

CMA INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT MARKET INVESTIGATION

MERCER'S RESPONSE TO 'INFORMATION ON FEES AND QUALITY' WORKING PAPER

This is the response by Mercer Limited (**Mercer**) to the Information on Fees and Quality working paper (**WP**) dated 1 March 2018.

1 Executive summary

1.1 We welcome publication in the WP of a significant amount of data reflecting that the information provided to trustees is helpful and thorough. We are concerned with the CMA's emerging finding that "*competitive processes are not providing customers with the necessary information to judge the value for money of investment consultants and fiduciary managers*" as it is inconsistent with the evidence cited by the CMA. We believe the evidence included in the WP does not support a finding of a potential competition concern in respect of the ability of trustees to drive competition among providers of IC and FM for the following reasons:

- (a) The WP contains a selection of results from the CMA's survey of trustees. We will provide comments on the survey methodology when it is published in full, but at this point we note that the survey covers a sample of 966 trustees.¹ The survey results in the WP show that trustees are satisfied with the information they are given and confident of their ability to evaluate their providers. We have summarised the main findings from the survey below:

		Very easy	Fairly easy	Combined "easy"	Don't know / NA
Fees					
Monitoring fees paid to investment consultant / fiduciary manager	IC	56%	33%	89%	~4%
	FM	44%	42%	86%	~5%
Monitoring third party fees	IC	34%	40%	74%	~5%
	FM	26%	40%	66%	~9%
Understanding and comparing the fees of rival bidders	IC	35%	46%	81%	~8%
	FM	26%	55%	81%	~10%
Understanding and comparing third party fees	IC	21%	36%	57%	~20%
	FM	17%	45%	62%	~10%
Performance					
Monitoring investment performance overall of scheme	IC	64%	30%	94%	~5%
	FM	57%	35%	92%	~5%

¹ WP, page 14.

Monitoring investment performance of asset managers	IC	56%	35%	91%	~5%
	FM	-	-	-	-
Understanding and comparing investment track-record of bidders	IC	21%	35%	56%	~ 18%
	FM	21%	53%	74%	~10%
Understanding and comparing overall quality of each proposal	IC	31%	51%	82%	~ 14%
	FM	20%	64%	84%	~10%

It is striking that, in virtually all cases, a majority of trustees find it “*very easy*” or “*fairly easy*” to understand the information they are given and, in most cases, higher than 80 per cent. These figures would be higher still if unallocated answers were deducted from the responses.

The results above show, therefore, a market where trustees in the main are satisfied with the information they receive. The CMA should have close regard to these results – in our experience, trustees are generally knowledgeable and sophisticated purchasers and if they are content with the information being provided, this is indicative of a market that is catering effectively to their needs.

- (b) The evidence includes a significant number of examples of positively good practice in terms of information that is provided to trustees – see, for example:
- (i) the CMA’s finding that in all the cases it reviewed, advisory clients received very clear, itemised invoices on a regular basis;²
 - (ii) for fiduciary clients, explicit reporting of funding level against scheme strategic benchmarks, enabling a clear assessment of the success of overall investment strategies;³
 - (iii) the provision of clear and detailed analysis in the form of strategic reviews;⁴ and
 - (iv) innovation in the digital space, with most firms having developed online tools that enable clients to monitor e.g. funding levels on a daily basis.⁵

The CMA does not provide any evidence to suggest these are isolated examples or otherwise unrepresentative of typical market practice, which is consistent with our experience.

- (c) To the extent the CMA has identified varying or inconsistent practice, it is not sufficient to justify a finding of an adverse effect on competition (**AEC**).
- (i) Different approaches are to be expected in a competitive market and are not indicative of market failings. Providers need to be able to tailor their offerings to different client needs, depending on individual client circumstances. Further,

² WP, page 23.

³ WP, page 46-47.

⁴ WP, page 50-51.

⁵ WP, page 51.

allowing scope for different approaches enables providers to innovate in client service.

- (ii) To the extent the CMA may have identified examples of practice it considers could be improved, that equally is not sufficient to justify a finding of an AEC:
 - (A) A competitive market would be expected to contain some providers who are better than others – over time, the average standard should rise but this does not necessarily mean that all providers will be at the same level.
 - (B) The client document sample size is small (as compared with the survey). The CMA has reviewed documents in respect of “around 40 clients” across 15 firms (yielding an average of fewer than three clients per firm) – a tiny fraction of the total market. The survey, with a sample size of 966 trustees, is far more representative of views in the market than the limited sample of documents cited by the CMA.

