

## **INVESTMENT CONSULTANTS MARKET INVESTIGATION**

### **Summary of response hearing with the Investment Association (the IA) held on 9 October 2018**

#### **Introduction**

1. The IA said that it had noted that the key themes that appear to be developing from the responses to the CMA's Provisional Decision Report were a recognition of the importance of conflict management, improved fee disclosure and appropriate regulatory oversight.

#### **Definition of Fiduciary Management**

2. The IA's view was that the CMA's current definition in the Provisional Decision Report is too wide ranging. The IA advised that in its' view the appropriate solution would be to tie the definitions to the provision of advice to pension trustees under the Pensions Act 1995, and the implementation of that advice, and that this would ensure that the remedies are appropriately targeted.
3. The IA recognised that it was difficult to pin down a definitive definition of fiduciary management as there are a variety of models used in the market, with the term meaning different things to different people. In particular, they thought that partial Fiduciary Management, where the Fiduciary Manager has been delegated control over less than 100% of a scheme's assets, could appear similar to a segregated portfolio management mandate in practice as these would have similar outcomes for the client.
4. Notwithstanding these challenges, the IA highlighted the following areas that a definition of Fiduciary Management should cover:
  - (a) It should capture both partial and full Fiduciary Management;
  - (b) Partial Fiduciary Management can be best thought of in two ways: firstly, as delegation of control over less than 100% of scheme assets; secondly involving constraints on the degree of delegation. Such constraints involve, for example, the provider taking decisions on strategic asset allocation or manager selection, but these decisions being subject to final sign-off by the client; and

- (c) That it includes strategic investment advice in relation to asset allocation and manager selection. The client will still make decisions on the scheme's overall objectives in relation to funding.
5. The IA noted that asset managers do not supply strategic investment advice (under the 1995 Pensions Act) in isolation, instead combining it with the implementation of that advice. A client could work with an adviser towards the result of appointing an asset manager, however, this would be core Investment Consulting activity rather than something carried out by asset managers.

## **Mandatory Tendering**

6. The IA said that tendering is widespread in institutional investment and they were not aware of any instances where an investment firm was appointed without first going through a tender process. For this reason, they thought there would be no significant additional costs on their members if tendering was made mandatory. The IA's members supported the introduction of mandatory tendering, although there was a range of views as to how effective it would be. Most members that had discussed the issue with the IA thought that mandatory tendering would reduce the investment consultants' incumbency advantage.
7. The IA said that there was widespread agreement amongst its members that an open tender would be desirable. However, a closed tender involving three to four firms is likely to be more practical for schemes on the grounds of resource and cost. Also, the IA's members were keen that clients should not be disincentivised from moving to Fiduciary Management due to the costs of running a tender exercise, and it was felt that an open exercise would be more costly.
8. In justifying its view that a first time move from partial to full Fiduciary Management should be subject to mandatory tendering, the IA said that the move to a full Fiduciary Management arrangement was a significant decision for trustees and schemes and should be subject to a wider search for the provider. A scheme moving from a partial mandate to a full Fiduciary Management mandate is making a major change to its investment governance arrangements and it was not clear why such a decision would not benefit from a wider choice of provider that mandatory tendering could bring.
9. The IA explained that there is a need to address the investment consultants' incumbency advantage in the fiduciary management market, but that care needed to be taken to avoid imposing disproportionate costs on pension schemes.

10. The IA said that independent advice from a third-party evaluator was important and that it advocates that pension trustees should consider using TPEs, but they recognise that the cost may be an issue for schemes, so would not recommend that this should be mandated. In addition, the IA said that some TPEs may have their own conflicts of interest where they also provide investment consultancy services.

## Comments on other proposed remedies

11. On Remedy 4,<sup>1</sup> and Remedy 5,<sup>2</sup> the IA said that the CMA's remedies fit with the MiFID framework and are supported by the IA. The IA said that where the CMA has gone further than MiFID in relation to mandating disaggregation of fees, the IA supports the CMA's approach as it provides the market with greater clarity. The IA pointed out that MiFID may not apply to all the services provided by fiduciary managers, however, where a firm is MiFID-regulated it will typically apply MiFID standards to all the services offered under FM.
12. On Remedy 6,<sup>3</sup> the IA said that they have no problems with use of a performance standard in principle and that its members who offer a Fiduciary Management service plan to adopt the IC Select standard when it is finalised, so there is no issue in mandating this.
13. The IA explained that it is currently difficult to estimate how long it will take to sort out any final issues with the IC Select standard. However, the IA emphasised that the bulk of it is agreed and only a few smaller issues now need to be resolved. The IA said that Investment Consultants and Fiduciary Managers had been actively involved in the development of the IC Select standard with many sitting on the Working Group. End user voices have also been heard as a number of professional trustee firms and their advisers are members of the Steering Group that oversaw the development of the standards.
14. The IA pointed out that there will be a continuing need for the standard to be updated as there is a continual evolution within the market.
15. The IA said that the Global Investment Performance Standard (GIPS) already dealt with a number of issues identified by the CMA in relation to the presentation of performance data. While the standard is commonly used by asset managers globally and in the UK, it is less widely requested by UK

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<sup>1</sup> **Remedy 4:** Requirement on firms to report disaggregated fiduciary management fees to existing customers.

<sup>2</sup> **Remedy 5:** Minimum requirements on firms for fee disclosure when selling fiduciary management.

<sup>3</sup> **Remedy 6:** Standardised methodology and template for reporting past performance of fiduciary management services to perspective clients.

investment consultants and pension schemes in comparison to clients in other jurisdictions such as the US. While managers did provide GIPS-compliant data (alongside other data) to consultants they had no control over what the investment consultant subsequently presented to the prospective client. Managers could not guarantee that in such instances prospective clients would see GIPS-compliant performance data.

## **Regulation**

16. The IA said that the FCA already regulates part of the activity of Fiduciary Managers, notably the service of portfolio management. The IA considers that advice to clients on investment objectives, the asset allocation needed to achieve the client's investment objective and advice on the choice of asset managers is not currently regulated by the FCA.
17. The IA said that they were broadly in favour of expanding the FCA's regulatory boundary to include the activities of Investment Consultants and Fiduciary Managers in the above areas, but that care should be taken not to inadvertently capture other activities, such as informal conversations that do not constitute advice.