

# INVESTMENT CONSULTANCY SERVICES AND FIDUCIARY MANAGEMENT SERVICES

## MARKET INVESTIGATION

### Statement of issues

#### Contents

	<i>Page</i>
Introduction .....	1
Background and approach to the investigation .....	5
Background .....	5
Scope of the reference.....	5
Our approach to the investigation .....	6
Market characteristics and outcomes.....	10
Key characteristics.....	11
Market outcomes .....	12
Hypotheses for investigation (theories of harm).....	15
A. Demand side and information issues.....	16
B. Conflicts of interest.....	22
C. Barriers to entry and expansion.....	25
Remedies .....	26
The CMA's approach to remedies.....	26
Potential remedies on which views are sought.....	28
A. Demand side and informational remedies .....	30
B. Potential remedies to address conflicts of interest.....	36
C. Potential remedies to address barriers to entry and expansion.....	39
Summary .....	39

#### Introduction

1. On 14 September 2017 the Financial Conduct Authority (FCA), in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), 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.<sup>1</sup>

2. The CMA, acting through a group of independent members constituted from its panel, 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 UK or a part of the UK.<sup>2</sup> If the CMA decides that there is such a prevention, restriction or distortion of competition, it will have found an ‘adverse effect on competition’ (AEC).<sup>3</sup>
3. If the CMA finds that there is an AEC, it has a duty to decide whether it should take action, and/or whether it should recommend others take action, to remedy, mitigate or prevent the AEC concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the AEC.<sup>4</sup> If the CMA decides that action should be taken, it must also decide what action should be taken and what is to be remedied, mitigated or prevented.<sup>5</sup>
4. This statement is based on the evidence we have reviewed to date<sup>6</sup> and sets out:
  - (a) our initial hypotheses concerning which features – if any – of the supply and acquisition of investment consultancy services and fiduciary management services are adversely affecting competition; and
  - (b) which potential remedies may be suitable to address any AECs that we may find.<sup>7</sup>
5. This issues statement will provide a framework for our investigation. In putting it together we have been mindful of the complexity and size of the markets

---

<sup>1</sup> References in this issues statement to ‘investment consultancy services’, ‘fiduciary management services’ and ‘institutional investors and employers’ have the same meaning as in the definitions in the [FCA decision to make a market investigation reference](#), 14 September 2017 (the FCA Reference Decision) (including the [terms of reference](#)).

<sup>2</sup> See [section 134\(1\)](#) of the Act.

<sup>3</sup> As defined in [section 134\(2\)](#) of the Act.

<sup>4</sup> [Section 134\(4\)](#) of the Act.

<sup>5</sup> [Section 134\(4\)](#) of the Act.

<sup>6</sup> The principal evidence we have drawn upon is the evidence referred to in: the [FCA Reference Decision](#); FCA Asset Management Market Study: Final Report June 2017 (the FCA Asset Management Final Report); FCA provisional decision on a market investigation reference November 2016; FCA Asset Management Market Study: Interim Report November 2016 (the FCA Asset Management Interim Report); and other previous reviews and reports in the sector.

<sup>7</sup> As noted in paragraph 3 above, if the CMA finds that there is an AEC, it has a duty to decide whether (and if so what) remedial action should be taken as regards the AEC concerned or any resulting detrimental effect on customers. In paragraph 4 and in the remainder of this document, we refer to potential remedies to address any AECs that we may find as short-hand to mean potential remedies to the AECs concerned or any resulting detrimental effect on customers.

involved and the time we have available under the 18-month statutory timetable in which to carry out our investigation.

6. This statement does not represent the CMA's provisional views, findings or conclusions on either the competition issues or potential remedies, should these be needed.<sup>8</sup> The CMA has yet to determine whether any competition concerns arise in the supply or acquisition of investment consultancy services or fiduciary management services. The hypotheses identified in this document are simply areas that, at this stage, we consider merit further investigation and analysis. Similarly, the CMA will only put in place remedies if it identifies that there are competition concerns (ie AECs) in the markets referred. There is no presumption that any AECs will be found. The consideration of both competition issues and potential remedies is therefore hypothetical at this stage.
7. We are publishing this statement now to assist those submitting evidence to focus on the issues we envisage being relevant to this investigation and any potential remedies to address any AECs that we may find. We invite parties to give us their views, with reasons, as to whether:
  - (a) the issues we have identified should be within the scope of our investigation and whether they are correctly characterised;
  - (b) there are further issues we have either not identified, or which we have indicated we are not minded to focus on, but which parties consider we should examine;
  - (c) the potential remedies we have identified would address the competition issues comprehensively and if so how, and whether they would be effective and proportionate; and
  - (d) there are other potential remedies which we have not identified that would address either the issues we have identified or other issues we should consider (detailing what those remedies might be and how they would address the potential AECs in these markets).
8. We ask parties to support their views on the questions above with relevant reasoning and evidence (including documentation and analysis). The provision of underlying evidence is critical, as it allows us to test and assess the views put forward by different parties.

---

<sup>8</sup> Our provisional findings on the features and any AEC(s) will be contained in our provisional decision report, issued at a later stage in the investigation. At that point, if any AECs are found, we would also set out our provisional decision on remedies.

9. We plan to hold hearings/roundtables with interested parties to discuss potential issues and potential remedies in due course. We will also gather further information, evidence and data to inform our understanding. As we undertake analysis and our thinking develops, we expect to issue or share further documents inviting comments from parties. We will then publish our Provisional Decision Report containing our provisional findings on the issues. If we were to provisionally find one or more AECs, the provisional decision report would also contain our provisional decision on remedies. We will hold further hearings with interested parties covering our provisional findings on any AECs and remedies, before publishing our final report. Our administrative timetable has been published on the [inquiry webpage](#).<sup>9</sup>

10. To submit your views together with supporting evidence, please email [investmentconsultants@cma.gsi.gov.uk](mailto:investmentconsultants@cma.gsi.gov.uk) or write to:

Project Manager  
Investment Consultancy Market Investigation  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD

By Thursday 12 October 2017.

11. The remainder of the document is structured as follows:

- We set out the background to this investigation and explain some of the guiding principles that will inform our approach.
- We set out our understanding of the key characteristics of the supply and acquisition of investment consultancy services and fiduciary management services in the UK and how we intend to analyse market outcomes.
- We identify three high-level hypotheses concerning features that might be adversely affecting competition and leading to possible adverse outcomes.
- We set out our approach and the criteria for considering potential remedies.

---

<sup>9</sup> *Market studies and market investigations: Supplemental guidance on the CMA's approach*, (revised July 2017) (CMA3) contains further guidance on the procedures for market investigations which were revised in July 2017.

- We identify some initial potential remedy options to address any AECs that we may find, within each of the three hypotheses and set out some key questions on potential remedies for parties to consider.

## **Background and approach to the investigation**

### ***Background***

12. In November 2015, the FCA launched a market study into asset management.<sup>10</sup> As part of this study it identified a number of potential competition concerns relating to investment consultants, who play a significant role in the market for institutional asset management. In November 2016, the FCA consulted on its provisional decision to make a market investigation reference in relation to the provision of investment advisory services. In response to this, the three largest investment consultants offered undertakings in lieu of a reference (UIL) offering various commitments. In June 2017, the FCA consulted on its provisional decision to reject the UIL.
13. In September 2017 the FCA published its final decision to reject the UIL and refer to the CMA for an in-depth investigation, the supply and acquisition of investment consultancy services and fiduciary management services to institutional investors and employers in the UK. The FCA rejected the UIL for various reasons. In particular, it considered that it could not be confident that the UIL would ‘achieve as comprehensive a solution as is reasonable and practicable’ to the potential adverse effects on competition identified and concluded that a full investigation of the sector by the CMA would enable the identification of all the relevant issues and appropriate remedies, if required, to be put in place.<sup>11</sup>

### ***Scope of the reference***

14. As set out in the terms of reference, for the purpose of this investigation:
  - (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; and
  - (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

---

<sup>10</sup> Asset managers manage investments on behalf of individual retail investors and institutional investors such as pension schemes – more information see the [FCA Asset Management Market Study](#).

<sup>11</sup> [FCA Reference Decision](#), paragraph 4.35.

the UK. 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.

15. 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. We recognise that there are significant differences between and within these types of investors. For example, there is a large range of different types and size of pension scheme. We will consider whether such differences are material to our assessment of competition in the sector.

