



**INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT SERVICES MARKET  
INVESTIGATION**

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**RESPONSE TO WORKING PAPER ON THE SUPPLY OF FIDUCIARY MANAGEMENT  
SERVICES BY INVESTMENT CONSULTANCY FIRMS**

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**12 APRIL 2018**

## INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT SERVICES

### WTW RESPONSE TO WORKING PAPER ON THE SUPPLY OF FIDUCIARY MANAGEMENT SERVICES BY INVESTMENT CONSULTANCY FIRMS<sup>1</sup>

#### 1. Introduction

- 1.1 WTW welcomes the opportunity to respond to the working paper setting out the CMA's initial analysis of competition issues that may arise when firms offer both investment consultancy ("IC") and fiduciary management ("FM") services, published on 29 March 2018 (the "**Working Paper** "). WTW broadly supports remedies to ensure that there is a level playing-field in respect of IC and FM services. Such measures, if appropriately designed, should help trustees better assess the value for money of different IC and FM products and would better enable trustees to select services that are in the best interest of their respective pension schemes. WTW always works in the best interests of its clients, and is supportive of any remedies which further encourage the industry as a whole to focus on clients' best interests.
- 1.2 Overall, WTW believes that the benefit to customers of IC firms being able to offer FM services significantly outweighs any potential detriment arising as a result of any potential conflicts of interest, where such conflicts are well managed. It is important that the CMA takes the customer benefits of the FM service into account when considering a) whether there are any concerns arising and b) the potential remedies for those concerns.
- 1.3 The IC-FM business model has evolved through innovation within the industry. The FM model has been adopted by customers because it offers (in many cases) a better and more effective model for executing their investment strategy. This model provides clients with a choice over the governance arrangements that they can adopt. WTW believes that there are many further pension schemes for which this service would be beneficial. As such it is unsurprising, and is in the best interests of clients, that firms offering FM services have mentioned the FM model to their existing IC customers and more widely.
- 1.4 It is natural and normal for commercial firms to seek to develop and sell new services. It is the client's responsibility to assess those services and consider which services would be useful to them. The CMA's Theory of Harm (defined below) suggest that there is a concern that IC firms cannot provide independent advice on FM services if they are also a provider of FM services. To be clear, there is currently no requirement for IC firms to provide "advice" on how clients work with them and what services they procure. These governing decisions are the sole responsibility of the trustees. As with any professional services firm, an IC-FM firm should be expected to talk to clients about the services that it provides that it believes are useful and beneficial to the clients – this would seem to us to be normal and responsible business practice, and also critical for future innovation in our industry.
- 1.5 We believe that there is merit in ensuring that roles and responsibilities of IC firms and trustees are more clearly set out and that, when discussing services with clients it is not presented as "advice", but we do not believe that the independence of an IC firm is inherently compromised by the ability to provide FM services. This is because it is not a requirement of any IC firm to provide independent "advice" to a client on the procurement of FM services.
- 1.6 Indeed, the potential conflict of interest identified by the CMA is one that is inherent to any firm offering more than one product that meets the needs of its customers. It is unsurprising that firms offering one product may seek to sell to their clients another product that they are offering. We note that much of the evidence apparently relied on by the CMA simply refers to comments along the lines of "it would be good if we could sell Product B to client X as well as/instead of Product A". We do not see how such activity – which is widespread throughout the economy – could be considered to

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<sup>1</sup> In this response and all responses to the CMA, Towers Watson Limited is the main regulated entity. We refer to both this entity and the relevant general business as "We", "Willis Towers Watson" or "WTW" throughout.

give rise to a conflict, particularly if there are safeguards on behaviour to ensure that clients are told about products in an appropriate manner.