Further, these documents should not be considered in isolation – the trustees receiving them would have the opportunity to discuss them as a group and to ask questions of their advisers (including investment consultants, scheme actuaries and corporate advisers) both informally on an ongoing basis and at regular trustee meetings. The formal documents provided to the CMA would be supplemented in practice by other communications.

We do not therefore consider that it is appropriate to conclude reliably, based on a small number of example documents considered without the wider context of communications surrounding those documents, that there are failings in this market that would support a finding of an AEC. This is particularly true in light of the strongly positive responses reported in the survey results.

- (d) Finally, the CMA itself notes that this is a market undergoing change. We submit that any assessment the CMA undertakes must include consideration of the ongoing and future impact of regulatory changes specifically designed to promote transparency – in particular MiFID II – before a view can be reached on whether there are competition concerns in this market. Further, there are significant industry initiatives (such as on FM performance standards) that will create further changes in the near future.⁶ This is the relevant framework or counterfactual that the CMA should use when considering potential competition concerns and the impact of possible remedies.

- 1.2 This is the first market investigation under the CMA’s new “streamlined” procedure, according to which the CMA considers remedies at an earlier stage and in parallel with the substantive competition assessment of the market. During the introduction of this new procedure a number of parties commented that the consideration of remedies at an earlier stage in the process created a risk that the CMA could be encouraged to find a competition problem to support the introduction of a remedy it has identified as potentially beneficial.⁷ Accordingly, the CMA must guard against suggesting the imposition of remedies may be appropriate, particularly where the evidence will

⁶ The CMA’s *Guidelines for market investigations: Their role, procedures, assessment and remedies* (CC3, revised) states that in assessing whether or not an AEC has arisen, one of the three issues that the CMA must examine is the main characteristics of the market and the outcomes of any competitive process. In conducting this examination, the guidance indicates that the CMA will look at the “legal and regulatory framework that applies to the reference market” and “the history of the market...and any significant changes that are anticipated in the market in the foreseeable future” (see e.g. paragraphs 94, and 102(c) and (e)).

⁷ See e.g. the City of London Law Society Competition Law Committee’s Response to the Consultation on Updated Guidance to the CMA’s Approach to Market Investigations (in particular, paragraphs 9(A) and 12) and the CMA’s Summary: roundtable on the updated guidance on the CMA’s approach to market investigations held on 29 March 2017 (in particular, paragraph 7).

not support the conclusion there is an AEC. This is also particularly so in circumstances where, as noted above, the market is evolving and there are ongoing regulatory changes and industry initiatives that can be expected to lead to improvements in the near future.⁸

- 1.3 Against this background, it is essential to avoid regulatory interference without sufficient justification, as such intervention can have unexpected and unpredictable consequences (such as potentially stifling innovation, promoting “tick box” approaches, or imposing unnecessary costs on market participants).
- 1.4 We would therefore encourage the CMA to reconsider its emerging findings in the light of all the evidence. We believe that when it has done so it will conclude that there are no grounds for a finding of an AEC in this market.
- 1.5 We set out in the following sections our more detailed comments on the CMA’s findings in respect of information provided to clients on fees and quality.

2 Information on fees

- 2.1 We are pleased that the CMA recognises the many examples of good fee reporting practice in the market, including the significant contribution in this regard from Mercer. These include the provision of monthly or quarterly invoices to advisory clients; very clear and detailed itemisation in the case of project fees or hourly charging; and clear explanations of expected changes in consultants’ fees. As noted above, it is also positive to see the high levels of satisfaction reported in the results of the CMA’s survey regarding the information provided to clients on fees with 89% of advisory clients, and 86% of FM clients, saying they find it “very easy” or “fairly easy” to monitor fees.
- 2.2 The CMA identifies the following concerns in respect of provision of information on fees to current and prospective clients:
 - (a) Inconsistent invoicing practices for FM clients.
 - (b) Limited regular information on third party fees, highlighting DB for both IC and FM.
 - (c) Clients not being fully informed of changes to third party fees and the impact of this.
 - (d) Difficulty for prospective DB and DC clients in comparing fees for advisory services.
- 2.3 Our response to these concerns is set out below.
 - (a) **FM invoicing**
- 2.4 We consider that our invoicing practices – which are client-centric – are both transparent and user-friendly. As previously submitted, we show clients third party asset manager fees separately from the fees payable to Mercer (the **Mercer Fee**) and any fund expenses. We do not charge our DB FM clients a single *ad valorem* fee which includes both the Mercer and third party manager fees. This transparent approach is a deliberate choice, and results from our approach of looking across the market to choose the best asset managers for our Mercer Funds and negotiating the most favourable fees possible with those asset managers on behalf of our clients. In addition, in our experience third party asset manager fees vary over time – and reduce in the majority of