### ***Our approach to the investigation***

16. In the rest of this section, we explain some of the guiding principles that will inform our approach to this investigation.
17. Our approach will involve defining the markets within which providers of investment consultancy services and fiduciary management services (ie, investment consultants)<sup>12</sup> compete, assessing the nature of competition in those markets and reaching a view on whether any features of the relevant markets prevent, restrict or distort competition. If we determine that any features do so, we will have found an AEC and we will then have to decide whether the CMA should take action to remedy the AEC or any resulting detrimental effect on customers, or whether we should recommend that others do so. Our approach to considering remedies is explained in further detail in paragraphs 81 to 86.

### ***Proposed focus***

18. At this stage, we are proposing to focus on pension schemes within the range of institutional investors as set out in paragraph 15. Pension schemes control a high proportion of the total assets managed by institutional investors (with an estimated £2.1 trillion assets under management)<sup>13</sup> and we understand they represent the largest body of customers for providers of investment consultancy services and fiduciary management services. The FCA also focused largely on pension schemes in its market study. We would welcome views on our proposal to focus on pension schemes within the wider range of

---

<sup>12</sup> Note that for ease of presentation unless otherwise specified we refer to providers of investment consultancy and/or fiduciary management services as 'investment consultants', although we note that (a) not all investment consultants provide fiduciary management services and (b) not all providers of fiduciary management services provide investment consultancy services (for example, asset managers do not provide investment consultancy services, but are included in this investigation on the basis that they provide fiduciary management services).

<sup>13</sup> Asset Management in the UK 2015-2016, A summary of the IA Annual Survey (September 2016).

institutional investors and whether there is a need to extend our analysis to include other types of institutional investors, such as charities, insurance companies and endowment funds. We would particularly welcome views on the extent to which other institutional investors use investment consultancy services and/or fiduciary management services and whether there are any particular areas of concern that warrant us undertaking further analysis for other types of institutional investors.

19. The FCA also noted that the potential concerns it identified can affect both larger and smaller institutional investors and both defined benefit (DB) and defined contribution (DC) schemes.<sup>14</sup> Therefore within our assessment of pension schemes, we will consider a range of different sizes and types of schemes. Our focus is on workplace pension schemes<sup>15</sup> as opposed to individual savings or pensions. We do not propose to focus on very small 'micro' pensions schemes which have 12 or less members,<sup>16</sup> as we understand that these schemes do not typically use investment consultancy services and/or fiduciary management services and are unlikely to face the types of potential issues identified by the FCA.
20. We recognise that in assessing competition, it will be important to understand the linkages to related services and, in particular, other connected parts of the pension sector. For example, one aspect of the advice given by investment consultants relates to the selection of asset managers. In addition, both asset managers and investment consultants provide fiduciary management services,<sup>17</sup> which is a fast-growing area. This means that consultants are both distributors for – and competitors to – asset managers. Investment consultants also offer advice to employers in designing and setting up pension schemes, and some also offer their own defined contribution pension products (in particular they offer master trusts),<sup>18</sup> therefore in that respect they are distributors for and competitors of providers of DC pension products. Investment consultants are also often part of larger organisations which

---

<sup>14</sup> FCA provisional decision to make a reference, paragraphs 4.11–4.15. A DB scheme is a trust-based pension scheme in which the benefits are defined in the scheme rules and accrue independently of the contributions payable and investment returns. In contrast, a DC scheme is a scheme in which a member's benefits are determined by the value of the pension fund at retirement. The fund, in turn, is determined by the contributions paid into it in respect of that member, and any investment returns net of charges.

<sup>15</sup> This would include Local Government Pension Schemes, which are funded and have invested assets, although we understand that these potentially operate differently from other types of workplace pension schemes – we therefore welcome views on these differences and whether these should be included in scope.

<sup>16</sup> Including DC trust-based micro-schemes, of which there are a relatively high number.

<sup>17</sup> Fiduciary management is an industry term that is usually taken to describe cases where a provider advises clients on how to invest their assets and then makes investments on their behalf for all or some of their assets. These delegated responsibilities can include selecting asset managers and strategic asset allocation. The level of delegation and discretion given can vary depending on the client's requirements.

<sup>18</sup> A master trust is a form of multi-employer occupational trust-based pension scheme established under trust and intended for employers that are not connected with each other. Master trusts involve a single provider managing a pension scheme for multiple employers under a single trust arrangement.

provide actuarial and other related services to pension schemes such as pension administration. There is therefore a considerable degree of vertical integration within the markets referred and other areas of the pension sector.

21. We would welcome views on our proposed focus and other scoping suggestions.

#### *Assessment of potential detrimental effects*

22. Our investigation will focus on the potential detrimental effects on customers of investment consultancy services and/or fiduciary management services resulting from any AEC(s) we identify, considering both short and long term impacts. Such impacts could take the form of:
  - (a) higher prices to customers (in this case institutional investors and employers);
  - (b) reduced service quality;
  - (c) reduced choices of provider and/or products;
  - (d) less innovation; or
  - (e) any combination of the above.
23. Such impacts will inform our assessment of both the effect of the AEC itself (taking into account any relevant customer benefits that arise from the features that prevent, restrict or distort competition) and of the effect of any potential remedies we consider.
24. We propose to assess market outcomes against the above factors as well as exploring the potential competition issues which may be leading to poor market outcomes (as set out in our three hypotheses below). We will consider both high-level outcomes in the pension industry (for example, the performance of pension funds) as broader context for understanding the market, as well as exploring in more depth outcomes that can be more directly attributed to the supply and acquisition of investment consultancy services and fiduciary management services.
25. Throughout our investigation, a key focus of our analysis will be on impacts on end consumers, that is pension scheme members who are contributing to/drawing on their pension, and companies which make contributions, as both would be affected ultimately by any adverse outcomes. For example, any potential competition issues may reduce pension fund returns and increase

the level of employer and active member contributions required to fund pension schemes.

26. We would welcome views on whether the potential detrimental effects identified in paragraph 22 above are the right ones to be focusing on, and/or whether there are any other types of potential detrimental effect you consider we should take into account in our analysis.

#### *Previous reviews, ongoing work and future developments*

27. The pensions sector has been subject to several previous reviews<sup>19</sup> and, while our analysis will focus on the competitive issues relating to investment consultancy services and fiduciary management services (as opposed to competitive issues more broadly within the pensions sector), we will be informed by such reviews. There has, however, been relatively little previous work undertaken directly on these services. Although the FCA received mixed responses to the concerns it raised in this area, there was also broad support for a more detailed review from many in the industry. One of the key aspects of this investigation will therefore be to ‘shine a light’ on this industry and its role within the wider pensions sector.
28. We want to ensure that the investigation benefits from the in-depth knowledge of the relevant regulators and their ongoing work in this sector. We also wish to minimise burdens on the sector by ensuring that we do not unnecessarily duplicate the work of the regulators. To achieve this, we will liaise with the relevant regulators as appropriate – in particular, the FCA and The Pensions Regulator (TPR).
29. In assessing competition issues and considering potential remedies, we will be forward-thinking, recognising that there is a number of changes currently taking place, or which will be taking place within the next few years. Such changes include the following:
- (a) following publication of the final findings of the FCA’s Asset Management Study, the FCA will be taking forward a wide-ranging package of remedies relating to asset management, some of which will have an impact on institutional investors;<sup>20</sup>

---

<sup>19</sup> Including Myners Review, [Institutional Investment in the UK](#); OFT, [Defined Contribution Workplace Pension Market Study](#) (September 2013, revised February 2014); The Law Commission, [Fiduciary Duties of Investment Intermediaries](#) Report (July 2014); The Law Commission, [Pension Funds and Social Investment](#) (June 2017).

<sup>20</sup> For further detail on remedies see chapters 11–15 of the FCA’s Asset Management Final Report, and within this for example remedies relating to increased disclosure to institutional investors see pp87–89.

- (b) the continued roll-out of auto-enrolment;<sup>21</sup>
  - (c) the decline in the number of (and active memberships in) DB pension schemes and the increase in DC schemes; and
  - (d) legislative and regulatory changes, including pension reforms which have been enacted but not yet introduced and other potential future reforms.<sup>22</sup>
30. We welcome views on our proposed approach to this investigation as set out in this section, including: how this investigation should build on the previous reviews of the sector and take into account current and future developments in the sector; and whether there are other fundamental changes or trends of which we should be aware.

### **Market characteristics and outcomes**

31. Institutional investment plays a significant role in the UK's economy, covering assets worth around £3 trillion.<sup>23</sup> The principal investors are pension funds, which manage the pensions of millions of people, who rely on their pensions in retirement. It is important that pension funds provide value for money for pensioners and the employers that contribute to the funds.
32. Investment consultants provide advice to a significant portion of these pension funds. Pension trustees are required to obtain and consider 'proper advice' as to whether an investment is satisfactory.<sup>24</sup> Trustees can fulfil this requirement by getting advice from investment consultants, although some may seek advice from in-house experts and/or other external advisers.<sup>25</sup> Most of the clients of investment consultants are DB pension schemes, although they also advise DC schemes, which are increasing in number and represent a growth area for investment consultants. We will therefore need to consider how the different types of pension schemes use investment consultancy services and fiduciary management services.