- 1.7 Indeed, there are good efficiency reasons to offer the FM services alongside the IC services. Both use individuals with the same expertise, and rely on a body of research knowledge that is equally useful for both services. The possible remedy that there should be structural separation between providers of IC services and providers of FM services would therefore lead to substantial increases in costs, to the detriment of pension schemes. It is important to remember that both IC and FM services seek to deliver the same outcomes for clients (high quality investment arrangements), and the existence of both types of delivery model within one firm simply provides more choice to that firm's customers.
- 1.8 A separation of these services would create a substantial barrier to innovation, which will likely have a significantly negative impact on consumer outcomes in the future. It appears that the CMA has been investigating the potential conflict of interest due in part to concerns raised by firms who currently only offer IC, and not FM. The development of the new FM model is therefore a threat to the business models of these firms. However, in reality, a firm being able to offer IC services and FM services is a beneficial consequence of competition in that it is able to provide new and better services to customers, and this should not be a source of concern. There is a serious danger that further innovations which require significant investment will be shelved if the consequence of such innovation is a regulatory inquiry into potential conflicts of interest, given the cost and time involved in such inquiries. It would be a perverse outcome of the CMA market investigation if the remedies ultimately proposed to enhance consumer welfare instead act to stifle innovation on the grounds that customers are being protected from potential conflicts of interest that are currently well managed across the industry.
- 1.9 WTW notes that the CMA's analysis has mentioned but not addressed several alternative (and in our view more concerning) conflicts of interest in the industry, in particular:
  - (a) the conflict of interest that exists for firms that do not offer both IC and FM - such firms have a natural incentive not to direct clients towards FM (or vice versa), even where it may lead to better outcomes for clients (and instead, as mentioned above, an IC only firm has an incentive to try to reduce innovation in the development of FM);
  - (b) the potential conflict of interest arising from asset managers offering FM services, which constitutes vertical integration, and may lead to a conflict due to incentives to select in-house funds that directly deal with individual investments, as opposed to the open architecture approach adopted by WTW; and
  - (c) [X]
- 1.10 While the CMA has indicated that it will address some of these at a later stage/in the context of the wider investigation<sup>2</sup>, such considerations are fundamental to a proper assessment of the issues at hand. As such, we set out our comments below but emphasise that any such comments are subject to a proper consideration of the issues identified above.
- 1.11 Further, WTW notes that the CMA's provisional conclusions drawn from the documents reviewed and the CMA's survey results (the "**Evidence**") might need to be reassessed so as to ensure that the reliance placed by the CMA on the Evidence is appropriate. In particular, it appears that the Evidence does not support the theory of harm that, when IC firms act as advisors to their customers and also offer FM services, customers are steered towards consultants' in-house FM services, when an alternative solution or deal could have been in their best interests (the "**Theory of Harm**").
- 1.12 The Evidence set out in the paper suggests that there are many examples of IC-FM firms raising FM services with their clients. As discussed above, this is essentially a firm selling another service and is

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<sup>2</sup> Paragraph 122 of the Working Paper.

not a conflict of interest. It is our view that this is simply the expected commercial practice of firms seeking to introduce additional services to clients. To reiterate, if a client decides to move to FM, it enters an entirely new contractual relationship, so the ability to “steer” is very limited, it is very obvious that such a change has taken place and lawyers and the trustees would be engaged in the negotiation of the new contract. The decision to move is always the clients’ alone.

- 1.13 WTW also notes that the CMA's survey contains certain questions which appear to be leading. This should cast doubt on the credibility of the survey results for these question and/or impact on the weight that should be placed on the responses received. We discuss specific examples of these leading questions in Section 3 below.
- 1.14 In addition to this, the working paper does not draw a clear enough distinction between potential conflicts of interest that the industry is already taking steps to address and actual conflicts of interest that may warrant additional remedies. For example, the CMA's survey suggests that 60% of trustees surveyed perceive that investment consultants steering clients into their own fiduciary management services is "a problem", but of those 60%, half (30% overall) find that this problem is generally "well managed". In other words, only 30% of trustees think that this is a problem which is not "well managed". Indeed, the point of emphasis of the CMA could easily be on the fact that it would appear that 70% of the trustees surveyed do not consider a real issue to exist in an unaddressed manner.<sup>3</sup> In any case, WTW notes the very leading nature of the specific question asked in this regard, which we discuss further in Section 3 below.
- 1.15 As highlighted above, WTW considers the behavioural and structural remedies suggested at paragraph 130 of the Working Paper to be disproportionate to the problems identified by the CMA in relation to IC firms offering in-house FM services to existing IC customers and would be detrimental to customers. We discuss this in more detail in Section 6.
- 1.16 Nonetheless, there is an opportunity to develop best practices which will create a level playing field for all participants, enabling trustees to select suitable FM services when that is in the best interest of their respective pension schemes.
- 1.17 Therefore, to the extent that the CMA's concerns are supported by the Evidence, WTW welcomes remedies which refine the process by which in-house FM services are offered by IC firms to existing IC customers.

