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INVESTMENT CONSULTANCY MARKET INVESTIGATION

RESPONSE TO PROVISIONAL DECISION REPORT

This submission sets out the response by Mercer Limited (**Mercer**) to the CMA's Provisional Decision Report (**PDR**) published on 18 July 2018.

1 Executive summary

1.1 The PDR reflects a substantial amount of work and we agree with many aspects of it. In particular, we are pleased the PDR highlights the actual state of play of the investment consulting (**IC**) and fiduciary management (**FM**) markets in the following respects:

(a) **There are healthy levels of competition.** Not only are there many players in the industry – more than 37 firms provide IC services, and over 18 provide FM – these are not highly concentrated markets. The PDR confirms that the largest firm offering FM has only 17% market share and the largest three investment consultants have less than 50% of the market combined.

(b) **Competitive pressures are material and likely to increase.** The CMA confirms that there are no material barriers to entry for either IC or FM. In particular, in FM, there are five large firms offering FM services and several other notable players – including recent entry by a number of large asset management firms. Levels of tendering and use of third party evaluators (**TPEs**) are on a pronounced upwards trend.

(c) **There is no evidence that investment consultants make excessive profits.** The analysis the CMA has conducted of IC and FM provider margins does not indicate that these are out of line with comparable sectors.

(d) **The overwhelming majority of trustees are satisfied with the service they receive.** The CMA's survey of pension trustees has shown resoundingly positive experiences, including confirmation that trustees consider conflicts of interest to be generally well managed.

(e) **IC and FM firms add demonstrable value.** The PDR confirms that:

(i) providers (and particularly FM providers) achieve better discounts on asset manager fees for their clients than schemes could achieve themselves;

(ii) asset allocation advice is tailored to clients and adds value; and

(iii) recommended asset manager products outperform benchmarks significantly on a gross basis (and on a net of fees basis to a lesser extent), and some investment consultants add significant value even on a net of fees basis.

1.2 There are, however, a number of points where the evidence does not support the CMA's findings. These relate to both the CMA's qualitative and quantitative findings:

(a) There is a significant error in one line of analytical code in the CMA's analysis of customer gains from engagement that results in a misclassification of data, undermining some results and reducing the impact of others. Correcting this error shows there is no statistically significant difference in the FM fees paid by 'engaged' and 'disengaged' clients (and, indeed, the sign of the estimated coefficient on the CMA's baseline engagement variable changes from negative to positive). This means customer detriment has not been demonstrated, contrary to the CMA's provisional conclusion.

(b) The CMA's gains from engagement analysis also uses unreliable samples and unreliable model specifications. In particular, the samples which remain after the CMA's data cleaning process are dominated by just one or two firms. These small samples are not representative of the market, and do not represent a "market outcome" – they are therefore not a reliable basis on which to justify a market-wide remedy such as mandatory tendering.

(c) The CMA's characterisation and analysis of the client journey from IC to FM appears to be based on (i) an inaccurate interpretation of the survey evidence; (ii) historical tendering figures that do not adequately consider current and future trends; and (iii) insufficient regard to the body of evidence of trustees challenging their ICs (even if the IC is a "trusted adviser").

(d) The CMA's analysis in relation to the Greenwich Associates IC Quality work uses incorrect data and an unreliable explanatory variable. This analysis, once corrected for these errors, does not support the finding that there is an inverse relationship between market share and quality.

1.3 Overall, therefore, the CMA's analysis appears to be based on data and evidence that are out of date relative to the current operation of the market, unrepresentative across firms, and incorrectly analysed. As a result, we believe the CMA's findings of an adverse effect on competition (**AEC**) in these markets are not justified.

1.4 Further, the CMA has not produced any robust evidence of customer detriment arising from the market features it has identified as potentially giving rise to an AEC. Remedying or mitigating customer detriment is a critical consideration set out in the statutory test for the CMA to impose a remedy. Without strong evidence of customer detriment, we respectfully do not agree with the CMA's conclusion that remedies are necessary in these markets.

1.5 Notwithstanding our reservations about the CMA's analysis, we welcome initiatives that may enhance transparency, consistency and comparability in reporting for the benefit of trustees – as such, we are broadly supportive of **Remedies 4 – 7**. Indeed, the market is already adapting in many of the areas covered by these proposed remedies in any event.

1.6 However, there are two areas where the CMA's remedies could do more harm than good:

(a) **Remedy 1**: the introduction of mandatory tendering at the point of moving to an FM service, both for new and historical appointments. The disadvantages of this remedy will, in our view, outweigh any potential benefit:

(i) Mandatory tendering is not necessary to address the CMA's concern – that trustees need to make an active, informed choice. The aim of improving engagement can be achieved without imposing a compulsory tendering obligation.

(ii) Mandatory tendering will create material additional cost for schemes and providers, likely at least £200,000 per tender in aggregate – and these costs are likely to be passed on to clients. As it stands, we have seen no evidence that the CMA has undertaken analysis to quantify these costs or to consider whether they would outweigh relevant benefits.

(iii) For some (especially smaller) schemes, the potential cost and effort of carrying out a tender could discourage them from switching to FM at all – even where it would be advantageous to the scheme to do so.

In addition, the obligation to conduct tenders for historical appointments would create considerable disruption in the industry, again without any demonstrable benefit. We estimate that the CMA's current proposals could lead to more than six schemes a month,

on average, having to put their FM appointment out to tender over the next two years – an unworkable volume for many, particularly smaller, providers.

To address these problems, we propose tendering at the point of first appointment of FM be promoted as best practice, rather than mandatory, with an obligation for schemes that choose not to tender to explain their reasons. A best practice approach should also apply in respect of historic appointments. This would achieve the CMA's objectives in a more proportionate manner.

(b) **Remedy 8**: the calculation of value added by IC asset manager (**AM**) recommendations. We are supportive, in principle, of measures which improve the ability of trustees to compare ICs. However, AM product recommendations are a relatively small part of what drives funding growth and risk reduction for pension schemes. They are not, and should not be, the primary basis on which pension schemes select their IC. Accordingly, the incremental gains to competition in the IC market from improving the comparability of IC AM product recommendation performance would likely be relatively small.

Further, it is unrealistic to believe that this remedy could meaningfully go beyond the baseline of confirming that an IC has a reliable track record of identifying AM products that outperform their relevant benchmarks. There would be significant challenges (particularly in terms of analytical horsepower) for trustees to determine that one IC is better than the other to a statistically significant extent.