---

<sup>21</sup> Section 3 of the Pensions Act 2008 introduces an obligation on employers to automatically enrol jobholders aged between 22 and state pension age to whom earnings of more than £10,000 are payable by the employer in the relevant pay reference period into a scheme that fulfils the criteria for an 'automatic enrolment scheme'.

<sup>22</sup> For example, the Pension Schemes Act 2015 set out a new legislative framework for private pensions, which amongst other reforms, will introduce 'shared risk' pension schemes (known as 'defined ambition' schemes), in addition to the two current main types of DB and DC schemes. These provisions will be brought into force by regulations at a date to be appointed.

<sup>23</sup> FCA Asset Management Interim Report, Executive Summary, paragraph 1.2.

<sup>24</sup> Section 36(3) of the Pensions Act 1995.

<sup>25</sup> Section 36(6) of the Pensions Act 1995 states that 'proper advice' means advice from someone authorised under the Financial Services and Markets Act 2000 (FSMA), or the advice of a person who is reasonably believed by the trustees to be qualified by their 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.

33. The scale of assets affected by the advice provided by investment consultants is very large – the FCA estimated that the 12 largest investment consultants potentially affect £1.6 trillion of assets through their advice and control assets of approximately £58 billion under fiduciary management (a smaller but growing area).<sup>26</sup> Therefore, investment consultants, although a relatively small sector in themselves (around £240 million was spent on investment consultancy services in 2015),<sup>27</sup> potentially have a significant role within the wider institutional investment and asset management industry.

### ***Key characteristics***

34. There are certain key characteristics of investment consultants, which we will consider in assessing the nature of competition, formulating hypotheses, identifying potential AECs and considering potential remedies to any AECs that we may find. We set out our understanding of these characteristics below, which have informed the development of our key hypotheses. We welcome observations on: the importance of these characteristics; how we should approach them in the context of our investigation; and whether there are others we should consider.

- (a) Lack of clarity and precise definition of investment consultancy services and fiduciary management services and potential overlap in the types of services offered. This may be due in part to the fact that some aspects of investment consultancy services and fiduciary management services are not regulated by the FCA. This may complicate the assessment of competition in the markets referred. This is something to which we will give further consideration and we would welcome views on this issue.
- (b) Difference in size and type of pension funds including: a large number of small pension funds, many with under £50 million of assets; and a small number of large DB and DC pension funds, some with over £5 billion of assets. There is also a wide range of different types of pension funds. We will take these differences into account in our investigation, including in the scoping of important pieces of analysis such as the survey we propose to conduct (see paragraph 53). We would welcome views on how we should do this.
- (c) Importance of the role of trustees: pension trustees have a critical role as it is their responsibility to ensure that the pension scheme is run properly and that members' benefits are secure. They have extensive

---

<sup>26</sup> FCA Asset Management Interim Report, paragraph 8.2 and 8.23

<sup>27</sup> [FCA Reference Decision](#), paragraph 4.10

responsibilities, duties and powers in relation to pension schemes and the investment of schemes' assets. They are the key conduit for acquiring and monitoring the services of investment consultants. Crucially, trustees vary substantially in terms of their background, experience and skills and it will therefore be important for us to engage with a range of trustees to understand the issues they face. Our proposed survey of trustees will be a key tool for achieving this aim.

- (d) Challenges in assessing pension scheme performance: the decisions that trustees have to make typically concern large investments over long time periods, but there are significant differences between schemes, not just in terms of size but in terms of the profile of their liabilities and their risk appetite, all of which complicates any attempt to compare the performance of different schemes. There is an additional challenge in assessing the specific contribution of investment advice on fund performance, given the range of other factors that are likely to have an impact on this performance (see paragraph 38). We would welcome views on how we should approach these challenges in our investigation.
- (e) Extensive regulations and legislation surrounding pensions: this adds to the complexity of pensions and could affect the market in a number of ways. It will be important for us to fully understand relevant legal and regulatory provisions in place. We would welcome views on whether any legislative or regulatory provisions have an impact on competition in connection with the supply or acquisition of investment consultancy services or fiduciary management services in the UK.

35. These sector characteristics will be important factors in our assessment of whether an AEC exists, as well as in any consideration of potential remedies to any AECs that we may find. The benchmark against which we will assess an AEC is that of a 'well-functioning' market – that is, one that works well for customers. This benchmark is not based on an idealised or theoretical notion of a perfectly competitive market, but will reflect a realistic assessment of likely outcomes in the absence of any features giving rise to AECs that we identify.<sup>28</sup>

### **Market outcomes**

36. As noted above, a key focus of our investigation will be to consider market outcomes, both as context for our assessment of potential competition

---

<sup>28</sup> [Guidelines for market investigations: Their role, procedures, assessment and remedies](#) (CC3 revised), paragraph 30.

problems in the sector and as a potential source of evidence of the scale of the detriment arising from any competition problems we may identify.

37. First, we intend to provide some broad context on overall pension industry outcomes and how pension schemes are performing.
38. Second, we will assess in more detail the outcomes from investment consultants, in terms of whether they are providing value for money – both in relation to the quality of their services and their fees. In relation to the quality of their services we propose to explore the following areas:
  - (a) Whether investment consultants are providing high-quality asset manager recommendations:

The FCA found that on average investment consultants are not able to identify managers that offer better returns to investors.<sup>29</sup> It conducted relatively comprehensive quantitative analysis in this area, which we intend to examine in detail. We are considering whether to extend this analysis, for example by updating it to include 2016/2017 data and including ‘negative’ recommendations<sup>30</sup> and we welcome views on whether this is necessary and likely to be informative. We may also seek to examine the selection methodologies of investment consultants to determine how they formulate their recommendations and the factors they take into account.

- (b) The extent to which investment consultants are driving competition between asset managers:

The FCA found that investment consultants do not appear to drive significant price competition between asset managers. The extent to which investment consultants drive competition between asset managers on fees and performance is an important area for us to consider further and we will explore what further analysis we could undertake in this area. For example, we may wish to consider fee discounts secured by investment consultants, whether consultants filter out poor value for money products such as ‘closet trackers’<sup>31</sup> and whether the weighting of consultants’ recommendations incentivises managers to reduce fees and improve fund performance. In assessing how effectively investment consultants are driving competition between asset managers, we will also

---

<sup>29</sup> FCA Asset Management Final report paragraph 10.1

<sup>30</sup> Funds/products that have been given a ‘sell’ or ‘not to buy’ rating (or equivalent) by investment consultants.

<sup>31</sup> Closet trackers are products that closely follow the market but charge ‘active’ fund prices. See FCA Asset Management Final Report, p40.

take into account the overall outcomes from asset management, drawing largely from the FCA's work.

- (c) Whether investment consultants are providing high-quality asset allocation advice:

This is potentially an important area for us to consider further, although we note that this is likely to be a particularly challenging area in which to undertake quantitative analysis. For example, we recognise that investment consultants' advice may only be sought for a certain portion of assets, that their advice may not always be followed and that there are potentially many other factors that can influence pension scheme outcomes (eg, mortality, employer contributions, macro-economic performance). Therefore, we will also consider whether there is further qualitative work we can undertake, for example in assessing: the extent of variation in allocation advice; how this varies between schemes/investment consultants and over time; how 'bespoke' this advice is; and whether there are examples of advice leading to good or poor outcomes. We therefore welcome views on the feasibility and methodology for undertaking quantitative and/or qualitative work in this area.

- (d) Whether investment consultants are providing high-quality fiduciary management services:

It may be more feasible to conduct a quantitative assessment of the quality of fiduciary management services provided by investment consultants, because they have delegated responsibility for asset allocation and/or potentially control over all, or some, of the assets in terms of selecting fund managers. This means that it may be easier to assess the direct impact of fiduciary management services on outcomes than it is to assess the impact of investment consultants' advice.

- (e) Whether investment consultants are providing a high quality of service in other ways:

Beyond the 'hard' quality factors described above, we will also examine other aspects of the investment consultants' quality of service, including for example their responsiveness, the clarity of advice given and the extent to which the advice given meets specific client requirements. We welcome views on these other quality of service aspects, which are the most important, how significant these are overall, whether we should investigate these further, and whether there are any other quality of service factors.