## **2. Conceptual Framework**

- 2.1 We note that, as stated in the Working Paper, IC services include a range of advice designed to help trustees of pension schemes set and meet their investment objectives. Therefore, IC services include advising on a range of services such as strategic asset allocation and manager selection and in some cases (not in WTW’s case) FM services. It is inherent in the nature of IC services that full service firms will sell a range of products including FM products.
- 2.2 WTW considers that there are many circumstances in which FM products and services are better for the pension schemes as compared to alternative non-FM products and services. Therefore, in these circumstances, WTW is acting in the best interest of the pension schemes by offering FM services to the respective trustees.<sup>4</sup> The FM model often represents a better process for the customer<sup>5</sup> by providing benefits such as:
  - (a) more resources available to dedicate to strategic decisions;
  - (b) clearer accountability in decision making;

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<sup>3</sup> Paragraph 60 of the Working Paper.

<sup>4</sup> As previously explained to the CMA, WTW does not advise its clients on FM selection or adoption.

<sup>5</sup> Page 48, Hearing Transcript of WTW with the CMA, 21 November 2017.

- (c) improved risk management;
- (d) dedicated professionalised and real-time portfolio management;
- (e) reduced management fees through aggregation and often reduced overall fees; and
- (f) improved economies of scope through aggregation.

- 2.3 This is a key point which the Working Paper does not address. We note the CMA's statement that "we are assessing outcomes for customers of IC-FM firms as part of our outcomes workstream"<sup>6</sup>. While this is to be welcomed, WTW considers that there is a current risk, with respect, that the CMA puts the cart before the horse in this regard. Trustee demand for FM has grown primarily because it is the best option for many pension schemes and will lead to better consumer outcomes. Many of the concerns that are flagged by the CMA would fall away if the CMA agrees that FM services are valuable for many clients in this regard. Yet we are having to respond now to the Working Paper – including to the indicative thinking on remedies – before the CMA has set out its initial views on this critical question. WTW would strongly urge the CMA to consider the outcomes for consumers before drawing any conclusions as to possible features giving rise to an adverse effect on competition.
- 2.4 For example, we consider that the examples listed at paragraph 11 of the Working Paper do not of themselves have an impact on competition or support the Theory of Harm. We further note the CMA's views at paragraph 12 of the Working Paper, recognising that "it is not straightforward to say how the practices above might impact competition".
- 2.5 We further note that in relation to demand side assessment and supply side assessment, the CMA has drawn tenuous links between the Evidence and its conclusions and the former does not clearly support the latter. We elaborate on this further below in Section 4.
- 2.6 As a point of clarification, we note that Cardano appears to have been omitted from the list of IC-FM firms under paragraph 35.

### **3. Stakeholder Views**

- 3.1 The Working Paper reports the views of relevant stakeholders including IC-FM firms, non-integrated IC firms and trustees. We have a number of specific observations for the CMA to consider which are detailed below.
- 3.2 WTW broadly agrees with the collective views of the IC-FM firms stated at paragraphs 48 (to the extent that this is applicable to WTW), 50, and 53 of the Working Paper. WTW also broadly agrees with paragraph 47 although it would clarify that it believes that such conflicts are currently well managed, and therefore do not currently – in WTW's experience – give rise to any customer harm. However, WTW would like to note its strong disagreement with the comment from Spence & Partners at paragraph 50 regarding competitive tendering. In our view and experience (and that of the wider industry), that comment is manifestly incorrect.
- 3.3 In relation to paragraph 54 of the Working Paper, WTW invites the CMA to consider the issue of conflicts of interest in the context of investment consultants who do not offer FM, in that they may fail to recommend FM to their advisory clients in order to avoid losing advisory work, in the near future. This conflict may lead to sub-optimal consumer outcomes in scenarios where FM is the best option for a particular scheme. The Working Paper does not adequately address this issue, and therefore does not represent a full analysis of the potential conflict of interest issues at play in this regard. We welcome the CMA flagging the issue but urge that all potential conflicts of interest issues are considered in the round.<sup>7</sup>

<sup>6</sup> Paragraph 122 of the Working Paper.

