they prevent, restrict or distort competition at the point at which customers first move into fiduciary management.

12.6 In this section we set out three remedies to address this AEC and the resulting customer detriment we have found:

- The first is the introduction of the **mandatory use of a competitive tendering process by pension scheme trustees before their first purchase of a fiduciary management service, or if they have already purchased fiduciary management services but have not previously tendered**. This remedy addresses the low levels of customer engagement at the point of first moving into fiduciary management and the behaviour of IC-FM firms in steering their advisory customers towards their own fiduciary management service (Remedy 1).

- The second is a requirement for IC-FM firms to **separate advice and marketing documents when selling their fiduciary management services** and to include **mandatory, prescribed text in each marketing document that informs trustees of the nature of the information**. This remedy addresses both the behaviour of IC-FM firms in steering their advisory customers towards their own fiduciary management service and low trustee engagement at the point of first moving into fiduciary management. This remedy supports the mandatory tendering requirement by making trustees aware of it, and the guidance and resources available from TPR (Remedy 2).

- The third is a recommendation to **TPR to develop enhanced guidance for trustees on conducting a competitive tender process**. This recommendation is intended to support trustee engagement, by enabling them to conduct an effective tender process where required (Remedy 3).

Remedy 1 – Mandatory competitive tendering for pension schemes first buying fiduciary management services or if they have not tendered previously

12.7 The objective of this remedy is that trustees achieve the best outcomes for scheme members by making an informed, active choice when choosing a fiduciary management services provider.

Description of the remedy

12.8 This remedy requires that (subject to certain conditions described below) all fiduciary management mandates will be subject to a competitive tender process before a scheme first adopts fiduciary management:

- Pension scheme trustees will be required to conduct a competitive tender process when first appointing a fiduciary management services provider for 20% or more of the scheme's assets.
- Trustees who have previously appointed a provider without conducting a competitive tender process will be required to conduct a competitive tender process within five years after the first appointment of a fiduciary management services provider.
- Fiduciary management firms will be prohibited from accepting a new mandate where this is the first purchase of fiduciary management services by pension scheme trustees, if no competitive tender process has taken place previously.

How it contributes to addressing the AEC and resulting customer detriment

12.9 We have found that IC-FM firms may steer their advisory customers towards their own fiduciary management service and that there are low levels of customer engagement at the point of first moving into fiduciary management.

12.10 A requirement to hold a competitive tender process ensures that trustees test the market before first buying fiduciary management services by making an informed, active choice and thereby acting more effectively to drive competition between providers.

12.11 In our assessment of the detriment arising from the AEC we identified that the behaviour of the incumbent IC-FM firm can make it less likely that those customers properly consider alternatives at the point of first moving into fiduciary management, which reduces firms' incentives to compete for customers on the basis of fees and/or quality of service. We also found that barriers to switching fiduciary management mean that customers may not be able to renegotiate or switch to a better alternative once they are in fiduciary management, so any detriment will persist for a longer period of time.

12.12 By imposing a requirement on trustees to hold a competitive tender process before appointing a fiduciary management services provider for the first time, or if previous appointments were not the result of a competitive tender process, this will increase trustee engagement, and, in turn, incumbent and rival providers are more likely to present a competitive offer. This will remedy or mitigate the customer detriment that may be expected to result from the AEC we have found.

12.13 TPR guidance, as described in remedy 3 and recommendation B, will help to ensure that this remedy is effective.

12.14 The rest of this section looks at our proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

Proposed remedy in the provisional decision report

12.15 In the provisional decision report, we put forward several design and implementation proposals for this remedy:

(a) We considered whether an open invitation tender process or a well-run, closed invitation tender process could achieve the outcomes required to address the features of the AEC identified.

(b) In the provisional decision report, we did not propose to impose any minimum threshold for tendering, either by pension scheme size, or by size or scope of the mandate. We also did not propose to make the use of TPEs mandatory. We set out our final view, having taken account of parties' responses to the provisional decision report, in the sections below.

(c) Also, in the provisional decision report, we did not propose to require additional tenders for increases in scope of the fiduciary management mandate.

(d) We considered how compliance with this remedy would be best monitored and enforced given that duties fall on both trustees and firms and we liaised with TPR and the FCA on those matters.

12.16 Following consideration of parties' responses to the provisional decision report, we set out below our final conclusions.

Issues raised in response to the provisional decision report

Parties' general comments

12.17 In the provisional decision report, we proposed that pension schemes first moving into fiduciary management should run a competitive tender process. We also proposed that firms already in fiduciary management, but which had not run a competitive tender process when appointing their fiduciary management provider should do so within five years of the CMA's order coming into effect, with a two-year grace period for any schemes which were already at the five-year threshold.

12.18 Parties made the following general representations on this remedy. We cover specific points in more detail in the various subsections below:

(a) WTW said that it was broadly supportive of this remedy, but careful consideration must be given to its scope, particularly with regard to how competitive tendering is defined, as well as practicalities of how mandating competitive tendering will work. WTW said it was critical that any remedy designed to promote this recognised the different circumstances within which different trustees operate and the different levels of resource constraint they face.[717]

(b) Aon said that it was supportive of encouraging better trustee engagement and welcomed tendering. However, making it mandatory presented serious risks of creating market distortion if not carefully implemented.[718] Aon also said that this remedy would create a negative perception of fiduciary management, suggesting that it was potentially risky and required more detailed consideration than was the case when selecting an investment consultancy provider. Aon said that the CMA risked stagnating this market by removing the trustees' flexibility and adding further cost and burden of a mandatory tendering regime. This

[717] WTW response to the provisional decision report.
[718] Aon response to the provisional decision report.

would inhibit some schemes from purchasing fiduciary management services.[719]

(c) Mercer said that carrying out unnecessary tenders would increase demands on resource-constrained trustees and introduce material costs, that a proliferation of tenders could lead to a 'tick-box' exercise, that material participation costs may present barriers for players seeking to enter or expand in the market and that some schemes may be discouraged from considering fiduciary management if they would have to bear the costs of tendering.[720]

(d) Mercer also said that an inflexible mandatory tendering obligation could create costs that outweigh any benefits. It also said that it has particular reservations about the retrospective element of this remedy, both in terms of practicality and proportionality.[721]

(e) Cardano said that holding a competitive tender would help to ensure that trustees can make an active and informed choice when choosing a fiduciary manager. In turn this would help to achieve better outcomes for scheme members.[722]

(f) River and Mercantile said it continued to support competitive tenders in relation to fiduciary management. It also said that it had stated openly for a long time that this would be a good thing for the industry and would be positive for client outcomes.[723]

(g) JLT said that it supported the aim of this remedy. However, increased requirements and costs may put off clients from pursuing fiduciary management.[724]

(h) Schroders said that it supported the CMA's proposed remedy to require trustees to hold a competitive tender process when first choosing fiduciary management. It also said that it was of paramount importance, for pension schemes and for the industry, that trustees make well-informed decisions when considering their governance structure and choosing the appropriate fiduciary management services provider.[725]

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[719] Aon response to the provisional decision report.
[720] Mercer response to the provisional decision report.
[721] Mercer response to the provisional decision report.
[722] Cardano response to the provisional decision report.
[723] River and Mercantile response to the provisional decision report.
[724] JLT response to the provisional decision report.
[725] Schroders response to the provisional decision report.

(i) Legal and General said that mandatory competitive tendering was unlikely to affect significantly the extent to which IC-FM firms can steer their advisory clients. It said that IC-FM firms can leverage their existing relationships prior to any formal tender process, through their ongoing ability to influence client investment thinking.[726]

(j) Other parties, such as Barnett Waddingham, Redington, KPMG, XPS, bfinance, Cambridge Associates, Charles Stanley, IC Select, LawDeb Pension Trustees, Stamford and Spence, also expressed support for this remedy in their responses to the provisional decision report.

(k) At the trustee roundtable discussion, run by the CMA on 3 October 2018, most pension scheme trustees supported this remedy.[727]

Open or closed invitation tender process

12.19 In the provisional decision report, we said that an open invitation tender process was likely to have the greatest impact on competition and drive improved scheme outcomes. However, we also recognised that a well-run, closed invitation tender process may achieve similar outcomes with a potentially lower cost to schemes and providers.

12.20 In response to the provisional decision report, the majority of parties, including some pension scheme trustees favoured well-run closed tenders to open tenders and made the following representations:

(a) Mercer said that trustees should have a choice of whether to conduct an open or closed tender process, taking into account their individual circumstances.[728]

(b) Aon said that in an open tender, providers may become selective and only respond to opportunities where they think they have the best chance of winning. Therefore, a better approach would be a well-run closed tender. The process may still be highly effective if three providers were invited to submit a proposal for a mandate.[729]

(c) WTW said that it considered that it would be more effective and proportionate for the CMA to mandate a closed tender process with minimum standards along with guidance from TPR.[730]

726 Legal and General response to the provisional decision report.
727 Summary of trustee roundtable discussion held on 3 October 2018
728 Mercer response to the provisional decision report.
729 Aon response to the provisional decision report.
730 WTW response to the provisional decision report.

(d) PLSA said that mandating an open invitation tender process was not the correct approach. An open tender process could result in a high volume of boilerplate responses from the supply-side, which could crowd out the other important issues – such as asset allocation or member communications – which trustees needed to consider. PLSA also said that the emphasis of remedy 1 should be on ensuring a well-run closed tender process, supported by guidance which defines what best practice looks like.[731]

(e) Hymans said that a suitable closed process for competitive tendering should be sufficient. It also said that this would not stop trustees choosing to adopt an open tendering process, but open tendering was likely to be disproportionate in many cases.[732]

(f) The Investment Association said that it was crucial that any restricted list of tender participants was produced from a whole-of-market starting point, since this will ensure that trustees have at least given some consideration to all providers across the market. Furthermore, there should be a minimum of three firms required to be on the shortlist, thus ensuring that trustees have a number of competing firms to choose from.[733]

(g) The Investment Association said that the need to keep tendering costs reasonable was particularly important for smaller, less well-resourced schemes and this was why the CMA should consider permitting the use of well-run closed tendering processes.[734]

(h) Cardano said that 'open' tenders should not be made compulsory and that, subject to minimum tender standards, a 'closed' tender can be as effective.[735]

(i) Schroders said that the tender process should not be overly onerous and inadvertently deter trustees from considering fiduciary management.[736]

[731] PLSA response to the provisional decision report.
[732] Hymans response to the provisional decision report.
[733] The Investment Association response to the provisional decision report.
[734] The Investment Association response to the provisional decision report.
[735] Cardano response to the provisional decision report.
[736] Schroders response to the provisional decision report.

(j) Russell Investments said that it favoured a well-run closed tender process over an open one. Furthermore, it believed that mandatory use of third party evaluators should be included in this remedy.[737]

12.21 At our trustee roundtable discussion, there was general support for closed tenders because it was felt that bidders needed to understand the scheme, and it may not be suitable to make scheme-specific information publicly available to all providers. Also, trustees felt that not all firms would wish to take part in an open tender. Some trustees considered that six to eight firms should be approached to bid to ensure that at least three respond with a proposal.[738]

12.22 We took account of parties' views and believe that both an open and a closed tender process would be effective in increasing customer engagement. A competitive tender process will drive pension scheme trustees' engagement with the market by making them aware of the availability, cost and quality of various providers of fiduciary management services. Although we recognise that both an open tender process and a closed tender process would be effective in contributing towards addressing the features of the AEC identified in fiduciary management, an open process may have higher costs and require more trustee time and effort than a well-run closed tender process, given the number of providers that need to be assessed and the number of submissions that would require attention from trustees. We conclude that a closed invitation tender process is sufficient.

12.23 We also note parties' views as to the need to define what we mean by a competitive tender process. Various parties put forward proposals as to the minimum criteria with which all tenders should comply in order to be categorised as competitive.

12.24 We expect pension scheme trustees to run a tender process most suitable for their scheme's needs and they should invite as many providers to tender as they see fit. However, we are mindful of the potential higher costs to trustees of having a large number of tenders to evaluate.

12.25 Having reviewed parties' submissions, we conclude that a competitive tender process is a tender process in which trustees can demonstrate that they have made a reasonable effort to obtain at least three submissions from unrelated parties.[739] This will keep the costs of tendering low, whilst giving trustees a choice of providers.

[737] Russell Investments response to the provisional decision report.
[738] Summary of trustee roundtable discussion held on 3 October 2018.
[739] By 'unrelated parties' we mean fiduciary management providers which are independent of each other and are thereby in a position to compete with each other.

Use of a Third Party Evaluator (TPE)

12.26 We recognise the expertise that a TPE could bring to a competitive tender process. However, we are conscious that having a TPE would result in a pension scheme incurring additional costs. We were, in particular, concerned that the cost of a TPE could have the greatest relative burden on the smallest schemes.

12.27 We considered whether only schemes of a certain minimum size should be required to have a TPE but concluded that this would likely reduce the effectiveness of the remedy overall, if trustees rely fully on a TPE to run the tender process and do not directly engage with the market themselves.

12.28 We note parties' views as to the need to mandate the use of a TPE in addition to, or in lieu of, a competitive tender. Our view is that a TPE could play a significant role in supporting trustees during a tender process. However, we have decided that their use should be voluntary not mandatory.

12.29 We are recommending to TPR that it produces enhanced trustee guidance in remedy 3 and recommendation B which will help trustees understand how to use a TPE during a competitive tender and how to engage with TPEs if trustees choose to do so.

Partial delegation of scheme assets

12.30 In the provisional decision report, we proposed that any move into fiduciary management should follow a competitive tender. We did not propose any minimum threshold for tendering by either size or scope of the mandate. Also, in the provisional decision report, we did not propose to require additional tenders for increases in scope of the fiduciary management mandate, that is from partial to full fiduciary management.

12.31 In this section we set out our final view, having taken account of parties' responses.

12.32 In response to the provisional decision report, some parties said that mandatory tendering should apply only to full fiduciary management mandates:

(a) WTW said that the most important decision point for a pension scheme in terms of the nature and cost of the service it procures arises when it makes the decision to migrate from an advisory only or partial fiduciary management service to a whole fund fiduciary management service. It was therefore more effective to mandate a competitive tender at this

point in the process rather than when the scheme first moves to a partial fiduciary mandate.[740]

(b) WTW also said that a compulsory tendering remedy should be restricted to full fiduciary mandates and not extend to either partial mandates or the array of products that compete with such mandates.[741] WTW said that mandating competitive tendering at the point that a pension scheme moves to a partial mandate would risk imposing a disproportionate burden on pension schemes and – in the process – creating a more significant barrier to the take up of fiduciary management services.[742]

(c) Russell Investments said that the scope of the remedy should be limited to fully delegated mandates only.

(d) At our roundtable discussion, trustees mentioned that there was currently an uneven playing field between schemes with IC-only firms and IC-FM firms. Trustees said that if an investment consultant was an IC-only firm, trustees have to tender to get a partial fiduciary management mandate. On the contrary, if an investment consultant was an IC-FM firm, trustees might move to a partial fiduciary management mandate as an 'extension' from the current investment consultancy relationship. Many trustees agreed that IC-FM firms should not be able to do these 'extensions' without a tender.[743]

12.33 We note parties' views that tendering should be mandatory only when schemes consider full fiduciary management services. However, at this stage it may be too late to run a competitive tender without incurring significant switching costs because of the potential 'lock-in' by the incumbent fiduciary management provider. Therefore, we have concluded that the remedy should apply to the first move into fiduciary management, whether or not it is or was for the whole of the scheme's assets.

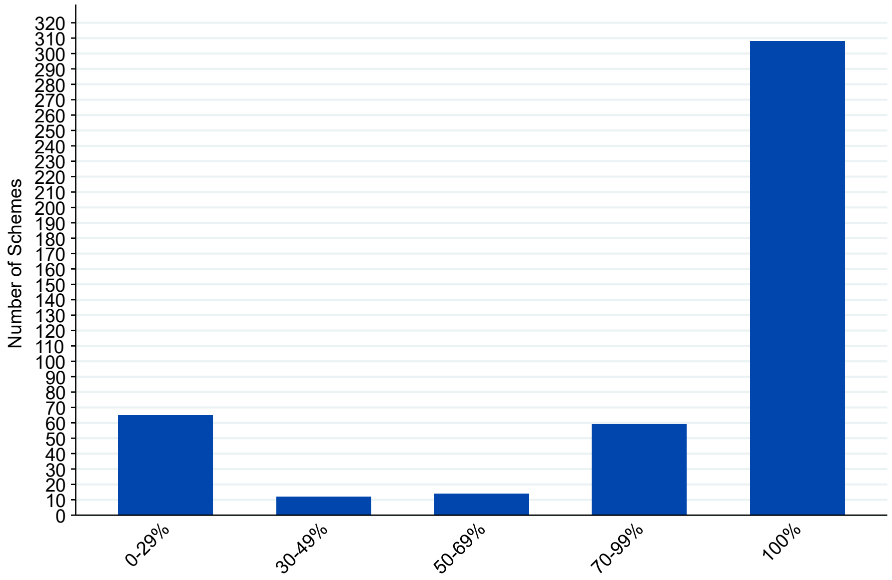
12.34 WTW said that if the CMA were to extend the scope of the remedy to include partial fiduciary mandates, then a minimum threshold should be applied in these instances, to take into account the level of influence the fiduciary manager has on the scheme's total assets. WTW said that a minimum threshold of 20% of assets would be required in such a scenario in order to

[740] WTW response to the provisional decision report.
[741] WTW response to the provisional decision report.
[742] WTW response to the provisional decision report.
[743] Summary of trustee roundtable discussion held on 3 October 2018.

avoid deterring a substantial number of smaller schemes from considering partial fiduciary solutions.[744]

12.35 Figure 27 below shows the total number of schemes within each delegation band. The right-hand column shows that the majority of schemes which buy fiduciary management services, delegate all of their assets. The left-hand column shows the number of schemes that delegate up to 29% of their assets. The figure also shows that a significant minority of schemes delegate between 70% and 99% of their assets. Other levels of delegation are far less common.

Figure 27: Number of Mandates split between Delegation Levels



Source: CMA

12.36 Over the course of this investigation, we had conversations with pension scheme trustees and various other interested parties and found that, sometimes, trustees find the decision to delegate discretion over all of their assets too big a step to take in one go. In some instances, trustees access the pooled fund of a fiduciary management provider (which may also be the investment consultancy provider) to test the fiduciary management solution but they only commit a small percentage of the scheme's assets with a view to full conversion from investment consultancy to fiduciary management if the model proves successful.

12.37 This was corroborated by our analysis in chapter 7 which shows that schemes with lower levels of delegation have lower tender rates and higher rates of buying fiduciary management from their incumbent investment consultant.

[744] WTW response to the provisional decision report.

12.38 When considering if a minimum threshold should apply for the first move into fiduciary management and if so what that threshold should be, we took account of WTW's submission, as well as our analysis (summarised in Figure 27) and various conversations we had with trustees over the course of our investigation.

12.39 We decided to set a minimum threshold above 0% as requiring a tender for very small mandates would be disproportionate, as it would mean very small delegations were in scope. We also decided not to set the threshold as high as 70% because this would mean the tendering requirement would not trigger until trustees were to delegate nearly all of a scheme's assets to a provider.

12.40 We considered whether the threshold should be as high as 29%; however, anecdotal evidence from within the sector implies that this would be very high for a scenario in which trustees were still just 'testing' the fiduciary management solution or allocating assets to a single asset class.[745]

12.41 Noting WTW's suggestion of a 20% threshold and other evidence collected during this investigation, we have concluded that the threshold should be 20% in order for the remedy to be effective and no more onerous than necessary.

12.42 In conclusion and based on the evidence available to us, we will require that any fiduciary management mandates which represent 20% or more of scheme assets must be competitively tendered before being awarded.

12.43 Any increase in delegation to fiduciary management that results in the scheme committing a total of 20% or more of its assets will be subject to the mandatory competitive tendering requirement, as described above.

Scheme size threshold

12.44 In the provisional decision report, we did not propose any minimum threshold for tendering by pension scheme size.

12.45 In response to the provisional decision report, parties made the following representations:

(a) WTW said that there should be no minimum threshold for pension schemes to run a competitive tender, assuming the proposed tendering approach was proportionate.[746]

[745] By 'testing' the solution we mean, pension scheme trustees allocate a small proportion of their scheme's assets into fiduciary management with a view of allocating all scheme assets if the service works well.
[746] WTW response to the provisional decision report.

(b) Aon said that while the importance of trustee engagement and the need to deliver good member outcomes was not dependent on the size of the scheme, small schemes needed to have flexibility on tendering (as they have today), which was difficult under mandatory rules that are designed to apply to a very diverse market. Therefore, it was necessary to ensure that a mandatory tendering regime did not dissuade trustees from considering fiduciary management where this would be a better approach than investment consultancy to meet their needs.[747]

(c) PLSA said that having a minimum threshold ran the risk of turning the requirement into a box-ticking exercise instead of encouraging schemes to think through the best approach for their scheme.[748]

(d) The Investment Association said that there should not be a minimum threshold below which schemes would not have to tender on the first-time adoption of fiduciary management. Smaller schemes would benefit most from a mandatory tendering requirement and it would be inconsistent with the CMA's own evidence to exclude them from this remedy.[749]

(e) Schroders said that the mandatory tendering requirement should be applied across all fiduciary management appointments for schemes of all sizes, scope and scale provided the required tender process was proportionate and not overly onerous.[750]

(f) Russell Investments also said that there should not be a minimum threshold for size as trustees tend to be self-selecting when deciding to purchase fiduciary management services.[751]

(g) However, Mercer said that in the event that tendering was compulsory, a scheme size threshold of assets of £100 million should apply, given the prohibitive costs of tendering for smaller schemes. The costs of tendering did not change materially with the size of scheme, meaning that they were much higher, relative to scheme size, for smaller schemes.[752]

(h) Cardano said that a minimum scheme size of £50 million should apply.[753]

[747] Aon response to the provisional decision report.
[748] PLSA response to the provisional decision report.
[749] The Investment Association response to the provisional decision report.
[750] Schroders response to the provisional decision report.
[751] Russell Investments response to the provisional decision report.
[752] Mercer response to the provisional decision report.
[753] Cardano response to the provisional decision report.

12.46 We note parties' comments and we are conscious that mandatory tendering may result in a scheme incurring costs. We are in particular concerned that the costs or time required may represent a greater relative burden on smaller schemes.

12.47 We considered whether only schemes of a certain minimum size should be required to hold a competitive tender when appointing a fiduciary management provider for the first time. A minimum threshold might mitigate the potential unintended consequence of smaller schemes deciding not to buy fiduciary management because of the costs associated with it.

12.48 However, whilst it is possible that some customers may be dissuaded from buying fiduciary management as a result of this remedy, we consider this would only apply to a small proportion of pension schemes.

12.49 We consider that applying a minimum threshold for size would likely reduce the effectiveness of the remedy, particularly as the problems we found are most prominent amongst smaller schemes. Furthermore, smaller schemes may be able to run less costly tendering processes than larger schemes. We also think that the members of small schemes need the same assurance that their pension scheme trustees seek value for money as those of large schemes. Finally, there are benefits arising from this remedy and we do not think that these should be reserved for large schemes.

12.50 We conclude that this remedy should have no minimum threshold for scheme size. However, following representations made to us, some types of scheme may be excluded from the scope of this remedy and this will be considered during the remedies implementation phase of the investigation.

Tendering for further mandates

12.51 In relation to the need for tendering after first fiduciary management appointment, parties made the following representations:

(a) PLSA said that the CMA's proposal not to require additional tenders for increases in the scope of a fiduciary management mandate was sensible; the initial tendering for fiduciary management services should be the key focus of a trustee board's decision-making and any further requirements in this area are likely to be disproportionately costly with respect to the expected benefits.[754]

[754] PLSA response to the provisional decision report.

(b) Mercer said that if a tender process has taken place on first appointment, no further process should be compulsory (or necessary, given that the trustees are clearly already aware of options in the market). To create such an obligation would potentially discourage firms from raising new solutions with their client in the knowledge that any expansion of their mandate would trigger a requirement to tender.[755]

12.52 Other parties said that the remedy should cover increases in the scope of fiduciary management, not just first appointment:

(a) The Investment Association said that the CMA should consider extending the mandatory tendering remedy to cover increases in the scope of fiduciary management when moving from 'partial' to 'full' fiduciary management for the first time. This was because 'partial' fiduciary management was in practice essentially the same service as segregated portfolio management. Moving from such a situation to a full fiduciary management mandate would be akin to a first time move into fiduciary management and so should be tendered for.[756]

(b) LCP said that the CMA should not limit the scope only to instances when trustees first consider using fiduciary management services but extend the remedy to all new fiduciary management mandates. LCP gave an example of when subsequent tendering would be warranted: trustees appoint a fiduciary management provider for a small part of their assets and do so under a competitive tender. The trustees subsequently considered adding further asset classes to the existing partial-FM mandate. LCP submitted that this second decision should also be captured by the requirement to make this appointment following a competitive tender process.[757]

12.53 We conclude that increases in the scope of the fiduciary management mandate should not be subject to mandatory tendering. Additional mandatory tenders are likely to have additional costs for pension schemes, which will be burdensome for smaller schemes, when compared to the total assets under management. They are also likely to be ineffective if they become a 'box-ticking' exercise where the customer has no intention of switching to another provider.

[755] Mercer response to the provisional decision report.
[756] The Investment Association response to the provisional decision report.
[757] LCP response to the provisional decision report.

A competitive tendering process for existing mandates

12.54 In the provisional decision report, we proposed that our remedy included a second element which will require schemes which use fiduciary management, but which have not held a competitive tender for the service, should to do so within five years from the start of their current mandate.

12.55 Parties made the following representations to this proposal:

(a) Russell Investments said that this would not be particularly burdensome for clients and it would ultimately have a positive impact in terms of empowering trustees to source the best deal.[758]

(b) Hymans said that it agreed that there should be a competitive tender for historic mandates, but the type of process should depend on the nature of the mandate in question.[759]

(c) WTW said that it has no concerns with back-dating this remedy for historic mandates, assuming that the requirement applies to full fiduciary mandates only and the definition of competitive tendering is proportionate and not-overly prescriptive. WTW expected the CMA to ensure that past tenders are not subject to any forward-looking definition of a competitive tender in this regard.[760] WTW also said that a scheme should not be required to hold an additional tender process as long as it can demonstrate that it actively considered its choice of provider at the time that it first migrated to a full fiduciary management services, either through an open or closed tender process in which at least two firms were invited to submit a proposal or any process where a TPE was employed to assess the fiduciary management provider regardless of whether there was actually a competitive process.[761]

(d) The Investment Association said that it agreed that schemes that have not previously tendered for their fiduciary management services provider should be required to tender for the mandate in future. Trustees who have not gone out and assessed a wider group of providers could be missing out on a better provider and/or a lower cost service.[762]

(e) The Investment Association also said that if the number of schemes in this position were very small, then a case could be made for not

[758] Russell Investments response to the provisional decision report.
[759] Hymans response to the provisional decision report.
[760] WTW response to the provisional decision report.
[761] WTW response to the provisional decision report.
[762] The Investment Association response to the provisional decision report.

imposing this requirement on trustees. It also said that the fact that the CMA had identified 327 schemes which, as of 2016, used the service but did not hold a tender process, means that a considerable number of schemes could benefit from tendering for a new provider.[763]

(f) Cardano said that trustees should be required to hold a competitive tender process if they did not previously do so.[764]

(g) Aon said that it does not support mandatory retrospective tendering for schemes that already purchase fiduciary management. Aon made the point that clients who already receive fiduciary management services were not 'locked in' so it was not appropriate to require them to go through the additional cost involved in a mandatory tendering regime. Also, given the industry's movement to regular review and tendering within a reasonable period, it was highly likely that trustees will retender in any event.[765]

(h) LCP said that the mandatory tendering of existing fiduciary management mandates was not warranted. The process was likely to be costly and take up a considerable amount of trustee time. The frictional trading costs of moving a fiduciary management service to a new provider mean few schemes are likely to change providers, even if, when considered net of these costs, a different fiduciary manager was preferred.[766]

(i) Mercer said that this proposed remedy would be particularly onerous, costly, and difficult to manage in practice. This obligation would likely generate an unmanageable volume of tenders and impose disproportionate costs which would set back the development of this fast-growing and dynamic market. Mercer estimated that this remedy would create a potential additional cost per firm of over £2 million per year.[767]

(j) Pension trustees raised some doubts about the practicality of mandatory tendering for schemes already in fiduciary management which had not tendered before. One professional trustee noted that one of their schemes had a lock-in period of five years with their fiduciary management provider and another professional trustee said that this was fairly typical. Trustees suggested that using a TPE or having a comply or

[763] The Investment Association response to the provisional decision report.
[764] Cardano response to the provisional decision report.
[765] Aon response to the provisional decision report.
[766] LCP response to the provisional decision report.
[767] Mercer response to the provisional decision report.

explain regime might be more suitable ways of driving competition for existing mandates.[768]

(k) Mercer proposed an alternative to mandatory historic tendering, which was to require providers to tell existing clients who had purchased fiduciary management services for the first time, and where the provider believes that the client has not previously engaged in a market testing process, that it would be best practice to conduct a tender to test the market.[769]

12.56 We note parties' comments above represented a range of views regarding potential costs for schemes and likely effectiveness.

