SPENCE

# Spence & Partners response to the Investment Consultants Market Investigation

**Box 1: Consultation questions for mandatory tendering on first appointment**

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

Whilst in principle we support the idea of understanding the market before making a choice, this type of exercise can be expensive and so for scheme's with limited budgets, it may deter them going down this route even if it could have been the best option. A solution to this could be to limit the number of providers considered so the search is more limited. In addition, a standardised approach to tenders could be adopted or as a minimum the tender could purely be a pricing exercise which would be more limited in nature than a full tender e.g. providers could be asked to provide a list of services and fees without the need to go through a full tender.

We also have concerns that for smaller providers such as ourselves it will prove to costly to keep tendering given our limited resources, so in fact it will limit competition as we will be forced out of this space or we would need to keep turning down tender requests.

- 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?

While the need for tendering is important, an open or closed tender should be at the discretion of the Trustees. A closed tender can make a more focused approach as many Trustees are likely to use an advisor, who will have a shortlist of providers and so these could be approached. As stated above, perhaps a minimum standard could just be a price check.

- Should firms be prohibited from accepting new mandates if no such competitive tender process has not taken place?

No. We believe some schemes based on size should be exempt from doing such an exercise on the grounds of cost and so firms should not be prohibited from accepting such business as long as some minimum criteria is met. We understand that CMA is not proposing a minimum threshold, but this could prevent some schemes from considering Fiduciary Management on the grounds of cost.

Firms should check if a competitive tender process has been run for schemes above this threshold. They could also be responsible for checking if a competitive tender has taken place.

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

Some trustees may only wish to delegate a small part of the scheme's management so doing a tender may seem disproportionate. Also smaller schemes may be put off as the costs will be high relative to the size of scheme so an exemption would be useful. However, a middle ground could be that these schemes could conduct some high level review of possible alternatives. In our view, there should be a minimum size given the potential significant cost of tendering or at least a minimum compliance review that covers just a simple price check.

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

This may counterproductive as the time and cost spent on doing such exercises may slow down the whole process and will also mean there could be multiple fiduciary managers that need monitoring. For smaller schemes this may not be feasible and may put them off the idea of going down the fiduciary route. In addition, it may prove that for part of the services the incumbent is competitive but for the expanded bit they are not. Does this mean they split their services? The practical implications of that are significant with schemes having several fiduciary managers increasing costs significantly and leading to advice etc. that is not joined up.

- How should trustee compliance be monitored?

The fiduciary management firm accepting the mandate could be responsible for this. They are in the perfect position to determine if the Trustees have complied by only allowing those that confirm compliance. This could be reported to the regulator for those that do not comply.

**Box 2: 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?

The proposed remedy seems reasonable, however, we would suggest the possibility of a light touch review is allowed as the cost of such an exercise will be expensive. Also, trustees may have previously been through a limited process e.g. they price checked the market but did not go for a full review, we feel they should not be required to re-tender.

- 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)?

This could be at the trustees' discretion as they can then decide which option is most suitable for their circumstances. In some cases, it may be that where they currently are is most suitable so doing a full scale open tender will make it seem like an additional governance burden that is costing the scheme.

- 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 could be meeting minutes of the tender which records the providers considered and the one chosen, copies of the presentation provided by the fiduciary manager or any advice they have received on the tender exercise. Also, it could be that the Trustees have considered at least one other provider.

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

5 Years is sufficient as proposed.

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

2-3 Years to allow the trustees time to fit it into any project plan.

**Box 3: 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?

It should apply to all. We note that the CMA review did not cover wealth managers when in fact several of them are offering FM services. We feel this is something they should cover.

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

The warning should be at the beginning of the presentation where fiduciary services are being marketed. If there are other parts to the presentation that do not relate to the fiduciary service, they should be in a separate section. A presentation where a comparison between fiduciary management services and advisory services are being made the warning should be at the start of that section.

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

There could be a requirement to state that fiduciary management services are being marketed, however, this could be difficult to monitor compliance. There is likely to be formal discussion where there is a presentation before the trustees make a decision with any services and so any warnings could be addressed at this point in writing.

- 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?

Firms should have the flexibility to change the descriptions so they can make it clearer what services are being offered if they wish to. However, it should be made clear that it falls outside the traditional investment consulting model and is a form of fiduciary management. Some guidance from TPR could help trustees to understand the differences.