39. In relation to considering investment consultants' fees, we will examine how fees are structured, trends in fees and any differences, for example between investment consultants and type of pension scheme. While it is generally difficult to examine if prices are 'too high', a proxy for this is to assess the profits that consultants are making and whether these are 'excessive' – the existence of which may indicate that there is scope for lower fees to customers. We will therefore be looking at the feasibility of undertaking a profitability exercise through estimating a return on capital employed and benchmarking this against estimates of a weighted average cost of capital. We note there may be some challenges in undertaking this analysis in this industry – for example there may be large common costs between investment consulting and other parts of their business. We will therefore consider other proxy measures and analysis we could undertake, for example by calculating margins (trends over time and potentially by different categories of service) and analysing trends in revenues, costs and operating profit.
40. We would welcome views on the potential ways we propose to assess market outcomes – both high-level industry wide outcomes and outcomes relating to investment consultants – and whether there are other types of analysis that may be informative and feasible.

#### **Hypotheses for investigation (theories of harm)**

41. To provide structure to our assessment of whether there are any competition issues leading to AECs, we set out below three high-level hypotheses for investigation (also known as our 'theories of harm'). These do not imply any prejudgement of an AEC; they are solely potential hypotheses to be tested. Our investigation is at a very early stage, and the purpose of identifying these hypotheses is to present some early thinking on these issues for comment and to help frame our investigation. These hypotheses are not necessarily mutually exclusive, indeed some are closely related and connected to each other. Equally they may not be comprehensive – there may be other issues that we choose to consider further in the course of the investigation as our understanding of the market develops. Similarly, we may find as our investigation progresses that some, or all, of these hypotheses do not hold.
42. There are many dimensions to the supply and acquisition of investment consultancy services and fiduciary management services, and we therefore need to target our effort on those areas where an inquiry of this nature is likely to add most value and have the most positive impact on customers and ultimately consumers. We would therefore welcome comments on whether the hypotheses identified and the areas/lines of analysis within each of these,

are likely to add the most value and whether other areas of analysis would be appropriate.

43. The hypotheses we have identified at this early stage can be grouped into the following three categories:
- Difficulties in customers' ability to effectively assess, compare and switch investment consultants result in weak incentives for investment consultants to compete for customers (**Demand side and information issues**).
  - Conflicts of interest on the part of investment consultants reduce the quality and/or value for money of services provided to customers (**Conflicts of interest**).
  - Barriers to entry and expansion reduce competitive pressure on investment consultants, which leads to worse outcomes for customers (**Barriers to entry and expansion**).
44. These hypotheses encompass the issues identified as part of the FCA's work on investment consultants within their Asset Management Market Study and reflect our initial thinking, but as the investigation progresses further issues may be identified and explored. In the following sections, we highlight different potential issues to explore within each hypothesis. We note that there are strong connections between the three hypotheses. For example, as we emphasise below, difficulties that customers experience in assessing, comparing and switching may also act as a barrier to entry and expansion.

#### ***A. Demand side and information issues***

45. The FCA's market study and other previous reviews into the sector have highlighted various difficulties that institutional investors experience in shopping around for, assessing and comparing different services and providers. The FCA's market study found that tendering and switching rates appeared to be low, and that customers – particularly pension trustees – find it difficult to monitor, challenge and assess the quality of consultants' advice. It also heard there were potentially greater demand-side concerns relating to fiduciary management services. These issues appear to be broadly recognised by the industry – the FCA noted that 'the majority of respondents supported the need for improvements in information on investment advice given to clients'.<sup>32</sup> The FCA also found that the monitoring of advice given to

---

<sup>32</sup> FCA Asset Management Final Report, paragraph 10.32.

employers regarding DC schemes once they are set up is less frequent than DB schemes.<sup>33</sup>

46. As set out in the CMA's guidelines for market investigations,<sup>34</sup> to drive effective competition, customers need to be both willing and able to access information about offers available in the market, to assess these offers to identify the product that provides the best value for them, and to act on this assessment by switching to their preferred supplier or product. If customers (the demand side) are not able to effectively shop around, choose and switch products and suppliers, competition will be weak, which is likely to lead to worse outcomes for customers. Suppliers (the supply side) may also create and/or enhance the difficulties customers have in shopping around, choosing and switching products or suppliers.
47. In assessing the extent of demand-side issues in the context of this investigation, we will consider what impediments there are to customers (in this case institutional investors and employers) accessing information ('access'), identifying best value for money ('assess') and switching services and suppliers ('act'). We will consider various issues within this hypothesis, including for example those that we set out below.

#### *Customer characteristics*

48. As background, we will be seeking, first, to understand more about the customers of investment consultants. As noted above, we understand that the majority of customers are pension trustees but investment consultants also provide advice to employers both in relation to investment and the design and implementation of pension schemes. We will be seeking further information from a wide base of investment consultants to understand who their customers are and any changes over time.
49. We will, in particular, seek to understand the characteristics of pension trustees. For example, we will gather information on the different types of schemes (by size of assets and numbers of members) and on the different types of trustees, including their experience/training and their use of investment consultants. It is possible that there are significant differences between smaller and larger pension schemes, as smaller schemes may, for example, have less resources/capabilities at their disposal and therefore be more reliant on advice. This analysis of customer characteristics will inform our understanding of the demand side and the potential issues set out below.

---

<sup>33</sup> FCA Asset Management Interim Report, paragraphs 8.141–8.145.

<sup>34</sup> [CC3 revised](#), paragraph 296.

## *Trustee/employer engagement*

50. We want to understand whether investment consultants are put under sufficient competitive pressure by trustees shopping around, switching, monitoring and challenging their advice or services (including fees). We want to understand more about when and why trustees obtain investment consultancy services and fiduciary management services, exploring for example what trustees consider to be the benefit of these services to them and to scheme members. We will consider the extent (if any) to which the legal duties and related regulations to which trustees are subject have any impact on competition between investment consultants.
51. We will also seek to understand the alternatives to using investment consultants, for example by looking at trustees/schemes that do not receive advice from investment consultants and instead, for example, use in-house expertise. In such cases, we will examine why they take this approach and whether this increases the competitive constraint on investment consultants.
52. We will also seek to understand the role of employers, who are represented on the pension fund board, and the extent to which they also receive advice from investment consultants<sup>35</sup> and whether this increases competitive constraints on investment consultants. In addition, we will seek to understand how and when employers receive advice on the design and implementation of pension schemes. We will seek to understand whether there are issues regarding how employers engage with investment consultants and whether they are incentivised and/or able to monitor and challenge advice in this area. We welcome views on this area and the extent to which we need to explore it further.
53. We will examine how trustees purchase, select and monitor investment consultancy services and fiduciary management services. This will include undertaking analysis to assess the levels and frequency of tendering and switching. Frequent tendering and switching could provide an indication that some competitive pressure is being exerted on investment consultants and we would also consider whether the threat of switching is exerting competition pressure. In addition, we will seek to understand the nature of trustees' tendering/purchasing behaviour, including, for example, how tenders are run, how bids received are assessed and how winners are selected. It is also important to assess to what extent the fees and/or advice is monitored and scrutinised once an investment consultant is in place. We are proposing to

---

<sup>35</sup> We understand that in some cases employers will also seek similar advice on pension funds, in addition to trustees.

undertake a survey of trustees to inform this area of analysis and gather information from investment consultants.

54. Understanding the nature of trustee/employer engagement will inform our analysis into what factors may be influencing or preventing their ability and/or incentive to challenge investment consultants.

*Clarity and comparability of information on investment consultants' fees and performance*

55. Trustees and employers may not have sufficiently clear and comparable information to be able to accurately and effectively assess and compare investment consultants' fees and/or the quality of their service.<sup>36</sup> This could constrain their ability to assess and monitor investment consultants' value for money, in turn reducing incentives for investment consultants to compete aggressively on price and/or quality. In some industries examining quality issues might be perceived as less important than pricing. However, in this industry, although investment consultant fees are important, poor advice and low quality of service, including through its impact on asset management fees, could have a more substantial impact on pension returns.
56. To assess this potential issue, we will collect and review the materials provided by investment consultants, such as tender documents, marketing materials and performance reports, to look at how fees and performance are communicated, whether this information is clear and comprehensive, and how comparable it is to that provided by other investment consultants. This information would include both investment consultants' fees and, within the broad category of 'quality of service': any fee discounts from asset managers; the impact of their recommendations and strategic advice; and 'soft' quality factors. We also plan to undertake a more systematic quantitative review of the accuracy of the information presented. Alongside this we will also look at comparing whether trustees' understanding of their advisers' fees and performance is comparable with the actual fees charged and performance. This may be difficult to analyse in detail, although we may undertake some comparisons on an aggregate basis. We also note that this work may help inform the design of any potential remedies to any AECs that we may find in this area. We would welcome views on this analysis.