⁸ In this context we note that the CMA’s *Guidelines for market investigations: Their role, procedures, assessment and remedies* (CC3, revised) specifically states that in assessing the effectiveness of different remedy options, the CMA “may need to take account of existing law or regulations either currently applicable **or expected to come into force in the near future** [emphasis added]”. The guidance states that such legislation may include both UK and EU legislation and directives (for example, MiFID II).

cases. Our unbundled approach ensures clients see the full benefit of reductions in asset manager fees. [redacted]

2.5 Importantly, however, this does not mean that our clients are not informed, and aware, of the fees and expenses payable for FM services. We take a number of steps to ensure clients fully understand the fees they will pay:

- (a) It is standard for our tender documents to include a breakdown of fees, identifying separately the Mercer Fee, the total likely fees payable to third party asset managers and any fund expenses.⁹
- (b) We provide information on fees to clients in the contractual documentation – namely the Investment Management Agreement (**IMA**) - that must be entered into at the outset of the FM relationship. [redacted].
- (c) Where VAT is applicable ([redacted]), clients receive VAT statements on a monthly basis.
- (d) [redacted].
- (e) With effect from the start of this year we provide all *prospective* clients and existing clients with our “*MiFID II Cost and Charges Information*” disclosure statement. The costs and charges statement provides information on the FM product cost including the Mercer Group Fee, the third party asset manager fee, the custodian and fund fees, and the transaction costs. These statements are produced on a share class basis and therefore do not take into account any client-specific rebates which are typically agreed with clients and used to allow for reductions in the underlying asset manager fees. We will therefore also draw our clients’ attention to the client-specific fee information which allows for rebates.¹⁰

2.6 Items (d) and (e) above have been prompted to some extent by changes introduced by MiFID II; however, in the interests of providing as much useful information as possible to our clients, with respect to (d) and (e) above we have taken the opportunity to go further than is required by the legislation by extending the provision of the information to *all* our DB FM clients, as opposed to only portfolio management clients.

2.7 We also participate in a number of industry surveys that collect and present information on fees, including the fiduciary management fee survey conducted by Ernst & Young (**EY**). This survey, to which the CMA does not make reference in the WP, is a further useful source of fee information for clients and shows fee information across 15 FM providers in the UK. It includes a “combined fee” assessment (comprising the fiduciary management fee – i.e. the Mercer Fee – and the third party asset manager fees) and a separate assessment of the third party asset manager fees achieved by each FM provider. EY publishes the results of these surveys on its website, which provides prospective and current clients the opportunity to assess how our proposition compares to other market participants.¹¹

(b) Third party fees

2.8 The position is different for advisory and FM and these are dealt with separately below.

Advisory

2.9 When providing advisory services, we recommend third party asset managers to our clients. When producing the manager selection report, the focus is on the appropriateness of the

⁹ Please see [redacted].

¹⁰ See example statements at <https://www.delegated-solutions.mercer.com/our-funds-uk.html>.

¹¹ Available at: [http://www.ey.com/Publication/vwLUAssets/EY-2017-fiduciary-management-fees-survey/\\$FILE/EY-2017-fiduciary-management-fees-survey.pdf](http://www.ey.com/Publication/vwLUAssets/EY-2017-fiduciary-management-fees-survey/$FILE/EY-2017-fiduciary-management-fees-survey.pdf).

manager for the strategy being pursued. The fee associated with the relevant asset manager is only one aspect of a wider set of criteria for clients to consider.

