

INVESTMENT CONSULTANTS MARKET INVESTIGATION

Summary of response hearing with Lane Clark & Peacock (LCP) held on 19 September 2018

Introduction

1. LCP explained that whilst they were broadly supportive of the CMA's provisional findings in the Provisional Decision Report and of the range of remedies proposed to address the adverse effects on competition, LCP does have some concerns, particularly in relation to Remedy 8,¹ as its implementation may lead to unintended consequences that could adversely impact on the industry.

Definition of Fiduciary Management

2. LCP suggested the definition that Fiduciary Management is the activity of providing both strategic advice to trustees and the implementation of that advice. That was the case in respect both of 'full Fiduciary Management' and 'partial Fiduciary Management'. LCP explained that their view of 'partial Fiduciary Management' is that it refers to services to a pension fund covering only some of the total assets of the pension fund.
3. LCP commented that the definitions of fiduciary management in the Provisional Decision Report (for example, "...*may also include investment advice but also includes the legal delegation...of some or all investment decisions...*") are too broad and risk capturing activities that should not fall under the definition, such as some activities of asset managers. This is because the implementation part of Fiduciary Management services is often indistinguishable from the services provided by an asset manager. That is the case in respect of the scenario in which the firm uses different asset manager products (segregated accounts), as well as the scenario in which the firm invests in its own 'wrapper' (fund of funds) product, since in both scenarios the firm is deciding how to invest. LCP has proposed revisions to the

¹ **Remedy 8:** Establish basic standards for how investment consultants and fiduciary managers report performance of recommended asset management 'products' and 'funds'

definitions in the Provisional Decision Report in their response to the consultation.²

Third-Party Evaluation

4. LCP can act as a third-party evaluator (TPE) of Fiduciary Management services, offering guidance for trustees on their choice of Fiduciary Manager and/or monitoring the Fiduciary Management provider which may be done via an annual 'health check'. LCP said that:
 - (a) LCP can assist trustees with the tender and selection process of appointing a FM provider;
 - (b) if trustees choose to engage a Fiduciary Management provider, then LCP can act to monitor it including its performance.
 - (c) TPEs can be a useful tool for trustees, however their use should not become mandatory. A large, well-resourced scheme could have the in-house ability to carry out this role.
 - (d) on a one-off basis, LCP is often approached by pension schemes when IC/FM firms are advocating products for an independent review of whether they are competitive products.
 - (e) LCP will quite often carry out a fee review for a range of different clients. This means that LCP has a feel for how much a Fiduciary management service should cost.
5. The cost of employing a TPE can vary depending on the task being carried out. Typically, for smaller mandates or schemes, costs could be as low as [£] for larger or more complex mandates costs could be between [£] (as a ballpark).

Mandatory Tendering

6. In relation to Remedy 1,³ LCP stated that they believed that a competitive tender for the services of a Fiduciary Manager should be held each time the mandate changes or when the level of assets under the mandate increases.
7. LCP said that the likely outcome of a retender of existing Fiduciary Management mandates would be that the trustees would retain the firm they

² Appendix to LCP's response to the Provisional Decision Report

³ **Remedy 1:** mandatory competitive tendering on first adoption of fiduciary management.

are currently using, avoiding any additional costs (such as the costs of exiting a Fiduciary Management mandate). A better resolution for this issue would be for trustees to carry out a review of the Fiduciary Management provider. Following such a review, the trustees may well decide to run a tender.

8. Should the CMA impose a remedy where tendering is only mandated for the first appointment of a fiduciary manager, then IC/FM firms could be incentivised to propose a partial FM contract that concentrates on their strong areas.
9. Trustees can run a tender for a mandate on their own, but LCP considers that tenders benefit from an independent oversight. LCP is aware of a problem where review and oversight of the tender is handled by one of the participants in the tender.
10. LCP said that Fiduciary Management mandates are very different from each other covering a wide range of issues. They are, therefore, very individual requiring a range of different rules for their implementation. LCP said that the cost of running a tender exercise is very varied and dependent on the make-up of the mandate.
11. LCP said that they do not have many clients with assets of less than £20m, the advice provided to these smaller clients can often be more basic, along the lines of addressing issues such as: 'Have they appointed an investment consultant?', 'How do they run their selection process?'. However, the cost of this advice is still a very small portion of the assets under management.
12. LCP explained its view that an IC/FM firm should not be able to offer both services ie strategic advice and implementation of the portfolio, to the same client.