<sup>7</sup> We note that this potential conflict was also referenced in the CMA's Roundtable with Asset Managers held on 12 February 2018.

- 3.4 [REDACTED]
- 3.5 We note that the CMA's survey asked trustees for their perception of the potential conflict of interest in investment consultants selling to their clients' in-house FM services. The relevant question in the CMA's survey was: "Would you say investment consultants using their position to steer clients into their own fiduciary management services is...?"<sup>8</sup> This is a leading question, which is very likely to affect the objectivity of the responses to this question. The question itself assumes that investment consultants have used their positions to steer clients into their own fiduciary management services. This is not WTW's experience in the market, or reflective of WTW's approach to such client discussions. We caution against relying excessively on the CMA's survey results in relation to this question.
- 3.6 We further note that while 60% of all trustees surveyed perceived that investment consultants steering clients into their own fiduciary management services was a problem, half of these 60% (30% of all trustees surveyed) indicated that the problem was generally well managed. Therefore, only 30% of all trustees surveyed indicated that investment consultants steering clients into their own fiduciary management services was a problem, and that more should be done to address it. In other words, only 30% of all trustees surveyed perceived that further action and/or remedies were needed to address the problem, and 70% do not.<sup>9</sup> Given that the relevant survey question in itself is leading (as detailed above in paragraph 3.5), we consider that only a minority of trustees surveyed perceived that further action and/or remedies are needed in relation to investment consultants steering clients into their own fiduciary management services.
- 3.7 WTW further notes that the appointment process for FM mandates is highly competitive (irrespective of the incumbent adviser), and that there has been a significant increase in the use of intermediaries to assist clients to carry out a competitive tender process. As stated by WTW in the hearing held on 21 November 2017:
- (a) competitive tendering is prevalent in FM and has increased materially over recent years; and
  - (b) of the [REDACTED] advisory mandates that WTW has won over the last five years [REDACTED] competitively tendered.<sup>10</sup>
- 3.8 In our view, the growth in the use of third party intermediaries is an important factor which the CMA has not fully taken into account in its analysis.
- 3.9 The CMA has highlighted that professional trustees and trustees of larger pension schemes are more likely to perceive investment consultants steering clients into their own fiduciary management services to be a problem and that more should be done to remedy this. WTW has the following observations in relation to this:
- (a) professional trustees are often also trustees of larger pension schemes;
  - (b) more than 90% of larger pension schemes use intermediaries to prevent any problems arising from conflicts of interest<sup>11</sup>; and
  - (c) smaller pension schemes often do not want to use intermediaries due to cost<sup>12</sup>.
- 3.10 Therefore, it appears that larger pension schemes would be able to remedy the problem caused by potential conflicts of interests through the use of intermediaries. [REDACTED]

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<sup>8</sup> Q1\_1 of CMA's survey.

<sup>9</sup> Q1\_1 of CMA's survey.

<sup>10</sup> Pages 6, 45, Hearing Transcript of WTW with the CMA, 21 November 2017.

<sup>11</sup> WTW to provide source.

<sup>12</sup> WTW to provide source.

