21 August 2018

Strictly Addressee Only

JLT Employee Benefits

The St Botolph Building,
138 Houndsditch,
London EC3A 7AW

Tel 020 7528 4000
Fax 020 7528 4500

www.jltgroup.com/eb

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

Dear Peter

Response to Provisional Decision Report

We thank you for the opportunity to respond to this document and for the opportunity to feed into the shaping of your Final Report.

Before turning to the specific questions you have posed in Chapter 12 we would make some initial comments. We must first compliment you on a thorough investigation of what is a pretty complicated market within such a tight timescale. We are satisfied that the proposed remedies in the report have been researched, looked at in the context of what was trying to be achieved and largely are a proportionate and effective proposal. We believe you have identified the matters needing to be addressed and whilst we could argue whether they did constitute fully an AEC they do in any case need addressing.

The concerns remaining to our minds are the practicalities of bringing into full force the remedies and the impact on the end users. In relation to tendering there is a remaining concern on 2 fronts. First, the increased requirements and not least the cost thereof may actually put off clients from pursuing the FM option. Second we hope that firms continue to ensure that client needs are put above profit and other considerations and do not fail to raise FM in view of the tender requirements and the concern that they may lose out on one or more aspects of their current appointment in the tender process. Both these aspects could lead to clients for whom FM would have been a "good" option not being able to benefit from this, other than by a competitor approach.

Lastly the resulting Orders and Regulations we suggest need to be clear on what is regarded as FM. We have made the point in previous responses and discussions that there is a progression between pure consultancy services and full FM services and there needs to be careful consideration that unintended consequences do not occur through "loose" definitions. For example pension schemes who merely use Platform solutions to benefit from aggregation are not always Fiduciary clients since the arrangement may not include, or include only limited delegations to the FM firm who "manage" the Platform.

Turning now to the specific questions raised:

Remedy 1 – Mandatory competitive tendering on first adoption of fiduciary management

Consultation questions for mandatory tendering on first appointment

Should trustees be required to hold a competitive tender process when first choosing fiduciary management?

In general we can support the aim of this and agree that this would ensure that full considerations are made. However in addition to the point made earlier that clients may be put off considering FM as a result, we are concerned in relation to small clients (sub £100m). The trustees of these schemes could benefit greatly in terms of better governance, speed of implementation and better outcomes through an FM route, but the costs of tendering may be prohibitive both from management time and cost. You have stated that you do not feel that there should be a *de minimis* level, however we would ask that this is revisited as it may result in unintended barriers to access with a detrimental impact on clients.

Secondly, some trustees may wish to insist that because of wider considerations, such as satisfaction with the strategic approach, knowledge of the scheme, sponsor and historic background, they appoint the existing IC firm as FM provider without undertaking a full tender exercise. This would be on a fully informed basis including having read and accepted the guidance proposed. Unless there is a facility for an informed opt-out route, then time and resources may be wasted by both the trustees, incumbent advisers and prospective FM providers in being forced through the tender route. We ask that full consideration is given to an informed opt out option and the requirements therefor.

Should the tender process be open? In what circumstances would a closed tender process be an effective alternative and how should we define the minimum standard for a tender process?

We believe that the tender process should be open, except where we are dealing with small clients where alternate considerations may outweigh, and these would be addressed by the *de minimis* and opt out proposals above.

Should firms be prohibited from accepting new mandates if no such competitive tender process has taken place?

If mandatory tendering is required then providing firms with the necessary proof should not be an issue. The issue would stem from exercises which would not be regarded as adequate tenders (for example merely asking for price estimates). The requirements for a minimum process we would expect to be set out in the anticipated TPR guidance.

Should there be a minimum threshold either for size of schemes or scope or scale of the mandate?

Yes, as stated in response to the previous questions we believe there should be a threshold and suggest minimum AUM of £100m.

As noted in our introduction, FM covers a very wide range of approaches, from basic aggregation through to fully discretionary FM. Our view is that an approach that could be considered largely implemented consulting, where the FM discretions are limited for example to managing cashflows and managing assets to a central benchmark should not fall within the scope of the requirements.

Should trustees be required to hold an additional tender process for any expansion in the scope of fiduciary management?

We have asked above that attention is given to the precise requirements for the appointment to be regarded as FM. Once this threshold has been passed we do not believe it is necessary for additional tender processes. This is consistent with the lack of requirement for any re-tenders of FM mandates.

How should trustee compliance be monitored?

You have already suggested that firms should not accept appointments which have not been through a tender process, which is one control. Second we suggest that the Annual Scheme Returns made to TPR be expanded to include a specific question in regard to any part of the scheme's assets being invested in an FM mandate and second the date of the last tender exercise relating thereto.

Consultation questions on mandatory tendering for existing fiduciary management mandates

Should trustees be required to hold a competitive tender process if they did not previously do so?

