

Investment consultancy and fiduciary management – new requirements for UK pension scheme trustees and service providers

The Competition and Markets Authority (CMA) has published the [final report](#) in its market investigation into the investment consultancy and fiduciary management services provided to institutional investors. The CMA investigation focused on pension scheme trustees as the main customers of investment consultancy and fiduciary management services.

In July 2018, the CMA published a report outlining its provisional findings and recommendations and inviting feedback (for more information, please see our [legal update](#)).

CMA findings

The CMA's final decision confirms the majority of its provisional findings and recommendations. The CMA concludes that there are competition concerns in respect of both investment consultancy and fiduciary management services which may lead to substantial customer detriment. It considers that these concerns exist to a greater degree in respect of fiduciary management services. The CMA's findings include the following:

- There is a lack of clear and comparable information for trustees to be able to judge the quality of their existing investment consultant/fiduciary manager or whether they would be better off using an alternative provider. There is also a low level of engagement among some trustees (in particular trustees of small schemes and DC schemes) when choosing and monitoring an investment consultant.
- In terms of winning fiduciary management business, the ability of a scheme's investment consultant to steer trustees towards their own fiduciary management service, combined with sub-optimal trustee engagement when first appointing a fiduciary

manager, and a lack of information on comparative performance and fees, means that providers which offer both types of service have an incumbency advantage over other providers. This may mean that trustees appoint, and remain with, the same provider for fiduciary management as for investment consultancy services, even if a better deal would be available with a different fiduciary manager.

- These factors reduce the ability of trustees to drive competition between investment consultants and between fiduciary managers. They also reduce the incentive for investment consultants and fiduciary managers to compete for business on the basis of fees and/or service quality.

CMA remedies

The CMA will implement a number of remedies to deal with its concerns, including the following:

- When appointing a fiduciary manager for the first time in respect of 20% or more of scheme assets, trustees will be required to run a competitive tender process involving at least three firms. Where trustees have already appointed a fiduciary manager in respect of this level of scheme assets without running a competitive tender process, they will be required to put the role out to competitive tender within five years. Fiduciary managers will be prohibited from accepting a mandate where there is a requirement to run a competitive tender unless the trustees confirm that a competitive tender process has taken place.
- The Pensions Regulator (the Regulator) will be asked to publish guidance for trustees on conducting a competitive tender process when appointing investment consultants and fiduciary managers.

- Trustees will be required to set strategic objectives for their investment consultant so that they can assess and monitor service quality better.
- Investment consultants and fiduciary managers will be required to report performance of any recommended asset management products or funds using basic minimum standards to enable trustees to compare performance better.
- Fiduciary managers will be required to provide better information on fees for existing customers to enhance the ability of trustees to assess value for money. Fiduciary managers will also be required to provide clear and comparable information on fees and performance to prospective customers so that trustees are better placed to assess the quality of, and value for money offered by, alternative fiduciary managers.
- Investment consultants will be required to separate documents marketing their fiduciary management services from their investment advice documents. They will also be required to include prescribed text in such marketing documents, identifying the documents as marketing materials, and reminding trustees of their duty to tender competitively for fiduciary management services in certain cases.

Implementation, monitoring and enforcement of the remedies

The CMA will implement its remedies by way of an order on trustees and investment consultancy/fiduciary management providers. The CMA will consult on a draft order to implement the remedies in early 2019. The remedies will largely come into force six months after the date of the CMA order. The CMA anticipates that the Regulator guidance on competitive tendering processes will likewise be available within six months of the date of the order.

The CMA will initially monitor compliance with and enforce the remedies. It anticipates that the Financial Conduct Authority (FCA) or the Regulator, as the case may be, will subsequently take on an oversight role, depending upon which regulator is best-placed to supervise compliance in respect of a particular remedy.

To support implementation of the remedies, the CMA will ask the government to:

- give the FCA oversight of all of the main activities of investment consultants; and
- give the Regulator oversight of the remedies imposed on trustees.

The CMA also recommends that the Regulator publishes guidance to support trustees in assessing, appointing and monitoring investment consultants and fiduciary managers.

If you have any questions about the issues raised in this legal update, please get in touch with your usual Mayer Brown contact or:

Edward Jewitt

Partner, London

E: ejewitt@mayerbrown.com

T: +44 20 3130 3661

David Harrison

Partner, London

E: dharrison@mayerbrown.com

T: +44 20 3130 3050

Warsha Kalé

Counsel, London

E: wkale@mayerbrown.com

T: +44 20 3130 3672

Katherine Carter

Professional Support Lawyer, London

E: kcarter@mayerbrown.com

T: +44 20 3130 3901

Alexandra Aninoiu

Associate, London

E: aaninoiu@mayerbrown.com

T: +44 20 3130 3572

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