12.57 Having considered those representations carefully, we conclude that the competitive pressure of a tender process for existing mandates is necessary to achieve a comprehensive solution and will help trustees with an existing mandate to achieve a better deal either with their existing or a new provider. We expect this remedy to reduce detriment in the market by reducing prices paid for fiduciary management services or improving value for money.

12.58 The scope of a competitive tender process for these schemes would be consistent with the requirements of any mandatory competitive tender process on first appointment, as set out in this report. Furthermore, we consider that tendering, in general, whether for existing or future mandates, is likely to lead to competitive pricing, higher quality of services and better outcomes for schemes.

Tenure and grace period

12.59 In the provisional decision report, we proposed that pension schemes which had not run a competitive tender before appointing a fiduciary management provider should have a five-year period before having to run a tender; also, that schemes which had already exceeded that five-year period should have a two year 'grace' period within which to run a tender. Parties made the following representations on these proposals:

(a) WTW said that the maximum permissible tenure without holding a competitive tender process should be seven years in total, where

[768] Summary of trustee roundtable discussion held on 3 October 2018.
[769] Mercer response to the provisional decision report.

existing mandates were tendered over five years with a two-year grace period.[770]

(b) The Investment Association said that for the maximum permissible tenure without holding a tender process, five years seemed sufficient.[771]

(c) Mercer said that a grace period of two years was likely to create very significant resource issues, therefore, the grace period should be extended to five years. Mercer agreed with the five-year tenure proposed in the provisional decision report.[772]

(d) Hymans said that five years felt like an appropriate maximum permissible tenure without holding a competitive tender.[773]

(e) Russell Investments said that there should not be a maximum permissible tenure imposed in relation to mandatory tendering. Furthermore, a two-year grace period would provide sufficient time to organise an effective tender process.[774]

(f) Cardano said that the minimum period for the schemes that did not hold a competitive tender to go to market should be three years; five years was too long.[775]

(g) River and Mercantile said that there should not be a maximum permissible tenure and that the grace period should be three years.[776]

(h) JLT said that it was satisfied with the timescale suggested in the provisional decision report, a two-year grace period for those schemes that have been invested in fiduciary management more than five years.[777]

(i) XPS said that the maximum tenure should be three years, also the grace period should also be three years.[778]

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[770] WTW response to the provisional decision report.
[771] The Investment Association response to the provisional decision report.
[772] Mercer response to the provisional decision report.
[773] Hymans response to the provisional decision report.
[774] Russell Investments response to the provisional decision report.
[775] Cardano response to the provisional decision report.
[776] River and Mercantile response to the provisional decision report.
[777] JLT response to the provisional decision report.
[778] XPS response to the provisional decision report.

(j) Barnett Waddingham said that a five-year tenure with a two-year grace period was sensible.[779]

(k) Cambridge Associates said that trustees should review service providers regularly, at the earliest prior to the second complete actuarial cycle after the initial appointment. If a scheme has reached the maximum period, the grace period should be 12 months.[780]

(l) Spence said that five years was sufficient as the maximum permissible tenure, and the grace period should be two to three years to allow trustees time to fit it into any project plan.[781]

12.60 We conclude that the time period should be five years. We consider that the capacity of the industry to respond to competitive tenders should be adequate to ensure good participation in tender processes. In reaching this view, we considered the number of tenders that we currently expect to take place each year (around 100 tenders per annum) and we also considered the number of additional tenders we thought firms would be able to effectively bid for (around 327 over two years).

12.61 We considered parties' submissions and decided to allow a two-year grace period to ensure that all trustees whose mandate already exceeds the five-year period (or is approaching it) have the opportunity and sufficient time to organise an effective tender process. Trustees will not be required to have completed a tender process earlier than two years from the date that the CMA's order is made.

12.62 We do not expect that firms should cease providing fiduciary management services to pension scheme trustees who have not held a competitive tender process, as this could lead to substantial switching costs to scheme members. The duty to run these tenders is on pension scheme trustees. However, we do expect that fiduciary management firms should treat it as their duty to notify their existing customers of the requirement to hold a competitive tender process if they did not do so previously, after five years.

[779] Barnett Waddingham response to the provisional decision report.
[780] Cambridge Associates response to the provisional decision report.
[781] Spence response to the provisional decision report.

Compliance with the remedy

12.63 In the provisional decision report, we asked who should be responsible for complying with the remedy and how compliance should be monitored. Some parties made the following representations:

(a) WTW said that it should be the responsibility of the pension scheme to identify whether it needed to run a competitive tender and whether/how it wished to run such a tender.[782]

(b) Mercer said that an obligation on firms not to accept a new mandate would be excessive. If the CMA decided to proceed with a mandatory obligation it would be sufficient for this to apply to trustees as the scheme was best placed to judge whether the obligation to tender has been complied with and if there was a risk of non-compliance, it was not acceptable for a provider to be faced with the choice between withdrawing services from the scheme or otherwise being in breach of its obligations.[783]

(c) Aon said that a prohibition on the acceptance of a new mandate by fiduciary management firms where no competitive tender had taken place would put fiduciary management providers in the position of policing the mandatory tendering regime. This was not a role that fiduciary management providers could fulfil, and Aon disagreed with this aspect of the proposed remedy. Aon said that its principal concern was that no fiduciary management provider can have full visibility over the process that has been adopted by trustees.[784]

(d) Cardano said that there should not be any prohibition placed on firms accepting new mandates. [785]

(e) However, the PLSA said that preventing suppliers from accepting a mandate where no such competitive process has been undertaken could also be effective in preventing non-compliance.[786]

(f) The Investment Association said that it did not have any concerns with fiduciary managers being prohibited from accepting a first-time mandate if it has not been competitively tendered for. However, it noted that the prohibition would be superfluous as long as trustees conducted the

[782] WTW response to the provisional decision report.
[783] Mercer response to the provisional decision report.
[784] Aon response to the provisional decision report.
[785] Cardano response to the provisional decision report.
[786] PLSA response to the provisional decision report.

required tender. This prohibition could be viewed as a useful complement only when trustees did not comply with their mandatory tendering obligation, which in itself should be a very rare occurrence.[787]

12.64 We noted parties' views and conclude that trustees should have the primary responsibility for deciding whether to conduct a tender process. Therefore, our remedy places the primary duty on trustees.

12.65 However, we also conclude that firms should be prohibited from supplying fiduciary management services unless they have participated in a competitive tender process. This reflects the fact that firms will be more familiar than pension scheme trustees with the regulatory regime that applies, and they can reasonably be expected to support the remedy. To enable this, pension scheme trustees will be required to confirm to firms, prior to the mandate being awarded, that they have run a competitive tender process.

Proposed alternatives to mandatory tendering

12.66 A range of alternatives to mandatory tendering were proposed by parties:

(a) Mercer said that this remedy was not well targeted to address the issue that the CMA has raised. A tender was only one method of achieving this and less onerous alternatives are available. Moreover, in Mercer's experience, it was increasingly the case that tendering was standard practice in any event and schemes which do not tender tend to have a good reason not to do so, that is, they have market tested, the appointment was for a niche service or the scheme was too small.[788]

(b) Mercer proposed an alternative to mandatory tendering which, in its view was effective and more proportionate than the remedy set out in the provisional decision report. This alternative would include a combination of: TPR guidance stating that competitive tendering is best practice, a requirement for fiduciary management providers to provide prominent statements to trustees prompting them to consider testing the market before making appointments and a requirement on schemes that do not carry out a tender to provide an explanation to TPR of the reasons why this was the case.[789,790]

[787] The Investment Association response to the provisional decision report.
[788] Mercer response to the provisional decision report.
[789] Mercer response to the provisional decision report.
[790] Mercer suggested as an example, the Trustee Report and Accounts where other changes are also commented on and all advisers listed.

(c) Aon said that good trustee engagement can be achieved in a straightforward manner by enhancing trustee accountability and transparency for their fiduciary management purchasing decisions. Accountability would come from a mandatory requirement on trustees to explain, in the DC Chair's statement or the recently proposed DB Chair's statement, how the move from investment consultancy to fiduciary management came about and the steps taken to implement that move. This approach would effectively mandate the engagement rather than the form of engagement. In Aon's view, it would achieve the same objective as a mandatory tendering approach in a more proportionate manner.[791]

(d) Aon also said that in view of the complexities and risks inherent in adopting a mandatory tendering approach, the CMA should explore a more flexible approach which focusses on increasing trustee accountability for their fiduciary management purchasing decisions. This would not only be more proportionate but would be more effective in ensuring greater trustee engagement in, and transparency of, the decision to first move from investment consultancy to fiduciary management.[792]

(e) WTW said that appointments for the internal pension schemes of IC-FM firms should be excluded from the scope of the mandatory tendering regime.[793]

12.67 We note Mercer's and Aon's preference for a 'comply or explain' regime where trustees report compliance to TPR or scheme members. Our view is that this remedy would not be as effective in changing trustees' behaviour as mandatory tendering. Our concern is that the pension scheme trustees would not face effective incentives to run a competitive tender process if they thought that they would not face enforcement from TPR. The remedy may also be difficult to monitor as it will be difficult to assess whether the reasons for non-compliance are reasonable.

12.68 For these reasons, we conclude that an 'accountability' or 'comply or explain' remedy would only be of limited effectiveness in changing trustees' behaviour and therefore would not address the AEC and resulting detriment identified as comprehensively as a mandatory competitive tendering remedy.

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791 Aon response to the provisional decision report, Part B.
792 Aon response to the provisional decision report, Part B.
793 WTW response to the provisional decision report.

12.69 We agree with WTW that mandatory tendering would impose an additional financial burden on IC-FM firm staff pension schemes without having a realistic prospect of improving the impact on the outcome of the tender process. We consider it unlikely that an IC-FM firm would hire a competitor for the needs of its staff scheme. Furthermore, there may be confidentiality issues arising from sharing sensitive information with competitors during a tender process where the contract will most likely be awarded in-house. Therefore, we conclude that appointments for the staff pension schemes of IC-FM firms are excluded from the scope of this remedy.

Effectiveness

12.70 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the fiduciary management AEC and the resulting customer detriment

12.71 We have found that IC-FM firms steer their advisory customers towards their own fiduciary management service. This remedy will contribute to addressing this feature as it requires pension scheme trustees to compare several providers before making the move into fiduciary management. This remedy will also contribute to addressing the customer detriment resulting from the AEC by requiring trustees to consider offers from several providers before moving into fiduciary management. This will encourage both the incumbent and alternative providers to compete more vigorously on price and quality.

12.72 We have also found low levels of customer engagement at the point of first moving into fiduciary management. This remedy will contribute to addressing this feature of the AEC by obliging trustees to make an active and informed decision on which provider to appoint prior to moving into fiduciary management. This remedy will contribute to addressing the customer detriment resulting from the AEC by ensuring that trustees actively test the market when selecting a fiduciary manager. This will encourage both the incumbent and alternative providers to compete more vigorously on price and quality.

Implementation, monitoring and enforcement

12.73 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.74 In our view, remedy 1 is capable of effective implementation as its operation and implications will be clear to trustees, who can readily implement it and comply by inviting a number of providers to bid if they are considering moving into fiduciary management.

12.75 In the provisional decision report, we asked parties who would be best placed to monitor and enforce this remedy. Most parties said that compliance should be monitored by TPR and the FCA. Amongst others, Aon said that compliance with a mandatory tendering regime should be overseen principally by TPR. Aon also said that if the CMA opts to introduce a prohibition on fiduciary management firms accepting non-tendered business, this would need to be subject to FCA oversight. The two regulators would need to be closely aligned on implementation, enforcement and guidance.

12.76 We considered parties' submissions and subject to the necessary regulatory powers, we concluded that TPR is best placed to supervise this remedy. We set this out in recommendation D, below.

12.77 We also concluded that FCA supervision of the firms' compliance with this remedy is crucial to ensure effective implementation. We set this out in recommendation A, below.

12.78 This remedy will be initially monitored and enforced by the CMA. To monitor compliance effectively, we will require trustees and fiduciary managers to submit a compliance report to the CMA annually. We would also expect non-compliance may be detected and reported to the CMA by competitors, customer groups and other affected parties if they become aware of it.

12.79 In view of the foregoing, our view is that the operation and implications of the remedy will be clear to those to whom it is directed namely, pension scheme trustees and providers, it would not require elaborate monitoring or compliance programmes, and it is capable of effective enforcement initially by the CMA and subsequently by the relevant regulators through their respective regulatory regimes. We conclude therefore that remedy 1 is capable of effective implementation, monitoring and enforcement.

12.80 This remedy will come into force six months from the date on which the CMA's order is made. This remedy will initially be implemented by CMA order. As soon as possible we intend that TPR should oversee trustees' compliance with this remedy as part of its other regulatory requirements on pension scheme trustees and the FCA should oversee firms' compliance with this remedy as part of its regulatory requirements on fiduciary management firms. As the provisions of the order are implemented into the relevant sector-specific regulatory requirements the relevant provisions of the order will cease to apply and this will happen in any event within ten years of the order being made.

The timescales over which the remedy will take effect

12.81 Remedy 1 will take effect within six months of the order being made. We consider that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing schemes and providers a reasonable period in which to start complying with this remedy.

12.82 We note that for schemes that already purchase fiduciary management services but have not tendered, we are allowing a two-year grace period for those schemes whose mandate already exceeds the five-year period.[794] This is to provide the opportunity and sufficient time to organise an effective tender process. We carefully considered parties' responses on the length of this grace period and consider that two years is the most appropriate length.

Consistency with existing and expected laws and regulations

12.83 In designing this remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted DWP, the FCA and TPR among others. In our view, remedy 1 does not create any tension with, or otherwise undermine, such laws and regulations. We have therefore concluded that remedy 1 is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.84 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in fiduciary management.

Proportionality

12.85 This section considers the proportionality of the remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management. Our guidance provides that in making our assessment of the proportionality, we will be guided by the following principles, namely that a proportionate remedy is one which (a) is effective in achieving its legitimate aim; (b) is no more onerous than needed to achieve its aim; (c) is the least onerous if there

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[794] The 'five-year period' means fiduciary management mandates awarded without a competitive tender for five or more years prior to the date when the CMA order takes effect.

is a choice between several effective measures; and (d) does not produce disadvantages which are disproportionate to the aim.[795]

Is effective in achieving its legitimate aim

12.86 We have assessed the effectiveness of remedy 1 and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.87 As discussed in detail above, we have considered the necessary requirements of the tender process to be effective in addressing the causes of the AEC, both for trustees and providers, and we have considered various alternatives to the precise design of remedy 1 to ensure that it is no more onerous than necessary. Our consideration has included the impact of different periods before trustees with existing mandates will be required to conduct a tender process, the inclusion of a minimum threshold for scheme delegation, mandatory tendering for further mandates and alternative models to achieve the same aim.

12.88 Our approach to the design of remedy 1 has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on business. Our view is that our design of remedy 1 strike the right balance in terms of the procedures it requires to ensure competitive tendering and is thereby no more onerous than needed to achieve its aim.

12.89 Further, in designing this remedy we have taken steps to ensure that costs are kept low for both pension schemes and providers:

(a) We are imposing only minimal requirements on the tender process, so that trustees can choose the approach that is most suitable for them. We are not requiring an open invitation tender process for example, based on feedback that this could substantially increase costs.[796]

(b) We are not mandating the use of TPEs, which would increase the costs to pension schemes. Trustees can decide whether the use of a TPE is appropriate for their circumstances.

(c) Firms will remain free to judge how much effort and therefore expense is justified for any given tender, taking into account factors such as the

[795] CC3 (Revised), paragraph 344.
[796] Eg summary of roundtable with Pension Scheme Trustees held on 3 October 2018 and responses to CMA information requests.

nature and scope of the requirements and the value to the provider of winning the tender.

Is the least onerous if there is a choice between several effective measures

12.90 As discussed in detail above, we considered various options in terms of the tender process, for example whether to require an open or closed tender. In addressing parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from remedy 1. For example, we considered pursuing mandatory switching, an ongoing requirement to tender, or preventing IC-FM firms from offering both services.

12.91 Our view is that although such measures would be as effective in contributing to addressing the AEC and resulting customer detriment, they would be more onerous than remedy 1 (for example, they would have significant monetary and non-monetary costs to firms and pension schemes).

12.92 We have therefore concluded that remedy 1 is the least onerous of several equally effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.93 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim of addressing the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it.[797]

12.94 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (that is, pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[798] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.95 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

[797] CC3 (Revised), paragraph 348.
[798] CC3 (Revised), paragraph 358.

Potential benefits

12.96 This remedy aims to improve levels of trustee engagement and ensure that trustees have access to the necessary information to judge the value for money of alternative providers.

12.97 We consider this remedy will substantially increase the competitive pressure on providers by requiring trustees to run a competitive tender process when they first move into fiduciary management. This will ensure that trustees test the market and make an informed, active choice. This will encourage both the incumbent and rival providers to present competitive offers.

Potential costs

12.98 We have considered the potential costs to pension schemes and firms of running and participating in a tender process, respectively. For schemes we considered the additional time that trustees will need to commit, as well as other potential costs, such as TPEs and other advisers. For firms we considered the incremental potential costs of this remedy, over and above the current costs of gaining new business.

12.99 Feedback from providers indicates that trustees might typically spend one to two weeks organising and running a tender process.[799]

12.100 Cardano submitted that the process is generally low-cost, although Mercer notes that the use of professional trustees would incur costs.[800] River and Mercantile submitted that professional trustees may be recruited specifically for the tendering process.[801] The potential costs incurred by the pension scheme will therefore depend on the governance arrangements and the makeup of trustees on the board.

12.101 We therefore recognise that some pension schemes may incur an additional cost from remedy 1. However, the remedy has been designed to give trustees the flexibility to conduct a tender process that is appropriate for their scheme. A simple tender process that complies with the requirements of remedy 1 would impose minimal costs on the pension scheme.

12.102 In terms of the costs incurred by providers, we have received a wide range of estimates. At the lower end, [✄] estimated a cost of less than £[✄] and [✄]

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[799] River and Mercantile responses to CMA information request. Summary of roundtable with Pension Scheme Trustees held on 3 October 2018.
[800] Cardano and Mercer responses to CMA information request.
[801] River and Mercantile response to CMA information request.

estimated a cost of £[✂] to £[✂].[802] At the upper end, [✂] and [✂] submitted estimates of over £[✂] for large schemes.[803] These estimates are predominantly based on staff time.

12.103 Our assessment is that the potential costs incurred by fiduciary management providers from remedy 1, for individual tenders, will generally be towards the lower end of these estimates. This is for the following reasons:

(a) Over time, this remedy is expected to lower the costs for fiduciary management providers of participating in a tender. This is partly a consequence of how this remedy works with other remedies in the package through more consistent requests for proposals (RFPs) (from remedy 3), and standardised performance and fee reporting (remedies 5 and 6).

(b) Many of the costs incurred in tendering would be incurred in the normal process of recruiting a new client, and so would not be materially greater as a result of remedy 1. Even without a tender process for example, firms may be required to meet the client several times. [✂] also noted that the costs related to investment strategy design (which are typically required as part of the RFP) are required for all new fiduciary management clients.[804] We recognise however that these costs are 'sunk' for firms that do not win the tender.

(c) Some providers may be eliminated in the initial stage of the tendering process; therefore, costs will be lower for such firms.[805]

12.104 We recognise that the intention of remedy 1 is to increase the amount of tendering, and that fiduciary management providers will, collectively, incur increased costs, in being involved in a higher number of tenders each year, However, we emphasise that no firm will be obliged to compete in more competitive tenders than it does now. Firms will make their own assessment as to the costs and expected benefits of competing in any given tender process, and we would expect firms to participate in a tender when the expected benefits outweigh the costs. Our remedy requires pension scheme trustees to conduct a one-off competitive tender process and we consider that pension scheme trustees will be incentivised to run competitive tenders which lower the costs of tendering for providers.

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802 [✂] and [✂] responses to CMA information request.
803 [✂] and [✂] responses to CMA information request.
804 [✂] response to CMA information request.
805 Legal and General response to CMA information request.

12.105 We have designed the remedy in a way that minimises costs and allows sufficient flexibility both for trustees and providers on a case-by-case basis.

12.106 Our overall assessment is that the potential benefits of this remedy are likely to outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.107 We have therefore concluded that remedy 1 does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.108 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Remedy 2 – Separation of advice and marketing by IC-FM firms on fiduciary management services

12.109 The objective of this remedy is that trustees understand whether information on fiduciary management received from an investment consultant is advice or marketing material.

Description of the remedy

12.110 This remedy requires IC-FM firms[806] to include a prominent notice in their written materials for advisory customers when marketing their own fiduciary management service. This remedy also requires IC-FM firms to provide marketing material and advice in separate documents. This will give clarity and context to the different types of information these firms provide to trustees.

12.111 The notice must be used in any written material relating to the fiduciary management services of IC-FM firms presented to their existing advisory customers. Such documents must be labelled as marketing and include prescribed text on the first page. This will mention the requirement for pension scheme trustees to hold a tender when first appointing a fiduciary

[806] This remedy would cover both integrated IC-FM firms and any investment consultancy firm which has any kind of partnership or joint venture with a fiduciary management services provider.

management provider and it will remind them of the guidance on tendering available from TPR (as discussed in remedy 3).

12.112 These measures will ensure that firms separate out professional advice on fiduciary management for pension scheme trustees from any marketing of their own fiduciary management service.

How it contributes to addressing the AEC and resulting customer detriment

12.113 As described in chapter 7, we have found that investment consultants' advice on investment strategy is sometimes combined with information on their own fiduciary management services.

12.114 When marketing is separated from the IC-FM firm's advisory materials, trustees should be better able to understand the nature of the information presented to them and how to engage with any potential purchase decision by, for example, getting independent advice or support.

12.115 This remedy will help drive greater trustee engagement and, together with remedy 1, help to address the incumbency advantage of IC-FM firms in winning fiduciary management business from existing advisory customers.

12.116 Together with remedy 1, this remedy should lead to strengthened competition and a reduction in the customer detriment that may be expected to result from the AEC that arises from trustees choosing an IC-FM's fiduciary management service by default.

12.117 The rest of this section looks at the remedy we proposed in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

Proposed remedy in provisional decision report

12.118 In the provisional decision report, we proposed that IC-FM firms should give timely, meaningful and prominent warnings to existing advisory customers when their written material relates to fiduciary management. We said that these warnings would highlight the availability of any materials and guidance from TPR and the mandatory tendering requirement on trustees if they do choose to take a fiduciary management mandate. We also said that the wording would need to be in a red box and it would have the tile 'Warning'.

Issues raised in response to the provisional decision report

12.119 The majority of responses supported the remedy as outlined in the provisional decision report. Some parties said that the red box and the word 'warning' may deter pension scheme trustees from considering the service even when this may be the right thing for the scheme they represented.

12.120 Parties made the following representations on this proposal:

(a) PLSA said that using language like ‘warning’ to describe the thrust of the proposals and suggesting a red box format might inadvertently deter trustees from considering an approach which was in their best interests.[807]

(b) Russell Investments said that the warning signs appeared to highlight danger in a similar way to goods that carry health risks, which distorted the perception of hazards associated with using fiduciary management and related services.[808]

(c) Legal and General said that a requirement for IC-FM firms to give notice to their advisory clients when discussing their fiduciary management services would be positive and allowed clients to distinguish investment advice from marketing material.[809]

(d) Aon said that a ‘warning’ was wholly inappropriate as it had strong negative connotations and suggested there are extensive risks involved in adopting fiduciary management, which was not the case. This could have the unintended consequence of dissuading trustees from considering fiduciary management, even where it was suitable for their needs and beneficial for their members.[810]

(e) WTW said that the use of the word ‘warning’ and presentation in a red box was likely to be associated by trustees with a high level of risk and may discourage them from giving due consideration to the benefits of fiduciary management.[811]

12.121 We have considered parties’ views on the proposal put forward in the provisional decision report and agree that the title ‘Warning’ as well as the red box design may distort trustees’ perception of the fiduciary management service. This was not the intended effect of the remedy.

12.122 Accordingly, we will not require that the prescribed text should be labelled as a ‘Warning’, nor that it should be presented in a red box.

[807] PLSA response to the provisional decision report.
[808] Russell Investments response to the provisional decision report.
[809] Legal and General response to the provisional decision report.
[810] Aon response to the provisional decision report.
[811] WTW response to provisional decision report.

12.123 Parties also made the following representations regarding the content of the 'Warning' text:

(a) Cardano said that the warning should be the same for all providers with no flexibility to change the wording. It said that a clear and transparent warning should help trustees to easily separate advice from marketing.[812]

(b) Mercer said that prescribing standard language and format risks being ineffective and eventually being overlooked by trustees. It said that providers should have a degree of flexibility around the precise wording and structure of any warnings.[813]

(c) Aon agreed that all firms should be required to include transparency statements in their marketing and advisory documentation. Aon supported a requirement for fiduciary management providers to explain clearly, when they introduced fiduciary management, that they cannot give recommendations for their own services.[814]

(d) WTW was generally supportive of this remedy and said that it was important that firms were transparent with regard to when they were advising clients and when they were selling additional services.[815]

12.124 We have taken into account parties' views on whether the wording should be prescribed. We also took into account the results of our document review as well as how different firms may come up with different wording. In the interests of transparency, comparability and to avoid circumvention we concluded that the wording used by all IC-FM firms should be the same prescribed text, set out in Figure 28 below.

Figure 28: Wording to be included in IC-FM firms' fiduciary management marketing documents

> This document contains marketing material about our fiduciary management service. This document does not represent impartial advice on this service.
>
> In certain cases, you are required to conduct a competitive tender process prior to appointing a fiduciary manager.
>
> Guidance on running a tender process is available from the Pensions Regulator.

Source: CMA

812 Cardano response to the provisional decision report.
813 Mercer response to the provisional decision report.
814 Aon response to the provisional decision report.
815 WTW response to provisional decision report.

12.125 This text must be included by IC-FM firms at the front of any written documents which market their own fiduciary management service.

12.126 In order to guarantee sufficient prominence, the text must be in at least the same font size as the predominant font size used throughout the remainder of the document. The text should not be disguised, diminished or obscured by graphics or in other ways.

Separation of advice and marketing materials

12.127 In the provisional decision report, we considered alternatives to having a 'warning'. One such alternative was to separate marketing and advice into different documents. Another was that, while advice and marketing could be included in the same document, they should be in separate sections.

12.128 Parties made the following representations regarding these alternative proposals:

(a) XPS said that the warning proposed in the provisional decision report looked sensible but there should be complete separation of advice from marketing materials, in separate documents delivered by different people from the investment consultancy and fiduciary management businesses, respectively so there was no confusion between advice and marketing. XPS also said that it was impossible for the investment consultants to be objective when comparing and contrasting the alternative products in the market compared to their own fiduciary management product.[816]

(b) Russell Investments proposed the complete separation of advisory material from marketing material. It also said that whilst having separate documents for advice and marketing could end up being inconvenient for clients, this was a highly effective measure to reduce the inherent conflict of interest.[817]

(c) Mercer said that the separation of marketing and advice would be very difficult to achieve in practice.[818]

(d) WTW said that as long as written material clearly disclosed where advice was provided and where marketing information was provided, WTW

[816] XPS response to the provisional decision report.
[817] Russell Investments response to the provisional decision report.
[818] Mercer response to the provisional decision report.

does not believe that separating content was necessary. WTW also said that if a warning was required to be placed at the start of any report that contained some marketing material, it may encourage clients to dismiss the entirety of a report which provided suitable content for them.[819]

(e) Aon also said that fiduciary management content did not need to be contained in a separate document, but it should be in a separate section of any document.[820]

12.129 Having considered this range of views, we have concluded that separation of advice from marketing in different documents is both possible and an effective way to achieve the aims of this remedy (in addition to the prescribed text element of this remedy) and address the AEC and resulting customer detriment we have found.

12.130 We think that having advice and marketing in separate sections of the same document is less clear, because the point of separation may be less clear for clients.

12.131 We also think that a requirement that documents should be delivered by different people from an IC-FM provider may not fit with how such firms are structured (as it may not be an obvious separation) and so could impose unnecessary costs which would be passed onto clients.

12.132 The provisional decision report noted that there is a risk of accidental or deliberate conflation of marketing and advice when investment consultants are discussing fiduciary management with clients. We have concluded that a requirement to separate marketing from advice in discussion or oral presentation is unlikely to be effective and any enforcement of compliance would be difficult. However, it is important that firms do not mislead trustees when communicating marketing messages.

Effectiveness

12.133 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment in fiduciary management.

[819] WTW response to provisional decision report.
[820] Aon response to the provisional decision report.

How the remedy contributes to addressing the fiduciary management AEC and the resulting customer detriment

12.134 We have found that IC-FM firms steer their advisory customers towards their own fiduciary management service. This remedy ensures that advisory and marketing documents are kept separate and marketing documents are signposted as such.

