

## **INVESTMENT CONSULTANTS MARKET INVESTIGATION**

### **Summary of response hearing with River and mercantile Investment Limited (R&M) held on 9 October 2018**

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

1. R&M said that the definition of Fiduciary Management, particularly ‘partial’ Fiduciary Management needs to be worded carefully not only to capture all the activities carried out under a mandate, but to avoid capturing services that are outside of it.
2. R&M said that a full Fiduciary Management mandate is delegated authority to invest all the pension scheme assets with the provision of strategic investment advice and authority to implement that advice. However, a ‘partial’ Fiduciary Management mandate is an ill-defined term, it is used in the industry as a catch all for any mandate that has a degree of manager discretion but is not full Fiduciary Management. They have seen Fiduciary Management mandates which are as small as [~~8~~] % of a scheme’s assets.
3. R&M believed that both full and partial Fiduciary Management were important to define if Remedy 1<sup>1</sup> would be implemented, so it was clear what mandatory tendering applied to. If, instead, best practice guidance was used in place of mandatory tendering, this could allow flexibility to ensure the relevant parts of a ‘partial’ Fiduciary Management were covered and would also be easier to amend in the future to capture industry developments.
4. R&M said that a clear distinction needs to be made between Fiduciary Management and Asset Management. R&M said that the clear dividing line is that Fiduciary Management involves an element of strategic advice provided under section 36 of the Pensions Act 1995.

#### **Mandatory Tendering**

5. In relation to Remedy 1, R&M said that there was a well-defined process that is adopted for the appointment of a Fiduciary Manager, and that a

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<sup>1</sup> **Remedy 1:** mandatory competitive tendering on first adoption of fiduciary management.

competitive/intermediated process for the appointment of a Fiduciary Manager should be run when the client first moves into Fiduciary Management.

6. R&M pointed out that they believed that the process of appointing a Fiduciary Manager should be a competitive process, but that this did not need to be an open tender. R&M explained that 'open' implies considering the majority of the parties in the market, whereas 'competitive' implies a competitive process which R&M believed should either be a tender involving two to four providers (versus the whole universe), or the use of an independent TPE to investigate the market on behalf of the client, or both. R&M believed that the TPE route could be the better solution as TPEs may have the experience to judge participants in the market.
7. R&M said that they broadly supported the principles behind the proposal for mandatory tendering but believe these principles could be satisfied by the appointment of an independent third-party evaluator to oversee the appointment of a Fiduciary Manager.
8. R&M said that third-party evaluators (TPEs) can make a tender process more robust as their experience means they may be better able to judge providers than some trustees can. Having in-house (sponsor) support or a professional trustee can also provide this to a scheme.
9. R&M commented that all of its new Fiduciary Management business over the last three years has come via a tender or had a TPE involved.
10. R&M considered that TPEs tend to be used when a client feels they need independent advice, however care needs to be taken as there are no regulatory standards for TPEs and it is important that TPEs are qualified to give such independent advice. TPEs should be high quality advisers, however the quality varies from full-time and specialist TPEs to those who carry out this role as a side-line and may not have researched the Fiduciary Managers to the same degree. In addition, some TPEs don't actually give advice on appointing a Fiduciary Manager, but simply facilitate the tender process.
11. R&M also recognised that some TPEs have conflicts of interest as many TPEs are also active in the market offering other services. For example, if a TPE is advising a client on whether a move to Fiduciary Management is appropriate and the TPE is also an Investment Consultant, then there is a clear conflict of interest.
12. R&M said that TPEs need appropriate policies and procedures, such as 'Chinese Walls', to manage any conflicts and ensure advisers are giving appropriate advice to their clients.

13. R&M suggested that best practice guidelines should be introduced covering the appointment of advisers. This should include minimum standards for any tender process.
14. R&M also said that a requirement to take independent advice could operate as a barrier to smaller schemes who may balk at the additional cost. R&M said that best practice guidelines could allow smaller schemes to carry out the tender themselves. This would allow smaller schemes to comply and explain rather than appointing a TPE.
15. R&M estimated that the cost to a firm of participating in a tender would be approximately [£]. Given this level of resources to be involved in a tender, if there was a significant increase in the number of tenders on the market in the next few years, then R&M predicted that smaller Fiduciary Management providers will need to pick and choose which mandates to pitch for.
16. In contrast, a mandate managed by a TPE, where they would interrogate the market to gain knowledge of the options available for their client, would be a much lower cost for the providers as only providers who are relevant to the client would be asked to submit a tender. The TPE could also evaluate the existing Fiduciary Manager, if there is one, and may negate the need for a long tender process at all.
17. R&M said that any system will need to allow for flexibility, for example many schemes will have already made an informed decision to move to Fiduciary management, however, certain schemes, typically smaller schemes, will need education and guidance on the choice of Fiduciary Management as part of the tender process. It is not uncommon for firms in this position to decide to put a small part of the assets out to Fiduciary management as a trial run.
18. R&M expressed concern that for small mandates, for example, those for 5% or less of assets, carrying out a full tender process would probably be unreasonable. However, they did not think that there should be any minimum size of scheme which should be required to tender.
19. R&M said that they considered that clients who have already appointed a Fiduciary Manager should not be forced to retender the mandate, but rather should review their mandate and adviser to ensure they are getting value-for-money. Whilst some schemes would be happy to go out to tender, it would be a waste of everyone's time to mandate a tendering exercise where the client is happy with their current provider.
20. R&M said that any review could be carried out by an independent trustee, a TPE or carrying out a tender, following the best practice guidance. Schemes should be free to choose what route is appropriate for them.

21. R&M pointed out that the Fiduciary Manager is not party to the details of the tender process, so it is difficult for them to know whether there was a tender of sufficient rigour to satisfy the requirement to tender, or indeed whether it was in line with best practice guidelines.
22. R&M commented that the requirement on schemes with existing FM mandates to tender would be good for some schemes but, for those who are happy with their FM provider, this would be a waste of time.
23. R&M suggested that compliance with this remedy could be via the scheme Chair's statement, where there is a requirement to "comply or explain" with the best practice guidance for appointment or continuing to use a Fiduciary Manager. They have observed some DC scheme Trustees acting differently as a result of recent requirements for Chairs to publish statements in their annual report and accounts and they are aware of TPR's review of these statements and their financial penalties for those which are not considered to be good enough.

## **Comments on other proposed remedies**

24. On Remedy 2,<sup>2</sup> R&M said that a warning should also apply to Investment Consultants who advise clients (as TPEs) on the move to Fiduciary Management, or Investment Consultants who advise not to use Fiduciary Management.
25. On Remedy 4,<sup>3</sup> R&M said that the trend in the industry is towards greater fee transparency. R&M is transparent with its fees and would encourage others to adopt similar standards.

## **Regulation**

26. R&M said that they operate both their Advisory and Fiduciary Management operations as though it were FCA regulated, so they would not find it a burden if the FCA's regulatory perimeter were extended.
27. R&M advised that some smaller genuinely independent TPEs may find FCA regulation onerous, so proposed that, where there is no conflict of interest, regulation on TPEs could be lighter touch.

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<sup>2</sup> **Remedy 2:** mandatory warnings when selling fiduciary management services.

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