**Box 4: 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. The key areas the fees should be broken down into should be:

- Advice
- Implementation of strategy
- Asset management fees – for internal funds and external.
- Other fees such as admin and custodian
- Estimated transactions fees for investing and exiting the investment

- Termination fees
- Split of fee between underlying manager and fiduciary manager

It should be clear if fees are taken from assets or charged separately, showing both as percentage and a monetary amount would help to gauge total fees paid. Any additional fees that could be incurred as part of the service that is not included in the headline fee could also be disclosed.

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

A standardised approach will help to make comparisons easier, but we would need to see the template before making a call on whether the templates are suitable.

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

Annually but also after any change in fee structure.

**Box 5: Consultation questions for fiduciary managers reporting disaggregated fees to new customers**

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

We believe prospective customers should see a fee breakdown. However, the final fee proposed may differ to that originally shown as the scope of services may differ to the original proposal. Trustees should be made aware that this is an indicative fee and will vary depending on services provided.

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

Yes as detailed above.

**Box 6: Design questions for fiduciary management performance reporting**

- Should there be a fiduciary management performance standard?

No.  Given the bespoke nature of pension schemes and the strategies put in place we feel that applying a standard will prove difficult.  However, that does not preclude specifying what information a manager should provide.

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

A combination of Fiduciary Management firms, trustees and advisers with oversight from the CMA/TPR/FCA.

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

We are not sure of this.

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

CMA or other regulatory body to make the decision on what to do.

**Box 7: Consultation questions for setting strategic objectives for investment consultants**

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

The process for setting the objectives should be based on a discussion between the trustees and the investment consultant. There is a danger that trustees could set unrealistic objectives that are out of the consultants' control, hence making it difficult to achieve. E.g. performance of the scheme where there can be a number of external factors.

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

This seems reasonable, but should only apply where there is an ongoing relationship. For one off pieces of work, the objectives should be based one the individual bits of work.

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

The objectives should be for ongoing relationships as this can be addressed and changes made. For short term projects and no ongoing relationship, it could be slightly more difficult as the main aim of the project will be to complete it within a certain timescale.

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

Every 3 years should be reasonable for an ongoing relationship. For smaller projects this may be difficult to assess until the project is completed, however, there could be interim points to assess progress but this won't necessarily be possible in all cases.

**Box 8: Consultation questions for performance reporting**

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

We believe that this information is generally available to trustees from investment consultants to make comparisons in performance between different funds. However, there is generally limited information on the performance of a fund from when a consultancy recommends a product. There would need to be some guidance on how to do this as the rating of product can change over time and so it would be useful to understand how this is reported on an ongoing basis.

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

Performance metrics around the value added split by strategy and manager selection.
Performance of assets against the schemes liabilities.

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

This could be done in conjunction with the CFA Institute who implements the Global Investment Performance Standards.

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

Ideally the fee being paid by the client should be used. However, not all clients pay the same fees on the same product or fund with factors such as fee structure (flat fee or outperformance fee) size of investment being impacting the costs of a product. Therefore this still makes like for like comparisons difficult between funds/products.

**Box 9: Consultation questions on extension of the regulatory perimeter**

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

We feel that the suggestion of extending it to cover investment consultants is appropriate.

- 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?

Yes if implemented.

- 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 do not know, but have concerns that the additional costs drive out smaller companies such as ourselves and so reduce competition.

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

We are not sure.

**Box 10: Consultation questions on enhanced trustee guidance**

- Would trustees benefit from enhanced guidance?

Yes

- What should the scope of any guidance include?

Guidance should cover details around how to measure and monitor performance of all parties involved as well as how to run a tender.

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

Yes. Written documentation.

**Box 4 Consultation questions on our remedy package**

- Is our package of remedies effective and proportionate in addressing the AECs and resulting customer detriment?

In aggregate yes.

- How should we define the scope of our remedies?

We are unclear on this question.

- What are the expected costs to schemes and firms of implementing our remedies and reporting compliance?

We at this point until further clarity is provided have no idea.

- Are any transition provisions needed?

Yes to allow for the time to implement the proposed changes.

- How should compliance with remedies be demonstrated and how should they be supervised by the relevant regulators?

An annual submission to the regulators who can then monitor this and take any necessary action if required.

- Should any remedies be time-limited?

No.

- Are there any relevant considerations in relation to remedies which would impose additional requirements to those in existing regulatory provisions (FCA conduct rules and MiFID II)?

We are not sure.

- Are there any relevant customer benefits in either market that we should consider as part of our assessment of a remedy package?

No.