12.135 We have also found low levels of customer engagement at the point of first moving into fiduciary management. This remedy contributes to address this feature of the AEC by reminding trustees to make an active and informed choice when deciding to appoint a fiduciary management services provider.

Implementation, monitoring and enforcement

12.136 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.137 In our view, remedy 2 is capable of effective implementation as its operation and implications will be clear to IC-FM firms as well as pension scheme trustees. IC-FM firms can readily include a notice in their written marketing material and provide it separately from any client advice.

12.138 This remedy will be initially monitored and enforced by the CMA. To effectively monitor compliance, we will require IC-FM firms to submit a compliance report to the CMA. We would also expect non-compliance to be detected and reported to the CMA by competitors, customer groups and other affected parties if they become aware of it.

12.139 We consider that the FCA is best placed to oversee this remedy in the longer term, either alongside or as part of similar conduct requirements on these firms. As the provisions of the order are implemented into the relevant sector-specific regulatory requirements the relevant provisions of the order will cease to apply and in any event within ten years of the order being made.

12.140 We decided to allow a six-month period from the date of the CMA's order after which firms will have to ensure that advice and marketing information is presented in separate documents and marketing documents include the disclosure text from Figure 28 above.

12.141 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, IC-FM firms), as well as others (namely, pension scheme trustees), it would not require elaborate monitoring or compliance programmes, and it is capable of effective enforcement initially by the CMA and subsequently by the relevant regulators through their respective enforcement regimes. We conclude therefore that remedy 2 is capable of effective implementation, monitoring and enforcement.

The timescales over which the remedy will take effect

12.142 Remedy 2 will take effect within six months of the order being made. Parties have generally indicated that remedy 2 does not have significant setup requirements. Our view is therefore that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing schemes and providers a reasonable period in which to start complying with this remedy.

Consistency with existing and expected laws and regulations

12.143 In designing our remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future.

12.144 In doing so we have consulted DWP, the FCA and TPR among others. A key development that has influenced our remedy design is the introduction of MiFID II. We have designed this remedy to be fully consistent with MiFID II. We have therefore concluded that our remedy 2 is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.145 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in fiduciary management.

Proportionality

12.146 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management.

Is effective in achieving its legitimate aim

12.147 We have assessed the effectiveness of remedy 2 and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.148 As discussed in detail above, we have considered the cost and feasibility of separating advice and marketing. Our approach to the design of our remedies has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on business. Our view is that remedy 2 strikes the right balance in terms of the clear separation of advice from marketing materials and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.149 As discussed in detail above, in addressing parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from our remedy 2.

12.150 For example, we considered whether the advice and marketing document should be presented by different people and at different points in time, rather than by the same person in the same meeting. Our view is that although such measures would be effective in addressing the AEC and resulting customer detriment, they would be more onerous than the current remedy 2 (for example, they would have significant monetary and non-monetary costs to firms and pension schemes).

12.151 We have therefore concluded that remedy 2 is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.152 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[821]

12.153 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[822] In

[821] CC3 (Revised), paragraph 348.
[822] CC3 (Revised), paragraph 358.

developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.154 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.155 This remedy aims to improve levels of trustee engagement and ensure that trustees understand whether information on fiduciary management received from an investment consultant is independent advice or marketing material.

12.156 We consider that this remedy will substantially increase the competitive pressure on investment consultants by ensuring that advice and marketing materials relating to fiduciary management are kept separate. It will help to mitigate the incumbency advantage of IC-FM firms in winning business from existing customers.

- *Potential costs*

12.157 In response to our information request, almost all providers stated that remedy 2 would impose minimal costs, although two providers stated that they would bear some costs in terms of training and compliance. We therefore conclude overall that the measures we have set out in this remedy impose minimal incremental costs on providers.

12.158 Moreover, we do not expect pension schemes to incur any costs as a result of this remedy. Indeed, scheme costs (and trustee time) will be reduced as trustees gain easier access to the information required to assess value for money.

12.159 Our overall assessment is that the potential benefits of this remedy would be likely to materially outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.160 We have therefore concluded that remedy 2 does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.161 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Remedy 3 – Recommendation to TPR to provide enhanced trustee guidance on competitive tender processes

Description of the remedy

12.162 In remedies 1 and 2 we have introduced trigger points for trustee engagement by requiring trustees to hold a competitive tender process when first purchasing fiduciary management services (for mandates of 20% or more of scheme assets) and to tender if they did not do so originally, and by ensuring that IC-FM firms are clear with clients when they are marketing their fiduciary management service to them. Remedy 3 is a recommendation to TPR to develop guidance to help trustees run competitive tender processes. We invite TPR to consider how guidance on running a competitive tender for fiduciary managers can also be used to support trustees when tendering for investment consultancy services.

12.163 We discuss the wider role that TPR's guidance can play in supporting trustees, including in relation to their use of investment consultancy services, in recommendation B.

How it contributes to addressing the AEC and resulting customer detriment

12.164 This remedy is designed to increase the effectiveness of remedies 1 and 2 by helping trustees engage as customers when first moving into fiduciary management and by addressing IC-FM firms' behaviour in steering their customers into their own fiduciary management service.

12.165 The rest of this section looks at our proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and our final decision on this remedy.

Parties' views in response to the provisional decision report

12.166 Of those parties that commented on this remedy, the majority were in favour.[823]

(a) The Investment Association said that some trustees would benefit from guidance that TPR would provide. It also suggested that TPR should consider developing a standard template for tendering (which can be enhanced by trustees as required) to help with the process. The Investment Association said that if the template and guidance were designed appropriately they should lead to an overall rise in the quality of tenders by setting out a minimum set of requirements that would need to be fulfilled.[824]

(b) PLSA said that TPR and others should ensure that any guidance was carefully designed and involved close consultation with the full range of demand-side representatives as any new guidance would be entering a crowded space.[825]

(c) Aon said that the guidance should include best practice examples which can add significant support to trustees, such as: tender timetables; the number of firms to invite to tender; how TPEs should be used in the tender process; and how to assess the true value of the services proposed by providers and not to focus on cost alone.[826]

(d) LCP said that guidance should cover other due diligence questions that trustees should consider as part of the appointment, such as the financial stability of the fiduciary management firm, the investment process, the team's experience and depth, and the quality of the operational controls. LCP also suggested that the guidance made clear that the trustees should not be advised on any competitive tender by any group linked to one of the fiduciary management providers under consideration.[827]

(e) WTW said that for the guidance to be effective, it should avoid proposing overly burdensome and prohibitively expensive processes, especially for smaller pension schemes. In addition, WTW said that the guidance

[823] Including KPMG, JLT, Legal and General, Redington, Barnett Waddingham, Cardano, Investment Association, PLSA, Aon, LCP, Mercer, River and Mercantile, Russell Investments and WTW.
[824] The Investment Association response to the provisional decision report.
[825] PLSA response to the provisional decision report.
[826] Aon response to the provisional decision report.
[827] LCP response to the provisional decision report.

materials themselves should be written in a way that was easily digestible for trustees.[828]

12.167 We expect that smaller schemes will benefit most from guidance while larger schemes will continue to run tender processes according to their available resources and in-house expertise.

Conclusion on remedy 3

12.168 We consider that TPR guidance on competitive tendering for fiduciary management services can reduce the burden on pension scheme trustees of running tender processes by clearly setting out best practice.

12.169 We also consider that some greater commonality of approach in competitive tenders by pension scheme trustees may reduce the cost to firms of participating in tenders, and this may itself help drive competition by encouraging more to take part in competitive tender processes.

12.170 The guidance should include:

- Factors trustees should consider as part of choosing to buy a fiduciary management service.
- The circumstances when a competitive tender is required, that is when schemes commit 20% or more of their assets to fiduciary management services.
- The need to invite a minimum of three firms to participate in the tender process.
- The use of the information that firms must provide, as described in remedies 5 and 6 below.
- How to assess value for money of the service proposed in the responses to tender;
- Other good practice in running a competitive tender process, such as the use of third party evaluators and advisers.
- Factors to consider in preparing tender documentation, including fee schedules.

[828] WTW response to provisional decision report.

- The duty on schemes which already have fiduciary management to tender within five years if pension scheme trustees did not do so originally.

12.171 Alongside guidance, TPR should offer some templates and other materials that can be used by schemes. The materials may include, but not be limited to:

- Sample tender timetables;
- Scorecards for comparing each element of providers' bids;
- Sample questions that trustees may choose to ask potential providers during the tender process; and
- A sample confirmation letter that pension scheme trustees will have to give to the winning firm to ensure their own compliance with remedy 1.

Effectiveness

12.172 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the investment consultancy and fiduciary management AECs and the resulting customer detriment

12.173 We have found that IC-FM firms steer their advisory customers towards their own fiduciary management service. This remedy and the associated recommendation B will contribute to addressing this feature of the AEC by providing trustees with the materials to support them in running a competitive tender process and to help them to select the most suitable fiduciary management provider for their needs.

Implementation, monitoring and enforcement

12.174 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.175 This remedy is capable of effective implementation as it entails limited and voluntary input from trustees and providers. We have had various conversations with TPR, over the course of this investigation, and are confident that TPR will take this recommendation forward as described here. TPR has considerable experience and expertise in developing such guidance and so is well placed to effectively undertake this recommendation. We expect

TPR to issue and update such guidance, going forward, in light of evolving best practice in the industry.

12.176 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, TPR), as well as others (namely, pension scheme trustees and providers) and it would not require elaborate monitoring or compliance programmes. We conclude therefore that remedy 3 is capable of effective implementation.

12.177 In the provisional decision report, we said that there was also scope for investment consultancy tender processes to be improved. We therefore invite TPR to consider how best practice from running competitive tenders for fiduciary managers could also be used within its guidance for pension scheme trustees tendering for investment consultancy services.

The timescales over which the remedy will take effect

12.178 The recommendation within remedy 3 will take effect on publication of this report although development and implementation of the guidance itself will take longer.

12.179 We anticipate that TPR can issue guidance within six months of our order being made in 2019, in order that it can support remedy 1, in particular.[829] Both fiduciary management providers and pension scheme trustees will then need to become aware of, and familiar with, the guidance, so this may have some time and small cost implications (for example, if pension scheme trustees choose to take formal training on it).

Consistency with existing and expected laws and regulations

12.180 In designing our remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted DWP and TPR, as well as current guidance available to trustees from TPR's website. This remedy builds on and complements these and the information currently available to trustees. We have therefore concluded that our remedy 3 is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.181 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting

[829] TPR indicated that the timeline of 6 months after the order is made seems achievable.

customer detriment we have found in investment consultancy and fiduciary management.

Proportionality

12.182 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management and investment consultancy.

Is effective in achieving its legitimate aim

12.183 We have assessed the effectiveness of remedy 3 and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.184 As set out above, remedy 3 will entail minimal and voluntary input from trustees and providers. The burden of this remedy will fall on TPR who will need to develop the guidance and tender materials. Our view is that remedy 3 strikes the right balance in terms of guidance materials and templates and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.185 In addressing parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from remedy 3. We considered mandating a standard template for all fiduciary management tenders. A standard template would not allow any flexibility for pension scheme trustees to tailor the tender documents to their own specifications. We considered this to be more onerous than remedy 3. We have therefore concluded that remedy 3 is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.186 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative

potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[830]

12.187 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (that is, pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[831] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.188 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.189 This remedy aims to assist trustees in running effective tender processes, helping them to choose the provider that offers the best value for money for their scheme and thereby encouraging firms to compete more vigorously on quality and price to retain and attract customers.

- *Potential costs*

12.190 In designing this remedy, we have considered recent regulatory and industry developments, as well as current guidance available to trustees from TPR's website. This remedy builds on and complements these developments and the information currently available to trustees. Therefore, we do not expect pension schemes and firms to incur any costs (or we expect such costs to be very limited) as a result of this remedy. There will be some costs incurred by TPR in the form of staff time to develop the guidance and tender materials.

12.191 Our overall assessment is that the potential benefits of this remedy would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.192 We have therefore concluded that remedy 3 does not produce disadvantages which are disproportionate to its aim.

[830] CC3 (Revised), paragraph 348.
[831] CC3 (Revised), paragraph 358.

Conclusion on proportionality

12.193 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Fiduciary management fees and performance reporting

12.194 In this section we set out the remedies we have decided to adopt in relation to improving the quality, comparability and availability of information provided by fiduciary management firms to existing and prospective customers.

12.195 We have found an AEC in relation to fiduciary management. We have found a lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers, as well as their own fiduciary managers, and barriers to switching fiduciary manager. These features prevent, restrict or distort competition once customers have bought fiduciary management services. These features (in combination with other features, as discussed in remedies 1, 2 and 3 above) make it difficult for many customers to access and assess the information needed to evaluate the fees of their existing fiduciary manager, to identify if they would be better off using an alternative provider, and to act on this information by switching. This in turn reduces the ability of customers to drive competition between fiduciary managers. It also reduces the incentives for fiduciary managers to compete for customers on the basis of fees and/or quality of service.

12.196 The AEC we have found may be expected to result in substantial customer detriment in the fiduciary management market. This detriment may be expected to manifest itself in terms of customers paying higher prices for these services and receiving worse outcomes in terms of service quality.

12.197 We will require fiduciary managers to provide disaggregated fee information to existing customers (remedy 4), as well as to report fees (remedy 5) and past performance (remedy 6) to prospective customers by reference to a standardised methodology.

12.198 We will also require that where fiduciary management and investment consultancy firms report performance of recommended asset manager products they do so using a standard approach (remedy 8).

Remedy 4 – Requirement on fiduciary management firms to report disaggregated fees to existing customers

Summary of the remedy

12.199 This remedy requires fiduciary managers to provide disaggregated fee information to their existing customers on a regular (at least annual) basis. This information will enable trustees to monitor both the overall fees paid for their fiduciary management service, and the fees paid for the distinct elements of the fiduciary management service. This breakdown includes the 'core' fiduciary management fee (including advice and implementation), asset management fees, transaction costs and other fees (such as custodian fees). The overall fee and the itemised fees will be shown in both percentage and cash terms.

12.200 This information will be included in the regular fee statement and we recommend that this would be based on the FCA convened Institutional Disclosure Working Group (IDWG) developed template.[832]

How it contributes to addressing the AEC and resulting customer detriment

12.201 We have found that there is a lack of sufficiently clear information for customers to assess the value for money of their existing fiduciary manager. Many customers do not receive clear fee information from their provider, with fees for the fiduciary management service often bundled with the underlying investment fees. This limits customers' ability to assess the competitiveness of the fiduciary management service they are receiving and the competitiveness of the underlying investment products.

12.202 With a minimum fee disclosure requirement, fiduciary managers will provide trustees with information in a format which will be clear. This information will allow trustees to understand the costs of their existing fiduciary management provider and those of the underlying products and so consider whether there may be any scope for lower costs in one or more fee categories.

12.203 Trustees will be better able to understand the fees charged by their existing fiduciary management provider and compare those to their objectives and budgets. If they choose to formally review their fiduciary management provider or go to tender for a new provider, an understanding of their current costs will help them drive competition between providers in a tender process. Therefore, this remedy will help to increase competition between fiduciary managers and

[832] We discuss the IDWG in recommendation C.

incentivise providers to reduce component fees, as well as the overall fees customers pay for the service. This will also remedy or mitigate the customer detriment that may be expected to result from the AEC we have found.

12.204 The rest of this section looks at our proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

Parties' views in response to the provisional decision report

12.205 All parties who expressed views on remedy 4 in response to the provisional decision report, supported the introduction of this requirement. For example:

(a) Cardano submitted that it supported this remedy and believed that it will achieve the objective of ensuring that trustees receive regular fee information which will be clear and comparable.[833]

(b) LCP submitted that it agreed that this remedy would be an effective way to address the AEC identified.[834]

12.206 At our trustees' roundtable discussion, trustees agreed that fee transparency was beneficial, and the information required as part of our remedy was the minimum that should be provided. Trustees also indicated that bundled fee information was not sufficient.[835]

12.207 Fiduciary management providers have told us that, with regard to reporting to customers on third party fees, significant progress has been made in this area following the coming into force of MiFID II requirements in January 2018. However, some parties have acknowledged that more could be done.[836]

12.208 A number of parties proposed that we mandate further disaggregation of fees. In particular, some parties proposed that we separated out the fees for advisory services from the implementation services.[837] Others proposed that we require firms to disclose the total revenue they receive, and to separate asset management fees incurred by entities affiliated to the fiduciary management provider from asset management fees paid to third parties.[838]

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[833] Cardano response to the provisional decision report.
[834] LCP response to the provisional decision report.
[835] Summary of trustee roundtable discussion: 3 October 2018.
[836] [✂].
[837] [✂].
[838] [✂].

12.209 Our remedy ensures that trustees receive the minimum set of information necessary to assess the competitiveness of the fiduciary management services and of the underlying investment products.

12.210 Mercer suggested implementing this remedy by way of an industry-wide standard template.[839] However, the Investment Association submitted that the IDWG templates will also be suitable for the reporting of disaggregated fiduciary management and asset management fees and transaction costs. Accordingly, it does not see the need for any further templates in this area.[840]

12.211 Aon proposed that alongside the numerical fee information, there should also be transparency on the range of services included, such as a checklist.[841] Our remedy does not prevent firms from providing, or customers from requesting, further information on services included. However, in our view, a checklist approach would not be compatible with the tailor-made nature of services provided by fiduciary managers.

Description of the remedy

12.212 Following the responses to the provisional decision report and taking into account parties' views and comments, we consider below how this remedy will work in practice.

12.213 This remedy imposes minimum fee disclosure requirements on fiduciary managers. We note that investment firms that are regulated in respect of their MiFID II business are subject to various requirements in respect of information on fees provided to their customers. These include, for example, the requirement to provide information on all costs and associated charges and to provide an itemised breakdown in certain cases.[842]

12.214 Our remedy will operate alongside MiFID II requirements on firms to aggregate all costs and charges to enable customers to understand the overall cost.[843] Therefore, firms would continue to provide aggregated information in addition to our requirement to provide disaggregated information.

[839] Mercer response to the provisional decision report.
[840] The Investment Association response to the provisional decision report.
[841] Aon response to the provisional decision report.
[842] See, for example, Article 24 MiFID II Directive and Articles 50 and 60 MiFID II Delegated Regulation.
[843] See, for example, Article 24 MiFID II Directive and Articles 50 and 60 MiFID II Delegated Regulation.

Information on all fees and charges

12.215 We will require fiduciary managers to provide a regular (at least annual) fee statement to their customers that clearly sets out the following information:

(a) An itemisation of the overall fees and charges incurred during the reporting period. The following fee elements will be clearly itemised:

(i) The fees for the core fiduciary management service, covering advice and implementation. This will include any incidental costs (eg performance fees) paid during the reporting period. Incidental costs could be separated out from the core fiduciary management fee and itemised separately.

(ii) Asset management fees. This will cover products and funds provided by the fiduciary manager, and those provided by third party asset managers. This fee will include any incidental costs and performance related payments. Costs associated with execution (ie transaction costs) will be itemised separately from the asset management fees.

(iii) All other investment fees. This will include custodian fees, administration charges and any charges that are related to ancillary services. These cost items will be bundled in one single fee item.

(b) The overall fees and charges incurred during the reporting period. This will cover all costs and charges incurred as part of the service, including both those deducted directly from assets and those invoiced separately and those paid to the fiduciary manager and to third parties.

12.216 We will require the overall fee and the itemised fees to be shown in both percentage (of assets under management) and cash terms.

Information on all costs and charges paid to third parties

12.217 As set out in chapter 5, we concluded that trustees should have access to regular information on asset management fees that are disaggregated to a level that enables trustees to assess whether the various elements of their portfolio, such as the growth and matching assets, are competitive.

12.218 Therefore, we will require that, in addition to the fee statement discussed above, fiduciary managers provide customers with fund-by-fund (or product-by-product) information on the fees paid over the reporting period and the impact of such fees on the return of underlying funds. This will ensure that customers have access to fund-by-fund information on both a gross and net returns basis. We recommend that the content of this information will be based on the IDWG user templates, as described in recommendation C below. The aggregation of such charges should equal the overall asset management fees disclosed.

Effectiveness

12.219 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the fiduciary management AEC and the resulting customer detriment

12.220 We have found that there is a lack of clear information for customers to assess the value for money of their existing fiduciary manager. This remedy contributes to addressing this by requiring fiduciary managers to disclose disaggregated fee information on a regular basis (at least annually). This improved information will enable trustees better to monitor both the overall fees paid for their fiduciary management service, and the fees paid for the distinct elements of the service.

12.221 If trustees choose to formally review their fiduciary management provider or go to tender for a new provider, an understanding of their current costs will help them drive competition amongst providers in a tender process.

Implementation, monitoring and enforcement

12.222 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.223 In our view, remedy 4 is capable of effective implementation as its operation and implications are clear to fiduciary managers, as well as pension scheme trustees. Fiduciary managers can readily implement it by providing disaggregated fee information, which they should already have, to their existing customers on a regular (at least annual) basis.

12.224 This remedy will be implemented by CMA order. To allow for the necessary system changes, this remedy will come into force six months from the date that the order is made. Therefore, we envisage that regular, at least annual, reporting to schemes should have commenced (ie schemes will have received their first fee statement) within 18 months of the CMA's order being made.

12.225 This remedy will initially be monitored by the CMA. To effectively monitor compliance, we will require relevant parties to submit a compliance report to the CMA. We would also expect examples of non-compliance to be detected and reported to the CMA by customer groups and other affected parties if they become aware of it.

12.226 We expect the FCA to introduce additional requirements in its rules to give effect to this remedy. In our view, the FCA is best placed to monitor and supervise this remedy in line with the existing Approach to Supervision, published as part of its mission. As the provisions of the order are implemented into regulatory requirements, the relevant provisions of the order will cease to apply and in any event within 10 years of the order being made.

12.227 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, providers), as well as others (namely, pension scheme trustees), it would not require elaborate monitoring or compliance programmes, and it is capable of effective monitoring and enforcement initially by the CMA and subsequently by the relevant regulator through its monitoring and enforcement regime. We conclude therefore that remedy 4 is capable of effective implementation, monitoring and enforcement.

12.228 This remedy is a development of existing regulatory requirements in relation to costs and charges disclosure, including those derived from MiFID II. Where this remedy applies to firms in respect of their MiFID business, this remedy will impose some additional requirements to those under MiFID II. The provisions of EU law applicable at the date of this report require notification to the European Commission of any additional requirements that are intended to be imposed so that the Commission can give its opinion on the proportionality of, and justification for, those requirements.[844]

The timescales over which the remedy will take effect

12.229 Remedy 4 will take effect within six months of the order being made. Parties have generally indicated that this remedy does not have significant set-up requirements. Our view is therefore that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while

[844] Requirements in relation to costs and charges disclosure is one aspect of the MiFID legislative package in relation to which Member States are permitted to impose additional requirements. As at the date of this report, the UK is required to notify the Commission of its intention to impose any such additional requirements. The Commission is then required to give its opinion on the proportionality of, and justification for, that requirement within two months of the notification (Article 24(12) MiFID II Directive).

allowing schemes and providers a reasonable period in which to start complying with it.

Consistency with existing and expected laws and regulations

12.230 In designing this remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted DWP, the FCA and TPR among others. A key development that has influenced our remedy design is the introduction of MiFID II. As mentioned above, we have designed this remedy to be fully consistent, and build upon, MiFID II. We have therefore concluded that remedy 4 is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.231 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in fiduciary management.

Proportionality

12.232 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management.

Is effective in achieving its legitimate aim

12.233 We have assessed the effectiveness of remedy 4 above and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.234 In chapter 5, we described how many fee-reporting practices for current clients (such as the ‘bundling’ of fiduciary management and asset management fees) prevent them from being able to fully assess the value for money of their service.

12.235 As described above, this remedy sets out minimum fee disclosure requirements, (i.e. unbundling of the ‘core’ fiduciary management fees, the asset management fees and other costs).

12.236 Our approach to the design of our remedies has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on business. Our view is that remedy 4 strikes the right balance in terms of the clarity and detail and is therefore no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.237 In addressing parties’ responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from our remedy 4.

12.238 We considered requiring firms to disaggregate fees even further than our current view but decided that although further disaggregation would be as effective in contributing to addressing the features of the AEC identified, it would be more onerous on firms.

12.239 We do not believe that other measures would be both as effective and proportionate in addressing the AEC and resulting customer detriment. We have therefore concluded that remedy 4 is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.240 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[845]

12.241 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[846] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.242 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

[845] CC3 (Revised), paragraph 348.
[846] CC3 (Revised), paragraph 358.

- *Potential benefits*

12.243 This remedy aims to ensure that trustees have access to the necessary information to judge the value for money of their fiduciary manager. We consider that this remedy will substantially increase the competitive pressure on fiduciary managers by improving the information available to trustees on the price of their service.

12.244 This remedy aims to assist trustees in assessing value for money of their fiduciary manager, and thereby encouraging firms to compete more vigorously on quality and price to retain and attract customers.

- *Potential costs*

12.245 This remedy imposes minimal requirements in addition to existing MiFID II fee reporting requirements, in order to ensure that all trustees have up front and sufficiently granular fee information to fully assess the costs of service. This remedy also builds on the work of the IDWG to ensure that trustees have the information they need to assess the cost and performance of the various funds in their portfolio.

12.246 Cost estimates from most parties generally indicate that there will be little, or no material, increase in costs from remedy 4.[847] Only [✂] and [✂] have submitted significant potential costs for remedy 4.[848] [✂] for example submitted that remedy 4 may have set-up costs of £[✂] to [✂][849] and [✂] submitted that the annual cost of remedy 4 could be anywhere from £[✂] to £[✂], depending on the extent to which the remedy replicates MiFID II.[850]

12.247 Remedy 4 will simply extend current best practice across the industry. The general consensus on the low incremental costs of this remedy is consistent with the fact that many providers already comply with the reporting requirements of remedy 4 covered by MiFID II, or plan to do so as part of their MiFID II fee disclosures. We therefore consider that, even if remedy 4 were to involve costs at the upper end of [✂] and [✂] estimates, the measures we have set out in this remedy impose limited incremental potential costs on providers.

[847] Responses to CMA information request.
[848] Responses to CMA information request.
[849] [✂] response to CMA information request.
[850] [✂] response to CMA information request.

12.248 Moreover, we do not expect pension schemes to incur any costs as a result of this remedy. Indeed, scheme costs will be reduced as trustees gain easier access to the information required to assess value for money.

12.249 Our overall assessment is that the potential benefits of this remedy would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.250 We have therefore concluded that remedy 4 does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.251 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Remedy 5: Requirement on fiduciary management firms to disclose fees to prospective customers

Summary of the remedy

12.252 This remedy requires the information on fees provided by fiduciary managers to be consistent and comparable across bids in a tender process, whether that is a mandatory tender when first purchasing fiduciary management services, as described under remedy 1 or any other type of tender that trustees may choose to run. In particular, the remedy requires firms to disclose and itemise all costs and charges that will be incurred by the customers. This will be provided both in percentage and cash terms.[851]

12.253 The cost will be the total fee to be charged for the service each year, any one-off fees that will be, or are likely to be, incurred by the customer, and potential exit fees and costs arising if the customer were to switch at a future date. Moreover, we will require the total fee to be charged for the service to itemise at least the 'core' fiduciary management fee (including any performance

[851] We note that investment firms that are regulated in respect of their MiFID II business are subject to various requirements in respect of information on fees provided to their customers. These include, for example, the requirement to provide information on all costs and associated charges and to provide an itemised breakdown in certain cases (see, for example, Article 24 MiFID II Directive and Articles 50 and 60 MiFID II Delegated Regulation).

related payment), asset management fees, and other fees (such as custodian fees).

How it contributes to addressing the AEC and resulting customer detriment

12.254 We found that there is a lack of clear and comparable information for prospective customers to assess the value for money of alternative fiduciary managers. The nature of fee information provided by firms in tenders is often limited and customers do not seek to obtain comparable information. Many providers also do not provide any information on the potentially high costs of transitioning into and out of their fiduciary management service.

12.255 By following a minimum fee disclosure requirement when responding to a tender, fiduciary managers will provide trustees with clear and comparable information.

12.256 In chapter 5, we described how fee information in fiduciary management tenders is generally more standardised and comparable across competing providers than in investment consultancy. However, we have also identified several factors that make comparison difficult for trustees when they attempt to assess and compare fees charged by each fiduciary management provider. We have also found that the level of details of the underlying asset management fees vary significantly across bids.

12.257 As a result of our remedy, trustees will be able to understand the fees charged by fiduciary managers prior to deciding to award the contract to a provider. Addressing this issue will help enhance transparency and comparability in competitive tender processes for prospective customers. It will also increase competition between fiduciary managers and may incentivise them to reduce fees, as well as the overall fees customers pay for the service. This will also contribute to remedying or mitigating the customer detriment that may be expected to result from the AEC we have found.