---

<sup>36</sup> This is a point given particular emphasis by the FCA. See, for example, paragraphs 3.12–3.18 of the FCA's Reference Decision.

### *Barriers to switching and tendering*

57. Even if trustees can access and understand information about their investment consultancy services and fiduciary management services they may not be able to act on this by looking for alternative suppliers through tendering and switching. There may be a number of barriers that prevent trustees from doing so. For example, it may be difficult and costly to tender or there may be high switching costs, such as the time taken to switch or the risk of losing the knowledge the investment consultant has about the pension scheme. Some pension schemes may build up a relationship with an individual investment consultant and this may also deter switching.<sup>37</sup>

### *Trustee/employer capabilities and incentives*

58. The strength of the competitive constraint trustees impose on investment consultants may be influenced by the ability, experience, knowledge and resources of trustees. These factors may contribute to trustees/employers being unwilling or unable to monitor and challenge advice, for example. There is a range of different types of trustees, from corporate trustees, professional paid trustees to unpaid individuals, some of whom have limited expertise/experience in pensions. The type and size of scheme may also influence the nature and extent of these issues. These issues are also linked to those set out above in relation to the clarity and comparability of information – as this may exacerbate any concerns we identify.
59. Some trustees may also have weak incentives to scrutinise advice from investment consultants in order to maximise value for money for scheme members, since they are potentially focused instead on ensuring compliance with regulatory and legal requirements and/or minimising risk. Some trustees are also pension scheme members themselves and therefore potentially have stronger incentives. As noted above, there may be weaker incentives on employers to scrutinise and obtain value for money from investment consultants on behalf of their employees, in relation to the design and implementation of pension schemes.

---

<sup>37</sup> We note that building a relationship with an investment consultant can provide benefits to trustees, as well as having a potentially detrimental impact on switching and therefore on competition. Were we to consider potential remedies in this area, we would therefore need to consider the potential benefits as well as the costs of such long-term relationships.

## *Complexity*

60. The FCA heard concerns that investment consultants may be incentivised to recommend unnecessarily complex investment strategies to clients, because investment consultants may be able to charge trustees more for developing and/or implementing complex investment strategies, (for example as they require more time running manager selection exercises, researching performance or monitoring products) and it is difficult for clients to determine whether this is necessary and represents value for money.<sup>38</sup> However, we note that 'complexity' in and of itself may not lead to poorer outcomes for investors. The concern is therefore whether investment consultants are recommending overly complex strategies that are not ultimately of benefit or necessary for investors.
61. This issue raises a number of challenges, including: defining what a complex strategy might be (for example whether this relates to the number of asset classes, fund managers, frequency of fund changes, use of complex investment products including the use of derivatives); assessing whether this is 'inappropriately' complex; and determining to what extent this excessive complexity increases investment consultants' fees. We would welcome views on the feasibility and value of additional work in this area. We note that this issue is also connected to other potential demand-side issues, including in particular the clarity and comparability of fees and trustee engagement.

## *Impact of demand-side issues on market outcomes*

62. The demand-side issues identified above may have a negative effect on outcomes. We will therefore consider whether there is any evidence that indicates that, as a result of these demand-side issues, customers are paying higher prices or receiving a lower quality of service than would otherwise be the case. Analysis may be challenging in this area, particularly in relation to the impact on quality, given the difficulties quantifying aspects of quality. However, there may be some analysis we can undertake, particularly on potential fee savings. We would welcome views on the value and feasibility of different types of analysis in this area, for example assessing whether those pension schemes that appear to be able to challenge investment consultants more effectively achieve better outcomes.

---

<sup>38</sup> FCA Asset Management Interim Report, p158.

## **B. Conflicts of interest**

63. Under this hypothesis, investment consultants have conflicts of interest, which means that their incentives are not fully aligned with those of the investors they advise, in turn compromising the quality and/or value for money of their advice and the services they provide. The FCA expressed some concerns about the existence of potential conflicts of interest and how effectively these were being managed by investment consultants. It noted that although there are inherent conflicts in the investment consulting business, it is necessary to manage these properly in order to prevent them from distorting competition and disadvantaging investors.<sup>39</sup> We note that these potential conflicts may be aggravated by some of the demand-side issues highlighted in hypothesis A.
64. Based on the FCA's concerns, we intend to explore the following different potential conflicts of interest:
- (a) Incentives to steer clients into the investment consultants' own in-house products/services, in particular, **moving clients into fiduciary management and/or their own master trust offering.**
  - (b) **Outside business relationships** with asset managers affecting the independence of investment consultants' advice.
  - (c) Receipt of **gifts and hospitality** affecting the independence of investment consultants' advice.
65. In addition to these potential conflicts identified by the FCA, we also understand that some investment consultants offer investment advice to both sponsoring employers and trustees of the same pension scheme (as noted above in paragraph 20) and that this may raise conflicts of interest in relation to the independence of the advice given to each. We also understand that some investment consultants have introduced a 'pay to play'<sup>40</sup> model which could also raise some conflicts of interest if it reduces or distorts the choice for investors and may also result in less transparent costs and fees (if the investment consultancy costs are indirectly incorporated into asset manager fees). We would welcome views on these conflicts or any other potential conflicts. We set out some further detail relating to the four key potential conflicts identified above.

---

<sup>39</sup> FCA Asset Management Final Report, paragraph 10.16.

<sup>40</sup> A 'pay to play model' is one in which the users of an intermediary's services do not pay for the service, but instead the intermediary charges providers. In the context of asset management and the supply of investment consultancy services, see paragraphs 8.78–8.80 of the FCA's Asset Management Interim Report.

*Moving clients into in-house products (eg fiduciary management/master trusts)*

66. The FCA heard persistent concerns that once investment consultants developed their own product offerings, they only recommended their in-house products/services.<sup>41</sup> The most common concern was where consultants develop a fiduciary management proposition. The FCA also raised concerns that where investment consultants<sup>42</sup> have an in-house master trust offering, there is a risk that clients may be advised to opt for this in-house offering even if there are better products available. This potential conflict may raise greater concerns given that employers are likely to have weaker incentives to monitor and challenge their advice (see paragraph 59). In addition, since, for these types of pension, there is no guaranteed retirement outcome for pensioners, any competition problems that we find are likely to have a more direct harmful impact on individual pensioners.
67. We note that it is natural for any firm to want to gain additional business, potentially through 'upselling' additional services to existing customers and this may be of benefit to customers. However, concerns arise if investment consultants recommend that their clients use the investment consultants' in-house products even though there are better products elsewhere. Such concerns are likely to be particularly acute where the customers are not aware that the advice they are given may not reflect the whole market, or where they do not have sufficient information to assess value for money.
68. We will look at the extent to which trustees/employers scrutinise and tender for these services and/or products. We will also review internal documents and client reports to consider whether consultants are actively pushing their fiduciary management or other in-house products and whether there are incentives for them to do so. Alongside this we will assess fees and revenues per client and whether some clients achieve lower fees than others. We may also look for patterns in whether investment consultants recommend fiduciary management/master trusts and in the types of schemes that have moved into these services and/or products. Finally, we will consider the extent of any efficiency benefits to investors from integrating investment consultancy and fiduciary management services.

---

<sup>41</sup> See FCA provisional decision to make a reference, paragraphs 3.19–3.25, which the FCA refers to as a vertically integrated business model.

<sup>42</sup> We refer to consultants here for ease, however by this we mean providers of advisory services on pension schemes to employers.

69. We will also consider whether, since both fiduciary management and master trusts are relatively new services/product offerings, there are fewer or no internal controls in place to manage these potential conflicts.
70. We also note that there is an existing price cap in place for master trusts which was put in place to protect auto-enrolled savers from high charges.<sup>43</sup> We may give further consideration to the pricing of master trusts, if there are concerns in relation to this potential conflict.
71. We welcome views on the types of analysis we could undertake in this area. In particular we wish to understand the strength of any potential concern in relation to master trusts given that this was not the FCA's key area of focus and the extent to which further detailed analysis is required.