#### 4. Demand-side Assessment

- 4.1 We note that the results from the CMA's survey indicate that, when buying FM products for the first time:
- (a) 44% of pension schemes surveyed sought advice from a third-party;
  - (b) 34% of pension schemes surveyed asked a third-party to run a tender;
  - (c) 24% of pension schemes surveyed ran a tender process or invited proposals with no external help; and
  - (d) 49% of pension schemes received some form of third-party support (in the form of advice or running a tender) when buying FM services for the first time (combining the results of (a) and (b) above).
- 4.2 We further note that, as stated in the Working Paper, KPMG's 2016 and 2017 surveys indicate that the proportion of new FM appointments in a given year that were advised by an independent third-party has grown from 23% in 2015, to 33% in 2016, and 60% in 2017.<sup>13</sup> WTW is disappointed that the CMA has not referenced the upward trends evidenced by KPMG in its own survey evidence.
- 4.3 Based on the above, we note with surprise that CMA has concluded that "a large proportion of pension schemes buying FM services selected a provider that was also their existing investment consultant", and that "the theory of harm considered in this paper may therefore impact a large part of the sector". WTW submits that the evidence does not support drawing any such robust inference in support of the Theory of Harm:
- (a) the CMA's survey results show only 51% of pension schemes buying FM services selected a provider that was also their existing investment consultant;
  - (b) given that the sample size for this survey question is 145, this equates to 74 pension schemes turning to an existing investment consultant; and
  - (c) if we examine the results of KPMG's surveys, a majority - 60% - of new FM appointments were advised by independent third-parties.
- 4.4 These findings do not strongly support the CMA's Theory of Harm:
- (a) First, it is altogether unsurprising that a good proportion (in this case, approximately half of schemes) decide not to switch providers when moving from advisory to FM services. These are clients which are likely to have been with their advisory provider for many years and where a relationship of trust has been built. An incumbency advantage is natural where such a relationship exists: the key issue is that competitive processes are being used to ensure fairness on price and maintain innovation and quality, which they are in this market. Where an IC provider also offers an FM service, this FM service will share many of the distinctive features that are likely to have been attractive to its IC clients in the first place (for example, advisory clients who were originally drawn to WTW because of the depth of its manager research expertise will also find this to be an attractive feature of WTW's FM service offering).
  - (b) Furthermore, the inverse of the CMA's survey results is that almost half of schemes *did* switch provider. KPMG's surveys (and WTW's experience in the market) clearly show the increasing use of third parties to advise on switches, which lessens concerns regarding the Theory of Harm. Not switching provider in all cases (or even in most cases) does not mean there is an

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<sup>13</sup> Paragraph 70 of the Working Paper.

adverse effect on competition provided that trustees are engaged in the process and diligently consider the best options for the scheme (which in WTW's experience they do).

- 4.5 We therefore submit that, based on the demand-side findings by the CMA as illustrated above, the Theory of Harm is not established and needs to be proved instead of presumed.

## 5. Supply side Assessment

### *Firms' Incentives*

- 5.1 The Working Paper considers evidence on how profitable FM services are for firms relative to IC services and how this is reflected in their remuneration policies. We submit that the profitability of the FM services does not necessarily indicate that firms would steer their existing clients towards their in-house FM services when an alternative solution or deal could have been in their best interests. On the contrary, as we have explained in our response to the CMA's Financial Information Request and in subsequent correspondence, FM services require higher average profit margins to compensate investment consulting firms for the higher operational and market risks associated with these services. The CMA has presented no evidence to suggest that FM services are more profitable than advisory-only services on a risk-adjusted basis.
- 5.2 In relation to firms' internal documents including strategy documents, board/committee papers and minutes produced over the last five years, the CMA has stated that it has found evidence that "some firms view (or have viewed) FM as being more profitable than pure IC accounts" and that "another firm had projected that FM would be less profitable than other services". Such evidence seems limited. Moreover, even if this is the case, it is only if they have the ability to steer the client into their own service that a concern could, possibly, arise. This does not appear to be the case. Indeed, it is striking that the survey evidence suggests that it is only in around 20% of situations that the incumbent provider has sought to recommend FM<sup>14</sup> and, when this does occur, on 45% of occasions a competitive alternative is referenced.<sup>15</sup> It is rare for professional services firms to recommend a competitor in other markets, absent necessity; such evidence does not suggest that a robust view should be taken on this Theory of Harm.
- 5.3 In relation to staff remuneration policies, as the CMA itself acknowledges in the Working Paper, "none of the IC-FM firms have remuneration policies that specifically reward advisory or FM staff for moving existing clients from advisory to FM services". Further evidence also indicate that bonus or sales incentive plans in relation to FM sales are only directed at certain FM sales staff.
- 5.4 While acknowledging that it does not appear that any IC-FM firms have schemes that directly link the pay of advisory staff to FM sales, the CMA states that "several IC-FM firms have bonus schemes under which advisory and FM staff may be eligible to receive a share of overall division profit, depending on how well they have performed in that year". It is common practice in many firms across various sectors to award a bonus based on both the overall performance of the division and the overall performance of the firm.
- 5.5 On the basis of this observation, the CMA then proceeds to say "it does appear that most IC-FM firms have remuneration schemes that could lead to advisory or FM staff receiving a bonus, should they make a contribution to FM sales that lead to increased revenue for the firm". We consider it very tenuous that a bonus resulting from the overall performance of the firm and division, which derives its profit from many different services including IC and FM services, is an incentive for advisory staff to facilitate the sale of FM services. In any job role in any company in any sector, it is likely that a contribution which may increase a firm's revenue may lead to a reward for the individual staff member. It is difficult to see how such a vague and remote causal link could provide any support for the Theory of Harm.