12.258 The rest of this section looks at our proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

Parties' views in response to the provisional decision report

12.259 All parties, who expressed views on this remedy in response to our provisional decision report, supported the introduction of these requirements. For example:

(a) Aon submitted that it supported any remedy which set out minimum requirements for fee disclosure to prospective clients.[852]

(b) Russell Investment submitted that it believed that standardising the way in which fee were presented and increasing the transparency of costs would help normalise the different approaches between providers, improve the accuracy of the proposals made, and ultimately allow customers to compare alternatives.[853]

(c) Legal and General submitted that it supports the CMA's proposal for standardised fee disclosures when selling fiduciary management. It believed it was particularly important that prospective clients were able to compare likely total fees for a mandate, including any hidden costs.[854]

12.260 Moreover, parties have informed us that this remedy is consistent with MiFID II and a standard disclosure requirement – including an estimation of the transaction costs likely to be incurred in investing the client's assets – across the fiduciary management market will aid the market.[855]

12.261 A number of parties proposed in relation to remedy 5 the same additional suggestions made for remedy 4. We have examined these suggestions in the section on remedy 4.

12.262 Some parties further submitted that there is a degree of subjectivity on how transaction costs incurred in moving assets into the proposed portfolio can be estimated.[856] However, other parties as well as trustees said they received estimates that matched actual costs incurred. We have therefore no evidence that fiduciary managers are systematically underestimating transaction costs.

Description of the remedy

12.263 Following the responses to the provisional decision report and considering parties' views and comments, we consider below how this remedy will work in practice.

12.264 The remedy requires fiduciary management providers to disclose and itemise all fees and charges that will be incurred by the customer when competing for a new contract, as required by remedy 1, or any other tender process that trustees may choose to run. Fees and charges will be provided in both

[852] Aon response to the provisional decision report.
[853] Russell Investment response to the provisional decision report.
[854] Legal and General response to the provisional decision report.
[855] [✂].
[856] [✂].

percentage (of assets under management) and cash terms and clearly present each of the following:

(a) The total fees to be charged for the service each year. This should cover ongoing fees and charges related to the provision of the service, including those deducted directly from assets and those invoiced separately.

(b) An itemisation of the total fees, including the following elements:

(i) The fee for the core fiduciary management service, covering advice and implementation. Any incidental costs (such as performance fees) will be separated out from the core fiduciary management fee and itemised separately.

(ii) Asset management fees. This will cover products and funds (or fund-of-funds) provided by the fiduciary manager, and those provided by third party asset managers. This fee will include any costs associated with execution (such as transaction costs) and incidental costs (such as performance related payments).

(iii) All other investment fees, such as custodian fees and administration charges and any charges that are related to ancillary services likely to be incurred.

(c) Any one-off fees and charges that will be, or are likely to be, incurred by the customer. These include:

(i) Estimated transaction costs incurred in moving assets into the proposed portfolio. This will include both the implicit and explicit costs of transferring assets, even if these costs are paid to third parties (such as brokers).

(ii) Any one-off fees for advice, such as for refining the investment portfolio.

(iii) Any other one-off charges, such as legal fees, ‘onboarding’ services.

(d) Finally, we will require providers to disclose the potential exit fees and costs arising if the customer were to switch at a future date to another fiduciary management provider for the services being tendered. These will include:

(i) Clear disclosure of any explicit exit fees that would be incurred from a change of provider (such as any exit charges or ‘lock-in’ fees in the contract).

(ii) A clear statement that transaction costs might be incurred in switching provider, and that such costs may be similar in magnitude to those disclosed. It should also be clearly disclosed whether there are any features of the proposed portfolio that might increase such transaction costs. This could include the use of proprietary funds or an increased exposure to illiquid assets.

12.265 Finally, we would expect that TPR guidance (see recommendation B) will reflect new requirements imposed by this remedy and on what information trustees will provide to fiduciary managers to obtain meaningful estimates of the fees.

Effectiveness

12.266 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the fiduciary management AEC and the resulting customer detriment

12.267 We have found that there is a lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers. This remedy requires that the information on fees provided by fiduciary managers to prospective customers is in a standardised, comparable and more detailed format. This information will include granular breakdowns of proposed fees. This will enable trustees to accurately assess the cost of competing offers.

12.268 Moreover, we found that there may be barriers to switching fiduciary manager. This remedy requires firms tendering for fiduciary management mandates to provide an estimate of all potential transaction costs and other upfront fees that might be incurred if the customer were to switch to that provider. The provider will also be required to clearly disclose the likely scale of switching costs out of the service (including both transaction costs and any explicit exit fees).

12.269 This information will allow trustees to make a more informed choice. Greater transparency will incentivise firms to reduce switching costs where possible and explain why they are justified if they are unavoidable.

Implementation, monitoring and enforcement

12.270 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.271 In our view, this remedy is capable of effective implementation as its operation and implications are clear to providers, as well as pension scheme trustees, and the remedy extends existing best practice across the industry. In chapter 5, we described how some providers are already complying with this remedy by providing disaggregated fee information to their prospective customers.

12.272 This remedy will be implemented by CMA order. To allow for any system changes, this remedy will come into force six months from the date that the order is made.

12.273 This remedy will initially be monitored by the CMA. To monitor compliance, effectively, we will require parties to submit a compliance report to the CMA. We would also expect examples of non-compliance to be detected and reported to the CMA by customer groups and other affected parties if they become aware of it.

12.274 We expect the FCA to introduce additional requirements in its rules to give effect to this remedy. In our view, the FCA is best placed to monitor and supervise this remedy. As the relevant provisions of the order are implemented into FCA regulatory requirements, those provisions of the order will cease to apply and in any event within ten years of the order being made.

12.275 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, providers), as well as others (namely, pension scheme trustees), it will not require elaborate monitoring or compliance programmes, and it is capable of effective monitoring and enforcement initially by the CMA and subsequently by the FCA. We conclude therefore that remedy 5 is capable of effective implementation, monitoring and enforcement.

12.276 This remedy falls within the scope of regulatory requirements under current financial regulation, in particular MiFID II. We have identified parts of remedy 5 that will impose additional obligations to MiFID II provisions. The provisions of EU law applicable at the date of this report require notification to the European Commission of any additional requirements that are intended to be imposed so that the Commission can give its opinion on the proportionality of, and justification for, those requirements.[857] We consider that the timeframe for implementation of this remedy allows for this to occur.

The timescales over which the remedy will take effect

12.277 Remedy 5 will take effect within six months of the order being made. Parties have generally indicated that remedy 5 does not have significant set-up requirements. Our view is therefore that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing providers a reasonable period in which to start complying with this remedy.

Consistency with existing and expected laws and regulations

12.278 In designing this remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted DWP, the FCA and TPR among others. A key development that has influenced our remedy design is the introduction of MiFID II. As mentioned above, we have designed this remedy to be fully consistent with, and build upon, MiFID II. We have therefore concluded that this remedy is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.279 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in fiduciary management.

Proportionality

12.280 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management.

[857] A Member State is required to notify the Commission of, and provide justification for, any additional requirement it intends to impose 'without undue delay' and at least two months before the date appointed for that requirement to come into force. The Commission is then required to provide its opinion on the proportionality of, and justification for, that requirement within two months of the notification (Article 24(12) MiFID II Directive).

Is effective in achieving its legitimate aim

12.281 We have assessed the effectiveness of remedy 5 above and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.282 In chapter 5, we described how comparing the fees of alternative providers in tenders can be challenging and there is wide variation in the reporting of asset management fees. The overall cost of service is often not indicated. Moreover, many tenders also include no information on the costs of transitioning into and out of these services, which can be considerable.

12.283 This remedy sets out minimum fee disclosure requirements requiring the unbundling of the 'core' fiduciary management fees, the asset management fees and other costs and requires firms to provide an estimate of all potential transaction costs.

12.284 Our approach to the design of our remedies has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on business. Our view is that this remedy strikes the right balance in terms of clarity and detail and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.285 In addressing the parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from this remedy. We considered requiring firms to disaggregate fees even further than our current view but decided that although further disaggregation would be as effective in contributing to addressing the features of the AEC identified, it would be more onerous on firms.

12.286 We do not believe that other measures would be both as effective and proportionate in addressing the AEC and resulting customer detriment. We have therefore concluded that this remedy is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.287 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[858]

12.288 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[859] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.289 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.290 This remedy aims to ensure that trustees have access to the necessary information to judge the value for money of alternative providers. We consider that this remedy will substantially increase the competitive pressure on fiduciary managers by improving the information available to trustees on the price of their service.

12.291 This remedy aims to assist trustees in running effective tender processes, helping them to choose the provider that offers the best value for money for their scheme and thereby encouraging firms to compete more vigorously on quality and price to retain and attract customers.

12.292 This remedy will be supported by enhanced trustee guidance which will help trustees to assess the price and quality of competing providers, and to select the most appropriate provider (and solution) for their scheme.

- *Potential costs*

12.293 This remedy imposes minimal additional requirements to existing MiFID II fee reporting requirements in order to ensure that trustees have up front and sufficiently granular fee information with which they can fully assess the costs of service. Consistent with that, estimates from parties generally indicate that there will be little, or no material increase in costs from this remedy.[860]

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[858] CC3 (Revised), paragraph 348.
[859] CC3 (Revised), paragraph 358.
[860] Responses to CMA information request.

12.294 Only [✂] and [✂] indicated that remedy 5 might impose material costs. [✂] submitted that remedy 5 would have set-up costs of £[✂] and ongoing costs between £[✂] and £[✂] a year.[861] [✂] submitted that set-up costs could be around £[✂] to £[✂] and the annual cost of remedy 5 could be anywhere from £[✂] to £[✂]. [✂] submitted that this depends on the extent to which this remedy replicates MiFID II.[862]

12.295 We also note that many providers already comply with the reporting requirements of this remedy or plan to do so as part of their MiFID II fee disclosures. Our remedy will therefore simply extend best practice across the industry. As indicated by the majority of parties that we have contacted, we do not expect this remedy to impose material costs on providers.[863]

12.296 We therefore consider that, even if this remedy were to involve costs at the upper end of [✂] and [✂] estimates, the design of this remedy imposes limited incremental potential costs on providers.

12.297 We do not expect pension schemes to incur any costs as a result of this remedy. Indeed, scheme costs (and trustee time) will be reduced as trustees gain easier access to the information required to assess value for money.

12.298 Our overall assessment is that the potential benefits of this remedy would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.299 We have therefore concluded that this remedy does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.300 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

[861] [✂] response to CMA information request.
[862] [✂] response to CMA information request.
[863] Responses to CMA information request.

Remedy 6: Requirement on fiduciary management firms to report their past performance to prospective customers by reference to a standardised methodology and template

Summary of the remedy

12.301 This remedy requires fiduciary managers to report historic investment performance of the firm's full fiduciary management customers by reference to a standardised methodology.

How it contributes to addressing the AEC and resulting customer detriment

12.302 We have identified that there are barriers for customers in assessing and comparing fiduciary management providers' quality in terms of their historic investment performance.

12.303 Although we acknowledge that past performance is not a reliable indicator of future performance, this remedy will enable trustees to better understand the historic performance of the fiduciary manager prior to deciding to award the contract to a particular provider.

12.304 The remedy will provide greater transparency and comparability between alternative fiduciary managers for prospective customers thereby enabling trustees to drive competition between providers. It will also enable trustees to achieve better value for money and thereby remedy or mitigate the customer detriment that may be expected to result from the AEC we have found.

12.305 The rest of this section looks at the proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

Parties' views in response to the provisional decision report

12.306 Almost all parties, who expressed views on this remedy in response to our provisional decision report, have indicated their support for an industry standard for reporting fiduciary management track records.

12.307 One exception was Spence and Partners, who submitted that, given the bespoke nature of pension schemes and the strategies put in place, applying a standard will prove difficult. Therefore, it concludes, there should be no fiduciary management performance standard.[864]

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[864] Spence and Partners response to the provisional decision report.

12.308 We note that a third-party evaluator, IC Select, has been developing a reporting standard for fiduciary management track records ('IC Select FM Performance Standard'). IC Select began using this standard in April 2018 and proposes to transfer it to the CFA Institute. The CFA Institute has indicated to us that the standard will be integrated into its Global Investment Performance Standards by January 2020 and be adopted on a voluntary basis.[865]

12.309 All the parties who agreed to a fiduciary management performance standard supported the one already being developed by IC Select. However, views on our proposed role for an implementation group differ.

(a) Some parties submitted that forming an implementation group would be of limited value and would duplicate the work already being undertaken.[866]

(b) Others supported the creation of an implementation group to finalise the remaining details with the CFA Institute.[867]

12.310 A few parties raised methodological or operational concerns with the standard:

(a) Mercer submitted that they have a number of concerns on the methodology around composites, returns and liabilities.[868]

(b) Barnett Waddingham noted that financial managers should not be represented in the working group that had to implement the standard.[869]

12.311 In our view, fiduciary managers, TPEs and other market participants are best placed to develop a performance standard which gives a fair reflection of performance. With respect to methodological concerns, a number of parties confirmed that IC Select, the CFA institute and their existing steering group are taking steps to address them.

12.312 Given the wide support for the IC Select standard and its advanced stage of development, we will not initially mandate there being an implementation group. Should the IC Select standard meet the design conditions we have described above, we will consider accepting this standard for the purposes of this remedy.

865 IC Select and CFA responses to the provisional decision report.
866 [✂].
867 [✂].
868 Mercer response to the provisional decision report.
869 Barnett Waddingham response to the provisional decision report.

Description of the remedy

12.313 Following the responses to the provisional decision report and taking into account parties' views and comments we consider below how this remedy will work in practice.

12.314 This remedy requires fiduciary managers to report their historic performance by reference to a standardised methodology ('fiduciary management performance standard'). Specifically, the remedy covers the historic investment performance of the firm's full fiduciary management clients ('fiduciary management track records').[870]

12.315 We expect that fiduciary managers will complete the development of the fiduciary management performance standard by working with pension scheme trustees or groups representing their interests and independent advisers including professional trustees and third-party evaluators.

12.316 We also expect that fiduciary managers will work with TPR to develop materials and tools to support trustees using the fiduciary management performance standard.

12.317 Fiduciary managers will have six months from the date of the CMA's order coming into force to put in place a fiduciary management performance standard that is acceptable to the CMA.

12.318 A submission will need to be made to the CMA from a majority of fiduciary managers or an association of investment professionals supported by a majority of fiduciary managers and representatives of pension schemes. The following matters should be included in the submission:

- *(a)* A description of the fiduciary management performance standard and an explanation of how the standard is non-discriminatory, and would not otherwise create any competitive disadvantage, as between firms operating in this market;
- *(b)* A list of fiduciary managers that have agreed to adopt the standard;
- *(c)* A process to ensure the standard is updated when needed so that it remains current;

[870] We note that investment firms that are regulated in respect of their MiFID II business are subject to various requirements in respect of information provided to their customers or potential customers. These include, for example, the requirement that information must be fair, clear and not misleading and there are additional requirements when providing information on the past performance of a financial instrument (Article 24 MiFID II Directive and Article 44 MiFID II Delegated Regulation).

(d) A description of the activities that providers are undertaking, or are going to undertake, to help TPR provide trustees with guidance on using the standard. That is, fiduciary managers will be expected to provide TPR with the inputs it needs to develop materials and tools that would support trustees in using this standard.

12.319 In the event that fiduciary managers are unable to develop and implement a standard that is acceptable to the CMA, we reserve the right to appoint an independent person to oversee its development.

12.320 This would be funded by fiduciary managers in proportion to their fiduciary management fees. In this instance, the CMA will also retain the ability to set a suitable timetable for the development of the standard, and the performance of the independent person will be monitored by the CMA.

12.321 Once the fiduciary management performance standard is in place, its use will become mandatory for all fiduciary managers. That is, in all tender submissions and marketing materials where fiduciary managers report the historic investment performance of their full fiduciary management clients, they will have to report the information using the fiduciary management performance standard.

Effectiveness

12.322 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the fiduciary management AEC and the resulting customer detriment

12.323 We have found that there is a lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers. This remedy requires firms to report their historic investment performance by reference to a standardised methodology to be developed and implemented. Remedy 6 will therefore enable trustees to compare the historic performance of prospective providers on a like-for-like basis which, will allow a balanced assessment of value for money to be made.

Implementation, monitoring and enforcement

12.324 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.325 Given the extensive support for the IC Select FM Performance Standard, we consider that the majority of fiduciary managers already have a system in place to collect information and report their performance in line with that standard. The operation and implications of this remedy are clear to providers, as well as to pension scheme trustees. We therefore consider this remedy to be capable of effective implementation.

12.326 This remedy will be implemented by CMA order. The requirement will come into force from the date the CMA order is made. We will ensure that providers comply with the provisions contained in the CMA order.

12.327 This remedy will initially be monitored by the CMA. To effectively monitor compliance, we will require relevant parties to submit a compliance report to the CMA. We would also expect non-compliance to be detected and reported to the CMA by competitors, customer groups and other affected parties if they become aware of it.

12.328 We expect the FCA to introduce additional requirements in its rules to give effect to this remedy. In our view, the FCA is best placed to monitor and supervise this remedy. As the relevant provisions of the order are implemented into the relevant sector-specific regulatory requirements, those provisions of the order will cease to apply and in any event within ten years of the order being made.

12.329 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, providers), as well as others (namely, pension scheme trustees), it would not require elaborate monitoring or compliance programmes, and it is capable of effective monitoring and enforcement initially by the CMA and subsequently by the relevant regulator through its monitoring and enforcement regime. We conclude therefore that remedy 6 is capable of effective implementation, monitoring and enforcement.

12.330 This remedy is a development of existing regulatory requirements in relation to the presentation of past performance information. Where this remedy applies to firms in respect of their MiFID business, it will impose some additional requirements to those under MiFID II. The provisions of EU law applicable at the date of this report require notification to the European Commission of any additional requirements that are intended to be imposed so that the Commission can give its opinion on the proportionality of, and justification for, those requirements.[871] We consider that the timeframe for implementation of this remedy allows for this to occur.

The timescales over which the remedies will take effect

12.331 Remedy 6 will take effect from the date any the CMA order is made. The CMA reserves the right to appoint an independent person to oversee the development of the fiduciary management performance standard if a standard that is acceptable to the CMA is not developed and implemented within this timeframe.

12.332 Given the wide support achieved by the IC Select FM Performance, we consider that firms already have the systems in place to collect and disseminate this information and we do not expect this remedy to impose material setup requirements. Our view is therefore that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing providers a reasonable period in which to start complying with this remedy.

Consistency with existing and expected laws and regulations

12.333 In designing our remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted the FCA, DWP and TPR among others. A key development that has influenced our remedy design is the introduction of MiFID II. As mentioned above, we have designed this remedy to be fully consistent with, and build upon, MiFID II. We have therefore concluded that our remedy 6 is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.334 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in fiduciary management.

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[871] Requirements in relation to costs and charges disclosure is one aspect of the MiFID legislative package in relation to which Member States are permitted to impose additional requirements. As at the date of this report, the UK is required to notify the Commission of its intention to impose any such additional requirements. The Commission is then required to give its opinion on the proportionality of, and justification for, that requirement within two months of the notification (Article 24(12) MiFID II Directive).

Proportionality

12.335 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management.

Is effective in achieving its legitimate aim

12.336 We have assessed the effectiveness of remedy 6 and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.337 In chapter 5, we described how fiduciary managers use very different ways of measuring investment outcomes to demonstrate their performance to prospective clients.

12.338 Our approach to the design of this remedy has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on businesses. We designed this remedy to build upon the requirements of MiFID II and be consistent with existing laws. Therefore, our view is that remedy 6 strikes the right balance in terms of the clarity and detail and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.339 In addressing parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from this remedy. We considered requiring firms to develop a standard following a prescribed set of requirements that allowed them little flexibility as to how performance may be reported but decided that although this could be as effective in addressing the features of the AEC identified, it would be more onerous on firms. We do not believe that other measures would be both as effective and proportionate in addressing the AEC and resulting customer detriment. We have therefore concluded that remedy 6 is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.340 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative

potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[872]

12.341 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[873] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.342 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.343 This remedy aims to improve levels of trustee engagement and ensure that trustees have access to the necessary information to judge the value for money of alternative providers. We consider that remedy 6 will substantially increase the competitive pressure on fiduciary managers by improving the information available to trustees on the quality of their service. This will help trustees to assess the value for money of alternative providers and, thus, will encourage firms to compete more vigorously on quality and price to retain and attract customers.

- *Potential costs*

12.344 This remedy allows providers to build on the extensive work already undertaken in the development of the IC Select FM Performance Standard. In response to our information request on the costs of each remedy, the majority of providers have indicated that there would be little or no incremental cost as a result of this remedy.[874]

12.345 Only [✂] and [✂] indicated that remedy 6 might impose material costs. [✂] submitted that remedy 6 would have set-up costs of £[✂] and ongoing costs of £[✂] a year.[875] [✂] submitted that set-up cost could be around £[✂] to

[872] CC3 (Revised), paragraph 348.
[873] CC3 (Revised), paragraph 358.
[874] Responses to CMA information request.
[875] [✂] response to CMA information request.

£[✂] and the annual cost of remedy 6 could be anywhere from £[✂] to £[✂].[876]

12.346 We note however that both firms have expressed support for a fiduciary management performance reporting standard, and both have been actively engaged in the IC Select process.[877] As part of this process, we understand that some providers have already begun to provide the relevant performance information to IC Select. Given the wide support achieved by the IC Select FM Performance Standard, we therefore consider that firms already have the systems in place to collect and disseminate this information. As a result, we do not expect remedy 6 to impose material incremental costs on providers.

12.347 We do not expect pension schemes to incur any costs as a result of this remedy. Indeed, scheme costs will be reduced as trustees gain easier access to the information required to assess value for money.

12.348 Our overall assessment is that the potential benefits of this remedy would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.349 We have therefore concluded that remedy 6 does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.350 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Remedies for the investment consultants market

Investment consultancy performance reporting

12.351 In this section we set out the remedies we will introduce to improve the quality, comparability and availability of information provided by investment consultancy firms to existing and prospective customers.

12.352 We have found an AEC in relation to the investment consultancy market. We found low levels of engagement by some customers and a lack of clear and

[876] [✂] response to the information request.
[877] [✂] . [✂].

comparable information for customers to assess the value for money of alternative investment consultants, as well as their own investment consultant.

12.353 These features make it difficult for many customers to access and assess the information needed to evaluate the quality of their existing investment consultant and/or identify if they would be better off using an alternative provider. This in turn reduces the ability of customers to drive competition between investment consultants. It also reduces the incentives for investment consultants to compete for customers on the basis of fees and/or quality of service.

12.354 We considered the nature of the AEC and design remedies to address the features of the AEC.

12.355 We will require trustees to set strategic objectives for their investment consultant (remedy 7). We will also require investment consultants and fiduciary managers to establish basic standards for the reporting of performance of their recommended asset management ‘products’ and ‘funds’ using a standardised methodology (remedy 8).

12.356 In response to our working papers and the provisional decision report, parties were generally supportive of measures to improve the transparency of information on fees and quality. Some parties supported initiatives that will make it easier for trustees to process information on fees and quality and easier to assess and compare the offering of different providers.

12.357 Parties told us that any measures we implement should not introduce an unnecessary burden and complexity for trustees, who may already be struggling with the information they currently have. Measures should be designed to ensure that unintended consequences do not arise, such as reducing trustees’ ability to focus attention on aspects of investment consultants’ service that are difficult to understand or compare (for example, cost compared to quality). We noted these concerns and have taken these into account when designing our remedies.

Remedy 7 – Duty on trustees to set their investment consultants strategic objectives

12.358 The objective of this remedy is that trustees better monitor the performance of their investment consultants by setting and measuring them against an appropriate set of strategic objectives, which are closely linked to the scheme’s investment objectives where possible.

Description of the remedy

12.359 This remedy will require pension scheme trustees to set their investment consultants a set of strategic objectives. We would expect the investment consultant's objectives to be closely linked to the scheme's investment objectives, if possible. Objectives should be set at least every three years and trustees should ask investment consultants to report periodically on their performance in meeting them.[878]

How it contributes to addressing the AEC and resulting customer detriment

12.360 In chapter 5, we described how it is difficult for trustees to monitor the quality of their investment consultant, because there is a lack of information for them to do so. We found that trustees do not set sufficiently clear objectives against which their providers can demonstrate their performance and sometimes they do not set objectives at all.

12.361 This remedy targets trustees and investment consultants that do not currently have such strategic objectives in place.

12.362 We note that it is already standard practice in fiduciary management that clients set their provider clear objectives at the start of the relationship and then measure their performance in delivering these.

12.363 Periodic evaluation of performance in meeting objectives will also introduce a natural opportunity for trustees to consider the quality of their investment consultant.

12.364 This remedy will therefore enable trustees to be better able to judge their investment consultant's performance and thereby to drive competition between providers. It will also remedy or mitigate the customer detriment that may be expected to result from the AEC we have found.

12.365 The rest of this section looks at our proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

[878] We note that investment firms that are regulated in respect of their MiFID II business are required to act in the best interests of their customers and all information addressed to customers or potential customers must be fair, clear and not misleading; investment firms must also provide their customers with adequate reports on the service provided (Articles 24 and 25 MiFID II Directive).

Key design and implementation issues

12.366 In general, we expect objectives set for investment consultants to be linked to the scheme's performance. However, we have been conscious of the challenge facing trustees in assessing their investment consultant's performance when the customer, not the provider, is responsible for choosing whether and when to execute the advice they are given. For this reason, it is not necessarily the case that scheme performance is a proxy for the performance of the investment consultant. Therefore, sometimes the objectives set for investment consultant may not be linked to the scheme's performance.

12.367 The nature of the objectives set for the investment consultant should take account of the following: if the pension scheme trustees normally follow all investment advice in a timely manner, then we would expect the investment consultant's objectives to be closely linked to the scheme's investment objectives; if the pension scheme trustees do not follow such advice in full or in a timely manner, then the investment consultants could be set a different type of objective.

12.368 To support this remedy, we recommend that guidance should be produced by TPR to help trustees in setting appropriate objectives for their investment consultant. TPR currently provides a range of guidance on trustees' 'relations with advisers'. This could be expanded to include guidance on setting objectives.

Parties' views in response to the provisional decision report and Working Papers

12.369 Parties made the following comments on this aspect of the remedy:[879]

(a) PLSA said that the objectives must be clearly linked to the investment objectives set out in the Statement of Investment Principles (SIP) as well as the (Defined Benefit (DB)) scheme's funding objectives, such as reaching solvency or achieving buy-out within a set period of time.[880]

(b) Aon said that trustees should set specific 'provider objectives' for each of its investment consultancy and/or fiduciary management providers that fall within the scope of the scheme's overriding objectives. These provider objectives should seek to measure how the particular provider

[879] Including KPMG, JLT, Legal and General, Redington, Barnett Waddingham, Cardano, Investment Association, PLSA, Aon, LCP, Mercer, River and Mercantile, Russell Investments and WTW.
[880] PLSA response to the provisional decision report.

supports the scheme in meeting its overriding objectives. The provider objectives should therefore be aligned to the rationale behind that provider's appointment.[881]

(c) Aon also said that there was a danger that, if scheme performance became a proxy for investment consultants' performance, advice may become more focussed on targeting higher returns to the detriment of risk considerations. A key element of provider objective setting was that the trustees should share any proposed objectives with the relevant provider and check that they are supportive and willing to share accountability for the stated objectives.[882]

(d) WTW said that, while it supported clarity on strategic objectives where possible, this did not mean that strategic objectives should be stripped back to outcomes that can be easily measured and quantified. WTW also said that it was important that objectives are used as part of understanding the assessment, rather than being the sole determinant of success.[883]

(e) WTW also said that the majority of clients had some form of strategic objective in place. WTW also said that the effectiveness of this remedy would not simply be in the mandatory introduction of objectives themselves but also some greater guidance on what the investment specific objectives for their investment consultants could include.[884]

(f) WTW said that under the advisory model, trustees may not have set a goal or objective for fund performance, meaning it was hard to see how investment consultants could provide performance information designed to allow trustees to track progress towards that goal. Therefore, devising a standard baseline level of scheme performance information would inevitably be challenging for trustees using advisory services.[885]

(g) Mercer said it was supportive of a strategic objective-setting process for DB scheme trustees. However, it had two primary concerns with this remedy: (a) the nature of objectives would vary by scheme, and so a uniform, one-size-fits-all template or model may be of limited benefit; and (b) strategic objectives may be difficult to measure and report against,

[881] Aon response to the provisional decision report.
[882] Aon response to the provisional decision report.
[883] WTW response to provisional decision report.
[884] WTW response to provisional decision report.
[885] WTW response to fees and quality working paper.

given the potential for trustees not to follow advice, or to fail to implement this on a timely basis.[886]

(h) LCP said that care would be needed in implementing this remedy to ensure that ICs were not encouraged to focus on a single metric. Doing so could lead to unintended consequences as far as investment risk, non-investment risks and cashflow risk are concerned.[887]

(i) KPMG said that investment consultants' performance would be measured by some qualitative measures of how well the providers have performed in terms of trustees' expectations, for example in terms of pro-activeness and quality of advice, and the quality of the research provided (which was subjective). KPMG said that it did not consider that cost (for example, effective fees against budget) should be considered as a metric, as this may distort incentives for the investment consultants and the trustees.[888]

(j) Redington said that it provided quarterly reporting to all its retained clients as standard which illustrates their total fund performance against their strategic objectives. Performance monitoring for existing clients should focus the mind first and foremost on the most important strategic factors, and afterwards on individual managers.[889]

(k) Cardano said that a market functions best, and relationships between sellers and buyers were improved, when the scope of work and commercial terms are set with respect to clearly defined objectives with measurable outcomes. Clearly defined objectives made it easier to monitor progress toward specific and measurable outcomes, and to explain deviations from plan. Better objective setting would facilitate clearer accountability among sellers, buyers and sponsoring employers. In turn, clearer accountability would drive better outcomes for defined benefit pension schemes and their members.[890]

12.370 Having considered the parties' submissions, we have concluded that the effectiveness of this remedy will rely on clear guidance produced by TPR to help trustees set appropriate objectives.