### *Outside business relationships*

72. The FCA found that the corporate groups to which investment consultants belong also generate substantial revenues from the asset management firms that these investment consultants are evaluating on behalf of pension trustees.<sup>44</sup> Asset managers<sup>45</sup> regularly purchase services from investment consultants such as the organising and hosting of investment conferences, data and consulting services and direct investment advisory services, and therefore asset managers (as clients of investment consultants) can generate significant revenues for investment consultants.<sup>46</sup> It undertook some quantitative analysis to determine whether there is a link between revenues received from asset managers and the likelihood of providing a high rating, and it found there was a significant positive association. However, it had uncertainties about the reliability of the data set and the extent to which other factors may explain the association.<sup>47</sup>
73. We will consider the FCA's analysis and identify in which parts of the investment consultants' business these outside revenues are generated and from which asset manager groups they come. We will also analyse the extent to which there are existing mechanisms in place that seek to address any issues, for example whether there are any internal controls such as written

---

<sup>43</sup> The Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879) set out a range of measures aimed at controlling the level and range of charges in pension schemes which are used by employers to meet their automatic enrolment duties. These include capping charges in the default arrangements within these schemes (broadly speaking, arrangements into which members are contributing without making an active choice or which have a minimum percentage of workers contributing) at 0.75% annually of funds under management, or an equivalent combination charge from April 2015.

<sup>44</sup> FCA Asset Management Interim Report, p156.

<sup>45</sup> Including corporate groups containing asset managers and their pension schemes.

<sup>46</sup> FCA Asset Management Interim Report, paragraphs 8.93&8.94.

<sup>47</sup> FCA Asset Management Final Report, p58.

protocols for Chinese walls. It may be informative to identify any differences between investment consultants. If we consider there are sufficient potential concerns in this area, we may consider undertaking more detailed statistical analysis, building on the FCA's work.

### *Gifts and hospitality*

74. The FCA found that there is a strong culture of gifts and hospitality in the investment consultancy sector, which could influence the ratings given to asset managers, and that, while they typically have policies in place to manage such conflicts the details of these can vary from firm to firm.<sup>48</sup> It undertook some quantitative analysis on whether there is a link between asset managers providing gifts and hospitality to investment consultants and the likelihood of the asset managers' products being highly rated, and found a significant positive association (however given among other matters uncertainties about the data set as noted above, it could not conclude that ratings were influenced by gifts and/or hospitality or revenues received).<sup>49</sup>
75. We will examine the FCA's analysis and consider if there is any scope for, and value in, extending or carrying out additional statistical analysis in this area. Subject to this examination, we may also carry out some further high-level qualitative analysis, which would involve identifying and assessing the effectiveness of existing internal policies or controls, and whether this varies across different types/size of consultants. We welcome views on the need for, and appropriate form of, further quantitative and qualitative work in this area.

### **C. Barriers to entry and expansion**

76. Entry or expansion by firms will often stimulate competition and the prospect of such entry or expansion within a short timescale may be a countervailing factor against a finding of market power and an AEC. Entry and expansion can upset established patterns of market conduct by incumbents, promote efficiency and lead to product innovation as well as reduced prices and greater choice and quality for customers. Barriers to entry and expansion can be any features of the market that prevent potential suppliers entering or smaller existing suppliers expanding.<sup>50</sup>
77. The FCA considered barriers to entry and expansion and found that barriers to entry did not look high, but that expanding in the market is more

---

<sup>48</sup> FCA Asset Management Interim Report, paragraph 8.85.

<sup>49</sup> FCA Asset Management Final Report, paragraph 10.16.

<sup>50</sup> See, for example, [CC3 revised](#), paragraphs 205–207.

challenging for smaller firms.<sup>51</sup> We will explore and test this potential issue in more detail.

78. Potential demand-side issues such as limited switching/tendering and difficulties comparing fees and performance (as set out in hypothesis A), may also be a significant barrier to entry and expansion and these issues will be considered as part of our assessment of hypothesis A. Here we focus on additional potential barriers to entry and/or expansion.
79. As background, we will seek to understand the number, size and characteristics of existing suppliers in the market. The FCA undertook some broad analysis on the levels of concentration in the market and changes in market shares over time, and we will seek to analyse this in further detail. We will also look to understand the types of suppliers who have entered, how they have done so and the extent to which they have been able to expand, and any factors that may have prevented them from doing so. For example, we understand that there is a number of smaller and medium sized firms, some of whom specialise for example in particular services, size of assets/type investor or type of asset class. It will be important to understand more about these 'niche' suppliers.
80. We plan to look at a range of potential barriers to entry, including the initial costs of setting up an investment consultancy (which we can analyse quantitatively) such as the cost of research/data on funds, customer acquisition costs and exit costs. We will also consider whether there are any barriers to expansion. For example, we will consider whether there are expansion costs, regulatory barriers, brand/recognition factors, advantages from offering a wider range of services (eg, a 'one stop shop') and/or whether the larger existing investment consultants have other advantages which smaller suppliers cannot replicate.

## **Remedies**

### ***The CMA's approach to remedies***

81. As noted in the introduction, alongside considering initial hypotheses relating to competition issues that might exist, we will also explore what potential remedies may be suitable to address any AECs that we may find. We are at a very early stage in thinking about potential remedies and we should emphasise that any discussion in the next sections on potential remedies and issues is purely hypothetical at this point. As our understanding of the market

---

<sup>51</sup> FCA Asset Management Interim Report, pp8&9.

and the potential issues within it develops, we expect our consideration of potential remedies to develop also. To help inform our initial thinking, we nonetheless welcome views from parties on potential remedies at this very early stage. Were we to provisionally find that there is one or more AECs, then our provisional decision on any remedies would be contained in our Provisional Decision Report, at which point parties would have a further opportunity to comment. Our final decision on any remedies would be contained in our Final Report.

82. When deciding whether (and if so what) remedial action should be taken to address an AEC, the CMA is required by the Act 'in particular to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable'.<sup>52</sup> In doing so, the CMA will consider: (a) how comprehensively the potential remedy options – individually or as a package<sup>53</sup> – address the AEC and/or the resulting detrimental effects on customers; and (b) whether they are effective and proportionate.<sup>54</sup>
83. The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including whether they are practicable and, among other considerations, the timescale over which they are likely to have effect.<sup>55</sup> The CMA generally looks to implement remedies that prevent an AEC by addressing its underlying causes, or by introducing measures that can be put in place for the duration of the AEC. The CMA will tend to favour remedies that can be expected to show results within a relatively short period of time. In line with our revised guidelines,<sup>56</sup> the CMA would also consider whether or not to limit the duration of individual remedies by including sunset provisions in their design. This approach might be appropriate if, for example, the relevant competitive dynamics of a market are likely to change materially over the next few years or the measure in question is intended to have a transitional impact, while other longer term measures take effect.<sup>57</sup>
84. The CMA is guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about which (if any) remedies to impose (should an AEC be found). The CMA would therefore assess the extent to which different remedy options are proportionate, and in particular it would be guided by whether a remedy option:

---

<sup>52</sup> Sections 134(6) and 138 of the Act.

<sup>53</sup> [CC3 revised](#), paragraph 328.

<sup>54</sup> [CC3 revised](#), paragraph 329.

<sup>55</sup> [CC3 revised](#), paragraphs 334 and 337.

<sup>56</sup> [CMA3](#), paragraphs 4.18–4.21 and 4.25.

<sup>57</sup> [CMA3](#), paragraph 4.20.

- (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.<sup>58</sup>

85. The CMA may also have regard to the effect of any remedial action on any relevant customer benefits (RCBs) of a feature or features of the market(s) (for example, benefits in the form of lower prices, higher quality or greater choice).<sup>59</sup>
86. In the event that the CMA finds that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare but might include situations in which no practicable remedy is available, where the cost of each practicable remedy option is disproportionate to the extent that the remedy option resolves the AEC, or where RCBs accruing from the market features are large in relation to the AEC and would be lost as a consequence of any practicable remedy.<sup>60</sup>

### **Potential remedies on which views are sought**

87. In this section, we describe some initial potential remedy options to address any AECs that we may find. We describe each of these potential remedy options in turn, describing how they might work in practice. We invite views on specific issues that we raise in this section as well as any other issues that interested parties would like to put to us. The list of potential remedies discussed below is by no means exhaustive and we invite suggestions from parties in relation to any remedies not identified below that they believe we should consider. As noted above, our consideration of these initial remedy options is purely hypothetical at this stage. It will be progressed as applicable in light of our emerging thinking on any potential AECs as our investigation progresses.
88. We note that Aon Hewitt, Mercer and Willis Towers Watson, the three largest investment consultants, representing approximately 60% of the market,

---

<sup>58</sup> [CC3 revised](#), paragraph 344.

<sup>59</sup> Section 134(7) and (8) of the Act.

<sup>60</sup> [CC3 revised](#), paragraph 354.

offered UIL designed to address the concerns set out by the FCA in its provisional decision to make a market investigation reference.