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<sup>14</sup> Paragraph 112 of the Working Paper.

<sup>15</sup> Paragraph 114 of the Working Paper.



- 5.6 We emphasise that within WTW there are a number of factors aspects that influence the allocation of individual bonuses and these incentives are client centric in nature. There is a focus on the long-term sustainability of the business. Therefore, incentives for individuals are structured to ensure that they act in clients' best interests, and to minimise the risk of losing clients and damaging the firm's reputation.
- 5.7 WTW also notes the implications should alternative incentive structures be pursued. Any structure which incentivises advisory staff not to FM clients (for example because a particular firm does not offer that service) where the client would benefit from the service would be detrimental to both the clients and to the industry as a whole.
- 5.8 Based on the evidence above, we note with surprise the CMA's conclusion that IC-FM firms have incentives to seek to sell FM services to their existing advisory clients. As mentioned earlier, the mere fact that FM services are more profitable than IC services does not in itself indicate that the IC-FM firms have incentives to seek to sell FM services to their existing advisory clients. Such a conclusion appears to WTW to be speculative at this stage, and cannot be considered strong evidence in support of the Theory of Harm.

### ***Firms' conflict management policies and other findings***

- 5.9 The CMA has recognised that the conflict policies and processes that IC-FM firms have in place have the potential to help manage the risk that IC customers are steered into FM products against their interests. The CMA further found some areas of improvement, being that some of the guidance in these policy documents is high-level and principle-based, there may be issues of complying with policies in practice, and that some IC firms do not distinguish sufficiently between providing impartial advice on FM products and promoting their own FM products. We acknowledge these findings by the CMA and welcome suggestions to refine conflict policies and processes to make them more robust.
- 5.10 In relation to the findings by the CMA on the conduct of firms around the points at which their existing clients consider buying FM products and results from the CMA's trustee survey<sup>16</sup>, WTW notes the importance of contextualising the results and understanding the nature of the business of IC services. WTW reiterates that IC services include advising on a range of services, and that it is inherent in the nature of IC services to sell a range of products including FM products. Offering a broad range of products (and therefore increasing choice) is clearly in the best interests of trustees and pension schemes. In particular, WTW considers that there are many circumstances in which FM services are better for the pension schemes as compared to alternative advisory services. Therefore, in many cases, WTW is acting in the best interests of the pension schemes by offering FM services.
- 5.11 Paragraphs 120 and 121 of the Working Paper replicate paragraphs 11 and 12 of the Working Paper. We reiterate that the practices discussed in paragraphs 11 and 120 do not impact competition (and therefore cannot give rise to an adverse effect on competition) and do not contribute to the alleged Theory of Harm.
- 5.12 Nonetheless, we acknowledge that more could be done in relation to sub-paragraph 11/120 (d) of the Working Paper in relation to potential conflicts of interest. As mentioned earlier, WTW welcomes suggestions from the CMA in relation to this sub-paragraph (d), and agrees that promoting greater consistency for the way in which FM services are raised with existing IC customers would be helpful for the industry as a whole.

## **6. Potential Remedies**

- 6.1 WTW welcomes measures to encourage trustee engagement as this will enable trustees to make more informed decisions that will be in the best interest of pension schemes and their members. Having said this, two of the remedies stand out for specific comment.

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<sup>16</sup> Pages 26 to 35 of the Working Paper.