12.371 We agree with parties that strategic objectives may be difficult to measure and report against, especially when trustees do not follow the advice given by their

886 Mercer response to the provisional decision report.
887 LCP response to the provisional decision report.
888 KPMG response to the provisional decision report.
889 Redington response to fees and quality working paper.
890 Cardano response to issues statement.

investment consultant or fail to implement the advice in the timeframe required for the advice to be successful. However, we think that, where possible, the investment consultants' objectives should be closely aligned to a scheme's objectives.

Minimum thresholds for this remedy

12.372 We have considered whether all pension scheme trustees should be subject to a requirement to set their investment consultant strategic objectives, or whether there should be a minimum size of scheme (measured by value of scheme assets) below which the requirement does not apply.

12.373 Parties made the following comments on this aspect of the remedy:

(a) Aon said that the importance of the accountability of trustees for their decisions to appoint advisers was not dependent on scheme size. Aon did not consider that it would be appropriate to set a minimum scheme size threshold for this remedy. However, objective setting and monitoring should be proportionate to the size of the scheme and the scale of any consultancy contract.[891]

(b) PLSA said that it believed there was merit in the principle of encouraging trustees of schemes of all sizes to set strategic objectives for their investment consultants.[892]

(c) Barnett Waddingham said that it did not believe a minimum size should be established; however, schemes should be allowed flexibility in how they undertake this measurement. For a small scheme with a low governance budget and who do not engage a proactive consultancy model then monitoring can necessarily be lighter touch (in the same way a passive manager was monitored at a lower depth than an active manager).[893]

12.374 Having considered parties' views, we have concluded that there should not be a minimum threshold based on the fact that all schemes should have clear strategic objectives when they engage an investment consultant. There is equal benefit to all schemes, regardless of size, to set clear objectives to their investment consultants. We also consider that a minimum threshold of scheme size might reduce the effectiveness of the remedy.

[891] Aon response to the provisional decision report.
[892] PLSA response to the provisional decision report.
[893] Barnett Waddingham response to the provisional decision report.

12.375 Furthermore, all DB schemes are required to commission a triennial scheme valuation and both DB and DC schemes with 100 or more members are required to have a Statement of Investment Principles. Therefore, reporting against strategic objectives may be linked easily to these processes without adding a significant burden on the scheme.

12.376 In the provisional decision report, we also considered whether all investment consultancy assignments and engagements should require strategic objectives to be agreed. We recognised for example that some investment consultants may be engaged for very specific pieces of consultancy project work, whereas other customer relationships may last for a number of years. Our view is that all customer relationships should be framed against objectives.

12.377 Parties made the following comments on this aspect of the remedy:

(a) JLT said that the CMA should bear in mind that there was a wide range of mandates; from schemes that requested little involvement from their investment consultant, to one off projects, to other schemes which were actively engaged across all facets on an ongoing basis.[894]

(b) LCP did not think that making this mandatory for all clients who received any form of service from an investment consultant was sensible or proportionate. Some clients may use an investment consultant for only a very limited service, for example: the production of performance monitoring reports; or a single manager selection exercise.[895]

12.378 Having considered parties' submissions, we have concluded that all investment consultancy arrangements should have objectives, regardless of length, scale, or nature of engagement.[896] An exclusion to this requirement would be existing engagements which are due to terminate within six months from the date the CMA's order is made.

12.379 Trustees have the flexibility to set objectives most relevant to the nature of their engagement with the investment consultant. We expect these objectives to be proportionate to the size of the scheme and nature and the scale of the investment consultancy engagement.

[894] JLT response to the provisional decision report.
[895] LCP response to the provisional decision report.
[896] As set out at chapter 13.10, during the remedies implementation phase of the investigation, consideration will be given to the possibility of other exclusions.

Effectiveness

12.380 This section considers the different aspects of the effectiveness of our remedy in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the investment consultancy AEC and the resulting customer detriment

12.381 We have found low levels of engagement by some customers. This remedy will drive greater engagement by trustees and help them monitor and assess their investment consultant's performance.

12.382 Also, in chapter 7, we described how there is a lack of clear information for customers to assess the quality of their existing investment consultant. This remedy addresses this feature of the AEC by requiring trustees to set up a framework to help them better understand what their investment consultant achieved over the course of its engagement with the trustee.

Implementation, monitoring and enforcement

12.383 Our assessment of the extent to which this remedy is capable of effective implementation, monitoring and enforcement is set out below.

12.384 In our view, remedy 7 is capable of effective implementation as its operation and implications are clear to pension scheme trustees, as well as providers. Trustees and investment consultants can readily implement it and comply by setting strategic objectives against which the investment consultant can demonstrate its performance.

12.385 This remedy will be implemented by CMA order. The remedy will come into force six months from the date on which the CMA's order is made.

12.386 As soon as is possible (see recommendation D below), we intend that TPR should oversee this remedy as part of its other regulatory requirements on pension scheme trustees. As the provisions of the order are implemented into the relevant sector-specific regulatory requirements the relevant provisions of the order will cease to apply and in any event within ten years of the order being made.

12.387 This remedy will initially be monitored by the CMA. To effectively monitor compliance, we will require trustees to submit a compliance report to the CMA. We would also expect non-compliance to be detected and reported to the CMA by competitors, customer groups and other affected parties if they become aware of it.

12.388 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, pension scheme trustees), as well as others (namely, providers), it would not require elaborate monitoring or compliance programmes, and it is capable of effective monitoring and enforcement initially by the CMA and subsequently by TPR as part of its other regulatory requirements on pension scheme trustees. We conclude therefore that remedy 6 is capable of effective implementation, monitoring and enforcement.

The timescales over which the remedies will take effect

12.389 Remedy 7 will take effect within six months of the order being made. Parties have generally indicated that this remedy does not have significant set-up requirements. Our view is therefore that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing schemes and providers a reasonable period in which to start complying with this remedy.

Consistency with existing and expected laws and regulations

12.390 In designing our remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted TPR, the DWP and others. In our view, remedy 7 does not create any tension with, or otherwise undermine, such laws and regulations. We have therefore concluded that this remedy is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.391 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in investment consultancy.

Proportionality

12.392 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management and investment consultancy.

Is effective in achieving its legitimate aim

12.393 We have assessed the effectiveness of remedy 7 and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.394 In designing this remedy, we have considered the costs to trustees and firms and the feasibility of implementation by trustees. We were mindful not to create unnecessary burdens on parties. Requiring trustees to set strategic objectives for their investment consultant, and for the investment consultant to report progress against these objectives to pension scheme trustees is not a costly exercise for either party.

12.395 Our view is that this remedy strikes the right balance in terms of the clarity and detail and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.396 In addressing parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from this remedy.

12.397 We have considered mandating use of templates for objectives and/or requiring that all investment consultants' objectives are quantitative in nature and linked to the scheme's objectives. However, we did not consider those would be as effective, as schemes sometimes do not follow the investment consultant's advice and it may be misleading for them to rely only on a metric based on the scheme's performance. This could exacerbate the problem by undermining confidence in a trustee's ability to assess the performance of an investment consultant.

12.398 We do not believe that other measures would be both as effective and proportionate in addressing the AEC and resulting customer detriment. We have therefore concluded that remedy 7 is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.399 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[897]

[897] CC3 (Revised), paragraph 348.

12.400 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[898] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.401 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.402 This remedy aims to improve levels of trustee engagement and ensure that trustees have access to the necessary information on the performance of their investment consultant to judge value for money.

12.403 We consider that this remedy will substantially increase the competitive pressure on investment consultants by requiring trustees to set strategic objectives for their investment consultant, and for the consultant to report progress against these objectives. This will drive greater engagement by trustees and help them to monitor the quality of their investment consultant and, thus, will increase the competitive pressure on the investment consultant to ensure that it is offering a high quality of service.

- *Potential costs*

12.404 It is likely that this remedy will impose some costs on pension scheme trustees due to the time they will need to spend developing and setting objectives for their investment consultant. Investment consultants may also charge for periodically reporting on the objectives.

12.405 Estimates from parties vary as to the likely cost of this remedy on pension scheme trustees. [✂], [✂] and [✂] submitted that they already agree strategic objectives with their clients and therefore expect no additional cost. [✂] and [✂] estimate annual costs per scheme of less than £[✂] and [✂] estimate annual costs per scheme of £[✂] to £[✂].[899]

12.406 We therefore expect this remedy to impose limited incremental costs on pension scheme trustees. We recognise that some costs will be incurred in

[898] CC3 (Revised), paragraph 358.
[899] Responses to CMA information request.

designing and setting strategic objectives with the investment consultant, although we envisage that objectives will be set for several years.

12.407 Our overall assessment is that the potential benefits of this remedy would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.408 We have therefore concluded that remedy 7 does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.409 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Remedy 8: Requirement on investment consultants and fiduciary managers to report performance of recommended asset management 'products' or 'funds' using a basic minimum standard

Summary of the remedy

12.410 This remedy requires that information provided by investment consultants and fiduciary managers to prospective customers on the performance of their recommended asset management products and in-house funds must adhere to certain MiFID II requirements.[900]

How it contributes to addressing the AEC and resulting customer detriment

12.411 We have found that there is a lack of clear and comparable information for customers to assess the value for money of alternative investment consultants and fiduciary managers. It is also very difficult for customers to assess and compare the quality of the advice they get from different providers. In particular, the methodologies used to calculate track records for recommended investment products make it difficult to interpret and compare the quality of advice across providers.

12.412 We have found that the historic investment performance of recommended asset management products has been presented in an inconsistent way in

[900] The requirements are those set out in Article 44(3), (4) and (5) of MiFID II Delegated Regulation. These presently apply only to investment firms regulated in respect of their MiFID II business.

responses to tenders and in marketing materials. This can make it difficult for trustees to accurately assess the performance of each firm in identifying good investment products.

12.413 By requiring providers to adhere to common standards when reporting performance of their recommendations, trustees would be better able to assess the value for money of alternative investment consultants and fiduciary managers and the quality of advice provided. This in turn would enable trustees to drive competition between providers. It would also enable them to achieve better value for money and thereby remedy or mitigate the customer detriment that may be expected to result from the AEC we have found.

12.414 The rest of this section looks at our proposed remedy in the provisional decision report, parties' responses to the provisional decision, our assessment following parties' submissions and final decision on this remedy.

Description of the remedy

12.415 This remedy requires that information provided to prospective customers regarding the performance of an investment consultant's or fiduciary manager's recommended asset management products and in-house funds must adhere to a standardised set of requirements.

Proposed remedy in provisional decision report

12.416 In our provisional decision report, we set out the matters to be included by investment consultants and fiduciary managers when reporting past performance of their recommended asset management products:

(a) **Excess return vs benchmark**. Returns should be compared to an appropriate benchmark, and the benchmark should be clearly stated.

(b) **Net of fees**. Returns should be presented on either (i) a net of fees basis, or (ii) both a gross and net of fees basis. It should be clearly stated what fee basis is used. We invited views from interested parties as to what fees should be used to make the gross to net fees conversion

(c) **The inclusion of all relevant products and funds**. The firm should include information on the performance of all relevant products and funds. For example, if the firm is asked to demonstrate the performance of its recommended asset management products, it should include all recommended products across all asset classes.

(d) **Survivorship bias**. The firm should take reasonable steps to ensure that reported performance does not suffer from survivorship bias.[901] If there is a possibility that the methodology being used may suffer from survivorship bias, this should be clearly disclosed.

(e) **Data issues, including simulated returns and backfill bias**.[902] The firm should take reasonable steps to ensure that data relying on simulated returns and/or backfilled returns is removed from the analysis. The firm should clearly disclose any other data issues that could materially affect reported performance, and whether any steps have been taken to correct for these issues.

Parties' views in response to the provisional decision report

12.417 All parties who expressed views on this remedy in response to our provisional decision report, have indicated their support in principle for this remedy, as a measure to improve customers' information. For example:

(a) WTW submitted that it firmly supported the CMA's proposal to establish basic standards for how investment consultant and fiduciary managers report performance of recommended asset management products.[903]

(b) Bfinance submitted that it broadly supported the development of basic standards for reporting performance of recommended asset management 'products' and 'funds', which investors can use to compare their consultant(s) against other consultant(s).[904]

(c) Redington submitted that it agreed that there should be a basic standard for reporting of recommended asset manager performance.[905]

12.418 However, several parties highlighted some practical challenges and risks associated with this remedy.

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[901] Survivorship bias is a form of selection bias that arises when the analysis of a variable (here investment performance) concentrates on products that made it past (ie survived) some selection process (here retaining their 'buy' rating) while not taking into account those that did not. As continuing to receive a 'buy' rating is contingent on investment performance, the observed performance of products that have retained their ratings over a reporting period will likely be inflated compared to the overall performance of the universe of 'buy-rated' products.
[902] Simulated returns occur when the (hypothetical) historical performance of products in a database are 'simulated' using statistical techniques. Such techniques might be used to produce strong historical returns in order to attract prospective investors. Backfill bias may occur if products are only added to a database after a certain period of time; those that perform well may be added, whilst those that perform poorly are unlisted. This may inflate the performance of products in the database.
[903] WTW response to the provisional decision report.
[904] Bfinance response to the provisional decision report.
[905] Redington response to the provisional decision report.

12.419 The first matter concerns the ‘behavioural’ unintended consequences of this remedy. In particular, parties submitted that asset manager product recommendations are a relatively small part of what drives pension schemes’ funding growth and risk. This remedy should not become the primary basis on which trustees select their investment consultant or fiduciary manager.[906]

12.420 We are not mandating that providers report quantitative information regarding the performance of their recommended asset management products. Further, we are not preventing providers from presenting additional information which might be of specific relevance to the trustees. Rather, we are setting minimum requirements for when investment consultants do choose to provide this type of information.

12.421 A further matter concerns some technical aspects of our basic principles. In particular, parties mentioned difficulties in relation to the lack of consistency in the product category definition between consultants and the difficulties of including certain asset manager products. Further, parties have different views on the gross and net of fees reporting.[907]

12.422 With this remedy, we are requiring use of some existing baseline principles that will leave firms sufficient flexibility to account for differences in products. Trustees should be given information on the effect of fees and other charges on the historic performance of recommended asset management products. This will allow them to assess the effectiveness of firms’ recommendations. We believe that the existing MiFID II requirements are sufficient to address this point.

12.423 Finally, the CFA Institute and the Investment Association submitted that requiring the disclosure of GIPS-compliant performance figures would address all the areas mentioned in our provisional decision report.[908]

12.424 We consider that most investment firms will have to comply with MiFID II requirements, whereas GIPS is a voluntary standard. Third party databases used by investment consultants and fiduciary managers for return reporting purposes – for instance eVestment – do not enforce the upload of GIPS-compliant information. Instead, they allow any type of return to be uploaded provided that the manager discloses exactly what it is. Therefore, the incremental cost of extending the application of MiFID II requirements in respect of non-MiFID II business is likely to be lower compared to mandating the application of GIPS. Moreover, differently from MiFID II, we note that GIPS

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906 [✂].
907 [✂].
908 CFA Institute response to the provisional decision report and The Investment Association response to the provisional decision report.

does not require asset managers to report the effect of fees and other charges on the performance of their products.

Conclusion on the design of this remedy

12.425 We noted that our remedy was similar to requirements which already apply to MiFID-regulated investment firms. Investment consultants and fiduciary managers who are subject to MiFID II are required to comply with detailed rules on the communication of information to clients as set out below.

MiFID II requirements

12.426 We note that investment firms that are regulated in respect of their MiFID II business are subject to various requirements regarding the information provided to their potential customers.

12.427 Specifically, MiFID II sets out requirements with which investment firms must comply when comparing investment or ancillary services, financial instruments, or persons providing investment or ancillary services and when presenting information on past performance of a financial instrument, a financial index or an investment service.

12.428 These requirements would likely apply to MiFID II investment firms when providing clients or potential clients with information about the performance of recommended asset management products or the historical performance of their own investment products (eg fund-of-funds, multi-client pooled funds etc).

12.429 In particular, Article 44(3),44(4) and (5) of MiFID II Delegated Regulation requires investment firms to ensure that information provided to customers or potential customers satisfies the following conditions:

(a) Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, investment firms shall ensure that the following conditions are satisfied:

(i) the comparison is meaningful and presented in a fair and balanced way;

(ii) the sources of the information used for the comparison are specified;

(iii) the key facts and assumptions used to make the comparison are included.

(b) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:

(i) that indication is not the most prominent feature of the communication;

(ii) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods;

(iii) the reference period and the source of information is clearly stated;

(iv) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(v) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(vi) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed.

(c) Where the information includes or refers to simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

(i) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;

(ii) in respect of the actual past performance referred to in point (i), the conditions set out in points (i) to (iii), (v) and (vi) of paragraph (b) are satisfied;

(iii) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

12.430 Within this context we believe that MiFID II achieves our objectives for this remedy for those activities that fall within its scope. For firms' activities that are not subject to MiFID II, extending the application of MiFID II requirements, instead of creating a new standard, ensures greater consistency across the industry.

12.431 Considering the issues set out above and parties' views on our proposed remedy 8, we have decided that this remedy should require that information that is provided to *prospective customers* regarding performance of an investment consultant's or fiduciary manager's recommended asset management products and in-house investment products must adhere to the requirements of Article 44(3), (4) and (5) of MiFID II Delegated Regulation.

12.432 This includes information provided in tender submissions and in marketing materials. We will also expect, but not mandate, providers to comply with this remedy when reporting any information of this type to *existing customers*.

12.433 The provisions set out in this remedy will apply both to products specifically recommended to clients and to a generic list of 'buy-rated products' whenever firms present to their prospective customers quantitative evidence to demonstrate their abilities as investment consultants or fiduciary managers.

12.434 In chapter 5, we noted that firms submit quantitative information on asset managers' product recommendations in the context of tender submissions and marketing materials. We also noted that most tender submissions do not present quantitative information on historical performance of their recommended asset management products. Instead, they present qualitative evidence and case studies, to which the provisions set out in this remedy will not apply. We emphasise that this remedy does not mandate firms to report to prospective customers quantitative information.

Effectiveness

12.435 This section considers the different aspects of the effectiveness of remedy 8 in contributing to addressing the features of the AECs and the resulting customer detriment.

How the remedy contributes to addressing the investment consultancy and fiduciary management AECs and the resulting customer detriment

12.436 We have found that there is a lack of clear and comparable information for customers to assess the value for money of alternative investment consultants and fiduciary managers.

12.437 This remedy requires information provided on the investment consultants and fiduciary manager's recommended asset management products to adhere to a standardised set of requirements. This remedy will therefore enable trustees to assess the historic performance of prospective providers and will allow a balanced assessment of value for money to be made. This will also contribute to addressing the customer detriment resulting from the AEC by encouraging providers to compete for customers on the basis of price and quality.

Implementation, monitoring and enforcement

12.438 In evaluating the effectiveness of this remedy, we have considered the extent to which the remedy is capable of effective implementation, monitoring and enforcement.

12.439 Remedy 8 only applies where firms are reporting quantitative performance information of their asset management products to prospective clients. As mentioned above, not all firms provide this information, therefore where they do not provide it they will not be required to comply with this remedy.

12.440 We also note that as remedy 8 follows MiFID II requirements, so its operation and implications should be clear to providers, as well as pension scheme trustees (indeed many providers already comply with the reporting requirements of remedy 8 for their MiFID II business). We therefore consider this remedy to be capable of effective implementation.

12.441 This remedy is capable of effective monitoring and enforcement. There will be no change for firms already regulated in respect of their MiFID II business, as the MiFID II regulatory regime will continue to apply.

12.442 This remedy will be implemented by CMA order and will apply to those providers whose business falls outside the scope of MiFID II regulation. To allow appropriate changes to reporting systems and relevant marketing materials, the remedy will come into force six months from the date the CMA's order is made.

12.443 This remedy will be initially monitored and enforced by the CMA pending implementation of our recommendation to government to extend the FCA's regulatory perimeter (see below).

12.444 To monitor compliance, we will require relevant parties to submit a compliance report to the CMA. We would also expect examples of non-compliance to be detected and reported to the CMA by customer groups and other affected parties if they become aware of it.

12.445 In view of the foregoing, our view is that the operation and implications of the remedy are clear to those to whom it is directed (namely, providers), as well as others (namely, pension scheme trustees), it would not require elaborate monitoring or compliance programmes, and it is capable of effective monitoring and enforcement initially by the CMA and subsequently by the FCA. We conclude therefore that this remedy is capable of effective implementation, monitoring and enforcement.

12.446 We conclude that the FCA is best placed to monitor and supervise this remedy for those providers whose business falls outside the scope of MiFID II regulation. This would be in line with the existing Approach to Supervision, published as part of the FCA Mission. As the provisions of the order are implemented into the FCA regulatory requirements, the relevant provisions of the order will cease to apply and in any event within ten years of the order being made.

The timescales over which the remedy will take effect

12.447 Remedy 8 will take effect six months from the order being made. Most parties have indicated that remedy 8 does not have significant setup requirements. Our view is therefore that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing schemes and providers a reasonable period in which to start complying with this remedy.

Consistency with existing and expected laws and regulations

12.448 In designing this remedy, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted DWP, the FCA and TPR among others. A key development that has influenced our remedy design is the introduction of MiFID II. As mentioned above, we have decided to apply the relevant MiFID II requirements in this remedy. We have therefore concluded that the remedy is consistent with existing and expected laws and regulations.

Conclusion on the effectiveness of this remedy

12.449 In view of the foregoing, we conclude that this remedy is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found in investment consultancy and fiduciary management.

Proportionality

12.450 This section considers the proportionality of our remedy in addressing the AEC and the resulting customer detriment we have found in fiduciary management and investment consultancy.

Is effective in achieving its legitimate aim

12.451 We have assessed the effectiveness of remedy 8 and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.452 In chapter 5, we described how, for prospective clients, there is limited information to assess providers' investment abilities and performance information on their recommended asset management products and funds is not directly comparable.

12.453 This remedy requires investment consultants and fiduciary managers to adhere to an existing, minimum set of requirements. Our approach to the design of our remedies has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on business. Our view is that remedy 8 strikes the right balance in terms of the disclosure and detail and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.454 In addressing parties' responses to the provisional decision report, we have considered alternative potential requirements which could be included or excluded from this remedy.

12.455 We have considered requiring firms to use templates for reporting performance that go beyond the requirements of MiFID II and, although we found that the requirements would be as effective in contributing to addressing the features of the AEC identified, we concluded that they would be more burdensome on firms than this remedy.

12.456 We do not believe that other measures would be both as effective and proportionate in addressing the AEC and resulting customer detriment. We have therefore concluded that remedy 8 is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.457 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[909]

12.458 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[910] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.459 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.460 This remedy aims to improve levels of trustee engagement and ensure that trustees have access to the necessary information to judge the value for money of alternative providers. We consider that remedy 8 will substantially increase the competitive pressure on investment consultants and fiduciary managers by improving the information available to trustees on the quality of investment consultants and fiduciary managers. This will help trustees to assess the value for money of alternative providers and, thus, will encourage firms to compete more vigorously on quality and price to retain and attract customers.

- *Potential costs*

12.461 This remedy applies MiFID II requirements on firms in respect of both MiFID and non-MiFID business, in order to ensure that trustees will be better able to assess the value for money of alternative investment consultants and fiduciary

[909] CC3 (Revised), paragraph 348.
[910] CC3 (Revised), paragraph 358.

manager and the quality of their advice. Estimates from some parties have indicated that there will be little, or no material increase in costs from remedy 8.[911]

12.462 However, [✂], [✂] and [✂] submitted that remedy 8 will impose significant costs, in particular, in relation to the collection and the analysis of the asset managers' data.[912] Costs are mainly driven by our requirement to disclose information 'net of fees'. In this regard, [✂] submitted that net of fee reporting will require set-up costs of £[✂] and approximately £[✂] of ongoing costs per year.[913]

12.463 Two main factors are driving [✂].[914] While we acknowledge that firms might incur some system reconfiguration costs in implementing this remedy, there is no requirement to collect information on 'actual' client fees. Remedy 8 requires, that, where the information is based on gross performance, disclosure of the effect of commission, fees or other charges. We are not prescribing how this effect should be assessed.

12.464 We also note that many providers already comply with the reporting requirements of remedy 8 for their MiFID II business. Our remedy will simply extend best practice across the industry.

12.465 Moreover, remedy 8 only applies where firms are reporting quantitative performance information of their asset management products to prospective clients. As mentioned above, not all firms provide this information, therefore where they do not provide it they will not sustain related costs.

12.466 Our understanding is that there are very few firms whose activities are not subject to MiFID II which provide the information that would engage this remedy, and these firms may incur some low and one-off costs to make changes to their reporting systems to allow compliance with this remedy.

12.467 We consider that MiFID II firms already have the systems in place to collect and present this information. As a result, we do not expect remedy 8 to impose material incremental costs on these providers. There may be some implementation costs for non-MiFID II firms, however, as discussed above, we expect these to be low and one-off.

12.468 Moreover, we do not expect pension schemes to incur any costs as a result of this remedy. Indeed, scheme costs (and trustee time) will be reduced as

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[911] Responses to CMA information request.
[912] [✂] response to CMA information request, [✂] response to CMA information request and [✂] response to CMA information request.
[913] [✂] response to CMA information request.
[914] [✂].

trustees gain easier access to the information required to assess value for money.

12.469 Our overall assessment is that the potential benefits of this remedy would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.470 We have therefore concluded that remedy 8 does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.471 In view of the above, we have concluded that this remedy is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Supporting remedies

12.472 Alongside the remedies set out above we also make four recommendations to government (DWP and HMT), TPR and the FCA that will make our package of remedies more effective.

A: Recommendation to HMT to extend the FCA's regulatory perimeter to cover activities of investment consultants

12.473 The objective of this recommendation is that firms which provide investment consultancy and fiduciary management are subject to consistent and proportionate regulation that reflects market developments and addresses the competition findings of this investigation.

Description of the remedy

12.474 This remedy is a recommendation to HM Treasury to extend the scope of the FCA's regulatory perimeter to include relevant activities of investment consultancy firms to the extent that they are not presently regulated by either the FCA[915] (for example, strategic investment advice) or under a designated professional body licence.[916]

12.475 The extension would enable the FCA to supervise those parts of remedy 8 as they apply to investment consultants, subject to its own process of introducing any new regulatory requirements on firms.

Why we recommend further regulation of investment consultants

12.476 At present some, but not all, activities conducted by investment consultancy firms are subject to regulation by the FCA or designated professional bodies such as the Institute and Faculty of Actuaries. This may inhibit the ability of the relevant regulator to intervene in the investment consultants market.

12.477 The evidence we have gathered in this investigation has confirmed that the activities of investment consultants potentially affect more than £1.6 trillion of pension scheme assets.[917] We estimate that 73% of pension schemes use investment consultants,[918] and that their advice may affect the retirement incomes of around half of households in the UK.

12.478 We have concluded that even a very small change in the quality of the service provided by investment consultants may, therefore, have a very large financial impact: if better advice from investment consultants resulted in a one percentage point improvement in the funding level of DB pension schemes (on a full buy-out basis), then this would reduce the average deficit by around £20 billion (see paragraph 13.104).

12.479 Our remedies for the investment consultants' market are designed to improve pension scheme trustees' ability to evaluate the quality of these services We consider that remedy 8 for investment consultancy firms is best incorporated with other FCA conduct requirements on those firms, rather than monitored separately by the CMA.

12.480 For these reasons, our view is that investment consultants should be regulated by the FCA, or within the designated professional bodies regime (for

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[915] We understand that elements of such activities (a) would be regulated to the extent that they form an integral part of a regulated activity (see, for example, FCA The Perimeter Guidance Manual (PERG) 13.3, Q21 in relation to MiFID II investment services) or (b) may be subject to FCA conduct requirements in the Conduct of Business sourcebook (COBS) if they are carried on in connection with a regulated activity. The aim of our recommendation would be to close the 'regulatory gap' in respect of key services, of which examples are outlined above. We note that PERG is guidance and therefore not legally binding.
[916] Some investment consultancies are regulated by the Institute and Faculty of Actuaries under a Designated Professional Body (DPB) licence
[917] See footnote 20.
[918] CMA analysis of CMA survey; we have treated schemes responding to the survey with 'don't know' as not purchasing the relevant services. Further details of how we have analysed our survey is set out in Appendix 4.

example, by the Institute and Faculty of Actuaries), according to the approach adopted by HMT.