In addition, if a mandatory remedy in this area had burdensome costs, particularly for smaller ICs, there could be adverse effects on the research coverage and advice offered by ICs. ICs may step back from offering these services, or rationalise significantly the asset classes or products in which they undertake research and ratings. This would leave trustees worse off. It could also create a barrier to expansion for smaller ICs.

There are particular risks of these issues arising from the CMA's current proposals relating to presenting 'net of AM fees' information, which could be misleading to trustees and could create complexity in comparing product performance and comparing ICs. This aspect of the proposed remedy could also significantly increase IC costs on an ongoing basis.

1.7 In the sections that follow, we set out in more detail our views on the PDR:

- **Section 2** sets out our views on the CMA's provisional findings;
- **Section 3** deals with market outcomes (with detailed analysis contained in Annex 1 and a Confidential Annex);
- **Section 4** explains why we respectfully do not agree with the CMA's AEC findings; and
- **Section 5** deals with remedies (with our detailed comments on Remedy 8 contained in Annex 2).

2 Provisional findings

2.1 We agree with a number of the CMA's findings relating to the competitive landscape, barriers to entry, and conflicts of interest.

2.2 To the extent we disagree with aspects of the CMA's analysis on these and other issues, we do not propose to repeat the submissions we have already made in response to the CMA's Working Papers and in our Overview Submission. However, there are a number of areas where the CMA has made new findings, and/or we have further comments to make. These relate to:

(a) the CMA's approach to the customer survey evidence on levels of trustee engagement, which devalues evidence of trustee satisfaction;

(b) the engagement levels of defined contribution (**DC**) schemes, where the CMA has not appreciated the context in which these schemes operate;

(c) the sale of FM services by IC firms, where we have a number of comments on the CMA's characterisation and analysis of the evidence; and

(d) barriers to expansion in FM, where the CMA has overstated the position.

2.3 We deal with these points in turn below.

(a) Customer survey evidence

2.4 The CMA appears to downplay the value of the positive survey results on trustee engagement and satisfaction levels, suggesting that trustees may over-estimate the quality of service they receive from providers because they do not know "*what good looks like*".[1]

2.5 We respectfully disagree. While not every trustee has the same level of experience, the increasing numbers of professional trustees and other trustees with relevant professional experience and qualifications, together with the guidance from the Pensions Regulator (**tPR**), mean that overall levels of trustee knowledge are increasing. Further, trustees do not work in isolation but together on a board of trustees: this structure allows trustee experience to be shared, meaning that in practice not every trustee needs to have the same level of knowledge and experience for a trustee board to have an overall ability to judge quality. We believe the CMA is too sceptical of the survey evidence on this issue – particularly given it relies heavily on the survey evidence elsewhere.[2]

(b) Engagement levels for DC schemes

2.6 We have previously highlighted the specific characteristics of DC schemes which can lead to what may appear to be lower levels of activity on the part of DC trustees.[3] Lower levels of activity do not, however, equate to lack of engagement.

2.7 DC and DB schemes are fundamentally different in construction and in terms of governance and regulatory requirements. DC scheme investments are typically less complex (than those of DB schemes). As a result, there tend to be fewer short-term interventions. In designing investments for DC schemes, the primary focus is on the long term glidepath for the individual member, with a strong emphasis on delivering transparent, good value outcomes. DC trustee engagement is, therefore, typically focused on quarterly monitoring of the main default arrangement and any additional self-select options made available to members. In line with the different regulatory and governance requirements that apply to DC schemes, assessments of

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[1] PDR, paragraph 5.12 and 5.38.
[2] Such as, for example, in respect of clients moving from IC to FM (paragraph 7.17).
[3] Please see our response to the Trustee Engagement Working Paper.

value for money take place on an annual basis. These involve scrutiny of investment costs and charges.

2.8 These factors do not mean that trustees of DC schemes are less engaged. Rather, they mean that well-designed DC schemes should be able to withstand different market environments without frequent changes from trustees – for example, frequent changes of default strategy would have cost implications for members and typically these are implemented by management within the fund itself. It is not surprising, therefore, that DC scheme trustees generally spend less time on regular intervention and implementation aspects of their role, as these elements are generally reflected in the underlying fund design, and they therefore need fewer meetings than DB schemes.[4] This should not be misinterpreted as lack of engagement.

2.9 Finally, we believe the existing regulatory environment is already fit for purpose: tPR updated the DC code in 2016 (and has released subsequent updates) for trustees.[5] Alongside statutory requirements to formally undertake a review of their investment strategy and statement of investment principles every three years, DC trustees are as mentioned above also required to undertake an annual value for money assessment, make results available publicly via the Chair's statement and publish transaction cost data. Further changes to this recently refreshed and well-functioning framework would create unnecessary cost and disruption.

(c) Sale of FM services by IC firms

2.10 We take issue with the CMA's analysis of the policies, incentives and processes followed by firms which offer both IC and FM when they introduce FM to their IC clients. We raise three main points: first, the interpretation of the CMA's trustee survey evidence; second, the analysis of tendering; and third, the conclusions on levels of challenge by trustees.

2.11 We also respectfully disagree with the CMA's characterisation of providers' behaviour – in particular, the references to providers of IC and FM "steering" their advisory clients towards their own FM service. The CMA found that firms have a legitimate interest in selling additional services to their clients and that there is no evidence of firms seeking to introduce FM services that are contrary to their clients' interests. Against this backdrop, the description of firms introducing FM services to their clients as "steering" those clients towards FM is unfair and prejudicial and should not be used by the CMA.

Survey of pension scheme trustees

2.12 The CMA cites its survey finding that 60% of trustees thought that ICs "steering" clients into their own FM services was a problem.[6] Aside from the use of the term "steering", we have commented previously on the leading nature of this question. In the PDR the CMA says that steps were taken to mitigate the risk of biased answers, but does not provide an explanation of what those steps were.[7] That being the case, our concerns stand.

2.13 In addition, we have previously highlighted that the survey was undertaken in circumstances where there had already been a great deal of commentary suggesting concerns in this area – including from the Financial Conduct Authority (**FCA**).[8] Against this background, it would be surprising if the potential for conflicts was not known to respondents – but even so, we note that half of the trustees who perceived this to be a problem thought conflicts were already well managed.

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4 PDR, page 140.
5 http://www.thepensionsregulator.gov.uk/press/pn16-40.aspx
6 PDR, paragraph 7.17.
7 Mercer response to the FM WP, paragraph 4.2(b); PDR, paragraph 7.19.
8 See e.g. press release published by the FCA, 14 September 2017: https://www.fca.org.uk/news/press-releases/fca-makes-market-investigation-reference-investment-consultancy-services.

