

INVESTMENT CONSULTANTS MARKET INVESTIGATION

Summary of response hearing with Aon plc (Aon) held on 27 September 2018

Introduction

1. Aon noted the close alignment between what they said in their initial submission and the findings in the CMA's Provisional Decision Report. However, Aon emphasised that there were a few key points where they continue to disagree fundamentally with the CMA's approach, analysis and findings.
2. Aon said that the CMA's approach is selective at times in its use of data to justify the findings of an adverse effect on competition (AEC) which, Aon believe, is not proven. Aon's main concern is that the evidence used to identify the features behind the alleged AECs is not robust, and, if there is no AEC, there are no remedies that can be imposed - even if Aon do support some of them.

The CMA's AEC Findings

3. Aon gave examples of the CMA's selective use of data: that the CMA ignored the survey result that 94 per cent of trustees are satisfied with their investment consultant. By contrast, the CMA chose to rely on the response of 30 per cent of trustees who think that steering is a problem with investment consultants carrying out FM and that something needs to be done about it. Similarly, the CMA appears to have ignored the survey result that a similarly sized group of 26 per cent of trustees think that something needs to be done about asset managers carrying out FM steering into their own products.
4. Aon said that Fiduciary Management was a well-functioning market. On defined benefit (DB) pensions, Aon highlighted several indicators of effective competition amongst Fiduciary Management providers, including:
 - (a) In terms of structure of the market, there are 17 providers with no one provider having more than a 20 per cent market share; there has been a new entrant into that market every year.

- (b) In terms of Fiduciary Management outcomes, there is a high degree of client satisfaction (95 per cent) with their Fiduciary Management provider. and the achievement of significant discounts on asset manager fees irrespective of the degree of trustee engagement;
 - (c) The CMA has adduced no evidence of a failure to add value through asset allocation, which can be responsible for up to 90% of the variance in scheme outcomes.
 - (d) There is no evidence to suggest excess profitability.
- 5. Aon detailed why the disagreed with the features sitting behind the alleged Fiduciary Management AEC:
 - (a) **Incumbency advantage for IC/FM firms:** Aon said that the CMA had not found any evidence that firms are seeking to introduce fiduciary management services that they believe to be against the interests of their clients. Aon's experience is that there is a high degree of engagement when firms move from Investment Consultancy to Fiduciary Management. In addition, the CMA survey found that the large majority of trustees say they are able to monitor Fiduciary Management fees easily.
 - (b) **Absence of clear and comparable information on fees:** Aon said that information is clear and available and the fact that it could be more comparable is not, in itself, an AEC.
 - (c) Finally, as the CMA acknowledges, Fiduciary Management is an emerging market. So, evidence relating to the level of switching should be considered inconclusive at this stage.
- 6. Aon also said, notwithstanding the above points, the fundamental issue is that the CMA has not presented evidence of detriment by way of trustees making bad choices when entering Fiduciary Management or staying with the same provider. The CMA's gains from engagement analysis shows that trustees are better off when they are internally acquired (ie they stay with the same provider) when moving from Investment Consultancy to Fiduciary Management. Disengaged trustees who stay with the same provider do not pay more than those who switch to another provider. This undermines the CMA's AEC finding.
- 7. Aon said that it believes that the CMA needs to respond on those points, and the points raised by Mercer before issuing its Final Report later this year.

Mandatory Tendering

8. In relation to Remedy 1,¹ Aon said that they feel strongly that if a move to Fiduciary Management is made too difficult or disproportionately expensive, trustees may simply not choose a Fiduciary Management solution. This would result in scheme members not benefitting from the proven benefits of Fiduciary Management in improving scheme outcomes. It could also encourage providers to create sub-optimal alternative structures to, essentially, game the system.
9. Aon said that requiring trustees to go through a tender process would not address a lack of trustee engagement. A client who is happy with their current provider will not value a compulsory tendering process. A more holistic approach is needed to ensure that trustees are engaged across all parts of their roles, not just when they choose an individual Fiduciary Management provider.
10. Aon said that engagement is hard to measure but they work with a set of trustees that are very engaged in the work that Aon are doing and the funding and investment behind their plans. This does not show up in a survey, particularly if you consider the major test of engagement to be whether trustees have changed adviser. Aon said that they are under constant pressure around price by engaged trustees, but this may not involve a third-party evaluator (TPE), a tender or switching - the CMA's measures of engagement. Aon added that a lack of competitive tendering did not mean that there was a lack of engagement - as some clients have initiated a price review without going through a tender process.
11. Aon also explained that they did not believe that mandatory tendering, if implemented with an associated large rulebook detailing the procedures, would help drive competition. Trustees would find avoidance mechanisms. A 'comply or explain' requirement would be better because those who would tender would continue to do so and those who don't would need to think about how they explain that.
12. Aon estimated that the cost of tendering to trustees is mainly in terms of their time. They noted that time is at a premium for trustees and they can only dedicate a limited amount to any one issue.