How it addresses the AEC and detriment

12.481 In our view our remedies directed at investment consultants would be best supervised by the FCA as the financial services sector regulator. Extending the FCA's regulatory perimeter[919] would help to reinforce the effectiveness of remedy 8 and so address the applicable AECs and resulting customer detriment.

12.482 Extending the perimeter would also ensure greater consistency of conduct by investment consultants over the services provided to pension scheme trustees.

12.483 Finally, the FCA as the relevant sector regulator would be better able to assess market developments across all relevant activities and take regulatory action as appropriate. It would be able to evolve our remedies for investment consultants in line with any other developments in conduct requirements for such firms.

Key implementation issues

12.484 If HMT accepts our recommendation to extend the regulatory perimeter, then the relevant activities of investment consultants that are not currently regulated will need to be identified and defined. We expect these to be activities related to strategic investment advice, such as advice on strategic asset allocation, manager selection and on fiduciary management.

Parties' views in response to the provisional decision report

12.485 In response to the provisional decision report, the vast majority of parties agreed with the extension of the FCA perimeter to cover investment consultancy services. Those that agreed made the following representations:

(a) WTW said that it was supportive of this recommendation but noted that it would increase hurdles for new entrants into the market. It also said that regulation should be on an activity basis, not a firm basis. Assuming regulation its activity-based, WTW suggested a number of services that could come under the perimeter, such as: strategic investment advice,

[919] Depending on its nature and degree, extension of the FCA's regulatory perimeter may catch firms in respect of activities that are currently only subject to regulation by designated professional bodies.

asset allocation advice, manager selection, settlement activity advice and advice relating to DB and DC schemes.[920]

(b) Aon said that it supported this remedy, however, the new perimeter should be defined by activity and avoid capturing unintended participants, such as actuaries.[921]

(c) KPMG said that it supported the recommendation and that the FCA's remit should capture all services provided by investment consultants.[922]

(d) Mercer said that it had no objection to the extension of the FCA's regulatory perimeter, as the FCA was well placed to oversee the remedies suggested by the CMA.[923]

(e) Hymans said that it supported a level playing field as it was currently an Authorised Professional Firm and apply FCA standards, however, it was important that the scope of the activities to be regulated was clearly defined.[924]

(f) Cardano said that it was supportive of this remedy and that the extended perimeter should capture the work undertaken by TPEs.[925]

(g) IFoA said that it supported the remedy, however, was it important to clarify exactly to what extent the perimeter would be extended and how it may impact the DPB regime.[926]

(h) Others, such as: LCP, The Investment Association, Redington, PLSA, River and Mercantile, JLT, Legal and General, XPS, Barnett and Waddingham, bfinance, Capita, Charles Stanley, IC Select, Law Deb and Spence were all supportive of this remedy.[927]

12.486 However, Cambridge Associates said that it did not see a need, or room, for a significant increase in regulation, since the FCA already provides nearly comprehensive regulation over fiduciary management services.

920 WTW response to the provisional decision report.
921 Aon response to the provisional decision report.
922 KPMG response to the provisional decision report.
923 Mercer response to the provisional decision report.
924 Hymans response to the provisional decision report.
925 Cardano response to the provisional decision report.
926 IFoA response to the provisional decision report.
927 Responses to the provisional decision report.

12.487 Cambridge Associates said that it supported the expansion of the FCA's conduct rules as a method to enforce any relevant CMA remedies which are mandated.[928]

12.488 In making this recommendation, we are conscious of the risks of distorting competition which might arise from increasing the regulatory burden on smaller firms. However, having remedies on investment consultants supervised by a single regulatory body, rather than the CMA acting in parallel to the sector regulator(s) will lessen that burden to some extent.

Effectiveness

12.489 We have found an AEC in investment consultancy services. We note that a part of this market is currently unregulated, although firms that are IC-FM integrated are regulated by the FCA in respect of their fiduciary management activities.

12.490 We consider FCA regulation in this area to be more effective than a CMA order in the long-term as there is a need for flexibility in regulation that takes account of market changes that the CMA order would not be able to fulfil.

12.491 In our view, recommendation A is capable of effective implementation. As stated in our guidance, recommendations such as this one to the government are not binding, although the UK government has committed to respond within 90 days of publication of our final report to any recommendation made to it.[929]

12.492 We have designed this recommendation to be fully consistent with, and build upon, current FCA regulation. We have therefore concluded that recommendation A is consistent with existing and expected laws and regulations.

12.493 We have therefore concluded that this recommendation is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Proportionality

12.494 This section considers the proportionality of our recommendation in addressing the relevant aspects of the AECs and the resulting customer detriment we have found.

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[928] Cambridge Associates response to the provisional decision report.
[929] CC3 (Revised), paragraph 327.

Is effective in achieving its legitimate aim

12.495 We have assessed the effectiveness of this recommendation and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.496 This recommendation is for HMT to consider the extension of the FCA perimeter to cover the activities of investment consultants. We consider this to be no more onerous than needed to achieve its aim as we are recommending the extension of the perimeter as far as necessary to address the AEC we have found.

Is the least onerous if there is a choice between several effective measures

12.497 In addressing parties' responses to the provisional decision report, we have considered alternatives to the extension of the FCA perimeter.

12.498 We do not believe that other measures (such as the CMA monitoring the investment consultancy remedies) would be both as effective and proportionate in addressing the AEC and resulting customer detriment. For example, we consider that the CMA monitoring the investment consultancy remedies to be different from and additional to existing FCA monitoring and therefore, more onerous on firms than the monitoring arising from the extension of the FCA perimeter.

12.499 We have therefore concluded that recommendation A is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.500 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[930]

12.501 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members

[930] CC3 (Revised), paragraph 348.

whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[931] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.502 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.503 This recommendation aims to allow the FCA to monitor and enforce the remedies imposed on investment consultants. We consider that FCA oversight of investment consultants' activities rather than CMA monitoring these remedies would have the benefit of avoiding parallel regulation by both the CMA and the FCA of investment consultants' activities.

- *Potential costs*

12.504 The potential costs of this remedy depend on the form that FCA regulation will take. As stated in our guidance, recommendations such as this one to the government are not binding. Therefore, this recommendation does not directly impose costs on firms or trustees. Whilst we expect HMT to conduct its own cost-benefit analysis, we would expect it to take into account our assessment of the potential costs of this remedy to the industry.

12.505 A small number of providers have indicated that the extension of the regulatory perimeter has the potential to create material incremental costs.[932] Other providers said that the costs are difficult to estimate at this stage, prior to knowing the form FCA regulation would take.

12.506 Our view is therefore that the potential benefits of this recommendation would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy, and to millions of pension scheme members, implies that even small improvements will yield benefits.

12.507 We have therefore concluded that recommendation A does not produce disadvantages which are disproportionate to its aim.

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931 CC3 (Revised), paragraph 358.
932 Responses to CMA information request (September 2018).

Conclusion on proportionality

12.508 In view of the above, we have concluded that this recommendation is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

B: Recommendation to TPR to provide enhanced trustee guidance

12.509 The objective of this recommendation is that trustees have access to guidance on how to assess their existing advisers and tender for, assess the performance of and choose fiduciary managers and investment consultants.

Recommendation

12.510 In remedy 3 above, we set out a recommendation to TPR to develop enhanced guidance for pension scheme trustees on running a competitive tender process with support from the CMA. Alongside this, we recommend to TPR that it develops broader guidance on engaging with investment consultants and fiduciary managers in order to support pension scheme trustees to gain most benefit from our package of remedies.

12.511 TPR is the sector regulator for occupational pension scheme trustees so is best placed to develop and provide such guidance.

12.512 In addition to any requirements arising from our remedies for pension scheme trustees, our view is that the following should be developed:

- Guidance for pension scheme trustees on choosing and monitoring investment consultancy and fiduciary management services providers, including in relation to:
  - Remedy 7: how pension scheme trustees should set and monitor appropriate strategic objectives on which investment consultants can report their performance.
  - Remedies 4, 5, 6 and 8: how pension scheme trustees should use enhanced fees and performance information from investment consultants and fiduciary managers.
- Supporting materials such as templates and checklists which will assist pension scheme trustees in tender processes.

Parties' views in response to the provisional decision report

12.513 In response to the provisional decision report, the majority of parties which made representations on this recommendation agreed with it. Parties said that guidance should cover details around how to measure and monitor performance, as well as how to run a tender.[933]

12.514 Furthermore, they said that standard templates for requesting key information from providers and a standard scoring template with associated guidance would be an appropriate approach.

12.515 Parties made the following specific comments on this recommendation:

(a) PLSA said that guidance must be designed in such a way that it did not evolve from a recommendation to a requirement; schemes must be allowed the space to run the tender process or engage with their investment advisers in a way which was best suited to their scheme's resources, objectives and circumstances. PLSA also said that trustees often liked to be given practical tools to use.[934]

(b) Barnett Waddingham said that regulations should be supported by clear and strong industry guidance covering: a) Factors to consider when deciding on the suitability of fiduciary management in general; b) Factors to consider when selecting a fiduciary management provider; c) The regulated advice required at different stages of the fiduciary management journey; d) A requirement for regulated advice to be provided by an independent organisation; and e) Periodic reviews of fiduciary management services by an independent and regulated adviser.[935]

(c) Hymans said that it was important for guidance to be pitched at a high level and the temptation to provide too much detail was resisted. The ultimate objective must be that trustees remain able to set objectives which are appropriate to their scheme's own individual circumstances, rather than being driven from any sort of proforma.[936]

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[933] Including Spence, Capita, Cambridge Associates, bfinance, Barnett Waddingham, XPS, Legal and General, JLT, River and Mercantile, PLSA, Redington, Cardano, LCP, Investment Association, Hymans, Mercer, KPMG, Aon and WTW.
[934] PLSA response to the provisional decision report.
[935] Barnett Waddingham response to the provisional decision report.
[936] Hymans response to the provisional decision report.

(d) Aon said that care should be taken to ensure that guidance was principles-based so that it did not result in (i) excessive burden on providers and/or trustees, or (ii) hamper innovation.[937]

(e) Aon said that in addition to the strategic objectives against which ICs would be reporting, it would be helpful to provide trustees with guidance on other factors to consider when judging their IC's performance, such as the following:[938]

(i) Has the content and delivery of advice provided clarity and understanding of the decision to be taken?

(ii) Does the advice reflect the circumstances of the scheme and was it to a sufficient level of detail?

(iii) Has the work been completed on time and within budget?

(iv) Have the trustees evaluated the robustness of the analysis behind the advice?

(v) Has the investment consultant been clear with regards to the scope of work and associated costs?

(vi) Did the investment consultant properly follow their instructions?

12.516 We have discussed the approach to developing guidance with TPR and are confident that the issues raised above will be taken account of.

Effectiveness

12.517 In our view, this recommendation to TPR to produce further guidance for pension scheme trustees is capable of effective implementation. As stated in our guidance, recommendations such as this one to the government are not binding, although the UK government has committed to respond within 90 days of publication of our final report to any recommendation made to it.[939]

12.518 The requirement for pension scheme trustees to set objectives for their investment consultant will be required pursuant to the CMA's order, therefore we would expect TPR guidance to be made available to trustees six months after the order is made.

[937] Aon response to the provisional decision report.
[938] Aon response to the provisional decision report.
[939] CC3 (Revised), paragraph 327.

12.519 This recommendation aims to be fully consistent, and build upon, current TPR guidance on laws and regulations.

12.520 We have therefore concluded that recommendation B is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Proportionality

12.521 This section considers the proportionality of our recommendation in addressing the aspects of the AECs and the resulting customer detriment.

Is effective in achieving its legitimate aim

12.522 We have assessed the effectiveness of recommendation B and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.523 As discussed above, recommendation B will entail only minimal – and voluntary – input from trustees and providers. The burden of this remedy will fall on TPR who will need to develop the guidance and other materials. Our view is that this recommendation strikes the right balance in terms of recommending guidance materials and templates and is thereby no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.524 In addressing parties' responses to the provisional decision report, we have considered alternative potential guidance which could be included or excluded from this recommendation. We do not believe that other measures that go beyond the support of our remedies package would be both as effective and proportionate in addressing the AEC and resulting customer detriment. We have therefore concluded that recommendation B is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.525 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative

potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[940]

12.526 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (that is, pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[941] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.527 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.528 This recommendation to TPR aims to improve levels of trustee engagement and ensure that trustees have access to the necessary information to judge the value for money of their investment consultant and/or fiduciary manager. We consider that this will assist trustees in running effective tender processes, helping them to choose the provider that offers the best value for money for their scheme and set meaningful objectives to their providers.

- *Potential costs*

12.529 In designing this recommendation, we have considered recent regulatory and industry developments, its fit with remedy 3 above, as well as current guidance available to trustees from the TPR. This remedy builds on and complements these developments and the information currently available to trustees.

12.530 We consider that TPR may incur some costs in terms of staff time to develop the necessary guidance and monitor its usage. Pension scheme trustees may incur a time cost in familiarising themselves with the guidance.

12.531 Our overall assessment is that the potential benefits of this recommendation would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider

[940] CC3 (Revised), paragraph 348.
[941] CC3 (Revised), paragraph 358.

economy, and millions of pension scheme members, implies that even small improvements in quality of performance will yield benefits.

12.532 We have therefore concluded that recommendation B does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.533 In view of the above, we have concluded that this recommendation is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

C: Recommendation to the FCA that it maintains oversight of transparency of asset management fee reporting

12.534 The objective of this recommendation is that pension scheme trustees have access to accurate, consistent and comparable information on underlying asset manager fees.

12.535 Following the conclusion of its Asset Management Market Study,[942] the FCA convened an Institutional Disclosure Working Group (IDWG) with asset managers and other interested parties to improve disclosure of asset management fees and charges with a series of agreed reporting templates.[943]

12.536 In the provisional decision report, we said that these templates should help investment consultants, fiduciary managers and trustees understand the underlying charges they pay.

12.537 The IDWG's recommendations to the FCA included the formation of a group to own the outputs of the work so far, curate and update the framework going forward, encourage and support the use of the templates as well as monitor their use. This group is now operating as the Cost Transparency Initiative.[944] The standards and templates agreed by the IDWG will now be industry-led via the Cost Transparency Initiative, rather than FCA-mandated. However, we understand that the FCA will keep some oversight of whether the original aims of the initiative are being met or whether any regulatory intervention is required.

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[942] https://www.fca.org.uk/publications/market-studies/asset-management-market-study
[943] https://www.fca.org.uk/firms/institutional-disclosure-working-group.
[944] Cost Transparency Initiative.

Parties' views in response to the provisional decision report

12.538 Most parties have not commented on this recommendation in response to our provisional decision report. Of those parties that commented, all were in favour of it.[945]

12.539 Parties made the following specific comments on this recommendation:

(a) Aon said that as a founding member and continuing contributor to the IDWG it strongly supported the work being done in this area and the recommendations proposed by the CMA in this regard.[946]

(b) PLSA said that it had been part of the IDWG since inception and strongly supports its work to improve disclosure of asset management fees and charges. PLSA also said that it supported the recommendation of the CMA that the FCA take steps to encourage whole of market adoption of the templates.[947]

12.540 We note that the FCA has been asked to join the Cost Transparency Initiative as an observer. The FCA has signalled that it will reconsider the issue of cost disclosure to institutional investors in the future if it has any reason to be concerned about the effectiveness of how the IDWG recommendations have played out in the market.

12.541 In conclusion, we strongly support this work and we encourage CTI to fully implement it across investment classes and evolves it to meet investors' needs.

Effectiveness

12.542 Our recommendation to the FCA to maintain oversight of transparency of asset management fee reporting has been designed to be fully consistent with, and build upon, IDWG and CTI work. In our view, it is therefore capable of effective implementation and is consistent with relevant industry developments.

12.543 We have therefore concluded that recommendation C is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

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[945] Including WTW, Mercer, LCP, Aon, PLSA, Investment Association, Barnett Waddingham, Redington and Legal and General.
[946] Aon response to the provisional decision report.
[947] PLSA response to the provisional decision report.

Proportionality

12.544 This section considers the proportionality of this recommendation in addressing the aspects of the AECs and the resulting customer detriment.

Is effective in achieving its legitimate aim

12.545 We have assessed the effectiveness of recommendation C and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.546 Recommendation C will entail no extra input from trustees and providers than has already been committed to the CTI. It avoids unnecessary burdens on firms and we therefore consider this recommendation is no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.547 In addressing parties' responses to the provisional decision report, we do not believe that other measures that go beyond recommendation C would be both as effective and proportionate in addressing the AEC and resulting customer detriment.

12.548 We are aware of the fact that asset management fees are a major cost to pension scheme trustees and transparency of these is important and beneficial to them.

12.549 We note that a considerable amount of work has already gone into the preparation of the CTI templates and that this is a well-developed and widely supported industry-led initiative to improve transparency on asset management fees.

12.550 We have not tested the industry's appetite to start from scratch and develop an alternative to the current template but consider this to be more onerous than adopting the current approach. We have therefore concluded that recommendation C is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.551 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative

potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[948]

12.552 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[949] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.553 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.554 This recommendation aims to improve levels of transparency and ensure that trustees have access to the necessary information to judge the value for money of their investment consultant and/or fiduciary manager and that this information is evolved over time to comply with the potential market changes.

- *Potential costs*

12.555 In designing this recommendation, we have considered recent regulatory and industry developments. This recommendation builds on and complements these developments and the information currently available to trustees. Therefore, we do not expect pension schemes and firms to incur any extra costs as a result of this remedy.

12.556 This recommendation does not directly impose costs on either providers or pension scheme trustees. In our view, this recommendation does not create incremental costs for providers and/or trustees since the CTI template is not mandatory to use and any costs in setting it up have already been incurred and are, therefore, sunk.

12.557 Our overall assessment is therefore that the potential benefits of this recommendation would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets to the wider economy – and millions of pension scheme members – implies that even small improvements will yield benefits.

[948] CC3 (Revised), paragraph 348.
[949] CC3 (Revised), paragraph 358.

12.558 We have therefore concluded that recommendation C does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.559 In view of the above, we have concluded that this recommendation is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

D: Recommendation to DWP to pass the necessary legislation to enable TPR to oversee remedies 1 and 7

12.560 The objective of this recommendation is that TPR should be empowered to oversee those remedies with which pension scheme trustees must comply as part of its regulation of them.

12.561 In order for TPR to be able to oversee pension scheme trustees' compliance with remedies 1 and 7, we are making a recommendation to DWP that it passes the necessary legislation to enable TPR to collect and process the necessary information for monitoring purposes and to take enforcement action in relation to non-compliance, as appropriate. We recommend that DWP should introduce the additional requirements in its regulations, similar to those set out in our remedies.

12.562 In our view, TPR is best placed to monitor and supervise the remedies with which pension scheme trustees must comply going forward once DWP has introduced the necessary legislation to facilitate this.

12.563 As noted above. we intend that the relevant provisions of the CMA's order to implement these remedies would cease to have effect as soon as legislation is passed, and provisions having the same effect as the remedy are incorporated into DWP regulations.

Effectiveness

12.564 In our view, recommendation D is capable of effective implementation. As stated in our guidance, recommendations such as this one to the government are not binding, although the UK government has committed to respond within 90 days of publication of our final report to any recommendation made to it.[950]

12.565 We have designed this recommendation to be fully consistent with, and build upon, current DWP regulation and TPR powers. We have therefore concluded

[950] CC3 (Revised), paragraph 327.

that recommendation D is consistent with existing and expected laws and regulations.

12.566 We have therefore concluded that recommendation D is effective in achieving its aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Proportionality

12.567 This section considers the proportionality of our recommendation in addressing the aspects of the AECs and the resulting customer detriment.

Is effective in achieving its legitimate aim

12.568 We have assessed the effectiveness of recommendation D and concluded that it is effective in achieving its legitimate aim, in contributing to remedy, mitigate or prevent the AEC and resulting customer detriment we have found.

Is no more onerous than needed to achieve its aim

12.569 Recommendation D involves legislation being passed to enable TPR to oversee the obligations imposed on pension scheme trustees by our remedies.

12.570 This will enable effective oversight of these remedies, thus avoiding a dual regulatory regime (by TPR and the CMA) on pension scheme trustees which may inadvertently give rise to discrepancies and confusion amongst those who are regulated. Accordingly, it avoids unnecessary burdens on firms and we therefore consider it is no more onerous than needed to achieve its aim.

Is the least onerous if there is a choice between several effective measures

12.571 In addressing parties' responses to the provisional decision report, we have considered alternatives to the extension of the TPR's powers.

12.572 We do not believe that other measures (such as the CMA monitoring the remedies affecting pension scheme trustees) would be both as effective and proportionate in addressing the AEC and resulting customer detriment. CMA monitoring of these remedies would be additional to existing TPR monitoring and therefore, more onerous on firms than the monitoring arising from the extension of the TPR powers.

12.573 We have therefore concluded that recommendation D is the least onerous of several effective measures.

Does not produce disadvantages which are disproportionate to the aim

12.574 We have considered whether this remedy would produce disadvantages which are disproportionate to its aim in remedying the AEC and the resulting customer detriment. In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it and the magnitude of the detriment associated with the AEC.[951]

12.575 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (that is, pension scheme trustees and scheme members whose interests they represent). We have also had regard to the impact of this remedy on those parties subject to it and on other affected parties.[952] In developing this remedy, we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

12.576 In this section, we cover first the potential benefits of the remedy, followed by its potential costs, and then conclude whether this remedy produces disadvantages which are disproportionate to its aim.

- *Potential benefits*

12.577 This recommendation should enable TPR to monitor and enforce the remedies imposed on pension scheme trustees. We consider that TPR oversight of these remedies rather than CMA monitoring of them has the benefit of avoiding parallel regulation by both the CMA and TPR of pension scheme trustees.

- *Potential costs*

12.578 As stated in our guidance, recommendations such as this one to the government are not binding. Therefore, this recommendation does not directly impose costs on firms or trustees. Whilst there would be costs to TPR of its oversight of remedies 1 and 7, we consider this will be more cost effective than the CMA performing these functions in parallel with TPR's existing activities.

12.579 Our overall assessment is therefore that the potential benefits of this recommendation would likely outweigh the potential costs. Although many of the expected benefits are difficult to quantify, the significance of these markets

[951] CC3 (Revised), paragraph 348.
[952] CC3 (Revised), paragraph 358.

to the wider economy – and millions of pension scheme members – implies that even small improvements in quality of performance will yield benefits.

12.580 We have therefore concluded that recommendation D does not produce disadvantages which are disproportionate to its aim.

Conclusion on proportionality

12.581 In view of the above, we have concluded that this recommendation is proportionate in remedying, mitigating or preventing the AEC and resulting customer detriment we have found.

Other remedies proposed by parties in response to the provisional decision report

12.582 In response to the provisional decision report, three parties have put forward a number of potential remedies to consider alongside our provisional remedies package.

12.583 These additional potential remedies include:

- *(a)* Recommendation to consider changes to the current regulatory approach, proposed by PLSA;
- *(b)* Recommendation to government to consider further support for scheme consolidation, proposed by PLSA;
- *(c)* Requirement for trustees to consider scheme governance, proposed by WTW;
- *(d)* Standardised total fund performance, proposed by Redington; and
- *(e)* A hub for trustees, proposed by Redington.

12.584 We have carefully considered these remedies, but we have decided not to take them forward. We set out our reasons for this below.

Recommendation to consider changes to the current regulatory approach

12.585 PLSA submitted that lessons for the UK approach to pension scheme governance could be learned from the UK's approach to corporate governance which instead focuses on how the quality of the people determines the quality of outcomes.[953] Specifically, it believed that there was scope for the CMA to recommend that:

(a) TPR consider rebalancing its priorities to include a greater focus on scrutiny of board appointments and effectiveness;

(b) TPR consider how best it could encourage a governance structure which more closely resembles a split into a board (which carries out strategic oversight) and an executive body (responsible for day to day running of the scheme).

12.586 PLSA also submitted that there was scope for TPR to improve the effectiveness of pension schemes' annual Chair's Statement. This could be through publication of the Statement on a scheme's website to enable effective scrutiny as well as a new requirement that the Statement demonstrates the competence and qualifications of the governance body, including the training trustees have undertaken in the previous year.

12.587 We note that TPR has already issued guidance for trustees in relation to their responsibilities and best practice for scheme governance. Any new guidance will need to be carefully drafted so as not to overburden trustees and thus lose its effectiveness. Further guidance will be issued as part of recommendation B.

12.588 We have a duty to remedy, mitigate or prevent an adverse effect on competition and any detrimental effects that may be expected to result from it. In this case, the remedy proposed by PLSA does not address any of the features of the AECs we have found, as described in chapter 11.

Recommendation to government to consider further support for scheme consolidation

12.589 PLSA submitted that, for many schemes, consolidation with other pension funds into larger entities could be a good way of equipping such schemes with the necessary governance capacity and structure.[954]

12.590 PLSA said that although it was clearly beyond the scope of the CMA to direct schemes to consolidate, it believed that a recommendation to the relevant government departments to continue to work towards enabling further consolidation in the sector could be helpful – and could encourage progress in

[953] PLSA response to the provisional decision report.
[954] PLSA response to the provisional decision report.

an area which would have an important and positive impact on scheme governance.

12.591 We note PLSA's concerns, however, this proposed remedy sits outside the scope of CMA's work on this market investigation.

Requirement for trustees to consider scheme governance

12.592 WTW proposed a potential additional remedy to encourage trustee boards to assess the governance of their scheme and whether there are sufficient resources and expertise in place to deal with the number of investment decisions that need to take place on a day to day basis.[955]

12.593 In WTW's view, this additional remedy could involve introducing some additional disclosure requirements for trustees on a triennial basis to TPR confirming that the trustees have considered its governance arrangements. WTW proposed that this would be on a 'comply or explain' basis: that is, trustees would be required to explain how they considered appropriate governance arrangements for the scheme, and justify any decision ultimately taken (whether to maintain or change governance arrangements).

12.594 WTW submitted that it would be very beneficial for trustees to have an explicit obligation to seriously consider scheme governance. It did not consider that this would impose a material additional burden on trustees or on schemes.

12.595 As noted above, TPR has already issued guidance for trustees in relation to their responsibilities and best practice for scheme governance. Further guidance will be issued as part of remedy 3 and recommendation B.

12.596 We have considered the points raised by WTW as part of the 'Mandatory use of professional trustees' remedy, which we discuss in the next section of this chapter. We have not considered the effectiveness of this remedy in detail because we considered that its potential costs would outweigh its potential benefits.

12.597 We conclude that this remedy could place a further burden on trustees (some of which are unpaid volunteers), especially for smaller schemes, and may have unintended consequences such as high costs to pension schemes and/or trustees resigning from their roles due to the increased burden and scrutiny. The latter could cause major disruption and non-compliance for those pension schemes affected by this potential remedy.

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[955] WTW response to the provisional decision report.

Standardised total fund performance

12.598 Redington submitted that it was important to measure the performance of a whole fund relative to its liabilities, as ultimately this was what the investment consultant should take responsibility for and was what clients should judge investment consultants on.[956] Furthermore, Redington said that agreed performance standards for total fund performance would improve the transparency of investment consultant outcomes.

12.599 Redington said that it was concerned that only requiring standardised performance for recommended asset managers could be misleading for schemes when assessing performance of their current and prospective investment consultants.

12.600 In chapter 5, we described how that information on fiduciary management performance was generally clear and detailed. Trustees negotiate/agree directly with the provider on what they want to see in their performance reports.

12.601 We have considered Redington's submissions but concluded that there was not a need for standardised reporting of total fund performance. Furthermore, this may have unintended consequences such as reduced innovation and flexibility in showing any scheme specific issues.

A hub for trustees

12.602 Redington proposed a 'rate my adviser' site, which would act to:[957]

- *(a)* Be a place for trustees to access comparable information on potential investment consultants as well as reviews from trustees; and
- *(b)* Be a place for investment consultants to give consistent and clear facts about themselves, including any information about previous experience if they are a new participant in the market.

12.603 Redington noted that in the retail advisory space, it had seen the establishment of VouchedFor to help investors find financial or legal experts and in other markets it had seen Checkatrade and Ratemybuilder and comparison sites like Money Supermarket.

12.604 We have considered Redington's proposal, but in our view the investment consultancy and fiduciary management markets are not well suited to a

[956] Redington response to the provisional decision report.
[957] Redington response to the provisional decision report.

comparison website approach. Given the bespoke nature of both investment consultancy and fiduciary management services, we consider that a comparison website will be of little benefit to potential users. There would also be costs associated with setting up and running such a website.

12.605 For these reasons, we conclude that the mandatory tendering remedy for fiduciary management services, combined with the information remedies, as set out above, would be more effective in addressing transparency and helping trustees assess the quality of the advice they receive.