2.14 More fundamentally, the survey results show that 70% of trustees do not report a concern about investment consultants introducing their own FM services to existing clients[9], with only 16% of FM clients introduced to FM by their incumbent IC provider. This indicates that this is far from a widespread concern in this industry, and certainly not at a level that would justify costly regulatory intervention.

Tendering and market testing

2.15 The CMA has materially understated the level of tendering and market testing that currently takes place when a client appoints an FM for the first time.

2.16 As noted in the PDR, KPMG's survey shows that the rate of TPE usage has almost doubled in a single year – from 33% in 2016 to 60% in 2017.[10] This reflects our own experience of a significant increase in the level and thoroughness of market testing in recent years. With TPEs actively marketing their services to trustees, our view is that the level of TPE usage will increase, and is reflective of a general trend towards greater market testing, through more informal market testing, formal tendering and TPE use (particularly given the widespread commentary in connection with the CMA's investigation, and the resultant increase in awareness among trustees about the potential benefits of market testing).

2.17 Against this background, the CMA should not place undue weight on backwards-looking evidence of levels of tendering. To do so, understates the level of testing now as well as likely levels in the future at the point when any tendering-related measures would be implemented.

2.18 Further, the CMA has been too narrow in defining a "tender" for its analysis. The CMA has chosen not to consider mandates described by parties as being awarded following "structured processes" as having been subject to a tender. In the data we provided, we used "structured processes" to cover situations where the client discussed propositions and fees with other providers, without necessarily running a full and formal tender process. These cases would therefore have involved at least some degree of market testing. However, "structured processes" were not included in the CMA's tendering figures. As a result, the CMA has under-estimated the real levels of engagement and market testing that take place.

Levels of challenge

2.19 We believe the CMA has understated the extent to which trustees challenge their provider: the CMA's evidence shows that trustees challenge their investment consultants and are willing to disagree with them where this is appropriate:[11]

(a) Care should be taken when citing measurements of "disagreement" as being equivalent to "challenge" – trustees may challenge the advice they receive but ultimately accept and act on that advice.

(b) The Trustee Landscape survey shows that the vast majority – 83% – of trustees reported having instances of disagreement with their investment consultants.[12] This third party research indicates that trustees do scrutinise and disagree with their consultant.

(c) The CMA survey found that 70% of trustees surveyed pressured their investment consultants to improve their terms within the last 3 years.[13] In our view, this further supports the existence of "challenge" from trustees regarding service and fees.

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9 PDR, figure 12 – 21% of trustees thought this was not a problem, 30% though it was a problem but generally well managed, and 19% did not know.

10 KPMG 2017 Fiduciary Management Survey

11 PDR, paragraphs 6.28 – 6.35.

12 And a further 6% could not recall. PDR, paragraph 6.30.

13 Trustee engagement WP, paragraph 67.

2.20 As a result, while we aim to build "trusted adviser" relationships with our clients, this does not, in our experience, equate with clients failing to provide challenge.

(d) Barriers to expansion in FM

2.21 We agree with the CMA's finding that there are no material barriers to entry in FM, but do not think it is correct that there may be material barriers to expansion in this market. The CMA relies in this regard on its findings in respect of the potential incumbency advantage enjoyed by ICs. We have explained above why we think trustees do provide challenge but, in addition:

(a) KPMG, in its Fiduciary Management survey, reported that there were 87 new schemes using FM in 2017. In a market that is growing rapidly, it is difficult to see how there could be material barriers to expansion – particularly when the same survey finds that 60% of new appointments were advised by a TPE (and thus were demonstrably open to competition); and

(b) there is further independent, third party evidence suggesting that the FM market shares of providers offering both IC and FM are likely to fall materially in the future as a result of factors such as market entry from asset management firms and an increased use of open tenders.[14]

2.22 In combination, this evidence suggests there will be opportunities for smaller players to expand their position in FM, provided they offer a good service in a highly competitive market.

3 Market outcomes

3.1 Both the IC and FM markets are not concentrated, with strong evidence of entry and expansion. The markets are dynamic. For example, the Herfindahl-Hirschman index (**HHI**) of the IC market has fallen by around 700 points since 2010, to 1,023 points in 2016. There is good evidence of switching in IC, market testing by both IC and FM clients, and active involvement by intermediaries (TPEs) driving value. The CMA has no evidence that IC or FM profits are above competitive levels.

3.2 We acknowledge the CMA's findings that:

(a) providers (especially FM providers) achieve better discounts on asset manager fees for their clients than schemes could achieve themselves; and

(b) asset allocation advice is tailored to clients and adds value.

3.3 The CMA, however, places weight in its AEC finding and estimated customer detriment on three areas of quantitative analysis: (1) the FM static and transition analyses; (2) a new analysis by the CMA of Greenwich Associates data; and (3) the (updated) Asset Manager Product Recommendations Analysis.

3.4 Following a comprehensive review of each of these analyses by our advisers (through a confidentiality ring), we consider that the results of these analyses do not support the CMA's AEC findings. In particular, the CMA has not identified reliable evidence of customer detriment, and the analysis is not sufficiently representative to justify a market-wide mandatory tendering remedy.

3.5 Our headline comments are below, with more detailed analysis contained in Annex 1. Further, our advisers will submit in parallel a Confidential Annex, which Mercer has not seen, commenting on confidential aspects of the disclosed materials and analyses.

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[14] Spence Johnson forecasts, PDR, paragraph 4.116.

(1) The Fiduciary Management analyses

3.6 The headline points in respect of both the FM static and transition analyses are:

(a) Material errors have been identified in the analytical code that affect the samples used by the CMA. The most significant example of this arises in the FM static analysis, where a single error in the code incorrectly omits relevant engagement information on ["]. This means that a number of ["] mandates are categorised by the CMA code as "internally acquired & disengaged" whereas information provided to the CMA shows that they were engaged on at least one of the three measures of engagement used by the CMA.

Correcting this error shows there to be no statistically significant difference in the FM fees paid by 'engaged' and 'disengaged' clients (indeed, the sign of the estimated coefficient on the CMA's baseline engagement variable changes from negative to positive). This means customer detriment has not been demonstrated, contrary to the CMA's provisional conclusion.