89. The UIL offered by the three parties related to the following areas:
- (a) changes to the tender regime for both consultancy services and fiduciary management services;
  - (b) public disclosure of performance in relation to manager selection and fiduciary management services;
  - (c) industry standards on disclosure of fees and other costs;
  - (d) conflicts of interest;
  - (e) improvements to the redress mechanism for complaints; and
  - (f) adherence of investment consultants to a strict code of conduct.
90. Following consultation, the FCA decided to reject the UIL package and make a market investigation reference to the CMA. When considering what potential remedies may be needed to address any competition concerns that we may find in this market, we have taken into account the UIL offered by the parties.
91. At this early stage, we are proposing to consider a wide range of potential remedies and we will consider other potential remedies if parties are able to provide relevant evidence and reasoning as to why these would be comprehensive, effective and proportionate.
92. Following the proposed three high-level hypotheses for investigation set out in paragraphs 41 to 80 above, we have broadly grouped the potential remedies into three categories: demand-side and informational remedies; remedies addressing potential conflicts of interest; and remedies addressing potential barriers to entry and expansion. Each category is further split into sub-categories addressed in the paragraphs below.
93. We have presented the potential remedies in this way for ease of exposition: the order does not represent any initial prioritisation or ranking of the potential remedies. Further, it should be noted that several of the potential remedies may address issues across the three categories. For example, mandatory tendering could be relevant to both demand-side issues and barriers to entry.
94. We invite responses to the following questions for each of the potential remedies set out below:

- (a) Would the potential remedy be effective and proportionate in remedying any AECs that we may find in relation to investment consultancy services and/or fiduciary management services?
- (b) Would the potential remedy give rise to any unintended consequences or distortions?
- (c) Are there other potential remedies that would be as effective and proportionate in remedying any AECs that we may find that would be less costly or intrusive?
- (d) What are the relevant costs and benefits that we should take into account in considering the proportionality of the potential remedy? How could we quantify these?
- (e) What provisions would need to be put in place for the monitoring and enforcement of the potential remedy and which body should be responsible for monitoring?
- (f) Should the potential remedy be time limited? If so, for how long should it apply? What type of changes in the market would warrant the variation or removal of the remedy?
- (g) Should the potential remedy apply only to pension funds and/or investment consultants of a certain size? If so, what should that threshold be?

95. We also invite views on the most appropriate means of implementing potential remedies to address any AECs that we may find.

#### ***A. Demand side and informational remedies***

96. We set out below potential remedies to address any AECs that we may find in relation to a weak demand side, and/or the customer detriment that these AECs may give rise to. We grouped these remedies into three categories corresponding to the different potential hypotheses within demand-side and informational issues.

#### ***Insufficient information is available to trustees and employers to compare investment consultants' fees and quality***

97. A particular concern expressed by the FCA is that trustees are insufficiently able to assess the quality of the advice that investment consultants give them or the fees that they are charging, with the result that the value for money

offered by investment consultants may be undermined. The FCA's final decision report stated:

Most respondents to our interim report agreed that providing comparable data on the performance of investment consultants' advice would benefit trustees and the sector as a whole," although "Some thought that this might be difficult to achieve, especially in relation to asset allocation.<sup>61</sup>

98. We therefore consider that potential remedies to improve transparency over fees and performance are likely to be a particularly important focus of our thinking on remedies at this stage. In broad terms, this potential set of remedies would involve developing an industry standard template for the reporting of fees and performance, which would make performance, fees and hence value-for-money, more transparent and comparable across different consultants, increasing competitive pressures on fees and quality of service. The potential remedies identified below could work alone or in combination, to achieve this outcome.

*Require investment consultants to provide clear, consistent information to trustees in relation to all fees*

99. This potential remedy would involve developing an industry standard for disclosure of all quoted or estimated fees, whereby all firms commit to provide clients with detailed fee information before they are appointed, when new contracts are signed and as part of any subsequent re-tendering process. This could include for example greater transparency in relation to 'pay to play' fees. The rationale for this potential remedy would be to allow trustees to make better informed decisions about the appointment of consultants in relation to the fees they are charging, and thereby increase competitive pressure on investment consultants' fees.

*Require consistent reporting of fees charged compared to those quoted or estimated*

100. This potential remedy would involve developing an industry standard on disclosure of all fees charged and comparison with those quoted for incumbent clients. This could involve comparing fees charged directly to fees quoted (eg at outset of a contract or during the competitive tender process) to

---

<sup>61</sup> FCA Reference Decision, paragraph 3.14.

help ensure that initial bids are binding and that competitive pressures on fees are sustained over the longer term.

*Require investment consultants to report all fees to an independent benchmarking service to allow pension schemes and employers to compare their fees to the market*

101. This potential remedy would involve the development of an industry standard for disclosure of all fees and costs incurred throughout a contract's lifecycle and could also include establishing an independent benchmarking platform which would collate and publish this data on a regular basis, thus allowing pension schemes and trustees to compare investment consultants' fees against other firms.

*Require investment consultants, when providing advice, to be clearer on the impact of a particular course of action on their own fees*

102. This potential remedy would involve developing an industry standard that would oblige investment consultants to disclose the impact of a particular course of action on the fees that their clients would have to pay, following that course of action. Investment consultants would have to explain investment strategies, pricing models, etc to trustees prior to making the investments and ensure that trustees have fully understood the course of action and the impact on their investment prior to proceeding with an investment.

*Ban certain investment consultant pricing practices*

103. This potential remedy would involve banning certain pricing models<sup>62</sup> and mechanisms if they were misleading to trustees or likely to lead to perverse incentives. This may either be required to deal with concerns under hypothesis A (demand-side and informational issues) or hypothesis C (conflicts of interest).

*Require investment consultants to report on pension fund returns against agreed benchmarks*

104. This potential remedy would involve developing an industry standard benchmark for relative returns. This could include requiring investment consultants to report on the relative performance of the fund against this benchmark, to increase industry transparency as well as help trustees better

---

<sup>62</sup> For example, such pricing models could include 'pay to play' fees, ad valorem fees and/or complex pricing models.

assess the quality of the advice that they receive from investment consultants. A particular challenge, as noted by the FCA, would be how to establish a link, in such reporting, between the performance of the fund in question and the asset allocation advice provided by the investment consultant. We would welcome the views of parties on this question.

*Require investment consultants to report the fees of asset managers selected and give details on the extent to which they have reduced fees for the trustees*

105. This potential remedy would involve developing an industry standard for disclosure of asset managers' fees and require consultants to report how and to what extent they have reduced fees for their clients. The rationale for this potential remedy would be to give pension funds and employers access to information to allow them to assess this aspect of investment consultant performance and thereby to make better informed decisions about the appointment and retention of investment consultants.

*Require investment consultants to report the performance of their manager recommendations based on standardised performance metrics*

106. This potential remedy would involve the development of industry standard performance metrics. Under this remedy, investment consultants would be required to report their relative performance in terms of asset manager recommendations against these metrics, to increase transparency and help increase competitive pressures on performance. There is a variety of ways in which this potential remedy could be implemented. Under one variant, for example, investment consultants could report against their own performance metrics, if they choose to do so, in addition to the standardised metrics. Under such an option, it would be important to ensure that the metrics developed by the investment consultant were used consistently over time to ensure comparability over time.

*Require pension schemes and employers to provide reviews of investment consultants, with aggregate results shared/available on websites*

107. This potential remedy would involve working with trustees and pension schemes to develop an industry standard reporting tool for the quality of service provided by investment consultants. The results could be made publicly available on an appropriate website.

*There is insufficient and/or ineffective tendering and market testing*

*Introduce mandatory tendering for consulting, fiduciary management services and/or master trusts*

108. This potential remedy would involve introducing a mandatory tender regime for investment consultancy services, fiduciary management services and master trusts. This could happen periodically (for example every five, seven or ten years), including when seeking to procure these services for the first time. In addition, pension funds could be encouraged to review services from investment consultants and/or providers of master trusts on a regular (ie annual/biennial) basis.

*Establish rules to improve the tendering process*

109. This potential remedy would involve working alongside investment consultants and pension funds to develop a set of industry standard rules to improve the tendering process and make it more transparent. Such rules could relate to, for example: the need to attract multiple bidders; the parameters of the tender documents; the selection criteria; and the use of a third-party adviser to run the tender.

*Produce standardised off-the-shelf tender documents that smaller pension schemes and employers could (but would not be obliged to) use to make tendering cheaper, easier and more effective*

110. This potential remedy would involve working with pension funds and consultants to develop a set of industry standard tender documents to help smaller pension funds with their tendering processes. Smaller pension funds and employers may not have the in-house capability and resources to develop these documents and standard off-the-shelf documents would make tendering cheaper, more transparent and effective for them.