This would bring alignment throughout the FM market. However it does raise questions of costs and waste of time and effort in forcing schemes to go through the exercise where they are entirely happy with their current provider. As noted above, we would suggest that an informed opt-out route is provided and / or a *de minimis* threshold for small schemes introduced.

Should the nature of the competitive tender process be the same as for those schemes adopting fiduciary management for the first time (e.g. should this be an open or closed tender process)?

We believe that the requirements should be the same, which is consistent with alignment of the entire market.

What should be the qualifying criteria of a previous competitive tender process, such that trustees are not required to hold an additional tender process?

This is a challenging question balancing the current providers wish to set the standard low and prospective providers wishing it to be set high. The process should as a minimum require 3 firms to have been invited to pitch for the business and at least 2 having made presentations/written proposals to the full trustee board. Where a TPE or IT was involved, mere confirmation from them that a full tender exercise had been completed may be regarded as sufficient evidence.

What should the maximum permissible tenure without holding a competitive tender process be?

We do not believe this to be appropriate and the periods should be set in terms of the structure detailed in paragraph 12.36.

What should the grace period for schemes which have already reached the maximum permissible tenure be?

We are satisfied with the proposed timescales suggested for the making of the Order and a 2 year grace period for those that have been invested FM for more than 5 years.

Remedy 2 – Mandatory warnings when selling fiduciary management services

Consultation questions for warnings when selling fiduciary management

Should this remedy apply only to IC-FM firms, or to other investment consultancy and fiduciary management providers?

As we have pointed out in many of our responses, conflicts exist far beyond merely the IC-FM firms. Accordingly warnings are appropriate in other instances. We would however trust that in the guidance to be provided by TPR and Regulation by FCA that "warnings" and treatment of conflicts that specific mandatory warnings will be addressed by good practice in the preparation of all marketing and advisory materials rather than prescriptive statements.

What should the structure and form of the warning be? Should there be any separation of content?

As will be apparent from our response to the previous question we are less than convinced about the use of mandatory warnings solely in relation to this service. Expansion of services is a common feature of all professional financial services firms. These extensions could in the majority of cases be provided by a competitor. However in this instance the measures under Remedy 1 are being introduced as the market is perceived to be working less effectively than it should. These measures in themselves should allay the concerns without Remedy 2 since it will be "impossible" to appoint an FM provider without undergoing a tender. Good practice would suggest that trustees should be alerted to this and the potential and actual conflicts as part of the introduction to the provision of these services. This can be set out in TPR guidance and FCA Regulation without having to specify the specific warnings as with few exceptions trustees are well educated, well informed and frequently have professional qualifications.

Should there be any requirement to give a warning on oral advice and marketing?

As stated in the previous response we believe this is best dealt with through TPR and FCA guidance.

Should firms have flexibility in changing the description of the service in the warning to a term other than 'fiduciary management' to reflect the description of the service being proposed? Are any additional safeguards necessary?

We believe this is covered in the suggested approach above.

Remedy 3 – Enhanced trustee guidance on competitive tender processes

We support the proposals under this Remedy.

Remedy 4 – Requirement on firms to report disaggregated fiduciary management fees to existing customers

Consultation questions for fiduciary managers reporting disaggregated fees to existing customers

Should fiduciary management firms be required to provide disaggregated fee information and how should they do this?

Yes, there should be a requirement to quote fee levels for the services which constitute the overall package, so that clients can understand the total costs involved in the service, and the breakdown into its constituent elements.

Should asset manager fee information be based on the IDWG templates?

We support the use of a consistent framework and accept that the IDWG templates are developing to become an industry standard.

What should the frequency of reporting such fee information to customers be?

We suggest annual disclosures should be sufficient and appropriate.

Remedy 5 – Minimum requirements on firms for fee disclosure when selling fiduciary management

Consultation questions for fiduciary managers reporting disaggregated fees to new customers

Should firms be required to provide a fee breakdown to prospective customers?

Yes, although accepting it may be difficult to be precise until the mandate has been fixed, at which time updates may be required. One area which needs careful treatment is in relation to transaction fees and how they are covered / estimated.

Should any other fees or costs be disclosed in addition to those mentioned in this remedy?

We think the fees and costs proposed in the remedy are sufficient, and welcome the requirement to address potential exit costs to be highlighted. However we note that care will be needed in relation to transaction costs, both at point of entry and point of exit – as these can often change significantly over time.

Remedy 6 – Standardised methodology and template for reporting past performance of fiduciary management services to prospective clients

Design questions for fiduciary management performance reporting

Should there be a fiduciary management performance standard?

Such a standard would enhance Trustee understanding and monitoring. The initiatives by IC Select which are we understand being taken over by CFA is a standard we would support as an industry wide mandatory standard. We do note the proposal that a group be set up to look at an appropriate measure in which we would be happy to participate or contribute our views to as the proposals develop.