(b) Data cleaning and manipulation by the CMA has removed very large amounts of data. Each baseline analysis is based on subsets of clients from only four integrated IC-FM firms. The transition analysis, for example, captures just 9-11% of 2016 FM market revenues. Further, the samples which remain are dominated by just one or two firms. These small samples are not representative of the market, and do not represent a "market outcome" – they are therefore not a reliable basis on which to justify a market-wide remedy such as mandatory tendering.

(c) Recent experience in 2017 and 2018 is not captured in either analysis (and FM mandates acquired during 2016 are also dropped out of both analyses). These analyses therefore cover FM acquisitions from over 2.5 years ago. Levels of tendering and the use of TPEs have continued to rise in recent years, meaning the analyses do not to take into account important recent trends that are more relevant for understanding the current, and predicting the future, working of the market.

(d) The CMA continues to use a very narrow measure of trustee engagement. Feedback from trustees to the CMA show that schemes monitor IC and FM performance in various ways. Yet the CMA focusses on only three measures in its analyses: formal tender; TPEs; and Professional Trustees. This means that the CMA is, at best, measuring the very lowest bound of trustee engagement, which will underestimate considerably the accurate level.

(e) At various points the CMA's findings are not statistically significant, yet weight is placed on them. The CMA states, however, elsewhere in the PDR (in relation to asset manager recommendations) that a result is "*no longer statistically significant, in other words this [result] may be down to chance*".[15] Many of the results in the FM analyses could be due to chance, and are not sufficient to support a market-wide remedy.

3.7 The above points raise significant concerns about the overall reliability of the FM analyses: they cannot be relied upon in their present form. We assess each analysis in more detail in Annex 1 and in the Confidential Annex.

(2) The new CMA analysis of Greenwich Associates data

3.8 The PDR presents an analysis that attempts to show that in the IC market there is a negative association between perceived quality – based on the Greenwich Associates Quality Index (**GQI**) – and market share.

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[15] PDR, paragraph 10.81.

3.9 The CMA had not previously consulted on either the approach to this analysis or any provisional results. The results of the CMA's analysis should not be relied upon for reasons including the following:

(a) **The CMA uses incorrect data for its assessment of the relationship between market share and quality:** the CMA says it used its own market share data (from Chapter 4) in the analysis.[16] Access to the data in the confidentiality ring shows this is incorrect.[17]

(b) **The GQI measure of quality** ["].

(3) Asset Manager Product Recommendations

3.10 We welcome the inclusion of our manager selection performance in the CMA's PDR. Our results were not part of the eVestment analysis published in the CMA's Working Paper covering this subject, as we invest in and maintain our own proprietary database (**GIMD**). The CMA has now conducted an analysis of our recommendations on GIMD which showed positive results – in particular, that ["].

3.11 ["]. Trustees face actual costs when seeking to invest in the benchmark. Not incorporating these costs in the comparison deflates the value added by investment consultants.

3.12 The CMA also takes an unprecedented approach in correcting for alleged backfill bias. It omits the product from the analysis if it had even one quarter delay between the track-record commencing and the product being entered onto the eVestment or GIMD database. This is an extreme approach that goes further than the FCA or the academic literature.

3.13 The CMA's revised asset manager product recommendations analysis shows that:

(a) several ICs add value to their clients in identifying highly rated products that, on average, outperform the relevant benchmark. This does not reflect a market failure;

(b) including ["] has improved the market outcome, and supports our view that the CMA's concerns, as reflected in the earlier Working Paper, are not justified; and

(c) any remedy agreed in relation to manager selection should not have the inadvertent effect of reducing innovation and choice for clients.

4 The provisional AEC finding

4.1 Against this background, the balance of the evidence does not support the CMA's provisional AEC findings. The relevant threshold is a "well-functioning market" – a market without adverse features but not an idealised perfectly competitive market[18] – and case law highlights that there is:

> "*[…] a clear difference between a properly functioning market unaffected by an AEC and an ideal market, in which every potential supplier of the relevant product competes on a precisely level playing field.*"[19]

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16 PDR, paragraph 10.104.
17 See ["].
18 The CMA's '*Guidelines for market investigations: Their role, procedures, assessment and remedies*', paragraph 320.
19 *Barclays Bank Plc v Competition Commission*, [2009] CAT 27, paragraph 104.

4.2 In this case:

(a) the only quantitative evidence of detriment identified by the CMA, relating to prices paid by less engaged schemes, contains material errors of analysis which change the PDR's headline findings – as discussed further in section 3 above and in the Confidential Annex;

(b) for the reasons set out in section 2 above, we do not agree with the CMA's provisional conclusion that ICs are "steering" clients to FM; and

(c) the CMA has identified numerous positive features in these markets and instances of value added by ICs and FMs.

4.3 The CMA has a duty under section 134 of the Enterprise Act 2002 to consider imposing a remedy in order to remedy an AEC or the detrimental effect on customers caused by an AEC. As explained by the Court of Appeal:

> "*No doubt in principle competition may be prevented, restricted or distorted within section 134 without any detrimental effects having yet become apparent. The existence or absence of such detrimental effects, however, is plainly a material indication of whether or not competition has in fact been prevented, restricted or distorted.*"[20]

4.4 Here, there is no robust evidence of detrimental effects on clients, despite the CMA carrying out significant analysis to try to establish whether such effects exist. In the absence of such evidence, we believe the CMA should conclude that there is no AEC in these markets, and accordingly that there are no grounds for the imposition of remedies.

5 Proposed remedies

5.1 We have explained above our reservations about the CMA's analysis which undermines any finding of an AEC and customer detriment. Notwithstanding our concerns, there are a number of measures that the CMA has proposed to encourage greater transparency and consistency in client reporting which we believe will be generally helpful in improving market practice – in particular, we support **Remedies 4 – 7**. The market is already moving in these areas and, despite there being no grounds for an AEC finding, we would be supportive of the implementation of these remedies if some suitable means could be found to achieve this.

5.2 We are also supportive in principle, subject to some questions over remedy design, of some of the remedies intended to encourage customer engagement – in particular **Remedies 2 – 3**.

5.3 There are two remedies where we object:

(a) **Remedy 1 –** we believe that an inflexible mandatory tendering obligation could create costs that outweigh any benefits – and possibly deter trustees from pursuing an FM approach even when it would be in their scheme's interests to do so. We have particular reservations about the backwards-looking element of this remedy, both in terms of practicality and proportionality.