Remedy 8: Standardised reporting of asset management products

13. LCP highlighted their concerns that:
 - (a) shining a spotlight and over-emphasising the manager selection aspect of Investment Consultancy and the performance of products and funds could lead to trustees only judging Investment Consultancy firms on their performance in this area and reducing the focus on Investment Consultancy firms' performance in other important areas such as quality of service.
 - (b) many asset classes do not lend themselves well to this type of analysis; and

- (c) the objective could be better achieved by including this as part of Remedy 7.⁴ For example, IC's could report their results of achieving clients' objectives, both quantitative and qualitative, as assessed under remedy 7.
14. LCP stated that even if Remedy 8 did not make it mandatory to report performance, its inclusion in the CMA's package of remedies is likely to increase commercial pressure to publish a track record. The issues highlighted are, therefore, relevant whether it is optional to publish or mandatory.
15. LCP suggested that, if the CMA does proceed with implementing Remedy 8, the establishment of reporting performance standards should be limited to actively managed products in liquid asset classes.

Comments on other proposed remedies

16. On Remedy 2,⁵ LCP said that it was relaxed that the wording proposed by the CMA to ensure that trustees understand when an investment consultant is providing advice or simple marketing was correct. LCP explained that this distinction should be clear to trustees and understands that currently trustees are usually aware of the potential conflict of interest. However, LCP added that disclosure of information would not address the incumbency advantage of the existing provider.
17. On Remedy 3,⁶ LCP explained that trustees take the guidance from the Pensions Regulator and others seriously. LCP understands that most trustees will keep themselves up-to-date with training and updates from the Pensions Regulator and others.
18. On Remedy 4,⁷ LCP currently collates this information and presents it to clients to explain fees. However, different firms adopt different approaches. LCP distils the information into a meaningful summary as in its experience trustees would not use data that is overly detailed.
19. On Remedy 5,⁸ LCP said that trustees should see disaggregated information, separating the fees for strategic advice from the fees for the implementation. The disclosures required under MiFID II would come into full effect in January 2019 when one year's worth of information is available.

⁴ **Remedy 7:** Duty on trustees to set their investment consultants' strategic objectives.

⁵ **Remedy 2:** mandatory warnings when selling fiduciary management services.

⁶ **Remedy 3:** Enhanced trustee guidance on competitive tender processes.

⁷ **Remedy 4:** Requirement on firms to report disaggregated fiduciary management fees to existing customers.

⁸ **Remedy 5:** Minimum requirements on firms for fee disclosure when selling fiduciary management.

20. On Remedy 6,⁹ LCP said that they have not seen very much use of IC Select data to date. In their role as a third-party evaluator, LCP has struggled at times to get quality information from Fiduciary Managers; IC Select's approach will help with this issue as this will set up a consistent set of templates. LCP said that if the CMA were to impose this remedy, it would be better to use the IC Select work as a starting point than to start again from scratch.
21. On Remedy 7, LCP said that trustees may use more qualitative measures (such as the type of questions used in the Greenwich Associates surveys – for example satisfaction with the individual investment consultant). Adding these qualitative measures would result in a better metric and increase the range of information that can be used by clients. The CMA should also be looking to bring out additional questions that are also important. Care should be taken that a focus on the performance of recommended asset management products (see Remedy 8) would not detract from other measures of performance.

Regulation

22. LCP is regulated by the Institute and Faculty of Actuaries under a DPB licence. LCP explained that this means LCP can provide limited regulated services (for example, recommendations on investment products) on an 'incidental' basis (at firm level) provided that they also provide non-regulated services. They assume that, if strategic asset allocation advice becomes FCA-regulated, then this would entail some change to the scope and nature of the DPB licence regime, but that it would not necessarily require being FCA-regulated.

⁹ **Remedy 6:** Standardised methodology and template for reporting past performance of fiduciary management services to perspective clients.