Who would be best placed to develop and implement a fiduciary management performance standard?

Please see the answer to the previous question.

How do you envisage the implementation group working: how should it be funded, who should be part of it, etc?

We believe that the IC Select and CFA model should be allowed to develop against strict deadlines set by the CMA.

What backstop would be appropriate in the event that the group is unable to agree on the standard in the required period?

A full understanding as to why the standard could not be agreed would be a pre-requisite of providing meaningful suggestions as to a backstop. At present we are optimistic that a standard can be developed.

Remedy 7 – Duty on trustees to set their investment consultants strategic objectives

Consultation questions for setting strategic objectives for investment consultants

Should pension trustees be responsible for setting objectives for their investment consultant?

Yes, but bearing in mind there is a wide range of mandates; from schemes that request little involvement from their investment consultant, to one off projects, to other schemes which are actively engaged across all facets on an ongoing basis.

Also, we expect that there will be challenges in developing appropriate, measurable objectives. Clarification will also be needed as to whether objectives should just apply to the more “high level” advice provided, such as in relation to investment strategy and manager selection, or whether they would also apply to day to day tasks undertaken.

Is review and agreement of objectives every three years a suitable timeframe?

Yes, as a minimum requirement.

Should there be a minimum threshold based on pension scheme size or the scale of the consultancy contract?

Yes, the requirement to set objectives for an investment consultant may become a barrier to obtaining advice, especially for very small schemes. We would propose a lower de minimis scheme size of say £20m. We note that many smaller schemes which are above the threshold for requiring a Statement of Investment Principles may already be reluctant to engage with an investment consultant. Or alternatively, the *de minimis* could be set in relation to contract fee.

As noted above, our view is that whilst it would be appropriate to apply specific objectives to high level advice, objectives should not be imposed on all aspects of investment consultancy, with a more general trustee satisfaction approach being sufficient.

When do you consider that the formal review of an investment consultant against the scheme's strategic objectives should take place?

Performance should be reviewed in relation to specific short term or specific mandates on completion. Whilst performance should be monitored on an ongoing basis, we agree the proposal that the requirement for a formal review on a three yearly basis alongside a review of the Statement of Investment Principles would be appropriate.

Remedy 8 – Establish basic standards for how investment consultants and fiduciary managers report performance of recommended asset management 'products' and 'funds'.

Consultation questions for performance reporting

Should basic standards apply to the reporting of recommended asset management 'products' and 'funds'.

The purpose for which the information is being provided is important. For marketing and tendering, then we agree that the use of a basic standard is consistent with the aim of ensuring comparability across providers.

However, for the purpose of ongoing monitoring of an existing investment manager, then we would understand that these additional reporting requirements would not apply.

Are there any other areas that we should include in the reporting standards?

We are satisfied that the areas listed in 12.131 are sufficient.

Should standards be developed and agreed by an implementation committee similar to Remedy 6?

We consider that this would be a useful development for consistency.

What fees should be used to make the gross to net fees conversion?

Fees should be representative of what would actually be paid by investors.

Recommendation A) Extension of FCA regulatory perimeter

Consultation questions on extension of the regulatory perimeter

Should the FCA regulatory perimeter be extended and what activities should be included?

Yes, as we have stated in previous responses and be the common regulatory standard across all IC and FM activities.

Should specific rules or principles related to remedies 1-2 and 4-8 be included within the FCA's overall conduct requirements? If not, how should those remedies be best implemented in the regulatory regime?

We agree they should be included.

What is the anticipated cost of an extension of the regulatory perimeter to firms? What is the marginal cost to firms already subject to FCA or designated professional body regulation?

We suggest the additional costs are entirely appropriate.

How should any changes be implemented to ensure consistency between regulators (including designated professional bodies) and to reduce costs to firms?

As we are not regulated by a DPB we are unable to comment.

Recommendation B) Enhanced trustee guidance and oversight of remedy 1

Consultation questions on enhanced trustee guidance

Would trustees benefit from enhanced guidance?

Yes, we believe enhanced guidance to be appropriate.

What should the scope of any guidance include?

The guidance should include as a minimum the areas identified in each of the proposed remedies.

How detailed should guidance be and what form should it take?

We would support principles based guidance rather than a checklist of compliance.

Measures not taken forward

We are in total agreement with the outcome that the CMA is not taking forward

(a) preventing investment consultants from offering fiduciary management;

(b) mandatory switching;

(c) the mandatory use of professional trustees.

We consider these measures neither appropriate nor proportionate and are pleased that the CMA agrees.

We do not have any further comments at this stage but would be very happy to answer any follow up questions and to participate in the further development of your Final Report.

Yours sincerely

Phil Wadsworth

Director