(b) **Remedy 8** – we support the principle of a standard for reporting performance of recommended asset management products and funds. However, the incremental gains to competition in the IC market from improving the comparability of IC AM product recommendation performance would likely be relatively small and, if a mandatory remedy in this area had burdensome costs, particularly for smaller ICs, there could be adverse effects on the research coverage and advice offered by ICs. ICs may step back from offering these services, or rationalise significantly the asset classes or products in which

[20] *Federation of Independent Practitioner Organisations v CMA* [2016] EWCA Civ 777, paragraph 39.

they undertake research and ratings. This would leave trustees worse off and could create a barrier to expansion for smaller ICs. We believe this is a real risk given the CMA's current proposals for 'net of fees' reporting of performance.

5.4 We set out our comments on each remedy in turn below, including responding to the CMA's questions. Our detailed comments on the design of Remedy 8 are contained in Annex 2.

5.5 We query whether the CMA is the appropriate body to take forward a number of these remedies. These markets are already subject to extensive oversight. Adding another layer of regulation – from an additional regulator – adds complexity and the potential for duplication or inconsistency as well as requiring the CMA to allocate substantial resource to implementation and ongoing monitoring.

5.6 As a result, for remedies 1, 2, 6, 7 and 8 – if the CMA ultimately decides that it would be necessary and proportionate to pursue these remedies – we believe a more appropriate way forward would be for the CMA to make recommendations to tPR and the FCA. These recommendations could be detailed to ensure that the other regulators obtain the full benefit of the CMA's work on these markets.

Remedy 1: *Mandatory competitive tendering on first adoption of fiduciary management*

A. Mandatory tendering on first appointment

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

5.7 No. The primary aim of this remedy is to address the potential for trustees to switch to the FM service of their existing IC by default without actively considering alternative providers:

(a) First, given the problems we have identified in section 3 above and in the Confidential Annex with the CMA's analysis of gains from engagement, we do not believe the evidence supports a remedy on this issue.

(b) Second, even if despite these evidential concerns a remedy is adopted, we believe that there are more suitable and proportionate methods available to achieve this aim – and indeed that a mandatory approach could have negative effects.

5.8 We set out below the reasons why we do not believe that a mandatory regime would be in trustees' best interests. We then comment, to the extent the CMA wishes to proceed with a mandatory approach, on how the remedy should be designed to mitigate the detrimental effects.

A compulsory regime would not be in all trustees' best interests

5.9 Our concerns about this remedy are twofold:

(a) the remedy is not well targeted to address the issue the CMA has raised and is too broad in its scope; and

(b) the remedy will create material additional cost that will have a detrimental effect on the market.

5.10 We explain these points further below and also set out our proposed alternative.

The breadth of the remedy

5.11 This remedy is not well targeted to address the issue that the CMA has raised. The CMA describes its objective for this remedy as being to ensure that trustees make an "informed, active choice" when choosing an FM provider.[21] This objective can be achieved without a tender; it requires that trustees are aware of their options and have actively considered them. A tender is only one method of achieving this and less onerous alternatives are available.

5.12 We are supportive of measures that would encourage more testing in the market, and that encourage trustees to consider the options available to them when considering FM. But our view is that mandatory tendering across the board goes too far. In our experience, it is increasingly the case that tendering is standard practice in any event. Schemes which do not run a tender tend to have a good reason for their choice. For example:

(a) trustees may have recently tested the market and feel sufficiently well informed that they do not need to do so again;

(b) the appointment is for a niche or particularly specialised service, for which the cost of running a formal tender would be disproportionate. By way of example, the cost to a provider of a competitive exercise for a single asset class mandate of £10m would be likely to exceed ["] – meaning providers are unlikely to have a strong incentive to take part; or

(c) the scheme is small and has limited resources.

5.13 In all of these cases, we would usually expect the trustees to carry out some form of market testing before appointing an FM, but there may be very good reasons why a full and formal competitive tender is not appropriate or necessary.

The cost and lack of benefit

5.14 For the reasons set out above, we do not believe that this remedy will create a significant benefit for providers, trustees or schemes. But it will create material additional cost.

5.15 The CMA has not conducted any assessment of the additional cost this remedy will impose on schemes and providers. Based on our market experience, the cost may break down as follows:

(a) Participation in a tender is likely to cost a provider around £60,000.

(b) For the scheme, we would expect considerable trustee time to be required (in the region of two days), which could incur charges if professional trustees are involved. If the scheme uses a TPE our understanding is that costs are likely to be in the region of £25,000 - £40,000.

(c) If we assume three responses to a tender, the total costs would exceed £200,000, not including trustee time.

(d) There would also be the additional cost of monitoring compliance with the regime, which will fall on both the regulator and the industry.

5.16 Our concerns, therefore, are:

(a) carrying out unnecessary tenders would increase demands on resource-constrained trustees and introduce material additional costs for providers and schemes. These costs

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[21] PDR, paragraph 12.22.

would ultimately be reflected in costs for trustees incurred in managing schemes that would better be invested to provide scheme benefits;

(b) given the costs of taking part, a proliferation of tenders could lead to a "tick-box" approach to responding from providers (especially smaller providers with constrained resources) or no response at all, meaning that the tenders become less useful;

(c) these material participation costs may present barriers for players seeking to enter or expand in the market; and

(d) some schemes (especially smaller schemes) may be discouraged from considering FM at all if they would have to bear the cost of carrying out a formal tender before appointment.

The last of these is particularly concerning – since the evidence shows that FM is a beneficial service that brings value to schemes and ultimately their members.

Our proposed alternative

5.17 For these reasons, we believe that an approach that encourages tendering while providing room for discretion is more appropriate. The CMA's objectives could be achieved effectively and more proportionately by way of a combination of:

(a) the introduction by tPR of guidance stating that competitive tendering is best practice when moving from IC to FM;

(b) a requirement on FM providers to provide a prominent statement to trustees prompting them to consider testing the market before making a first appointment; and

(c) a requirement on schemes that do not carry out a tender before first appointment of FM to provide an explanation of the reasons why this was the case in, for example, the Trustee Report and Accounts where other changes are also commented on and all advisers listed.

5.18 We believe that, in combination, these steps will ensure that trustees consider carefully whether to carry out a tender – forming a reasoned policy on this decision will achieve the CMA's objective of "an informed, active choice".

The definition of "Fiduciary Management" requires careful consideration

5.19 If the CMA decides to proceed with a mandatory tendering obligation, then we believe it is crucial that the regime be designed in such a way to mitigate the worst of the disadvantages we have identified.

5.20 To achieve this, the CMA's proposed definition of FM should be clear and appropriate. As currently drafted, it risks:

(a) over-capturing mandates which may have any element of discretion; and

(b) introducing uncertainty for trustees trying to determine whether their appointment of an FM provider would necessitate a competitive tender.