- 2.10 Our manager selection report includes as standard a quoted *ad valorem* fee for a particular mandate size based on the asset manager's headline rate and an indication from Mercer as to whether a discount is likely to be possible.
- 2.11 Negotiations on fees may be led by the client or consultant.¹² As a result, we are not always involved in fee negotiations and may not have visibility of the fee agreed. It is not, therefore, always possible for Mercer to report third party asset manager fee information to current clients on an on-going basis. We do, however, conduct periodic assessments of asset manager fees on a client-specific, ad-hoc basis.
- 2.12 Our consultants use MercerInsight to obtain greater information and market intelligence on manager fees for our advisory clients.¹³ Mercer's Global Investment Manager Database ("**GIMD**"), which supplies MercerInsight data, asks for asset manager input on fee information. [REDACTED]. This information will be used by the consultant when setting out information on the manager's fees in a manager selection report.¹⁴
- 2.13 MercerInsight also has the functionality to enable consultants (and clients with a subscription to the database) to check a manager's likely fees against the rack rates of other asset managers within the same universe. As such, our consultants will be able to provide information to clients on where a specific manager's rack rate sits relative to its peers.¹⁵ Additionally, our Fee Survey – an anonymised, aggregated report – is available to clients subscribing to either our MercerInsight Trends, or our Global Investment Forum conference packages. [REDACTED].

FM

- 2.14 As set out above, we advise prospective FM clients on the total likely third party asset manager fees associated with using the Mercer Funds as part of the tender process.
- 2.15 Central to our service offering is the ability to continually generate better value from third party managers for the benefit of our clients, which we achieve by using our global scale and total volume of assets under management. To protect our ability and leverage to achieve these deals for clients, we do not disclose details of the individual underlying asset manager fees. We also note that full fiduciary clients typically invest in funds which may collectively use up to [REDACTED] asset managers; it is therefore more helpful to report the third-party fees across each of the funds in which we invest for a client as opposed to listing fees individually for each of the underlying managers.

2.16 [REDACTED].

(c) Third party fee changes

- 2.17 Our FM clients subscribe to Mercer's service partially as a means to take advantage of the speed of implementation afforded by delegating decision-making. [REDACTED].
- 2.18 [REDACTED].
- 2.19 [REDACTED].

¹² Please see further [REDACTED].

¹³ As explained further in [REDACTED]. The CMA case team have been provided with access to MercerInsight.

¹⁴ The manager-inputted fee information acts as a starting point; this must then also be confirmed directly with the manager when a client makes investment decisions.

¹⁵ See [REDACTED].

(d) Comparability of fees for advisory services

- 2.20 According to the survey, 81% of trustees found it “very easy” or “fairly easy” to understand and compare the fees of rival bidders. We believe that this already high level of understanding will increase as professional trustees bring additional expertise to trustee boards and the use of third party evaluators becomes more common in tender processes for advisory services.
- 2.21 While differences in scope of work may affect the comparability of fees, the figures above suggest that this does not appear to be a widespread problem for trustees particularly in the context of tenders.

3 Information on performance

- 3.1 The CMA has noted that there are no universal shortfalls in information given to either current or prospective clients regarding performance. We welcome this element of the WP and refer to the very high proportion of survey respondents citing the ease of understanding providers’ performance (over 94% and 92% of advisory and FM clients respectively). This reflects not only the level of clarity in respect of current practices, but also the sophisticated nature of participants in the market. Trustee boards have training on these matters; the advantages of discussing matters as a group; and can use the experience of professional trustees to ensure they understand the performance of their provider.
- 3.2 The CMA does, however, consider that the document set reviewed highlights differing levels of detail and, in respect of current clients, frequency in performance reporting. As noted above, this variation in standards of practice is to be expected in any competitive and client-centric market. That notwithstanding, we believe that Mercer’s provision of performance reporting is on the more robust end of the market spectrum, and consider that we offer meaningful and informative reporting with appropriate frequency. We also meet clients regularly to discuss scheme performance and have invested in innovative online tools.
- 3.3 We set out below further views on specific elements of these emerging findings in relation to current and prospective clients.

