

B&CE Ltd Response to the CMA Provisional decision report in the investment consultants market investigation

1. Introduction

B&CE is the provider of the People's Pension, a not-for-profit master trust which delivers a workplace pension to more than 4 million mostly low and medium income savers. B&CE is a not-for-profit provider of straightforward financial products, founded in partnership by construction industry employers and trade unions in 1942.

2. General comments

2.1. We are restricting our comments to the CMA's analysis of the DC market and how remedies ought to apply in that market.

2.2. The CMA analyse the market for Investment Consulting (IC), vertically integrated investment consulting and fiduciary management (IC-FM) and Employment Benefit Consulting-master trust (EBC-MT) firms in the DC market. The general tenor of the CMA's conclusions is that there is an issue with governance with respect to the purchase of IC and IC-FM services in trust-based DC, particularly amongst smaller schemes. With respect to EBC-MT services, the CMA state that "given the limited penetration that [vertically integrated EBC-master trust (MT) firms currently have in the master trust and wider DC sectors, we consider it unlikely that any potential steering by these firms towards their own master trusts has had a material impact on competition to date."

2.3. Our view is that the relevant market where there is a problem in DC is neither the master trust market as a whole nor the wider DC sector. We think the relevant market consists of group of small single company trust-based schemes. Demand is distinct here from demand in large master trusts or in large single company schemes where the quality of trustees and the services supporting them should mean that they can exercise countervailing buyer power.

Self-reporting by trustees to TPR surveys indicate that half of micro and almost a third of small schemes have no procedures in place to assess the effectiveness and performance of advisers and service providers. It is conceivable, given that this is self-reporting rather than auditing, that the true figures would be worse.

E6 - Does the scheme have procedures in place to assess the effectiveness and performance of scheme advisers or service providers?

	Micro	Small	Medium	Large	Master
<i>Base: All using external advisers/ service providers</i>	61	77	98	132	45
Yes - in all cases	32% (+15%)	30% (0%)	45% (-5%)	66% (+8%)	60% (+5%)
Yes - usually	8% (-1%)	12% (+2%)	16% (-4%)	12% (-2%)	29% (-11%)
Yes - in some cases	6% (-4%)	16% (+6%)	17% (+8%)	17% (+2%)	0% (0%)
No	47% (-13%)	27% (-18%)	16% (+1%)	4% (-8%)	11% (+6%)
Don't know	8% (+3%)	14% (+10%)	5% (0%)	1% (-1%)	0% (0%)
Net: Yes	45% (+10%)	58% (+8%)	78% (-1%)	95% (+9%)	89% (-6%)

Source: The Pension Regulator “Defined contribution trust-based pensions research. A technical report on the 2017 survey”, p.15

This TPR research is supportive of the CMA’s own findings which are summarised as : “...a proportion of trustee boards lack sufficient bandwidth and capabilities to be able effectively to monitor and scrutinise the investment advice they receive. These issues are most prominent amongst small schemes and DC schemes.”¹

2.4. Applying the market definition we suggest would lead to an appreciation that the role of EBC-MTs is potentially more significant than it might initially appear. The number of members whose trustees are likely to be advised to move them into a master trust is likely to grow swiftly. The expectation is that at least a third of single company DC trust schemes are expected to move into a master trust within the next five years². Historically, single company DC trusts have mostly been “poor cousin” adjuncts of DB schemes in the same companies. However, as most DB schemes are now closed to new employees, these DC schemes will become increasingly significant in terms of employee pension coverage. The current prevalence of these types of arrangement can be seen from TPR estimates there are 1350 DC trust-based schemes in the UK with more than 12 members but only 80 which have more than 5000³.