5.21 The CMA's definition of "fiduciary management" should therefore be amended as follows:

"the provision of a service to institutional investors in the United Kingdom where a client who operates a defined benefit scheme delegates to its provider both (i) decisions in respect of the client's asset allocation; and (ii) the implementation of these decisions, based on the

client's investment strategy. This service may include responsibility for implementation of all or some of the investor's assets."

5.22 This proposed definition could further clarify that the following solutions would be captured:

(a) *a full (or whole funds) fiduciary management solution; and*

(b) *a partial fiduciary management solution where both asset allocation advice and delegated implementation are combined as part of the service*;

and that the following would **not** fall under this definition:

(i) single asset class appointments under which the client delegates only manager selection and implementation responsibilities (i.e. no asset allocation decisions); (ii) diversified growth fund and balanced mandate appointments; (iii) appointments to manage the level of hedging of a portfolio (i.e. which entail no ongoing advice); (iv) solutions which are implementation-only, and where the client retains control of asset allocation and/or management selection investment decisions (e.g. operating / investment platforms); (v) existing private market appointments which use closed-end funds; and (vi) services in relation to defined contribution mandates.

5.23 This would prevent wider asset management products being incorporated in any remedies.

b. 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?

5.24 No – trustees should have the choice of whether to conduct an open or closed tender process taking into account their individual circumstances.

5.25 Open tender processes are resource-intensive and costly for both providers and schemes, given the increase in submissions to be reviewed and responded to. We would expect the cost involved to rise in proportion with the additional number of tenders received; assuming that a trustee will receive at least twice as many submissions in an open process, this would result in the cost being doubled. This can be seen in the experience of local authorities (which are much larger schemes than a traditional FM scheme), who dedicate significant time and resource to open processes. Again, this additional cost carries the risk of deterring a number of schemes (particularly smaller schemes) from proceeding with a fiduciary management approach at all.

5.26 On this basis, we propose the definition of a "competitive tender process" to include a requirement that clients review written proposals (or receive presentations with written content) from at least two providers. Such proposals or presentations should contain fee estimates.

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

5.27 No – an obligation on firms not to accept a new mandate would be excessive. If the CMA decides to proceed with a mandatory obligation it would be sufficient for this to apply to trustees. This is for two reasons:

(a) The scheme is best placed to judge whether the obligation to tender has been complied with – providers rarely have full information on this issue (since they do not usually have visibility of, for example, how many other providers have been invited to tender or the extent of the materials provided).

(b) If there is a risk of non-compliance, it is not acceptable for a provider to be faced with the choice between withdrawing services from the scheme or otherwise being in breach of its

obligations. Take, for example, a case where non-compliance only comes to light after the FM appointment has been implemented (perhaps because of a flaw in the tender process). An FM provider would find it very difficult, if not impossible, to withdraw services at this stage – to do so would risk a material adverse impact on the scheme from a cost and performance perspective and would be contrary to the provider's professional obligations.

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

5.28 Yes – in the event that tendering is compulsory, a scheme size threshold of assets of £100 million should apply given the prohibitive costs of tendering for smaller schemes. The costs of tendering do not change materially with the size of scheme, meaning that they are much higher, relative to scheme size, for smaller schemes.

5.29 The definition we propose above would effectively capture schemes which should be caught by reference to the scope of the mandate.

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

5.30 No – if a tender process has taken place on first appointment, no further process should be compulsory (or necessary, given that the trustees are clearly already aware of options in the market). To create such an obligation would potentially discourage firms from raising new solutions with their client in the knowledge that any expansion of their mandate would trigger a requirement to tender.

f. How should trustee compliance be monitored?

5.31 TPR would be the most appropriate (and best equipped) body to monitor trustee compliance.

B. Mandatory tendering for existing fiduciary management mandates

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

5.32 No – this proposed remedy would be particularly onerous, costly, and difficult to manage in practice.

(a) It would require schemes which are satisfied with their providers to run a tender process that may create no benefit. These schemes may have carried out informal or structured market testing before or since appointing their FM provider and be fully aware of the options available in the market. Nevertheless, if the proposed regime were to be implemented, they would be required to carry out a formal tender process within a short timescale.

(b) For providers, this remedy would create uncertainty and distraction, diverting significant resources that would be better spent on serving clients.

(c) For all parties, this obligation would likely generate an unmanageable volume of tenders and impose disproportionate costs which would set back the development of this fast-growing and dynamic market.

5.33 Based on the numbers estimated by the CMA, an average of at least six additional mandates would come to market each month for a period of at least two years.[22] This volume of tenders would have a material impact on the ability of firms to bid for mandates and respond to RfP requests, while carrying out their day to day business. As noted above, the cost for a firm of responding to a tender in typically in the region of £60,000. Even assuming a firm only took part in half of these opportunities, this would create a potential additional cost per firm of over £2 million per year (and this does not include the cost of responding to new opportunities that come to market during this period).

5.34 This added cost would be likely to reduce, rather than increase competition in the market: smaller providers would find it particularly hard to bear these costs and dedicate the resources required to keep up with this volume of tenders. Indeed, this concern has been voiced by a significant number of parties throughout the market investigation.[23] In addition, this increase in the overall costs of all suppliers would likely be passed on to schemes.

5.35 To avoid these negative outcomes, our proposed alternative is to require providers to communicate with those existing clients who had purchased FM services for the first time, and where the provider believes that the client has not previously engaged in a market testing process, that it would be best practice to conduct a tender to test the market. In addition, as described above in relation to prospective clients, schemes which have never conducted a tender for their FM provider could be required to make a statement explaining why this is the case. This would, in our view, be more effective and proportionate in achieving the CMA's objective of ensuring active engagement.

b. 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)?

5.36 If the CMA proceeds with a mandatory obligation it should be closed, for the reasons set out above.

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

5.37 If the CMA proceeds with a mandatory obligation then it needs to be designed in such a way as to avoid capturing schemes which have already conducted a market test. The criteria need to be easy to understand and compliance easy to demonstrate.

5.38 For these reasons, we believe it should be sufficient for a client to have reviewed written proposals or received presentations including written materials (both of which would need to contain information on fees), from at least two providers at the time of appointment. There should be no restriction on the format of the proposals provided.

5.39 Importantly, as far as we are aware, no scheme has to date conducted an open tender in relation to a mandate falling within our proposed definition. This would, under the CMA's provisional proposals, result in all schemes having to re-tender. Open tendering should therefore not form part of any criteria regarding historical tender processes.

