

## **Introduction**

Please see below Law Deb's responses to some of the question's posed by the CMA in We have omitted questions where we do not feel it is appropriate for us to comment. We would be happy to discuss any of our replies in more detail if required.

## **Remedy 1 Objective**

Trustees achieve the best outcomes for scheme members by making an informed, active choice when choosing a fiduciary management provider.

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

This would seem to be a prudent course of action given the importance and potential impact of such a decision.

### **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 do not believe the tender process needs to be open. In our experience we have found that a disciplined approach to a closed tender can be very effective, both in terms of cost and outcome, in particular where a third party evaluator is involved. We would welcome and support guidance being provided by the Pensions Regulator (tPR) on this, though are cognisant of resourcing constraints at tPR.

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

The cost incurred and resource spent must be proportional and appropriate for the size of scheme and the scope or scale of the mandate. We would welcome and support guidance being provided by the Pensions Regulator (tPR) on this as a threshold, whilst a simple and attractive concept, may not be appropriate in all cases.

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

We believe this should be a function of the scope or extent of the expansion. We would welcome and support guidance being provided by the Pensions Regulator (tPR) on this.

### **How should trustee compliance be monitored?**

We believe the Chairs annual statement should confirm adherence to tPR codes of conduct. There may also be scope for a "comply or explain" regime where trustees are given the opportunity to detail decisions on proportionality (of cost and resource)

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

We believe this would seem a prudent course of action, but, as above, cost incurred and resource spent must be proportional and appropriate for the size of scheme and the scope or scale of the mandate.

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

This would seem to be a prudent course of action and would re-affirm our above comments on open and closed tenders.

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

We would agree the suggested period of five years seems sensible and we would certainly suggest a minimum of three in order to be able to appropriately assess the success, or otherwise, of the fiduciary manager.

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

We would agree the suggested period of two years seems sensible and we would certainly suggest a minimum of one.

**Remedy 2 Objective**

Trustees understand whether information received from an investment consultant is advice or marketing.

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

We believe this remedy should apply to all, for the avoidance of doubt or confusion.

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

As long there is clear identification of what constitutes advice and what is marketing then we believe the precise content is best left to compliance departments in the affected entities (ideally working to FCA guidance).

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

We see no reason why a verbal recognition of the potential conflict of interest could not be given, but we understand that a requirement to deliver a formal warning verbally is overly cumbersome.

**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?**

The important aspect of this remedy is the clarification of what constitutes advice and what is marketing. As long as this clear distinction is made in respect of the service being discussed then we believe the firm should have flexibility to describe the service appropriately (ideally working to FCA guidance as to what would constitute regulated activity).

**Remedy 4 Objective**

Trustees receive regular fee information which will be clear and comparable.

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

We believe the reporting of disaggregated fees is an important part of improving trustee engagement.

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

We believe the IDWG to be a well and appropriately resourced group. It has followed what appears to be a rigorous process and we believe it would be prudent to adopt the proposed templates.

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

Ideally a minimum of annually, but if reporting is provided quarterly we believe there is no reason why it should not be (and indeed have seen cases where it is) included in the quarterly reporting.

**Remedy 5 Objective**

Prospective customers receive fee information that is consistent and comparable across fiduciary management bids when holding tender processes, or (if no tender process is run) prior to awarding the contract.

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

We believe the provision of such information will improve trustee engagement. We recognise that the level of detail provided should be proportional to the scope of the mandate however.

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

We believe any fees that will impact the ultimate client return experience should be quoted.

**Remedy 6 Objective**

Prospective customers are better informed as to the fiduciary managers' historic performance.

**Should there be a fiduciary management performance standard?**

We firmly believe that there should be a performance standard.

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

We believe the standard developed by IC-Select, in coordination with industry participants, should be adopted. Although initiated by a third party provider, this work is scheduled to be transferred to the CFA institute. IC-Select and the CFA Institute have provided a detailed joint submission to the CMA so rather than duplicate commentary and effort we would just re-confirm our support for this initiative.

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

The IC-Select initiated performance standard appears to have broad support from the industry, as witnessed by comments at a recent Fiduciary Management Forum. If this support is re-confirmed in responses to the CMA then a separate working group may not be needed as (we note) IC-Select and the CFA Institute comment in their joint submission.

**Remedy 7 Objective**

Trustees monitor the performance of their investment consultant by measuring it against an appropriate set of strategic objectives.

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

We believe this is a prudent suggestion when undertaken in conjunction with enhanced tPR guidance.

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

We believe this is a prudent timeframe.

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

We do not believe there should be a minimum threshold, but recognise the process of setting objectives should be proportional and appropriate for the scheme.

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

Progress should be monitored on an on-going basis and the trustees should decide the timetable for formal review.

**Remedy 8 Objective**

Trustees can assess and compare historical performance of recommended asset management products.

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

We believe this should be covered by the GIPS standard. As the CFA institute highlight in their submitted commentary on Remedy 6 – "As of 2018 there are over forty countries that accept GIPS as the global investment performance standard within their local asset management industry."

**Recommendation A Objective**

Firms that provide investment consultancy and fiduciary management are subject to consistent, proportionate regulation that reflects market developments and addresses the competition findings of this investigation.

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

We believe the FCA regulatory perimeter should be extended.

**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 believe these remedies should be included within the FCA's conduct requirements.

**Recommendation B) Objective**

Trustees have access to free, comprehensive and impartial advice on how to choose and assess current and prospective advisers.

**Would trustees benefit from enhanced guidance?**

**What should the scope of any guidance include?**

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

We believe this would be beneficial to many trustees and we see this as a natural extension to the existing guidance provide by tPR.

Andrew Harrison

Director

LawDeb Pension Trustees