Current clients

- 3.4 Both our experience and indeed the CMA’s own survey results reflect clearly and unequivocally that the quality of reporting for current clients (both advisory and FM) already attains the outcomes achieved through effective competition: reporting is suitably regular and clear to enable customers to understand scheme performance against objectives.
- 3.5 Notably, the survey results show that:
- (a) 94% of advisory clients and 92% of fiduciary clients find it either “very easy” or “fairly easy” to monitor overall investment performance;
 - (b) fund-level information is mostly clear and well-presented, with a largely standardised format; and
 - (c) client preferences are often the driver of reporting detail differences.
- 3.6 These are indicators of a well-functioning market. We respectfully consider that the CMA’s areas of concern, outlined below, do not signal that there is an AEC in this market. Our response to the CMA’s specific concerns are as follows:

- (a) Assessment of long-term objectives: The CMA's emerging view is that advisory clients are not provided with regular performance reporting that allows for an assessment against long-term 'strategic' objectives. This view is overly simplistic.

Our reporting structure is bespoke to client-specific situations. While clients are obliged to review their asset portfolios and managers regularly, they have discretion to interpret this requirement differently (i.e. quarterly or annual reviews). Complexity of arrangements, governance models, and client budget therefore affect the frequency of such assessments. Importantly, the CMA's survey results demonstrate that the vast majority of trustees are satisfied with this approach.

- (b) Focus on risk for advisory clients: As the CMA notes, for DB advisory clients, more substantial detail on risk is generally covered in strategic reviews and ad hoc analysis rather than in regular reports. This is broadly consistent with market practice to date, although, as we have previously submitted, we have seen a growing focus on potential impacts of investment and operational risks in such reporting and is a trend that we encourage. We are alive to client demand in this area and are able to adjust as required depending on specific needs.
- (c) Reporting gross / net of fees: The CMA notes a lack of consistency in reporting gross or net of fees for DB advisory clients. This is another area where Mercer is driven by client requirements. Reporting performance of both overall investment and individual asset class and managers allows for comparison against the manager's stated performance targets. On all occasions we make clear whether returns are shown net or gross in our reporting.
- (d) Information on DC member outcomes: We welcome the CMA's finding that DC reports (for both advisory and fiduciary clients) provide clear information on performance. We already recommend, and indeed prioritise, a number of items relating to member outcomes in reports for DC clients.¹⁶

Prospective clients

- 3.7 We are pleased to see the CMA considers there to be no common shortfalls in information across service/client type.
- 3.8 However, the WP here also draws out some potential concerns. We do not view these findings as indicative of a lack of effective competition and consider these below.

Advisory

- 3.9 We refer to the CMA's finding that advisory tenders do not typically request detailed information on past investment performance, but tend instead to request case studies to demonstrate capabilities and strategies. This is consistent with our experience.
- 3.1 We do not consider this a negative feature and further note that:
- (a) 82% of survey respondents expressed that it is either "very easy" or "fairly easy" to compare overall quality of proposals.
- (b) Purchasers in the market are knowledgeable with access to multiple sources of information and forums for discussion. They are increasingly supported by professional trustees and third-party evaluators.

¹⁶ Please see [redacted] for further details.

- (c) In the majority of tenders, prospective clients are seeking to understand how the consultant adds value across a range of activities (such as strategic asset allocation advice and asset manager advice), and in relation to other factors such as ability to innovate, and degree of proactivity. While some of these assessment factors naturally lend themselves to performance analytics, others are better demonstrated by the use of case studies or client feedback data. Indeed, in recognition that past performance is not an indicator of future performance, we have only been asked to provide this on an extremely limited number of occasions.
- (d) We engage in regular due diligence sessions with third party evaluators which enable detailed scrutiny of our performance record and the value we drive from asset managers and custodians.

FM

- 3.2 The CMA found that responses to particular questions were not generally comparable across bids. We echo our views stated above in relation to advisory bids.
- 3.3 Notwithstanding this, we are generally supportive of industry efforts to increase consistency and comparability through the use of a standard and are taking part in the industry-led debate on this issue. As we have submitted previously, this must be designed carefully to ensure this is meaningful and useful for clients and that it provides sufficient flexibility to allow providers to differentiate their offerings. We consider this in greater depth in section 5 below with regards to the potential remedies identified by the CMA.

