

INVESTMENT CONSULTANTS MARKET INVESTIGATION

Summary of response hearing with Barnett Waddingham LLP (BW) held on 1 October 2018

Introduction

1. BW said that they welcomed the CMA's Provisional Decision Report (PDR), but think that that proposed remedies can be improved in advance of the final report.

Mandatory tendering for fiduciary management

2. In relation to Remedy 1,¹ BW said that a Fiduciary Management appointment is an investment mandate and that such appointments are like any other investment appointment such as appointing an asset manager.
3. BW said that any instance where advice is provided as well as implementation should meet the definition of Fiduciary Management. Currently, BW said, much of this advice is not recognised as being part of the Fiduciary Management service.
4. BW said that the CMA should consider small partial Fiduciary Management mandates, or mandates that increase the assets under management of the Fiduciary Manager by a small amount. These mandates are very similar to appointing an asset manager and could be delivered under an asset management mandate. The CMA should consider whether this means that the appointment of an asset managers who is also a fiduciary manager should be caught under the mandatory tendering regime.
5. BW said that most of the market's perceptions of the notion of 'open' tenders are based on the public sector OJEC model which is quite burdensome.
6. BW said that the CMA will need to consider the expansion of mandates held by firms and when these will trigger a tendering exercise. For example, as

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

part of a mandate the client could purchase a diversified growth fund (DGF), would the growth or expansion of the DGF trigger a mandatory tender?

7. BW said that they thought that any process whereby a provider is directing trustees into their own products should trigger a competitive procedure.
8. BW said that the trigger for a move towards a fiduciary management mandate is generally the client's Investment Consultant introducing their Fiduciary Management offer. BW's view is that, at this stage, it is crucial that the client receives proper advice on Fiduciary Management is rather than simply receiving details of the incumbent's offer.
9. BW pointed out that the cost of Fiduciary Management was not the main driver of choice for most clients. Trustees need to be comfortable with their chosen provider and understand the approach they are taking. BW would anticipate seeing a high degree of cost differentiation between providers as there is a broad range of different offerings.
10. BW explained that they believed that any tender should be open unless a regulated third party evaluator (TPE) is involved. TPEs can narrow the universe of potential providers to only invite those who can match the client's preferences and requirements. However, exceptions would need to be allowed where the additional cost of running an open tender was not justified.
11. BW said that clients should seek advice from a TPE. BW said that they act as if their TPE advice is regulated by the FCA. They said that TPE is not a separate role and is covered under BW's other authorisation.
12. BW said that the costs of using a TPE to monitor tenders varies from scheme to scheme. Typically, the cost would be in the [£K] for a review of the incumbent service, but the scope of any service would depend on the level of knowledge of the trustees. Larger schemes may pay more, on average, than smaller schemes, as they tend to look at issues in greater depth.
13. BW said that the costs of FM are lower when they are in a competitive tender process. As a TPE they can use their experience to negotiate fees with providers.
14. As a TPE, BW said that it takes care to avoid conflicts of interest with its investment consultancy service. For example, if BW is advising a client who is deciding between fiduciary management and investment consultancy, the expectation of their TPE service would typically be for them to not bid for any subsequent investment consultancy contract, and they would explain this to the client.

15. BW said that if a mandatory tender was imposed, this should be at the point of first appointment of a Fiduciary Management adviser. Tendering for those who have appointed a Fiduciary Manager in the last few years made less sense as providers will be reluctant to bid for such tenders based on the assumption that the tender is likely to result in the re-appointment of the incumbent.

Other proposed remedies

16. On Remedy 2,² BW said that trustees should recognise if they are being sold to. It thought that the effectiveness of a warning would be linked to its delivery and that it was unlikely to be effective if it was not in the provider's written materials. Overall, BW was not sure that the warnings would have a material impact.
17. On Remedy 4,³ BW said that the requirement to report disaggregated fees could have the unintended consequence of firms bulk buying investment products to drive down prices.
18. BW believes that the key is for clients to understand what is being paid in total to asset managers – trustees do not benefit from getting detailed information on asset management product fees. In addition, it thought that asset managers would be nervous of revealing fee levels.
19. On Remedy 5,⁴ BW thought that it might also encourage FM firms to compete on the basis of cheaper investments but then move clients into more expensive ones once they are appointed.
20. On Remedy 6,⁵ BW said that, as a TPE, where performance information is provided under the IC Select standard methodology then this is used as part of their assessment for FM providers who use it, but they are not excluding those who do not.
21. For Remedy 8,⁶ they consider that AM selection is only a limited part of the investment consultancy service but one that happens to be easy to measure. Also, they think it important that clients recognise that past investment performance of recommended fund managers is only one indicator of a firm's quality and there is a risk that using these standards will overly highlight

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

³ **Remedy 4:** Requirement on firms to report disaggregated fiduciary management fees to existing customers.

⁴ **Remedy 5:** Minimum requirements on firms for fee disclosure when selling fiduciary management.

⁵ **Remedy 6:** Standardised methodology and template for reporting past performance of fiduciary management services to perspective clients.

⁶ **Remedy 8:** Standardised reporting of asset management products.

manager selection rather than other, more important, factors. Qualitative analysis should also guide trustees as to the choice of investment consultant.

FCA regulation

22. BW said that it is an authorised professional firm with a mix of FCA and DPB regulation. Its DPB licence only allows BW to provide advice as an incidental part of its main business. [X]. BW understand that there are few large firms with exclusively a DPB licence and that, for similar reasons to BW, most firms switch to FCA approval at some point in their growth.