### ***Mandatory tendering of FM services at the point of first adopting the service***

- 6.2 First, the CMA has referenced mandatory tendering of FM services as a potential remedy. In WTW's experience, the majority of its FM business has been won through a competitive tender process and as detailed in paragraph 70 of the Working Paper, there has been an upward trend in the number of intermediated tender processes for FM appointments in recent years, so it is questionable what impact making tendering mandatory would have. However, WTW does not object to mandatory tendering if the CMA considers that a feature giving rise to an adverse effect on competition exists and can see that such a remedy would require each trustee to consider the position of the incumbent advisor. However, it is not clear to WTW on the basis of the Working Paper that such an adverse effect on competition has been identified. The CMA should consider the consequences of this remedy for smaller schemes (e.g <£100m) where the costs of a competitive tender may be disproportionate compared to the benefits it would offer.
- 6.3 WTW notes that there will be costs associated with the tendering process and the switching IC and/or FM providers. The choice of IC and/or FM providers is often a part of a long-term strategy of a pension scheme. WTW further notes that this is also a reason why some trustees do not switch on a frequent basis, as opposed to any inherent incumbency bias or trustee apathy. In WTW's experience, trustees are highly engaged in any discussion and decision-making regarding a switch from advisory to FM services. Such a switch is a major strategic decision, and is likely to be considered very carefully by trustees. The CMA should consider such factors further as part of its analysis of the potential remedies.

### ***Structural Remedies***

- 6.4 Second, WTW considers it important to address the CMA's reference to a possible structural remedy. WTW recognises that the CMA is under a duty to consider all options. However, our review of the Evidence and experience in the industry is such that the conclusion that no such remedy is warranted or justified should be reached. None of the Evidence suggests a concern that would warrant a structural remedy. Crucially, outcomes for customers and market outcomes have not been discussed and these are important analysis which should be included for a holistic assessment. Indeed, the survey is evidence that a significant number of the trustees that consider an issue to exist already consider it well managed. Therefore, a remedy designed to build on the conflict of interest policies and procedures that already exist would be proportionate.
- 6.5 Thus, WTW does not believe there can be any justification for a structural remedy splitting up the investment advisory and fiduciary management businesses. In fact, such a remedy would itself be detrimental and have adverse effects on competition, as we have stated before:
- (a) It is efficient to operate investment advisory and fiduciary management services in the same business as both can benefit from the same research function. Research and development would be of lower quality and/or more expensive for a standalone operation.
  - (b) The value that we create for both advisory and fiduciary clients is a product of combining client context, strategic risk management, portfolio construction and efficient implementation.
  - (c) Importantly, and as considered in further detail elsewhere in this response, there are no material conflict of interest issues in the current model. If a client wishes to switch to fiduciary management, they will, in our experience, almost always carry out a competitive tender process and receive assistance from independent third parties. In contrast, were we to offer only one solution for example advisory, there would be a strong potential conflict of interest – we would be economically incentivised to not refer to fiduciary management as this would mean that we would forgo all possibility of future work, even if fiduciary management were the best solution for the particular client. This remedy would therefore create conflicts of interest.

6.6 We believe that client outcomes would be adversely impacted were this value-chain to be broken by a structural remedy, whether by not allowing a single firm to possess both strategic consulting skills and implementation services, or by not allowing a single firm to provide the full range of services to a client<sup>17</sup>. Such a move could result in:

- less choice for clients who want to engage with one firm;
- less differentiation and choice between strategic advisers;
- increased cost of strategic advice;
- more of these responsibilities being delegated to the asset management community (which is unlikely to be the most economical or effective solution);
- a reduction in economies of scale for negotiating on third party fees;
- a reduction in the quality of strategic advice; and
- a reduction in the quality of innovation, manager selection and mandate design.

6.7 As noted above, WTW submits that the CMA should carry out additional work to assess customer outcomes (and particularly analysis in respect of FM services offering better customer outcomes in many cases) prior to reaching any decision on the necessity and appropriateness of remedies in relation to the Theory of Harm and other issues considered in the Working Paper.

**WILLIS TOWERS WATSON**

**12 APRIL 2018**

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<sup>17</sup> That is, any such "structural" remedy would be unwarranted and/or disproportionate.