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

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22 Based on 145 schemes identified in Revised Table 8 in the Addendum to the PDR for which a tender must be completed within 2 years from the date of the order. The CMA itself notes that these figures are probably an understatement.

23 See public submissions from e.g. Cardano; Hymans Robertson; Redington; LCP; JLT; PLSA; and P-Solve.

5.40 If the CMA proceeds with a mandatory obligation then a maximum tenure of five years is reasonable (subject to a grace period, as explained below).

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

5.41 As explained above, the grace period of two years proposed for retendering of mandates which are more than five years old is likely to create very significant resourcing issues. Providers would simply not have the capacity to participate in such a high quantity of tender processes in such a short time. Rather, the grace period should be extended to five years.

Remedy 2: Mandatory warnings when selling fiduciary management services

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

5.42 Given the CMA is concerned trustees may not be adequately engaged and/or may not be sufficiently aware of the options available in the market, this remedy should apply to all providers of fiduciary management services (within our proposed definition).

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

5.43 Subject to a minimum amount of prescribed information, providers should have a degree of flexibility around the precise wording and structure of any warnings. The CMA should take account of the nature of these clients: trustees are professional purchasers, and not retail customers where stark 'health warnings' may be more appropriate.

5.44 The obligation should be to provide a disclosure that is prominent, clear and explains that the service is (a) different to the client's current solution; and (b) offered by other firms in the market.

5.45 As regards separation of marketing and advice, as we have submitted previously, this would be very difficult to achieve in practice.

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

5.46 No – we agree with the CMA's provisional conclusion requiring disclosures in respect of oral advice and marketing is unlikely to be a workable approach, and we do not believe they are necessary in these contexts given that trustees will obtain written advice on material issues. A warning in written materials therefore appears sufficient to achieve the CMA's objectives.

d. 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?

5.47 Yes – as above, firms should have discretion around the precise formulation of a disclosure; for example, Mercer may refer to fiduciary management as 'Delegated Solutions' within its materials.

5.48 Prescribing standard language and format risks being ineffective and eventually being overlooked by trustees.

Remedy 3: Enhanced trustee guidance on competitive tender processes

5.49 We support enhanced trustee guidance.

5.50 We have no specific comments on the CMA's recommendations at this time, though note our interest in participating in any design process.

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

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

5.51 Yes – we support this remedy, which should generally follow the standardised template designed and implemented under Remedy 5 below, and be provided to clients on at least an annual basis.

5.52 As with Remedy 5, the breakdown should require firms to disclose the total revenue they receive from the mandate (including revenue earned by FM providers that use an in-house custodian and/or asset manager).

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

5.53 We have not been involved in the drafting of the IDWG templates (which are not yet publicly available) and cannot provide detailed comments on the suitability of these at this stage.

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

5.54 Such reporting should be on an annual basis.

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

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

5.55 Yes – as a firm that already provides detailed breakdowns to prospective clients, we support this remedy, which should be implemented by way of an industry-wide standard template.

5.56 This breakdown should comprise an FM fee (separated into a schedule of services), asset management fees, custody costs and administration charges.

5.57 A proposed template is provided below:

On-going costs	%	£
Fiduciary management fee		
Asset manager fee		
Custody / administration		
Other		
Total		
Total revenue earned by your firm		
On-boarding charges		
Transition management services		

Disinvestment costs of legacy portfolio	
Costs of investing in your fiduciary solution	
One-off costs levied by your firm	
Total	

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

5.58 Yes – the fee breakdown should require that firms disclose the total revenue they receive from the mandate. This would ensure full transparency e.g. in respect of those firms that use in-house custodians and asset managers.

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

a. Should there be a fiduciary management performance standard?

5.59 Yes, we support an FM performance standard that applies to UK DB schemes.

5.60 We believe this would be useful and relevant for trustees, provided: it is focused on trustees; it is clear and straightforward to understand; it allows trustees to make "like-for-like" comparisons; and it manages the risk of fiduciary managers manipulating this disclosure or "gaming" the system in their own favour.

5.61 However, to allow like-for-like comparisons, a clearly defined scope of FM will be important – in line with the definition which is used under the current FM performance standard.

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

5.62 ["]. Although we are broadly supportive of the current draft Fiduciary Management Performance Standard, we see the governance of this and certain aspects of the methodology as problematic. ["].

5.63 As we have set out previously, we have a number of concerns around the methodology behind the current Fiduciary Management Performance Standard, including in respect of: (i) composites; (ii) returns; and (iii) liabilities.[24]

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

5.64 In order to address the above outstanding concerns, the implementation of the draft Fiduciary Management Performance Standard should have oversight and input from industry participants such as FM providers, TPEs, and independent trustees.

5.65 We have no fixed views on funding at this stage.

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

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[24] See paragraphs 5.5 and following of Mercer's response to the CMA's WP on information on fees and quality.

5.66 We do not envisage agreement on the standard being problematic in the required period, given that the Fiduciary Management Performance Standard is already close to being finalised.

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

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

5.67 We are broadly supportive of a strategic objective-setting process for DB scheme trustees. However, we have two primary concerns with this remedy:[25]

(a) the nature of objectives will vary by scheme, and so a uniform, one-size-fits-all template or model may be of limited benefit; and

(b) strategic objectives may be difficult to measure and report against, given the potential for trustees to not follow advice, or to fail to implement this on a timely basis.

5.68 In order to address these concerns, we propose the following:

(a) Trustees' strategic objectives (the **Strategic Objectives**) should be expressed in objective, financial terms.

(b) Trustees should set their investment consultants the objective of providing advice aimed at helping the trustees to achieve the Strategic Objectives.

(c) Given advice may not always be followed, or may not be implemented in a timely manner, trustees should ask their investment consultant to provide a report containing an assessment of the impact of client decisions taken on the advice of the investment consultant, together with key advice that was not implemented (or not done so in a timely manner).

5.69 The above approach will enable both trustees and providers to focus on the achievement of desirable and appropriate financial outcomes for the scheme. The structure will also place focus on collaboration in the trustee and provider relationship, and appropriately reflect the responsibilities of both parties in achieving the Strategic Objectives.

5.70 We note that DC schemes already conduct triennial assessments of objectives and believe that this framework should be used for DC schemes rather than creating an additional obligation on trustees. Further, as DC success should necessarily be measured against member outcomes, investment services should not be reviewed in isolation, but as part of a wider governance framework that combines investment and administration practices. This would follow guidance from, for example, the PLSA.

