

CMA Review of the Investment Consultancy and Fiduciary Management Markets

Background

In 2018 the Competition and Markets Authority (CMA) published its conclusions from an investigation into the investment consultancy and fiduciary management markets. The CMA has since announced new responsibilities and duties on Trustees, and these are to take effect from 10 December 2019 by means of a CMA Order¹. The CMA also tasked The Pensions Regulator (TPR) with producing guidance for Trustees for complying with these new duties, and TPR has now issued this draft guidance, which is now subject to industry consultation.

TPR has prepared guidance for Trustees in several areas. One of these aims to help Trustees assess the respective merits of, and choose between, alternative investment government models (i.e. fiduciary vs investment consultancy). Another aids Trustees in choosing and monitoring providers of investment consultancy services. Neither of these are mandatory in their effect or application, but are intended to support “best practice”.

What action is the CMA now mandating?

The CMA has identified two “remedies” intended to improve the process of engaging and assessing the performance of fiduciary managers and investment consultants.

Remedy 1 requires a tender process to be followed when 20% or more of scheme assets are delegated under a fiduciary management mandate.

Remedy 7 introduces a requirement for Trustees to set strategic objectives for providers of investment consultancy services.

These two remedies are to take effect from 10 December 2019. It is proposed that the Department for Work and Pensions (DWP) brings forward legislation to enact them in due course, although the timeframe for this is not yet known.

The CMA has identified one further remedy focused on the investment performance data provided by investment consultants and fiduciary managers to prospective customers.

Remedy 8 requires that information provided to prospective customers on the performance of their recommended asset management products and in-house funds must adhere to certain MiFID II requirements.

What does it mean for Trustees?

In order to support the Trustees to fulfil their obligations, TPR has issued draft guidance covering the following topics:

1. **Tendering for fiduciary management services.** Trustees will be prohibited from entering into, or continuing a fiduciary management agreement (covering 20% or more of a scheme’s assets) without performing a competitive tender process. If such a process was not followed for existing agreements, a re-tender process must be completed within five years of the appointment or, if later, 9 June 2021. By definition, this only affects Trustees using, or intending to use, fiduciary services.

¹ CMA Investment Consultancy and Fiduciary Management Market Investigation Order 2019

2. **Setting objectives for providers of investment consultancy services.** With effect from 10 December 2019, Trustees must not enter into a new contract, or continue to obtain existing investment consultancy services, unless objectives have been set. Decisions about those objectives and, where relevant, processes must be documented. Minutes of Trustee meetings are permissible for this purpose, but a specific standalone document is likely to be appropriate in many cases.

Objectives are likely to be partly quantitative (e.g. performance relative to liabilities) and partly qualitative (e.g. communication skills). They should reflect the range of services received (e.g. strategic advice, asset transfers, manager selection advice, etc.), and could also distinguish between shorter-and longer-term timeframes. The principles of how they will be reviewed and assessed should also be established. It is anticipated that the adviser's input will be sought throughout this process.

What happens next?

The specific content of TPR's guidance remains subject to consultation, so the final form will not be known until very shortly before the CMA Order mandating compliance with Remedies 1 and 7 takes effect in December 2019. However, we will be working with our clients to ensure that they are able to comply with their legal obligations within this timeframe. We will also be ensuring that clients will be able to determine the full implications of the final guidance in due course, if it is not possible to do so by December 2019.

We have been actively assessing the implications of these changes for Trustees, and we will be contacting our investment advisory clients with specific guidance over the coming weeks. In outline, we expect the principal steps to be as follows:

Trustee awareness. Trustees should be aware that they will have additional responsibilities with effect from 10 December 2019. We recommend that this topic should be included in agendas for all forthcoming Trustees' meetings.

Assure compliance with the law. In order to comply with the CMA Order by 10 December 2019, Trustees will need to confirm their approach and decisions in relation to these matters. Depending on the timing of Trustees' meetings, it may be necessary to agree the initial approach by email.

Determine any further steps needed to fully define consultant objectives. Although compliance with the CMA Order is required by 10 December 2019, it is unlikely that Trustees will have worked through the full implications of TPR's final guidance. We anticipate most of this detailed work will need to take place early in 2020.

If you would like to discuss this further, please get in touch with your usual contact at Cartwright.

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No action should be taken based on this research note without the trustees of the relevant occupational pension scheme receiving written investment advice from Cartwright Benefit Solutions Limited confirming the suitability of the investment decision for that particular occupational pension scheme.

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