2.5. It is important to also note in the context of the wind up of historic DC trusts that the role of advisers as regards future member contributions is potentially even more untrammelled than it is regarding managing existing pension pots. The adviser can counsel an employer to wind up a scheme and move it into the advisor’s master trust. This would not fall into the category of regulated advice from an FCA perspective. The views of trustees of the old scheme would not be relevant or need to be taken into account as regards the employer’s choice of new scheme. The only role the trustees would have is with regard to the transfer of the existing accrued benefits. Advice from the existing adviser to the employer/trustees is

¹

https://assets.publishing.service.gov.uk/media/5b4f4db2e5274a730e4e273b/investment_consultants_market_investigation_provisional_decision_report.pdf, p.110

² <https://www.moneymarketing.co.uk/dc-consolidation-guy-opperman/>

³ <http://www.thepensionsregulator.gov.uk/doc-library/dc-trust-presentation-of-scheme-return-data-2018.aspx#s26095> table 1

unlikely to state that the new investments, also provided by the adviser, are unsuitable, even if the new scheme is not the best that it is available on the market for members. At a minimum, the appropriate remedy in the circumstances of the wind up of single company DC trusts ought to be:

- A requirement that employers have to take a whole of market selection process run by a consultant without a master trust and agnostic to the result (eg no ties);
 - Bring this kind of advice within regulated advice, not least so that employers have someone to sue in the event members come back to them on the returns;
 - Exclude trustees from taking advice from an advisor who is involved in the master trust/or wider funds when considering the suitability of investments for historic pension pots when a wind up is taking place.
- 2.6. Member detriment may also be more direct in excessively priced DC trust investments than in DB. In DB, the employer always carries the risk, in DC single company trusts this may not be the case.
- 2.7. The CMA do not comment in substance on a DC buy-side remedy in the provisional decision. We note that in the Initial Statement of issues of 2017 that the CMA said they would consider “Recommend[ing] some form of aggregation/consolidation of pension trusts to benefit from economies of scale.”⁴
- 2.8. Elsewhere in the world this has been a feature of reform of pension systems so that they operate in the member interest.
- 2.9. The Australian legislator has amended the fiduciary duty of trustees to require them to consider whether they have the scale to deliver value for money for the member. If they cannot deliver value for money, they are obliged to exit. Australian pension trustees are required to consider this on an annual basis. The Australian pension regulator is empowered to enforce the duty⁵.
- 2.10. In the Netherlands, identification by the Dutch regulator of schemes that it thinks ought to consolidate, through a process of ongoing review, has led to consolidation (this was combined with a number of general regulatory measures which it was understood would also increase costs for small schemes)⁶.
- 2.11. The UK’s Law Commission has also recently recommended, inter alia, that the UK should adopt a similar rule to Australia⁷.
- 2.12. We note that the CMA does state: “We think the indicators of low engagement with investment outcomes by DC schemes raise a risk to the financial outcomes for millions of DC scheme members in the longer term. We think that these schemes should be held to a very high standard of governance due to their responsibility to the interests of the end customer. We recommend that DWP and TPR should consider what further measures may be necessary

⁴ <https://assets.publishing.service.gov.uk/media/59c376f7ed915d408c10d131/investment-consultancy-market-investigation-issues-statement.pdf>, p.34

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https://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/government_response/key_points.htm

⁶ <https://www.ipe.com/pensions/pensions-in/netherlands/best-hands-on-deck-the-consolidation-of-dutch-pension-funds/10006890.fullarticle>

⁷ Law Commission, *Pension Funds and Social Investment* p.126

to achieve this”⁸. We think it would be helpful if the CMA were also to state explicitly what in its view might comprise further helpful measures and whether this would include measures to promote scale.

2.13. The CMA rule out the use of any structural remedies on the sell-side in general. However, the CMA might wish to consider applying such a remedy in the small company trust-based DC market, either narrowly to wind ups or more generally. The current lower aggregate value of these transactions for the investment adviser market compared to the rest of the market should severely reduce any concerns about loss of economies of scale and scope amongst advisers. Such concerns appear to be the CMA’s primary concerns regarding structural solutions on the supply side. A further advantage is that a structural remedy applied to a relatively small market would allow the CMA to ultimately compare and contrast outcomes in that market segment and a wider market.

2.14. The CMA’s remedy of a mandatory tender is likely to be helpful in some cases. However, where the core problem essentially comprises of weaker smaller DC trustee boards and incumbent consultants then it is not hard to envisage this will also influence the result of tender processes.

If we can be of further assistance, please do not hesitate to contact:

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⁸ P140-141