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Strictly Addressee Only

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Dear Peter

Response to Working Paper: Supply of fiduciary management services by investment consultancy firms

We have pleasure in providing some comments on the above paper and responses to the proposed remedies. On the general content of the paper there are a few instances where we could query the conclusions you have drawn given the evidence. We believe however it is more important, and a better use of time, that we do look at the proposed remedies. Nevertheless we would make the point that the comments from professional trustees and larger schemes in paragraph 61 appear a little surprising at first sight. We would have expected that professional trustees and the trustees of larger schemes were more than capable of insisting that, where they felt there was a problem, more was done to resolve the particular issues. Perhaps these are aspects of larger schemes, or larger providers of which we are unaware.

Lastly before considering the additional potential remedies we would comment in relation to the question raised in paragraph 43 in relation to the perimeter of regulation. Our belief is that regulation should encompass all services provided by ICs and FMs. We would however encourage principles based regulation rather than the inflexible stringencies of tick box regulation.

Your Proposed Additional Remedies

We have provided extensive comments on the remedies set out in the Statement of Issues which we do not repeat here and rather have concentrated on the points set out on page 40.

1) Mandatory tendering at the point of adoption of FM or within a fixed period after first appointment.

The concept does have merits, but in concluding on these aspects, particularly where cost is an issue, there is a balance to be struck between spending on retender and spending on changes leading to better member outcomes.

The length of time between the idea of FM being discussed and being implemented is usually quite lengthy, during which the incumbent typically spends a lot of time getting the client happy with the concept and indeed may be introducing FM in stages. Is it then proportionate for there to be a mandatory requirement for tendering where the client may be more than happy to seek these services from the incumbent?

In particular, enforcement of the cost and management time of a tender exercise for a client, particularly of small or medium size, that potentially only meets twice a year could be a barrier to implementation of

strategic changes that would be in the client's best interests. This is also in part a challenge to the "theory of harm", as for such clients, an efficient route into FM enables these strategic changes which otherwise would not be implemented.

We would suggest and support a mandatory requirement at or before the point where full FM is to be implemented for the IC to alert the client to other providers, TPEs and the tender option, perhaps against a mandatory list of topics. Thus if the client did wish to then go down the tender route it could do so, but would not be forced to.

Should a mandatory requirement be imposed we would suggest, in view of the costs which must ultimately be borne by the sponsors and members that this be restricted to schemes above a minimum threshold (say AUM greater than £100m) with a voluntary code applying to smaller schemes.

a) What could be the minimum scope of an acceptable competitive tender process (for example the number of firms invited to participate)?

Please see our comments to the general question above. It should be up to the client to choose the correct process according to the needs of the scheme.

b) How long should an initial FM mandate last before the requirement for an initial tender?

We believe this is covered in our answer to a), with the mandatory alert to the client.

c) Should such an approach have a requirement for an open tender process?

Not necessarily, as in previous commentary it should be up to the client to call the process which suits the scheme.

d) Should there be a requirement or encouragement to use a third party evaluator?

No, there should be a requirement as part of the alert to make the client aware of the existence of TPEs. It should be part of this notification to include a discussion of the conflicts of the parties as well as those of a TPE.

e) Should this requirement exist for both partial and full FM mandates?

As we have intimated elsewhere there are many shades of FM, some of which are only minor extensions of the IC service. If a "definition" of FM is where some or all the decisions in respect of the investment of scheme assets is delegated, then whilst this would be consistent treatment, however the tender requirements would look onerous in many situations. Any mandatory requirements we suggest to be restricted to the larger clients (AUM greater than £100m).

f) Should there be specific requirements for any incremental expansion of an FM mandate (such as additional asset classes)?

Where there is no additional delegation, but the same delegations in respect of additional assets then we suggest nothing further is required.

g) Should any other requirement be imposed in relation to schemes which have already adopted an FM approach? If so, what? Should this be limited to schemes that did not competitively tender for FM?

For FM appointments which took place prior to the introduction of the new requirements it would be logical for these to be subject to the process outlined above (alerting the client to other service providers, and at the clients choosing a retender) no later than 3 years from the original appointment and 2 years from the effective date of the new requirements.

2) Segregation of marketing materials from advice

We do not perceive an issue exists here. Nevertheless by making the IC and FM businesses regulated on a principles basis then it can be made a requirement to identify where advice is being provided and the evidence supporting this advice, other aspects being general marketing or market intelligence.

a) Are there currently business models where separation of marketing and advice would be problematic?

No, although what is regarded as marketing needs to be defined.

b) How could the key differentiators of marketing and advice be defined?

Yes, under principles based regulation.

c) Could marketing and advice be further separated through a time gap between the decision to adopt FM and the provision of marketing materials?

We do not view this as either practical or achievable.

3) Reporting to members

We do not believe that there needs to be any update to the current reporting requirements set out in legislation, codes of practice and illustrated by the Pensions Regulator in the toolkit and on the website. To subject these decisions for "approval" by members appears at odds with the fiduciary requirements of trustees. Trustees are fundamentally aware that they are making their decisions in the interests of members, and that they should be able to justify the decisions made. Members can always challenge any decisions and IDRP exist to allow this, but that is entirely different to what is proposed and inferred here.

a) Would a requirement to report the actions of trustees to members be sufficient to incentivise trustees to more actively consider an appropriate range of options?

This is inappropriate as covered above.

b) What should be in the scope of this report and should there be any enhanced power for members to challenge any decision.

This is inappropriate as covered above.

4) Restrictions on selling both advisory and FM services

As will be apparent in our responses here and elsewhere, we do not believe any restrictions should be imposed or any ban on selling both services. We support principles based regulations which require advisers to address conflicts and alert clients to their ability to seek services from another provider. The damage caused to clients by the consequences of such a move would in our opinion be disproportionate to the perceived AECs.

a) Would the benefits to trustees of receiving both advisory and FM services from the same provider outweigh the potential harm?

For our clients, FM is often the quickest, most effective and efficient way for strategic ideas to be implemented by clients and is therefore often viewed by clients in part as an extension of our consulting service. We therefore believe in a fully transparent environment there are many benefits from the IC and FM provider being in the same corporate entity.

b) Could any restriction be limited to situations where advisory and FM services have not been subject to an open tender process (either separately or in combination)?

We do not believe in the imposition of any restrictions

We do hope you find our comments useful. If you have any queries in respect of our response or more generally please get in touch with us.

Yours sincerely

Phil Wadsworth

Director