Other remedies we will not take forward

12.606 As noted in the provisional decision report, we consulted on a number of other potential remedies in our Issues Statement and working papers.

12.607 The section below covers those remedies which have received significant comment from parties in their submissions[958] or where our remedies have developed from those outlined in working papers.

12.608 These include:

- *(a)* preventing investment consultants from offering fiduciary management;
- *(b)* mandatory switching;
- *(c)* the mandatory use of professional trustees;
- *(d)* other information remedies.

12.609 We have decided not to take these forward and we set out our reasons for this below.

Preventing IC-FM providers from offering both services

12.610 We have considered whether preventing IC-FM providers from offering both investment consultancy and fiduciary management services would be an effective remedy to address the AECs we found, particularly in relation to the behaviour of incumbent investment consultants. This type of remedy can be used to create a new source of competition or strengthen an existing source of competition by increasing the quantity of non-vertically integrated firms in the

[958] Those submissions were made primarily prior to the provisional decision report. Some limited submissions were also made in response to the provisional decision report and they are addressed below.

market. For the reasons set out below, we have decided not to pursue this remedy.

12.611 This remedy would mean that providers would not be able to provide both investment consultancy and fiduciary management services. At the point that trustees were considering moving into fiduciary management, this remedy would have the effect of making trustees find a fiduciary management services provider not associated with their existing investment consultancy provider.

12.612 In response to this remedy IC-FM providers may choose to divest one or other of their investment consultancy or fiduciary management businesses or shut down one of their investment consultancy or fiduciary management businesses. This may result in unhelpful separation of investment consultancy and fiduciary management, in cases where trustees benefit from economies of scale, such as shared research costs or overlapping activities (ie asset allocation advice or other type of advice).

12.613 We think that there can be efficiencies from the investment consultancy and fiduciary management services being provided by the same provider, but we also think it is important that fiduciary management services are tendered for to make sure that trustees get the best deal available to them, hence the implementation of remedy 1 of our package.

12.614 We also considered whether IC-FM providers could implement an internal structural separation of their investment consultancy and fiduciary management businesses (a ‘firewall’ measure) or guarantee not to provide both investment consultancy and fiduciary management services to the same customer.

12.615 These remedies would be effective in preventing incumbent IC-FM firms from steering trustees towards their in-house fiduciary management services, because they would no longer be able to offer such services.

12.616 However, there are potential benefits for customers in IC-FM firms providing both services, which would be lost under this remedy, for example shared asset manager research costs. We considered that this remedy could have the following adverse consequences, leading to worse outcomes for trustees and scheme members:

(a) IC-FM providers would lose any economies of scale and scope from being active across both lines of business, for example by sharing the asset manager research function. Costs for providers, and prices for customers, could go up as a consequence;

(b) IC-FM firms might close, rather than divest, a line of business which would reduce choice for customers and increase market concentration;

(c) Pension schemes would no longer be able to buy fiduciary management services from a provider of investment consultancy services which already understands their scheme's needs.

12.617 We note that, in the CMA survey, a minority of trustees (10%) supported the separation of companies providing investment consultancy and fiduciary management services. Support was higher amongst large schemes (18% of trustees), but this still represents a minority of potential customers.[959]

12.618 IC-FM firms responding to our Issues Statement were largely against a remedy which would prevent them from also offering fiduciary management, although we note that some investment consultants supported this remedy.

12.619 We also doubted whether alternative ways of implementing this remedy, such as internal structural separation or guaranteeing not to provide both investment consultancy and fiduciary management services to the same customer, would be effective, because they would be difficult to monitor (and potentially easy to circumvent).

12.620 We considered the potential costs of this remedy and thought that:

(a) it would represent a major intervention in the investment consultancy and fiduciary management markets with at least nine IC-FM firms forced to divest or halt activities;

(b) there would be significant costs in implementation because IC-FM providers would incur transaction costs in selling or closing one or other of their investment consultancy or fiduciary management businesses.

12.621 In response to the provisional decision report, LCP submitted that the CMA reconsider its provisional view to reject this remedy.[960] In its view the same firm should not be permitted to provide both investment strategy advice and the implementation services of fiduciary management (providing the decisions on asset allocation; providing manager selection decisions; and monitoring / adjusting the portfolio) to the same client.

12.622 Having considered LCP's submission, we have concluded that the mandatory tendering remedy for fiduciary management services, combined with our

[959] Source: CMA survey, question Q6, 'What, if anything, would you support to mitigate any of the potential conflicts of interest that you consider may be problematic?'.
[960] LCP response to the provisional decision report.

information remedies, would be at least as effective as this proposal, but importantly without adverse consequences for trustees; it would also be a more proportionate solution to the AEC and the customer detriment that may be expected to result from it.

Mandatory switching of fiduciary management services provider

12.623 We considered whether requiring pension scheme trustees to switch fiduciary management services provider would be an effective remedy in addressing any historic incumbency advantage achieved by IC-FM firms.

12.624 While this remedy would be effective at addressing any historic incumbency advantage it would also potentially worsen competition by reducing the number of firms able to compete for fiduciary management mandates. Depending on its design it would also potentially distort incentives of providers.

12.625 Our view is that a mandatory switching remedy would directly address issues of incumbency but would have potentially significant negative effects on scheme outcomes. Briefly these include:

- *(a)* **Reduction of choice:** trustees would be unable to continue with their existing provider, even if their offer was the best value or most suitable. Furthermore, not only would there be one fewer firm taking part in any tender process, but the competitive pressure of an incumbent on other firms would be lost. Simply put, competition would be significantly reduced.

- *(b)* **Switching costs:** as trustees would be required to switch fiduciary management services provider regardless of any tender process, they would incur switching costs which may be high. Such costs would include both transaction costs of selling assets and purchasing new assets but also would give rise to possible disruption and an opportunity cost for the scheme Board in overseeing the transition. We acknowledge that our mandatory tendering remedies could also lead trustees to incur switching costs. However, importantly, in these circumstances, the trustee would be able to evaluate whether or not they would wish to incur these costs, taking into account the benefits available from changing suppliers. By contrast, mandatory switching would require these costs to be incurred in all circumstances, even when there was little to be gained from changing supplier.

- *(c)* **Impact on long-term investment strategies:** if trustees were required to switch provider and anticipated the potentially high costs of this, then investment strategies might naturally move away from illiquid assets or other assets with high transaction costs. Schemes and members might experience worse investment outcomes as a result.

12.626 We have decided instead to introduce remedy 1 which requires trustees to hold a competitive tender process when first choosing a fiduciary manager. This remedy will ensure that fiduciary management services providers will need to compete for most mandates.

12.627 We consider that the mandatory tendering remedy for fiduciary management providers, combined with the information remedies, as set out above, would be at least as effective as the mandatory switching remedy but importantly without the adverse consequences for trustees as set out above. We also consider that that remedies are less disruptive than the mandatory switching remedy.

12.628 Our recommendation B to TPR will include reference to guidance on the potential benefits of periodic market testing.

Mandatory use of professional trustees

12.629 We have found that there are low levels of trustee engagement, particularly amongst small and DC schemes, and that engagement is greater where a scheme has a professional trustee.

12.630 In considering how to drive greater engagement we therefore considered the role of professional trustees.

12.631 A number of parties said that mandatory use of professional trustees would improve scheme governance. Other parties were concerned about both the availability of professional trustees to provide services and the burden that mandating their use would place on small schemes.

12.632 We recognised the experience that a professional trustee could bring to a scheme where that trustee had a range of experience with a number of schemes.

12.633 However, we were conscious that having a professional trustee would result in a scheme incurring costs. We were in particular, concerned that the cost of a professional trustee would have greatest proportionate burden on the smallest schemes. We considered whether only schemes of a certain minimum size should be required to have a professional trustee but concluded that this might reduce the effectiveness of the remedy, particularly as the problems we found are most prominent amongst smaller schemes.

12.634 We note that there are no formal educational, regulatory or membership requirements to act as a professional trustee, and no agreed definition or qualifications. Therefore, anyone making themselves known as a professional trustee regardless of skillset would be able to discharge the requirement. We could therefore not be certain that using a professional trustee would improve scheme governance or member outcomes. We considered this would reduce the confidence we could have in how effective mandating their use would be.

12.635 We further noted that many lay trustees are likely to have comparable skills and experience to professional trustees and a blanket requirement for the use of professional trustees would potentially be disproportionate.

12.636 Our view is that professional trustees could play a significant role in supporting lay trustees. However, we have decided that their use should be voluntary. We consider enhanced trustee guidance in recommendation B.

Information remedies

12.637 To enable like-for-like comparisons between firms, some parties have advocated the development of standardised investment consultancy 'track records'.

(a) Redington for example submitted that investment track records could provide a useful counterfactual to the investment outcomes that a scheme has achieved.[961]

(b) Cardano submitted that investment consultants may object to having performance measured as they are not in full control of the outcome. However, aggregation across the entire firm should make it valid. A track record was a good way of assessing the investment ability of a provider.[962]

12.638 In our view however, in practice, investment track records are not well suited to an advisory model. As noted by a number of parties, an investment consultant's advice may be taken with a delay, or not at all, and the scheme sponsor and other advisors can all play an important role in decision making.[963] In general therefore, the performance of any given scheme is not directly attributable to the quality of investment advice provided by the investment consultancy.

[961] Redington response to the information on fees and quality working paper.
[962] Cardano hearing summary.
[963] KPMG, LCP, Mercer and WTW responses to the information on fees and quality working paper.

12.639 Further, in many cases an investment consultant may be hired to advise on specific issues that have no direct bearing on overall scheme performance. In these instances, the scheme's overall performance (eg its aggregate return) may not reflect the quality of the particular service provided by the investment consultancy. KPMG submitted that a scheme may have very specific objectives, such as diversifying risk, which are not aimed at increasing overall returns.[964]

12.640 In our view, the investment consultant may add value in helping the trustees to achieve their objectives, but this would likely not be captured in the firm's track record. Importantly, we note that investment consultants are not formally accountable for scheme performance as that duty lies with the scheme trustees.

12.641 We have decided therefore not to introduce any additional information remedies beyond those set out above.

[964] KPMG response to the information on fees and quality working paper.

13. Our remedies package and decision on remedies

13.1 In this chapter we assess the effectiveness and proportionality of our remedies package as a whole (see chapter 12 for an assessment of each individual remedy).

13.2 We set out our approach to the scope of the package and how it will be implemented, we then summarise our views as to why this package is effective and proportionate in addressing the two AECs and resulting customer detriment we have found. We conclude by summarising our decision on remedies.

Scope of our remedies

13.3 Our remedies package is designed to address the AECs and resulting customer detriment we have found. As set out in chapter 12, some of our remedies apply to investment consultants and fiduciary managers;[965] and some apply to the trustees of trust-based pension schemes including DB and DC schemes as these are the primary customers of investment consultants and fiduciary managers. The remedies are directed to the parties whose behaviour needs to change in order to address particular aspects of these AECs and the resulting customer detriment.

Implementation

13.4 Where possible, in order to achieve as comprehensive a solution as is reasonable and practicable to the AEC concerned and any detrimental effects on customers so far as resulting from the AEC, the remedies will be implemented by CMA order. The CMA will also be making recommendations to DWP, HMT, the FCA and TPR.

13.5 As set out in chapter 3, certain activities conducted by investment consultancy and fiduciary management firms are not currently subject to FCA regulation. By introducing certain remedies by order we can address the AECs (including the relevant underlying features of the markets) and resulting customer detriment comprehensively and effect change quickly, although we expect that our remedies will become part of sector regulation over time.[966]

[965] In November 2018, we consulted on draft definitions for remedy purposes. We will continue to refine the definitions in the remedies implementation process following this final report and will consult on a draft of the CMA's order that will contain those definitions.
[966] Remedies 2 and 4-6 set out above (and part of remedy 1) could become FCA conduct requirements. Remedy 8 replicates existing MiFID II requirements in respect of the provision of certain information.

13.6 Some firms are exempt from FCA regulation as a result of being regulated by a designated professional body, such as the Institute and Faculty of Actuaries. (We understand that this is the case for some investment consultancy firms which are also actuarial practices.) We will continue to liaise with the FCA and relevant designated professional bodies to ensure that firms are subject to consistent regulation and that there is an even playing field.

13.7 The CMA must make an order within six months of the date of publication of our final report.[967] The order will be subject to formal public consultation within that six-month period.

13.8 As set out in Table 10 below, nearly all aspects of our order would come into force within 6 months after the order is made.

Table 10: Date on which remedies will come into force

Remedy	When provisions come into force (after order is made)
Promoting trustee engagement when buying fiduciary management	
1. Mandatory competitive tendering for pension schemes first buying FM services, or if they have not tendered previously.	+ 6 months (for new mandates). For existing mandates that were not tendered previously, trustees will be required to run a competitive tender process within 5 years of the first appointment of an FM provider. There will be a 2-year grace period for schemes whose existing mandate already exceeds the 5-year period.
2. Separation of advice and marketing by IC-FM firms on FM services.	+ 6 months.
3. Recommendation to TPR to provide enhanced trustee guidance on competitive tender processes.	We anticipate that TPR can issue guidance within 6 months.
Fiduciary management fees and performance reporting	
4. Requirement on FM firms to report disaggregated fees to existing customers.	+ 6 months.
5. Requirement on FM firms to disclose fees to prospective customers.	+ 6 months.

[967] EA02, Section 138A. The CMA may extend the six-month period only once and by up to a further four months if it considers that there are special reasons why a final order cannot be made within the statutory deadline.

Remedy	When provisions come into force (after order is made)
Promoting trustee engagement when buying fiduciary management	
6. Requirement on FM firms to report their past performance to prospective customers by reference to a standardised methodology and template.	Immediately for development of the standard and + 6 months for its usage. (The CMA reserves the right to appoint an independent person to oversee its development if an acceptable standard is not developed and implemented within this timeframe.)
Investment consultancy performance reporting	
7. Duty on trustees to set their investment consultants strategic objectives.	+ 6 months.
8. Requirement on investment consultants and fiduciary managers to report performance of recommended asset management ‘products’ or ‘funds’ using a basic minimum standard.	+ 6 months.

13.9 While we anticipate that most aspects of our order will come into force after six months, the direct impact on parties’ behaviour will vary by remedy. For example: our competitive tender process remedy (remedy 1) will lead to historic mandates being subject to tender processes over a period of several years.

Definitions and potential exclusions

13.10 For the purposes of the conduct of the market investigation, the CMA has used the definitions of investment consultancy services and fiduciary management services contained in Appendix 8, the Glossary to this final report.

13.11 For the purposes of potential remedies, the CMA ran an initial consultation in November 2018 on more detailed draft definitions of these terms. We received nine responses to the consultation and our work will continue on the definitions during the remedies implementation phase of the investigation, taking those responses into account. This work will include the examination of potential exclusions suggested by some parties. There will also be a consultation on the draft order which will provide an opportunity for further comment before the order is finalised.[968]

Duration of remedies

13.12 The remedies will initially be implemented by CMA order until such time as the legislative changes which the CMA is recommending come into force so that TPR and the FCA are able to oversee the remedies. As such legislation comes into force and TPR and/or FCA requirements are finalised, the relevant provisions of the CMA order will fall away.

13.13 We consider that, in the long run, the FCA is best placed to supervise new conduct requirements on investment consultancy and fiduciary management firms (ie remedies 1, 2, 4, 5, 6 and 8) and as may be necessary adapt any requirements in response to market developments. Similarly, TPR is best placed to supervise and guide pension scheme trustees (remedies 1, 3 and 7). In light of the roles of the FCA and TPR, the CMA does not intend to act as a parallel regulator either of firms or pension scheme trustees in the longer term.

13.14 In addition to this, we have decided that our remedies will generally be time-limited, such that, if they are not incorporated into ongoing FCA or TPR supervision of their respective sectors, then they will cease to apply after ten years.

Relevant customer benefits

13.15 The CMA may have regard to the effect of any remedial action on any relevant customer benefits (RCBs) of the feature(s) of the market(s) concerned.[969]

13.16 For these purposes, a benefit is an RCB if:

(a) It is a benefit to customers or future customers in the form of lower prices, higher quality or greater choice of goods or services in any market in the UK, or greater innovation in relation to such goods or services; and

(b) The CMA believes that the benefit has accrued, or may be expected to accrue within a reasonable period, as a result of the feature(s)

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[968] CC3 (Revised), paragraph 89 and Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (CMA3), paragraph 4.5.
[969] EA02, section 134(7).

concerned and the benefit was or is unlikely to accrue without the feature(s) concerned.[970]

13.17 We have not identified any RCBs resulting from the features we have found. Parties have also not identified any RCBs during the investigation. We have not therefore considered RCBs in designing our remedies.

Effectiveness

13.18 This section considers the effectiveness of our package of remedies as a whole in addressing the AECs and the resulting customer detriment. We cover the fiduciary management and investment consultancy AECs and associated remedies in turn.

13.19 We then consider other aspects of the effectiveness of our remedies package. This covers a range of factors set out in our guidance, including the effective implementation of the remedies package and its consistency with existing and future laws and regulations.[971]

Fiduciary management AEC and proposed remedies

13.20 In chapter 11 we set out five features of the fiduciary management market which comprise the AEC we have found. We now explain how the part of our remedies package concerning the fiduciary management market addresses each of these five features, and the customer detriment that may be expected to result from the AEC.

IC-FM firms steer their advisory customers towards their own fiduciary management service.

13.21 Remedy 1 imposes a requirement on trustees to conduct a competitive tender process on first adoption of fiduciary management. This directly contributes to addressing the feature by requiring trustees to compare offers from several providers. A corresponding prohibition on firms accepting a new fiduciary management mandate where a competitive tender process has not occurred ensures that trustees do not unwittingly adopt fiduciary management having not fulfilled this requirement.

13.22 Remedy 2 ensures that advisory and marketing materials will be kept separate, and marketing materials will be clearly marked as such. Marketing materials will also include a clear reminder to trustees of their obligations

[970] EA02, section 134(8).
[971] CC3 (Revised), paragraphs 336-341.

under remedy 1. This will help to ensure that trustees run competitive tender processes when required to do so. Recommendation A will help to reinforce the effectiveness of remedy 2.

13.23 Remedy 3 and the associated recommendation B will provide trustees with materials to support them both in making the decision on whether to adopt fiduciary management and how to run an effective competitive tender process. This will help trustees to select a provider that offers the best value for money for their circumstances.

13.24 Remedies 5 and 6 will ensure that information relating to the cost and performance of alternative fiduciary managers is presented on a consistent basis. This will help to create a level playing field across alternative providers, reducing the IC-FM firm’s incumbency advantage.

13.25 In order for TPR to be able to oversee pension scheme trustees’ compliance with remedy 1, we are making a recommendation to government (recommendation D) that it passes the necessary legislation to enable TPR to collect and process the necessary information for monitoring purposes and to take enforcement action in relation to non-compliance, as appropriate.

13.26 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by ensuring that there is a clear separation between advice and marketing materials, and requiring trustees to consider offers from several providers before moving into FM. This will encourage both the incumbent and alternative providers to compete more vigorously on price and quality.

Low levels of customer engagement at the point of first moving into fiduciary management.

13.27 As set out above, remedy 1 imposes a requirement on trustees to conduct a competitive tender process on first adoption of fiduciary management. This directly addresses, in whole or in part, the feature by forcing trustees to make an active and informed decision on which fiduciary management provider to appoint.

13.28 For those schemes which have already adopted fiduciary management, remedy 1 will require a competitive tender process to be held within five years of initial appointment if one has not been held. This remedy makes trustees evaluate whether they could be getting a better deal and gives the opportunity either to switch provider or to get a better deal from their existing provider.

13.29 Remedy 3 and the associated recommendation B both support remedy 1 and are intended to provide trustees with materials to support them both in identifying relevant factors when choosing between providers and on how to run an effective tender. Remedy 3 will include clear guidance to trustees that tendering is best practice for *all* FM appointments.

13.30 This is reinforced by remedy 2 which will signpost trustees to these materials.

13.31 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by ensuring that trustees actively test the market when selecting an FM provider. This will encourage both the incumbent and alternative providers to compete more vigorously on price and quality.

Lack of clear and comparable information for customers to assess the value for money of alternative fiduciary managers.

13.32 Remedy 5 requires that the information on fees provided by fiduciary managers to prospective customers is in a standardised, comparable and more detailed format. This information will include granular breakdowns of proposed fees. This will help trustees accurately to assess the cost of competing offers.

13.33 Remedy 6 will require firms to report their historic investment performance by reference to a standardised methodology to be developed and implemented. remedy 8 will require information that is provided on the fiduciary manager's recommended asset management products to adhere to a standardised set of requirements.

13.34 Taken together remedies 6 and 8 will therefore help trustees to compare the historic performance of prospective providers on a like-for-like basis which, alongside the improved fee information under remedy 5, will allow a balanced assessment of value for money to be made.

13.35 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by enabling trustees to better assess the value for money of competing offers. This will encourage providers to compete more strongly on the basis of price and quality and seeks to ensure that trustees choose the most appropriate option for their scheme.

Lack of clear information for customers to assess the value for money of their existing fiduciary manager.

13.36 Remedy 4 will require fiduciary managers to provide disaggregated fee information to their customers on a regular basis and at least annually. This improved information will help trustees to monitor better both the overall fees paid for their fiduciary management service, and the fees paid for the distinct elements of the service (including the underlying asset management fees).

13.37 Recommendation C will help to ensure that trustees have access to accurate, consistent and comparable information on the underlying asset management fees.

13.38 If trustees choose to formally review their fiduciary management provider or go to tender for a new provider, an understanding of their current costs will help them drive competition amongst providers in a tender process.

13.39 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by encouraging providers to compete for customers on the basis of price and quality.

Barriers to switching fiduciary manager.

13.40 The cost of switching fiduciary manager is largely determined by the nature of the investment decisions made by, and on behalf of, a pension scheme. Some switching costs are driven by a corresponding change in investment strategy rather than as a direct result of switching provider. Certain asset classes may have higher sale costs or include 'lock-in' periods, whereas other switching costs may arise where funds have been invested in a provider's own investment vehicle or fund which cannot be transferred to another provider.

13.41 Remedy 5 requires firms tendering for fiduciary management mandates to provide an estimate of all potential transaction costs and other upfront fees that might be incurred if the customer were to switch to that provider. The provider will also be required to clearly disclose the likely scale of the costs of switching out of the service (including both transaction costs and any explicit exit fees).

13.42 This information will allow trustees to make a more informed choice. Greater transparency will incentivise firms to reduce switching costs where possible and explain why they are justified if they are unavoidable.

13.43 Remedy 3 and the associated recommendation B assist in reducing the burden and costs for trustees in conducting a tender process if they do intend to switch provider.

13.44 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by ensuring that trustees are informed of all potential costs when selecting an FM provider.

Investment Consultancy AEC and proposed remedies

13.45 In chapter 11 we set out three features of the market which comprise the AEC we have found. We now explain how our remedies address the AEC (through these features) and the customer detriment that may be expected to result from the AEC.

Low levels of engagement by some customers.

13.46 Remedy 7 requires trustees to set strategic objectives for their investment consultant, and for consultants to report periodically their performance against these objectives. This will drive greater engagement by trustees and help them to monitor and assess their investment consultant's performance.

13.47 Remedy 3 will ensure that there is guidance to trustees on how to run a competitive tender process and recommendation B will provide broader guidance to trustees on engaging with investment consultants, including how to set strategic objectives and monitor their performance.

13.48 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by making it easier for trustees to assess the price and quality of their incumbent and alternative investment consultants. This will help trustees to engage more actively in the market.

Lack of clear information for customers to assess the quality of their existing investment consultant.

13.49 We have found that there is a lack of clear information for customers to assess the quality of their existing investment consultant. In part this is because the impact of advice, and specifically strategic advice, is not always identifiable and more generally the range of advice can be very broad.

13.50 Remedy 7 addresses this by requiring trustees to set their investment consultants strategic objectives, and for the consultants to periodically report their performance against these objectives. This sets up a framework to allow trustees to understand better what their consultant has achieved according to the nature of their engagement and by reference to the strategic objectives that trustees will set for their investment consultant.

13.51 This will be further supported by recommendation B, which will provide guidance to trustees on how to set strategic objectives for their investment consultant.

13.52 Recommendation C will help to ensure that trustees (and their advisers) have access to accurate, consistent and comparable information on their asset management fees. This will help trustees to assess whether their investment consultant has recommended competitive asset management products.

13.53 In order for TPR to be able to oversee pension scheme trustees' compliance with remedy 7, we are making a recommendation to government (recommendation D) that it passes the necessary legislation to enable TPR to collect and process the necessary information for monitoring purposes and to take enforcement action in relation to non-compliance, as appropriate.

13.54 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by enabling trustees more accurately to assess the quality of their investment consultant. This will place increased competitive pressure on providers to offer a high quality of service to their customers.

Lack of clear and comparable information for customers to assess the value for money of alternative investment consultants.

13.55 We have found that there is a lack of clear and comparable information for customers to assess the value for money of alternative investment consultants.

13.56 It is very difficult for customers to assess and compare the quality of the advice they would get from different providers. In particular, the methods used to calculate and present track records for recommended investment products makes it difficult to interpret and compare the quality of advice across providers.

13.57 Remedy 8, supported by remedy 3, addresses this by requiring the information that is provided on the performance of an investment consultant's recommended asset management products to adhere to a standardised set of requirements. This should help trustees compare the effectiveness of the investment consultant's recommendations.

13.58 Recommendation A will help to reinforce the effectiveness of remedy 8. Extending the FCA's regulatory perimeter would also ensure greater consistency of conduct by investment consultants across the services provided to pension scheme trustees.

13.59 Remedy 3 will include guidance for trustees on running effective tenders, including advice on how to request information relating to fees and performance.

13.60 These remedies, together, will address the feature and will also contribute to addressing the AEC and the customer detriment resulting from the AEC by enabling trustees to fully assess the value for money of competing offers. This will encourage providers to compete strongly on the basis of price and quality and help to ensure that trustees choose the most appropriate option for their scheme.

Other aspects of the effectiveness of our remedies package

13.61 In evaluating the effectiveness of our package of remedies, we have considered the following further factors set out in our guidance:[972]

(a) The extent to which the remedies are capable of effective implementation, monitoring and enforcement.

(b) The timescales over which the remedies will take effect.

(c) The consistency of the remedies with existing and expected laws and regulations.

(d) The coherence of our remedies taken together as a package.

Implementation, monitoring and enforcement

13.62 Remedies 1 to 8 (excluding remedy 3) will be implemented by CMA order.[973] As noted above, the CMA must make an order within six months of the date of publication of our final report. Once the order has been made, the CMA will monitor and enforce remedies 1 to 8 (excluding remedy 3).

13.63 Ultimately however, we consider that the FCA would be best placed to supervise new conduct requirements on investment consultancy and fiduciary management firms (subject to the regulatory perimeter being extended). This applies to remedies 1, 2, 4, 5, 6 and 8.

13.64 In addition, we consider that TPR would be best placed to oversee remedies 1 and 7, subject to the necessary legislation being passed to enable them to do

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972 CC3 (Revised), paragraphs 336-341.

973 Remedy 3 and our supporting remedies are recommendations to other government departments and regulators. Details on how each remedy will be implemented, monitored and enforced are provided in chapter 12.

so. We expect that, in time, TPR will oversee trustees' compliance with these remedies.[974]

13.65 As explained above, the CMA does not intend to act as a parallel regulator to either the FCA or TPR in the longer term. Therefore, each provision of our order will cease to apply as and when the relevant sectoral regulator introduces equivalent requirements.

13.66 Our remedies package is therefore capable of effective implementation, monitoring and enforcement, both under the CMA order regime and as and when the FCA and TPR will take on responsibility for monitoring and enforcing those parts of our remedies package which fall within their respective remit. We have considered the extent to which each individual remedy is capable of effective implementation, monitoring and enforcement in chapter 12.

The timescales over which the remedies will take effect.

13.67 The timescales over which the package of remedies will take effect are presented in Table 10 above. In developing these timescales, we have given careful consideration to parties' and stakeholder's views regarding the impact of any new requirements, and any systems that need to be put in place to comply with each remedy as well as the remedies package as a whole.

13.68 Remedy 1 will take effect within six months from the order being made. We consider that this is a reasonable timescale to ensure that the remedy can show results within a relatively short time while allowing schemes and providers a reasonable period in which to start complying with this remedy.

13.69 For schemes that already purchase fiduciary management services but have not tendered, we require them to do so within five years of our order. We are allowing a two-year grace period for those schemes whose mandate already exceeds the five-year period (or is approaching it). This is to provide them with sufficient time to plan for and organise an effective tender process. We carefully considered parties' responses on the length of this grace period (see chapter 12) and consider that two years is appropriate.

13.70 Our view is that the information remedies (remedies 4 to 6 and remedy 8) can be implemented within six months of the order being made. This is appropriate given that most parties have generally indicated low setup requirements and costs of implementing these remedies (see chapter 12).