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

Alternative model

13. Aon proposed an alternative model to mandatory tendering which would, in their view, deal with the perceived lack of engagement by trustees. Aon believed that this model would result in a more encompassing engagement with trustees and help trustees to work through what is key and important to their members.
14. Aon described three features of the model in particular:
 - (a) **Best practice guides:** The Pensions Regulator (TPR) should produce best practice guides for Trustees covering, amongst other features, governance; the appointment of providers / advisers and how trustees should carry out reviews of their providers / advisers;
 - (b) **Annual Statement from the Chair:** The Chair of Trustees should produce an annual statement covering the scheme's investment objectives and targets. This statement should also cover: the approach to governance and targets; the major providers, when they were reviewed with the report on the review (including an explanation as to why a tender was not used, if that was the case); any major appointments and how these were made and the performance achieved for the fund over the year.
 - (c) **Transparency and accountability:** TPR should review all annual statements. Statements should also be sent to Members and be publicly available.

Mandatory Warnings

15. On Remedy 2,² Aon said that this will be entirely inappropriate and counterproductive. Aon said that the CMA has found that Fiduciary Management has genuinely added value and not been introduced where it has not been in clients' interests. To single out Fiduciary Management just because it is part of the CMA's remit and give it a specific health warning is not only unjustified but misleading and, potentially, damaging to trustees. Aon questioned why other courses of action are not also worthy of warnings (such as investment consultants that choose not to recommend Fiduciary Management or Fiduciary Management firms that implement their own asset management products).

² **Remedy 2:** mandatory warnings when selling fiduciary management services.

16. Aon said that they wanted a level playing field where, if a warning was introduced for Fiduciary Management services, a warning should also be imposed when introducing similar services.
17. Aon explained that transparency in the introduction of Fiduciary Management was key, as it is key in many other areas of investment advice. This was particularly important when managing any conflicts of interest that arise in the process.

Definition of Fiduciary Management

18. Aon said that there is no consensus amongst respondents to the Provisional Decision Report (PDR) as to what the definition of Fiduciary Management should be.
19. Aon recognised that the implementation of remedies would require a precise definition of Fiduciary Management, this definition would need to cover a number of features: it should apply only to full Fiduciary Management (ie 75% or more of assets under management) because partial Fiduciary Management overlaps with other products; the definition should cover the matters that trustees could do themselves but choose to delegate (thereby avoiding capturing asset managers); it should cover 'FM Lite' (ie where directive advice is given but trustees have a technical veto which in practice they do not exercise); and it should not cover DC schemes as it is a complex market with a lot of decision-making being done by members rather than trustees and there are multiple investments approaches with multiple providers.

Third-Party Evaluation

20. Aon said that third-party evaluators (TPEs) can be effective in assisting trustees, but that this is not always the case. Making the use of TPEs mandatory would increase the cost of tendering without guaranteeing a benefit to trustees. Employing a TPE would cost in the region of £25k – £50k. The costs of tendering will need to be recovered from the assets of the pension scheme, by opening out the tender to all tendering firms, there is a risk that this will significantly increase costs.
21. Aon said that they were aware of the potential conflict where TPEs were also competitors, but that this did not cause Aon great concern. The main issue was for schemes where TPEs who also had an IC offering might not be as independent as they claimed.

Comments on other proposed remedies

22. On Remedy 3,³ Aon said that they were supportive of the CMA's proposals for TPR to produce 'best practice' guidance on the competitive tender process. Most clients ensure that they have regular updates on any updated TPR guidance. Clients are also very familiar with the principles of 'best practice'. Aon said that the CMA should consider the principles outlined in their alternative approach (see above) when considering this remedy.
23. On Remedy 6,⁴ Aon said that the model proposed by IC Select could face some difficulties if it sought to become a global standard as reporting performance standards differ depending on the jurisdiction where the firm is based which means adopting a global standard will be difficult. Notwithstanding this, Aon noted that the existing Global Investment Performance Standards (GIPS) was workable in the UK context. As such, Aon already used that standard to report performance information on its website. Aon had also been happy to accept the IC Select standards when the UiLs were proposed in 2017. Aon therefore suggested that this implies that there should not be a long timescale for implementation of this remedy.
24. On Remedy 8,⁵ Aon questioned whether an implementation committee would be needed, and suggested that if so, the committee should be operated by the CFA. The CMA should consider the benefits of reporting gross of fees to clients against the low cost of reporting net of fees.

Regulation

25. As regards the proposed extension of the FCA regulatory perimeter, Aon said that it would be manageable depending on how detailed the rulebook would be. They added that defining asset allocation would be difficult and care would be needed to avoid unintended consequences (such as capturing actuaries and accountants). Aon said that in-house team should be caught by any Regulations to prevent firms shifting the risks of the process by employing people to carry out these tasks rather than engaging a Fiduciary Management provider.

³ **Remedy 3:** Enhanced trustee guidance on competitive tender processes.

⁴ **Remedy 6:** Standardised methodology and template for reporting past performance of fiduciary management services to perspective clients.

⁵ **Remedy 8:** Establish basic standards for how investment consultants and fiduciary managers report performance of recommended asset management 'products' and 'funds'.

Application of the Remedies to defined contribution (DC) Schemes

26. Aon said that many of the proposed remedies would be difficult to translate to the DC market. Aon pointed out that most DC pensions do not have trustees, so many remedies would be directed to a role that does not exist. Aon also believe that pensions regulation is working well in the DC market and that the proposed remedies would be disproportionate.