*Recommend some form of aggregation/consolidation of pension trusts to benefit from economies of scale*

111. This potential remedy would involve recommending aggregation or consolidation of trusts below a certain size and with similar investment criteria and strategies. The consolidation/aggregation could give rise to economies of scale by reducing fixed costs for the funds. We note, in this respect, that the FCA has recommended that ‘the Department for Work and Pensions (DWP)

continue to review and, where possible, remove barriers to pension scheme consolidation.’<sup>63</sup>

*Trustees are not incentivised to achieve value for money from investment consultants and/or have insufficient experience to discharge their duties*

*Ensure that trustees have responsibilities for obtaining value-for-money from investment consultants/scrutinising consultants’ advice*

112. This potential remedy would involve requiring trustees to seek to obtain value for money from investment consultants and/or to carry out appropriate scrutiny of their advice against the needs and requirements of the pension fund. The rationale for such a remedy would be to avoid trustees picking by default the ‘most familiar’ option when it comes to selecting an investment consultant and to encourage them properly to scrutinise the advice they receive.
113. There is a variety of mechanisms which could be used to implement such a remedy, including, for example the creation of a code of conduct to which trustees would be required to adhere, or legislative changes to amend or supplement trustees’ duties.

*Require the inclusion of at least one professional trustee for each pension scheme/enhance training for trustees*

114. This potential remedy would involve requiring pension funds to appoint at least one professional trustee to their board, in order to ensure that the trustees as a group can benefit from the individual’s expertise and experience of how other pension schemes operate. This remedy would also involve working alongside pension funds and trustees to develop a definition for what a ‘professional trustee’ means. The professional trustee would provide their experience from other pension schemes and bring best practice.
115. An alternative or supplementary potential remedy would involve requiring enhanced training for trustees on areas such as investment strategies, asset allocation and manager selection. If respondents consider that such additional training would be desirable, it would be helpful if they would indicate in which areas enhanced training for trustees would be of most value.

---

<sup>63</sup> Asset Management Market Study Final Report, paragraph 1.29.

## ***B. Potential remedies to address conflicts of interest***

116. We set out below potential remedies to address any AECs that we may find in relation to potential conflicts of interest. We have grouped these remedies into four categories, corresponding to different hypotheses regarding the existence of conflicts of interest.

*Investment consultants encourage clients to use their fiduciary management services and/or master trust services even if it is not in the clients' best interests*

*Require investment consultants to give greater clarity to trustees that they are moving into a different arrangement, and that they could seek this service from other firms*

117. This potential remedy would involve developing an industry standard whereby investment consultants commit to inform their clients of the distinction between fiduciary management services and investment consultancy services. Investment consultants would have to advise consultancy clients that it would be best practice to conduct a competitive tender process for fiduciary management services. As a supplementary measure, the remedy could involve developing an industry standard whereby investment consultants commit to provide their clients with 'cost benefit' analyses for different options available to them.

*Require mandatory tendering of fiduciary management/master trust services*

118. This potential remedy would involve imposing a mandatory tender regime whereby trustees would be required to tender for fiduciary management services periodically (eg every five, seven or ten years). Under this remedy, investment consultants would also be required to encourage clients to review fiduciary management services periodically (eg every year or two years).
119. A similar remedy could apply to the selection of master trusts, whereby employers would be required to tender for the selection of a master trust scheme for their employees periodically.

*Prohibit investment consultants from providing fiduciary management/master trust services*

120. This potential remedy would involve prohibiting investment consultants currently offering investment consultancy services to their clients from providing fiduciary management services to those clients. A similar remedy would prohibit investment consultants advising an employer on the

establishment of pension schemes from providing an in-house master trust scheme to the same employer.

*Measures to control prices in relation to master trust services*

121. This potential remedy would involve reviewing the existing price cap in place for master trusts (see paragraph 70). We may want to consider the impact of this cap on competition and outcomes for pensioners, with a view to reviewing the level and/or scope of the cap. We note that any such remedy may address the demand-side issues identified under hypothesis A, as well as the conflicts issues under hypothesis B.

*Bringing the supply of investment consultancy services and fiduciary management services within the FCA's regulatory perimeter*

122. Currently some investment consultancy services and fiduciary management services can be provided in a way that is not regulated by the FCA. The FCA noted in its report that bringing the provision of those services within its regulatory perimeter may address some of the potential concerns, as it would be able to supervise and monitor the provision of those services. It would also give the FCA the power to implement and carry forward any recommendations or remedies that we may introduce to address any AECs that we may find.<sup>64</sup> This remedy would potentially be relevant in enforcing and/or monitoring some of the conduct issues described in this category (and the sub-categories below) and may also have relevance to the other categories, in particular demand-side and informational issues (hypothesis A).

*Investment consultants' recommendations are influenced by their business relationships with asset managers*

*Require full disclosure of business interests to trustees*

123. This potential remedy would involve working with trustees and investment consultants to develop an industry standard on full disclosure of business interests. Investment consultants would also have to make a full disclosure to trustees as regards all business interests that might affect – or be perceived to affect – the integrity of their advice and give rise to conflicts of interest.

---

<sup>64</sup> FCA pProvisional dDecision to mMake a market investigation reference, paragraphs 4.29–4.33.

*Impose measures to ensure there is stronger separation of different business areas within investment consultants*

124. This potential remedy would involve developing a set of business separation rules that investment consultants would be required to adhere to. The remedy could, for example, facilitate stronger business separation between investment consultancy services and fiduciary management services and the services that asset managers purchase from investment consultants (for example the organising/hosting of conferences, data and consulting services, as well as investment consultancy services).

*Investment consultants' recommendations are influenced by hospitality*

*Impose limits on the value of hospitality that investment consultants are allowed to receive from asset managers*

125. This potential remedy would involve working with trustees and investment consultants to develop an industry standard on managing conflicts of interest. Consultants would commit to refuse any gifts, hospitality or entertainment above a pre-agreed threshold. Consultants could also make their firms' policies in regards to hospitality public and disclose any hospitality that could give rise to a conflict of interest, regardless of the value of such hospitality.

*Impose limits on the type of hospitality eg legitimate business meetings and conferences only*

126. As above, this potential remedy would involve working with trustees and investment consultants to develop an industry standard on managing conflicts of interest. Investment consultants would need to commit to refuse any gifts, hospitality or entertainment outside a pre-agreed set of parameters (eg allow only business meetings, conferences, etc). Investment consultants would also have to make their firms' policies in regards to hospitality public and disclose any hospitality that could give rise to a conflict of interests to the trustees, regardless of the nature of such hospitality.

*Require full disclosure of hospitality received to trustees*

127. This potential remedy would involve working with trustees and investment consultants to develop an industry standard on managing conflicts of interest. Consultants would also have to make their firms' policies in regards to hospitality public and disclose any hospitality to the trustees, regardless of the value and nature of such hospitality.

*Impose an outright ban on hospitality*

128. This potential remedy would involve banning the offer and acceptance of any gifts, hospitality or entertainment of any value and nature between investment consultants and asset managers.

***C. Potential remedies to address barriers to entry and expansion***

129. We set out below potential remedies to address any AECs that we may find in relation to barriers to entry and expansion.

*Introduce mandatory tendering for investment consultancy services and/or fiduciary management services*

130. This potential remedy would involve introducing a mandatory tendering regime for both investment consultancy services and fiduciary management services, and pension funds could also be encouraged to review services from investment consultants on a regular basis. See also paragraph 108, where this remedy is discussed in the context of demand side issues.

*Require divestiture of investment consultancy services*

131. This potential remedy would involve requiring firms to divest their investment consultancy services arm if these firms offer other services such as asset management services, etc. This remedy would seek to create a new source of competition or strengthen an existing source of competition by increasing the quantity of non-vertically integrated investment consultancy firms in the market.

*Basic FCA accreditation scheme to provide certification of smaller consultants*

132. This potential remedy would involve recommending that the FCA develop an accreditation scheme for smaller consultants, who are currently seen as risky by trustees. This remedy would be designed to increase switching between investment consultants and lower barriers to entry and expansion.

**Summary**

133. We have identified three initial high-level hypotheses for structuring our investigation and have set out some potential remedies that may help to address any of these issues if one or more AECs are identified through our investigation.

134. We should emphasise that we have not found any competition concerns and both the issues and potential remedies that we have described in this document are hypothetical at this early stage of our investigation. The CMA will only put in place remedies if, following our investigation we determine that there are AECs that require remedying and there is no presumption at this stage that AECs will be found and remedies required.
135. This statement provides a framework to prompt parties to submit evidence and views on both the issues that we envisage being relevant at this stage and on the potential remedies that we have identified or any other potential remedies.

Thursday 21 September 2017