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

5.71 Yes, in line with the scheme's triennial actuarial valuation.

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

5.72 No – this should not be based on size of scheme as objective-setting is beneficial and particularly so in the case of smaller schemes.

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[25] As highlighted by the CMA in paragraph 12.119 of the PDR.

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

5.73 Every three years – as mentioned above, this would tie in with the triennial actuarial valuation process.

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

5.74 Our detailed comments on Remedy 8 are contained in Annex 2. Below we set out a summary of our main views on the CMA's specific questions.

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

5.75 We broadly support increased transparency in reporting performance of recommended asset management products and funds, and would be willing to work with an implementation committee to develop this.

5.76 However, we have material reservations about the CMA's proposals. In the absence of a quantified customer detriment which the remedy would be targeted to address, this remedy appears unnecessary and disproportionate.

(a) AM product recommendations are a relatively small part of what drives funding growth and risk reduction for pension schemes. It is not, and should not be, the primary basis on which pension schemes select their IC. Accordingly, the incremental gains to competition in the IC market from improving the comparability of IC AM product recommendation performance would likely be relatively small.

(b) Further, it is unrealistic to believe that this remedy could meaningfully go beyond the baseline of confirming that an IC has a reliable track record of identifying AM products that outperform their relevant benchmarks. There would be significant challenges (particularly in terms of analytical horsepower) for trustees to determine that one IC is better than the other to a statistically significant extent.

(c) In addition, if a mandatory remedy in this area had burdensome costs, particularly for smaller ICs, there could be adverse effects on the research coverage and advice offered by ICs. ICs may step back from offering these services, or rationalise significantly the asset classes or products in which they undertake research and ratings. This would leave trustees worse off. It could also create a barrier to expansion for smaller ICs.

5.77 Our primary concerns about the proposed design of the remedy relate to:

(a) the mandatory presentation of returns on a 'net of fees' basis, which would raise disproportionate levels of risk, complexity and cost for the industry, both in the implementation stage and going forward;

(b) the setting of an 'appropriate benchmark', which would be significantly challenging to formulate in practice, and risks reducing innovation in research/ratings processes, research coverage, and relevance of results; and

(c) the significant additional requirements and costs for providers in implementing this remedy: with Mercer's costs alone estimated to be more than ["] in present value terms (see Annex 2 for a detailed breakdown), this remedy is likely to result in considerable financial impact to the industry.

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

5.78 Yes – we believe there is information relevant to trustee decision-making in relation to product recommendations which goes beyond historical performance.

5.79 In our experience, trustees value seeing:

(a) ["];

(b) ["]; and

(c) ["].

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

5.80 We would welcome the establishment of a steering committee, given the need for careful design, consensus building and trustee engagement in the formation of this remedy.

5.81 This committee will require independent regulatory involvement, and will require the ability to:

(a) consult the industry and clients on design considerations;

(b) handle competitively-sensitive representations from providers (for example, several FM providers are also asset managers being rated by other investment consultants); and

(c) if necessary, compel the participation of parties including asset managers (e.g. to provide comparable fee information).

5.82 We would like to participate in the steering committee.

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

5.83 As noted above, we do not agree with the CMA's proposed requirement that returns be presented on a 'net of fees' basis – we consider this aspect of the remedy to raise the greatest cost and risk. As an overarching point, we believe this element is not proportionate, particularly given the uncertain benefits this would have for trustee decision-making.

5.84 Specifically:

(a) A 'gross of fees' presentation is far more reliable, meaningful and proportionate: calculating net of fees using gross fund performance and rack rate fees provided by managers is unlikely to reflect true fees paid by clients. Issues may arise around data availability and consistency between managers, including across platforms (e.g. GIMD and eVestment).

(b) Calculating net of fees results would add significant cost for providers. For Mercer, in present value terms we estimate the cost of implementing and monitoring net of fee reporting to be over ["]. Such costs will be particularly felt by smaller providers. Again, this could lead to adverse effects on research coverage and advice and may also constitute a barrier to expansion for smaller firms.

(c) If the CMA proceeds to mandate a 'net of fees' approach, we propose that asset managers be required to report net of fees (given the challenges in collecting fee scale data and calculating appropriate fee levels). Providers could then report both net and gross of fees and calculate returns accordingly, without any fee assumptions.

5.85 Please refer to Annex 2 for our conservative estimates of the cost of implementing and maintaining the 'net of fees' element of this remedy.

Recommendation A: Extension of FCA regulatory perimeter

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

5.86 In principle, we have no objection to the extension of the FCA's regulatory perimeter. As highlighted in paragraph 5.5 above, the FCA is well placed to oversee the remedies suggested by the CMA but we would caution against the risk of duplication or inconsistency among different regulators and oversight from professional bodies such as the CFA and Institute of Actuaries.

5.87 While we think some of the activities suggested by the CMA could appropriately be covered by the extension (e.g. advice on asset allocation), we are less clear about how FCA regulation may apply to other areas (such as fiduciary management). In order to comment in detail on these proposals, therefore, we would need to understand this more clearly.

b. 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?

5.88 We believe it would be appropriate for the perimeter to be extended through amendments to existing FCA handbooks in the form of principles, rather than the introduction of specific rules. However, as noted above, further information on the CMA's proposals in this area are required to enable us to comment in detail.

c. 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?

5.89 The costs of extension could be material, requiring, for example, additional compliance resource, upgrades to IT systems, additional training for staff, additional regulatory fees and amendment of contracts. This is an area where careful planning will be needed to ensure that the changes do not introduce unintended consequences – for example through adding significant costs to a particular segment or activity which in turn could be passed on to clients. We would expect the FCA to conduct a cost benefit analysis to consider these issues before making changes to its approach.

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

5.90 We believe that consistency between regulators is an important issue to be considered in planning any changes to the regulatory framework.

Recommendation B: Enhanced trustee guidance and oversight of remedy 1

a. Would trustees benefit from enhanced guidance?

5.91 As explained above, we do not support Remedy 1. However, we support enhanced guidance for trustees on best practice in conducting tenders.

b. What should the scope of any guidance include?

5.92 We agree that it would be helpful for the guidance to cover best practice in conducting tenders, and Remedies 4-8.

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

5.93 We do not have detailed comments at this stage, but would be happy to take part in future discussions on the scope and content of any guidance. We suggest that any guidance is developed by tPR.

Recommendation C: Improving information on underlying asset management fees and performance

5.94 We support this remedy, as set out above in relation to Remedy 4.