4 Information on service and client satisfaction

- 4.1 The CMA has also looked at information relating to service levels and client satisfaction in marketing and tender material. Specifically, it has found that information is not always directly comparable and may be selectively chosen.
- 4.2 It should be re-emphasised that trustees are sophisticated purchasers. Against that backdrop, our responses to the emerging findings in this area are as follows:
 - (a) It is normal commercial practice for firms to select the messages they consider to be key or impactful within their marketing campaigns. To suggest or impose consistency here would severely risk stifling innovation and competition.
 - (b) Our clients continually monitor service levels. This is often supported by independent evaluations (and/or in-house specialists) and via the idea generation of rival providers and/or scheme actuaries.
 - (c) There are a number of publicly available third party surveys that gather information relating to client satisfaction.
 - (d) We carry out regular Client Experience Management reviews, which provide us with an in-depth view of how we are performing against client expectations. These involve face-to-face meetings with clients, with approximately [§<] interviews per year in the UK.¹⁷

¹⁷ Please refer to the [§<].

5 Remedies

- 5.1 For the reasons explained above, we do not believe that the CMA has identified a potential AEC that would justify the consideration of remedies. We also urge the CMA to keep customers as the central focus in the consideration of any remedies, and in particular to bear in mind that differently situated market participants will have very different interests. To the extent remedies are considered on a hypothetical basis, we have the comments below:

Standard baseline of advisory performance

- 5.2 We have explained above that meaningful performance reporting is driven by specific client requirements. The introduction of a standard, and publication of performance on that basis, may therefore not be in trustees' best interests, and could also lead towards an unhelpful "league table" approach unduly dependent on past performance.
- 5.3 We would note in this respect the example of "balanced fund" reporting in the 1980s/1990s, where the creation of performance reporting requirements based around peer groups led to unintended consequences – including that asset managers were encouraged to hug the peer group benchmark, leading to reduced innovation and mediocre results. Consequently, this approach fell out of favour.
- 5.4 As noted in our previous submissions, we consider it would be very challenging to compare consultants' performance on the basis of a standard, given that clients may not act on advice, or implement it in a timely fashion. It is not clear how a standard could allow for this potential gap between advice and implementation.

FM performance

- 5.5 Whilst we are supportive in principle of the introduction of a performance standard for fiduciary management, we have a number of concerns about the design and operation of the FM performance standard proposed by IC Select (the **Standard**). We believe that to be useful and relevant for pension scheme trustees, a performance standard must have the following characteristics:
- (a) it must be clear and simple to understand;
 - (b) it must allow trustees to make "like with like" comparisons; and
 - (c) it must avoid the possibility that fiduciary managers could manipulate or "game" the system in their own favour.
- 5.6 The most important overriding consideration is that any standard must be focussed on trustees – providing them with the most useful information to allow them to assess fiduciary managers. If the Standard does not meet these criteria, the risk is that it will not be used or, worse, that it will confuse or mislead trustees.
- 5.7 With this in mind, we have listed our concerns with the proposed Standard below. These points have also been shared with IC Select.
- (a) Composites: the Standard as currently drafted provides that the "*construction of a fiduciary manager firm's composites is entirely at the discretion of the fiduciary manager firm*". We believe that this leaves too much to the individual firm's discretion, as there will be scope for an individual fiduciary manager to design a composite that shows its relative performance at an advantage. Indeed, with so many composites this is not a "standard" at all – it will be very difficult if not impossible for trustees to compare like with like. To avoid

this problem, the Standard must be based on standardised composites that are adopted by all participating fiduciary managers.

- (b) Returns: the Standard as currently drafted provides for returns to be shown relative to both full liabilities and hedge-adjusted liabilities. This gives trustees two alternative results to compare. This is potentially confusing and misleading – trustees should have a single measure to use, showing returns relative to full liabilities.
- (c) Liabilities: the Standard currently provides for the benchmark to be the scheme's liabilities on either a gilts or swaps basis. Trustees should be given a single benchmark. To achieve this, we would propose the Standard's benchmark to be liabilities on a gilts flat basis.
- (d) Governance: [§<]. We understand that the intention is for the Standard to be taken forward by GIPS, but believe that the process for this transfer to take place should be agreed and formalised now, in order to avoid confusion or uncertainty as the Standard develops.

5.8 Despite our concerns, Mercer will continue to engage with IC Select and the industry in the development of the Standard. However, we have invited IC Select to address our concerns prior to the launch of the Standard in order to maximise its effectiveness.

5.9 If the CMA decides to pursue either the Standard or a similar remedy, we submit that the points above should be taken into account in the design of the Standard or any alternative standard.