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974 See recommendation D

13.71 For remedy 6, we will require firms to report their historic investment performance by reference to a standardised methodology to be developed and implemented within six months from the order being made. In setting this timetable, we have had regard to the work already undertaken by industry in developing a common standard. The CMA retains the ability to appoint an independent person to oversee the development of the fiduciary management performance standard, in the event that a standard that is acceptable to the CMA is not developed and implemented within this timeframe.

Consistency with existing and expected laws and regulations

13.72 In designing our remedies package, we have carefully considered consistency with existing laws and regulations and those expected to come into force in the near future. In doing so we have consulted DWP, HMT, the FCA and TPR among others.

13.73 In respect of the range of activities conducted by investment consultants and fiduciary managers, we have identified that some elements of our proposed remedies fall within the scope of regulatory requirements under current financial regulation, in particular, MiFID II. That raises two matters which we address below.

13.74 The first matter concerns the mechanism for avoiding overlapping requirements on providers from two sources (that is, a CMA order and existing regulatory requirements), recognising that our remedies need to cover the breadth of investment consultancy and fiduciary management providers.

13.75 To address this point, we will include the following carve out in the order: its effect will be that a requirement imposed by the order will not apply to the extent that it applies pursuant to other regulatory requirements[975] as they exist from time to time[976] (for example, MiFID II and the COBS provisions of the FCA Handbook). Providers that are subject to these regulatory requirements will continue to be bound by them and will not be subject to those parts of the CMA order.

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[975] For example, part of our remedy 2 is that IC-FM firms must identify clearly any marketing in the materials provided to existing advisory customers in relation to fiduciary management. A requirement to that effect in the CMA's order would not apply to investment firms in respect of their MiFID II business, because they are already subject to such a requirement under Article 24(3) MiFID II Directive.

[976] This would mean that as and when requirements in the CMA's order are replicated in regulatory requirements introduced by a sector regulator in the future (for example, by way of revisions to the conduct requirements in the FCA Handbook), those parts of the CMA order would no longer apply to firms that are subject to those regulatory requirements.

13.76 The second matter is specific to the MiFID II regime and concerns the imposition of any additional requirements on providers that are subject to MiFID II.[977]

13.77 In summary, MiFID II provides that, in exceptional cases, European Member States may impose additional requirements in respect of certain matters.[978] Such requirements must be objectively justified and proportionate to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of the Member State in question.[979] Member States must notify, and the European Commission is required to provide its opinion on, the proportionality of, and justification for, any additional requirements that are intended to be imposed.[980]

13.78 As regards remedies 4 to 6, our view is that they cover matters in respect of which additional requirements may be imposed.[981] As those remedies contain requirements additional to those in MiFID II, they would be subject to notification to the European Commission. As regards the remainder of our remedies, our view is that they do not require notification to the European Commission.[982]

13.79 We note that our order will not come into force until after the date on which the UK is expected to leave the European Union (29 March 2019). This is not currently expected to have material implications for any of the remedies in our order. However, in respect both of drafting the order and notification to the European Commission, we will take account of relevant developments arising as we go through our implementation process on remedies.

13.80 Our information remedies – particularly remedy 4 – also build on the work of an industry group, the IDWG, in producing templates for the reporting of asset management fees. We have also expressed our support for this work in

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[977] This matter is engaged in the scenario in which, for the purpose of the provision of the services in question, the investment consultant or fiduciary manager treats the pension scheme and its trustees as a retail or professional customer and not as an eligible counterparty (ECP).
[978] For further detail, see Article 24 MiFID II Directive.
[979] Article 24(12) MiFID II Directive.
[980] A Member State is required to notify the Commission of, and provide justification for, any additional requirement it intends to impose 'without undue delay' and at least two months before the date appointed for that requirement to come into force. The Commission is then required to provide its opinion on the proportionality of, and justification for, that requirement within two months of the notification (Article 24(12) MiFID II Directive).
[981] In the description of each remedy in the preceding sections, we have identified where Article 24 MiFID II Directive is engaged.
[982] The part of remedy 2 that would require clarification of which information constitutes marketing goes no further than the equivalent requirement in Article 24(3) MiFID II Directive. Remedy 7 does not impose any additional requirements on firms such as would engage the EU notification requirement. Remedy 8 replicates the requirements set out in Article 44(3), (4) and (5) MiFID II Delegated Regulation which presently apply only to investment firms regulated in respect of their MiFID II business. The remainder of our remedies do not engage any applicable MiFID II provisions.

recommendation C. Whilst the FCA has not proposed that the IDWG templates will be mandatory, it may review this approach if adoption rates are poor.[983] Our remedies will continue to be consistent with the regulatory framework if this were to happen.

13.81 For pension schemes, some of our remedies fit with the existing guidance provided by TPR and some will require additions or enhancements to that guidance and/or TPR's codes of practice. We will continue to liaise with DWP and TPR to ensure best fit of our remedies package with its regulatory remit and functions.

13.82 In light of the above, we have concluded that our package of remedies, and each of the remedies within it, are consistent with current and expected laws and regulations.

Coherence as a package of remedies

13.83 In the sections above, we have explained how our remedies reinforce one another in addressing (through the features of the markets we have identified) the AECs and resulting customer detriment that we have found. There are several aspects to this:

(a) Our remedies package promotes greater trustee engagement when buying FM services. Remedy 1 requires that trustees run a competitive tender process when first purchasing FM, and remedy 3 provides guidance on how this can be done most effectively. Remedies 5 and 6 ensure that trustees have access to clear and consistent information on the fees and performance of alternative providers.

(b) Our remedies package includes a range of measures to help trustees monitor and assess the fees and performance of competing providers. Remedies 4 and 5 address FM fee reporting; remedy 6 addresses FM performance reporting; and remedies 7 and 8 address IC performance reporting (remedy 8 also addresses FM reporting). These remedies are fully consistent with each other and with recent developments such as MiFID II.

(c) We have made a series of recommendations for others to deliver measures that will empower trustees and improve the effectiveness of our overall remedies package.

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983 See, for example, the summary of the IDWG's recommendations.

13.84 We therefore conclude that our individual remedies combine to form a coherent package.

Conclusion on the effectiveness of the remedies package

13.85 Based on the above assessment, we have concluded that the package of remedies represents an effective solution to remedy, mitigate or prevent the AECs and resulting customer detriment that we have found.

Proportionality

13.86 Our guidance provides that in making our assessment of the proportionality of our remedies, we will be guided by the following principles, namely that a proportionate remedy and package of remedies is one which (a) is effective in achieving its legitimate aim; (b) is no more onerous than needed to achieve its aim; (c) is the least onerous if there is a choice between several effective measures; and (d) does not produce disadvantages which are disproportionate to the aim.[984]

13.87 We have considered the effectiveness of the remedies package above. We consider each of the remaining aspects in turn.

Is no more onerous than needed to achieve its aim

13.88 Our approach to the design of our remedies has been to target the causes of the AECs, that is the features, and to avoid imposing unnecessary burdens on business.[985]

13.89 We set out in detail our consideration of design issues under each remedy in chapter 12 and highlight below key aspects of our approach where we have sought to reduce cost:

- *(a)* **Remedy 1** – we have considered the necessary requirements of the tender process, for example whether to require an open or closed invitation tender. We have also considered the phasing of the two aspects of the remedy, and in particular the impact of different time periods for trustees with historic mandates who will be required to conduct a tender process.

- *(b)* **Remedy 2** – we have considered the cost and feasibility of separating advice and marketing and have proposed what we consider to be an

[984] CC3 (Revised), paragraph 344.
[985] CC3 (Revised), paragraphs 333 and 353.

effective remedy that is no more onerous than needed to achieve its legitimate aim and therefore avoids unnecessary burdens on firms.

(c) **Remedies 4 - 8** – we have set out simple, high-level approaches and outcomes to give trustees better information on fees and performance. This will ensure that trustees have access to the information they need without imposing unnecessary burdens on firms.

13.90 In designing our remedies package, we have given careful consideration to recent regulatory and industry developments that could, through their future implementation, help to address some of the AEC features that we have identified. This includes MiFID II and the development of the IDWG fee templates, as described above.

13.91 Our remedies build on and complement these developments to ensure that the AEC features that we have identified are adequately addressed, without creating unnecessary burdens on firms.

Is the least onerous if there is a choice between several effective measures

13.92 In setting out the remedies we have decided to introduce, we have identified those which we consider to be effective at remedying the two AECs and resulting customer detriment we have found. We have consulted widely on the design of our remedies package, as well as potential alternative remedy options.

13.93 In our decision on remedies we are not pursuing (see chapter 12) we have included several remedies which we consider to be potentially or partially effective but disproportionate. In particular, we have decided upon a remedy to require mandatory tendering before the adoption of fiduciary management, but we are not pursuing more onerous remedies such as mandatory switching between providers, an ongoing requirement to tender, or preventing firms from offering both services.

13.94 We consider these remedies to be no more effective (and in some instances less effective) than the remedies we have decided upon, and have significantly higher monetary and other costs to firms and pension scheme trustees that cannot be justified relative to their impact on the AECs or resulting customer detriment. We therefore do not consider such remedies to be proportionate.

13.95 We have also considered some potential remedies that we do not believe to be effective in addressing the AECs and resulting customer detriment. This includes promoting tendering when first moving into fiduciary management as ‘best practice’, with a requirement for trustees that choose not to tender to explain their reasoning. This is discussed in detail in chapter 12.

13.96 Having considered alternative potential remedies, we therefore do not believe that other measures would be both as effective and proportionate in addressing the AECs and resulting customer detriment. We have therefore concluded that our remedies package is the least onerous set of effective measures that could be imposed.

Does not produce disadvantages which are disproportionate to the aim

13.97 We have considered, and consulted on, whether our package of remedies would produce disadvantages which are disproportionate to the aim of remedying the AECs and the resulting customer detriment.

13.98 In making a judgement about whether to proceed with any particular remedy, we have considered both the positive and negative potential effects on those persons most likely to be affected by it. These potential effects are discussed for each remedy in chapter 12.

13.99 As outlined in our guidance, we have had particular regard to the impact of the remedies on customers (ie pension scheme trustees and pension scheme members whose interests they represent).[986] We have also had regard to the impact of the remedies on other parties subject to them and on other affected parties.[987] In developing our remedies package we have therefore consulted with a wide range of stakeholders including customers, firms, industry bodies and regulators.

13.100 In the ensuing analysis, we cover first the potential benefits of the remedies package, followed by its potential costs, and then conclude whether the remedies package produces disadvantages which are disproportionate to its aim.

Potential benefits of the remedies package

13.101 Our remedies package aims to improve levels of trustee engagement and ensure that trustees have access to the necessary information to judge the value for money of alternative providers. We consider that the remedies package will substantially increase the competitive pressure on investment consultants and fiduciary managers:

[986] CC3 (Revised), paragraph 358.
[987] CC3 (Revised), paragraph 348.

(a) By requiring trustees to run a competitive tender process when they first move into fiduciary management, remedy 1 will ensure that trustees test the market and make an informed, active choice. This will encourage both the incumbent and rival providers to present competitive offers.

(b) By ensuring that advice and marketing materials relating to FM are kept separate and by reminding trustees of the tendering requirement of remedy 1, remedy 2 will help to mitigate the incumbency advantage of IC-FM firms in winning business from existing customers. Remedy 3 will assist trustees in running effective tender processes, helping them to choose the provider that offers the best value for money for their scheme.

(c) By improving the information available to trustees on the quality and cost of investment consultants and fiduciary managers, remedies 4, 5, 6 and 8 will help trustees to assess the value for money of alternative providers. This will encourage firms to compete more vigorously on quality and price to retain and attract customers.

(d) By requiring trustees to set strategic objectives for their investment consultant, and for the consultant to report progress against these objectives, remedy 7 will drive greater engagement by trustees and help them to monitor the quality of their investment consultant. This will increase the competitive pressure on the investment consultant to ensure that it is offering a high quality of service.

13.102 These remedies will be supported by enhanced trustee guidance which will help trustees to assess the price and quality of competing providers, and to select the most appropriate provider (and solution) for their scheme.

13.103 The combined impact of these remedies will be to increase the pressure on investment consultants and fiduciary managers to compete for customers based on price and quality. By improving the visibility and comparability of this information, and encouraging trustees to actively test the market, we expect providers to compete more vigorously to attract and retain customers.

13.104 It is not possible to quantify all of these potential benefits with precision: these are complex markets and many of the expected benefits result from more intense competition on quality (which is inherently difficult to measure). However, due to the scale and significance of the markets to the wider economy, we expect the potential benefits to be substantial.[988] In this context, we note that:

(a) Investment consultants and fiduciary managers advise on decisions affecting millions of pension scheme members. We estimate that this includes around 10 million people in DB schemes and around 15 million people in DC schemes.[989]

(b) Investment consultants advise on decisions affecting at least £1.6 trillion of pension scheme assets, and fiduciary managers implement decisions affecting over £110 billion of pension scheme assets. Even small improvements in investment performance will therefore have significant benefits. As an illustration, a 1 percentage point improvement in DB funding levels would reduce the aggregate deficit (on a full buy-out basis) by almost £20 billion.[990]

(c) Pension schemes make long-term investments, typically spanning several decades. Any improvements in investment performance will be compounded over time, and given the time horizons involved, this compounding effect will be substantial.

(d) Investment consultancy revenues were around £337 million in 2017, and fiduciary management revenues were around £254 million.[991] Even a 1% reduction in fees resulting from our remedies would save pension schemes around £3.4 million per year in investment consultancy and £2.5 million per year in fiduciary management.

(e) Fiduciary management has grown dramatically over the last decade, with a ten-fold increase in assets under management since 2007. Over this period, the combined market share of the three largest IC-FM providers has grown from less than 10% to over 50%. Our remedies will help to reduce the incumbency advantage of IC-FM firms and maintain a competitive landscape in this rapidly growing market.

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[988] See the discussion on detriment in chapter 11 for further details.
[989] These figures are high-level approximations. The CMA survey indicates that around 83% of DB schemes and 38% of DC schemes use either IC or FM. TPR's DB Landscape Survey 2017 indicates that there were 11.3 million DB members in 2017. The ONS Occupational Pension Schemes Survey 2016 indicates that there were 39.2 million DC members in 2016. We have simply multiplied the percentages using IC or FM by the overall number of members. As larger schemes are more likely to use IC and FM (based on the CMA survey), these are likely to be lower bound estimates.
[990] Calculations are based on data from the PPF Purple Book 2017. In 2017 the total assets of DB schemes were £1,541 billion, total liabilities were £2,277 billion and the aggregate funding level was 67.7% on a full buy-out basis. The CMA survey indicates that around 83% of DB pension schemes use IC or FM. This figure was applied to the assets and liabilities in making this calculation.
[991] CMA data collected from parties.

Scale of direct benefits for schemes moving into fiduciary management

13.105 Although it is not possible to quantify the overall potential benefits of our remedies package, we have gathered some evidence on the direct benefits (in terms of lower fees) for schemes moving into fiduciary management, particularly those resulting from remedy 1.

13.106 Our gains from engagement analysis (in chapter 10) indicates that, for schemes that moved into fiduciary management with their existing investment consultant, those that ran a formal tender paid significantly lower fees (on average) than those that did not.

13.107 The magnitude of these potential savings is presented in Table 11 below. Alongside the baseline estimates from our 'FM static' analysis, we have also included some sensitivities to indicate a reasonable range of estimates.[992]

13.108 The baseline results indicate that the average scheme could save almost £600,000 over a 10-year period as a result of running a formal tender.

13.109 The sensitivities indicate a range of savings from £135,000 - £810,000 over a ten-year period. We consider that a timeframe of ten years is reasonable in this context, as pension scheme investments are long term and many fiduciary management contracts include lock-in periods lasting several years (see chapter 6).

Table 11: Potential fee savings from tendering in FM

	Baseline	Sensitivities		
Saving from tendering	22%	5%	10%	30%
Annual saving	£59,400	£13,500	£27,000	£81,000
Total saving (10-years)	£594,000	£135,000	£270,000	£810,000

Source: CMA analysis. The figures are based on a mean spend per client of £270,000 per year (2016).

13.110 These figures indicate the potential direct benefits to pension schemes resulting from remedy 1, as a direct consequence of potential fee savings. The magnitude of such savings is consistent with evidence from internal documents and submissions from TPEs (see chapter 10).

13.111 To give an indication of the cumulative impact of such savings across pension schemes, we assume that there are 40 additional tenders per year as a result

[992] See chapter 10 for the FM static analysis and results.

of remedy 1.[993] In this case, the *annual* saving across pension schemes (based on the figures in Table 11) would be in the range of £540,000 to £3.24 million.

13.112 Our view is that fee savings are not the only, or likely to be the main, benefit of remedy 1. We note that the decision to move into fiduciary management is generally a long-term commitment (with high switching costs), that can have significant implications for scheme governance, investment performance and costs.

13.113 The benefits of testing the market are therefore far wider than a potential reduction in fees. In its response to our updated working paper on market outcomes for example, Ernst and Young stated that 'it is our view that value creation is a composite of cost, the investment proposition, the operational risk management offered by the fiduciary manager, and the legal terms of the fiduciary management agreement. This leads to a strong need to consider the total service offered by the fiduciary manager and the total cost of investment, rather than, whilst still important, focussing too much on the fiduciary management fee'.[994]

13.114 Further, at our trustee roundtable discussion, a professional trustee stated that net of fees investment performance was a more important consideration than fees when running a tender.[995] Barnett Waddingham stated in a hearing that 'the cost of fiduciary management was not the main driver of choice for most clients. Trustees need to be comfortable with their chosen provider and understand the approach they are taking'.[996]

13.115 We therefore consider that there are wide ranging benefits from running a competitive tender process when appointing a fiduciary manager. In terms of fee savings alone, the direct benefit will be in the order of £[✂] to £[✂] over a ten-year period for a typical pension scheme, resulting from lower prices. The overall benefits for schemes will be much larger, as this does not take into account the wider benefits resulting from higher quality of service.

13.116 Our overall package of remedies, including more detailed and consistent information on fees and quality (remedies 5 and 6), will help trustees to get the

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[993] The KPMG FM survey 2018 indicates that there have been approximately 110 new FM mandates per year over the last 5 years. The survey also indicates that 66% of new mandates used a TPE in 2018. We have therefore assumed that 66% of schemes run a competitive tender process in calculating the aggregate fee savings from remedy 1. This is to provide a cautious estimate: the client data provided to us and the CMA survey indicate that tendering rates have historically been substantially lower than this (see chapter 7).
[994] Ernst and Young response to the working paper on market outcomes, p2.
[995] Summary of roundtable with Pension Trustees held on 3 October 2018.
[996] Summary of response hearing with Barnett Waddingham on 1 October 2018.

maximum benefit from running a tender process when selecting their fiduciary management provider.

Potential costs of the remedies package

13.117 We have set out the potential costs associated with each remedy in chapter 12 above. This incorporates our consideration of the views received in response to the provisional decision report, hearings with parties, trustee roundtable discussions and responses to an information request (issued in September 2018) to twelve investment consultants and fiduciary managers.

13.118 Our assessment is that our remedies are not likely to impose significant costs on either pension schemes or providers. In considering the cost of our package of remedies, we have summarised the potential costs below within the following categories: promoting greater trustee engagement when buying fiduciary management services; fees and performance reporting; and supporting remedies.

Promoting greater trustee engagement when buying fiduciary management services

13.119 The main potential costs for pension schemes as a consequence of remedy 1 (mandatory tendering on first adoption of FM) are based on trustee time. The costs incurred will therefore depend on the scheme's governance arrangements and the composition of trustees on the board – schemes that use professional trustees for example may incur some incremental costs.

13.120 As outlined in chapter 12 however, the remedy has been designed to give trustees the flexibility to conduct a tender process that is appropriate for their scheme. A simple tender process that complies with the requirements of Remedy 1 would impose minimal costs on the pension scheme.

13.121 We have received a wide range of estimates for the costs to providers when participating in a tender process. These range from less than £[✄] to over £[✄] (the latter being for large or complex schemes). As outlined in chapter 12, our assessment is that the costs of remedy 1 incurred by fiduciary management providers will generally be towards the lower end of these estimates. We consider that pension scheme trustees will be incentivised to run competitive tenders which lower the costs of tendering for providers.

13.122 We also emphasise that no firm will be obliged to compete in additional tenders. Firms will make their own assessment as to the costs and expected benefits of competing in any given tender process, and we would expect firms to participate in a tender when the expected benefits outweigh the costs. We have designed the remedy in a way that minimises potential costs and allows sufficient flexibility both for trustees and providers.

13.123 Remedies 2 and 3 are also aimed at promoting greater trustee engagement when buying fiduciary management services. In response to our information request, almost all providers stated that remedy 2 would impose minimal costs, although two providers stated that they would bear some costs in terms of training and compliance.

13.124 Remedy 3 will require only minimal – and voluntary – input from trustees and providers. This remedy will therefore not impose material costs on either pension schemes or providers.

13.125 In its hearing in October 2018, WTW stated that fiduciary management has brought improved returns and lower volatility of funding for pension schemes.[997] It is concerned that a remedies package might deter the many pension schemes who have not taken up fiduciary management from doing so as this could lead to detriment in terms of their scheme returns.

13.126 Our remedies package imposes minimal costs on trustees however. In our view, the remedies package would therefore not prevent trustees from buying fiduciary management if they decided that it was in their best interests to do so. Further, moving into fiduciary management can have significant implications in terms of scheme governance, investment performance and costs.[998] We therefore consider that trustees should actively test the market when first moving into fiduciary management.

Fees and performance reporting

13.127 Our remedies relating to fees and performance reporting (remedies 4, 5, 6 and 8) have been designed to complement, and in some cases extend by a small degree, existing regulations and industry and regulatory initiatives. We therefore consider that they impose minimal incremental potential costs on providers.

13.128 We do not expect pension schemes to incur any costs as a result of these remedies. Indeed, scheme costs (and trustee time) will be reduced as trustees gain easier access to the information required to assess value for money.

13.129 As discussed in chapter 12, estimates from parties generally indicate that there will be little or no material increase in costs from remedies 4 or 5. These

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[997] Summary of response hearing with WTW, 2 October 2018.
[998] As shown in chapter 10 for example, median fiduciary management fees are around five times higher than median investment consultancy fees.

remedies have been designed so that they complement MiFID II regulation and extend its requirements by a small degree and only to the extent necessary. Remedy 4 also builds on the work of the IDWG, which aims to ensure that fee information is provided by underlying asset managers in a consistent format.

13.130 We also note that many providers already comply with the reporting requirements of remedies 4 and 5, or plan to do so as part of their MiFID II fee disclosures. Our remedies will therefore simply extend best practice across the industry.

13.131 Remedy 6 (relating to fiduciary management investment performance) allows providers to build on the extensive work already undertaken in the development of the IC Select FM Performance Standard. We therefore consider that firms already have the systems in place to collect and disseminate this information, and so we do not expect remedy 6 to impose material incremental potential costs on providers. This is consistent with responses that we have received from the majority of providers in response to our information request.[999]

13.132 As discussed in chapter 12, it is likely that remedy 7 (requiring trustees to set strategic objectives for their investment consultant) will impose some costs on pension scheme trustees due to the time spent developing and setting objectives with their investment consultant.

13.133 We envisage however that these will be long-term objectives covering several years. Any additional consultancy charges would therefore be incurred only infrequently. We do not anticipate any material incremental potential costs on providers, although we recognise that some costs may be incurred in monitoring and compliance.

13.134 Estimates from the majority of parties indicate that there will be little or no material increase in costs from remedy 8 (minimum standards on the reporting of recommended asset management products).[1000] As noted in chapter 12, however, a small number of parties have indicated material costs from the requirement to disclose the effect of commissions, fees and other charges on performance.

13.135 Our view is that, by extending the application of relevant MiFID II requirements, this remedy simply extends best practice across the industry. We consider that firms whose activities are subject to MiFID II should have the

[999] Responses to CMA information request.
[1000] Responses to CMA information request.

systems in place to collect and present this information. Further, remedy 8 only applies where firms are reporting quantitative performance information of their asset management products to prospective clients. We have found that not all firms provide this information, and this remedy places no obligation on them to do so.

Supporting remedies

13.136 Our remedies package includes four recommendations to government departments and regulators. As stated in our guidance, such recommendations do not bind the person to whom they are addressed, although the UK government has committed to respond within 90 days of publication of our final report to any recommendation made to it.[1001]

13.137 Our recommendations do not directly impose costs on either providers or customers. We anticipate that the relevant departments and regulators will conduct their own detailed proportionality assessment before implementing our recommendations, although we would expect such assessments to take into account our findings. In making these recommendations however, we have given consideration to their potential costs and benefits. This is set out, for each recommendation, in chapter 12.

13.138 A small number of providers have indicated that recommendation A (extension of the regulatory perimeter) has the potential to create material incremental costs.[1002] Given the importance of investment consultants to the wider economy, and the millions of pension scheme members who are potentially affected by their advice, our view is that these firms should be regulated by the FCA or within the designated professional bodies regime. Extending the FCA's regulatory perimeter would also help to reinforce the effectiveness of remedy 8 and therefore address the AECs and resulting customer detriment.

13.139 A small number of parties indicated material potential costs from recommendation C, based on compliance with the IDWG fee templates.[1003] Whilst we recognise that the introduction of these templates may impose some costs on fiduciary managers, we note that the FCA is not currently proposing that the IDWG templates will be mandatory. We also consider that this information is extremely important in helping trustees to assess the full value for money of the services they receive. Finally, we expect that the IDWG templates will lower some of the costs for investment consultants and fiduciary

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[1001] CC3 (Revised), paragraph 327.
[1002] Responses to CMA information request (September 2018).
[1003] Responses to CMA information request (September 2018).

management firms by improving the underlying information they receive from asset managers.

Summary of the potential costs of our remedies package

13.140 In summary, our assessment is that our remedies will not impose material incremental potential costs on pension scheme trustees, providers or other affected parties. Our remedies relating to fees and performance reporting have been designed to be consistent with, and build upon, existing regulatory requirements and regulatory and industry developments. Estimates from providers generally indicate that they will incur minimal incremental costs from these remedies.

13.141 We anticipate no cost to pension schemes as a result of our information remedies, except remedy 7. In contrast, these remedies will make it easier for trustees to access the necessary information to assess value for money, thereby lowering overall costs. In terms of remedy 7, we anticipate that the strategic objectives would be modified only every few years, and so we expect that annual scheme costs would be minimal. Trustees have control over these costs, as they have flexibility to decide on objectives that suit the specific circumstances of their scheme.

13.142 We recognise that both pension schemes and providers will incur some costs as a result of remedy 1. However, the remedy has been designed to give trustees the flexibility to conduct a tender process that is appropriate for their scheme. A simple tender process that complies with the requirements of remedy 1 would impose minimal costs on the pension scheme. Further, our overall package of remedies will help to minimise the burden on trustees: this includes enhanced TPR guidance and consistent information on fees and performance from providers.

13.143 We have received a wide range of estimates from providers on the cost of participating in tenders – ranging from less than £[✄] to more than £[✄]. We recognise that the intention of remedy 1 is to increase the amount of tendering, and that fiduciary management providers will, collectively, incur increased costs. We emphasise that no firm will be obliged to participate in any individual tender and can decide for themselves how much effort and therefore expense is justified for any given tender. Moreover, the incremental costs of remedy 1 are towards the lower end of the estimates submitted by parties, as explained above. In our view therefore, this remedy does not impose material incremental potential costs on providers.

13.144 Our supporting remedies (recommendations) do not bind the persons to whom they are addressed, and so do not directly impose costs on either providers or customers. We recognise however that an extension of the FCA's regulatory perimeter has the potential to impose additional costs on some providers. Given the importance of investment consultants to the millions of individuals who are potentially affected by their advice, our view is that an extension of the regulatory perimeter is necessary and proportionate.

Balance of the potential benefits and costs of the remedies package

13.145 Our assessment is that the potential benefits of our remedies package are likely to substantially outweigh the potential costs. Although many of the anticipated benefits are hard to quantify, the significance of these markets implies that even small improvements in quality or reductions in price will produce substantial benefits in the aggregate. These benefits will be compounded and accumulate over time.

13.146 In contrast, our remedies impose relatively small potential costs on pension schemes and providers. Our information remedies will impose only minimal incremental costs on providers and will reduce the cost to trustees of accessing the information they require to fully assess value for money. We expect that this will increase the pressure on both the incumbent and alternative providers to compete vigorously on price and quality.

13.147 Although some providers have submitted high estimates for the cost of remedy 1 (mandatory tendering), we emphasise that participation in any given tender is optional. As noted above, the costs to the pension scheme of complying with remedy 1 are expected to be minimal.

13.148 In contrast, the potential benefits of remedy 1 to pension schemes are considerable. Reasonable estimates from our gains from engagement analysis and qualitative analysis (see chapter 10) indicate that fee savings alone could amount to tens of thousands of pounds per year. The overall benefits of tendering are much broader.

13.149 In view of the above, we have concluded that our remedies package is proportionate in remedying the AECs and the resulting customer detriment.

Decision on remedies

13.150 We have decided to introduce the package of remedies set out in chapter 12.

13.151 This represents as comprehensive a solution as is reasonable and practicable to the AECs and resulting customer detriment that we have found.