

Consultation

Draft guides to deliver the CMA's recommendation to produce guidance to trustees of occupational pension schemes on engaging with investment consultants and fiduciary managers

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Introduction

The Pensions Regulator (TPR) is the UK regulator of occupational pension schemes. We are a non-departmental public body established under the Pensions Act 2004. Our sponsoring body is the Department for Work and Pensions (DWP) and Parliament sets the legislative and regulatory framework within which we work.

Following an investigation into the investment consultancy and fiduciary management market, the Competition and Markets Authority (CMA) has introduced new duties for trustees and managers of occupational pension schemes,¹ which will take effect from 10 December 2019.

The DWP is currently consulting on bringing these new duties into pensions legislation, after which we will be tasked with regulating compliance with the requirements.

The CMA made recommendations in its final report for us to produce guidance to support trustees in complying with these new duties. This consultation is in respect of the guidance we have produced to support those recommendations.

Who is this consultation for?

We are particularly interested to hear from anyone affected by the requirements of The Investment Consultancy and Fiduciary Management Market Investigation Order 2019² ('the Order'). This is primarily for trustees of occupational pension schemes and providers of fiduciary management and/or investment consultancy services, including trustees who have appointed a fiduciary manager that will be required to run a competitive re-tender. The final order brought local government pension schemes into scope for some aspects of the order. We would therefore also be interested to hear from them, particularly in respect of the guidance on setting objectives for providers of investment consultancy services. References in the guidance documents to trustees include, where applicable, scheme managers of LGPS funds.

We are also interested to hear from third parties who provide trustees with support and advice in selecting and reviewing the performance of providers of fiduciary management and/or providers of investment consultancy services.

Impact assessment

We will be liaising with the DWP, and may seek further external evidence to support our assessment of regulatory burden and Business Impact Target obligations under the Small Business, Enterprise and Employment Act 2015.

- 1 https://assets.publishing.service.gov.uk/media/5cfdfa86e5274a090f9eef8e/Order_investment_consultants.pdf
- 2 https://assets.publishing.service.gov.uk/media/5cfdfa86e5274a090f9eef8e/Order_investment_consultants.pdf

Responding to the consultation

We have provided a form for responses which you can complete electronically and submit to us. We are also happy to accept paper responses. You can send your response:

- by email to **FMandIGuidance@tpr.gov.uk** (documents should preferably be in Word format)
- by post to **Louise Spicer**, Regulatory Policy, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW

We may share the feedback you send us within our own organisation or with other government bodies, including the CMA. We may publish this feedback as part of a response to the consultation. If, for the purposes of our published consultation response, you wish your response to be kept confidential or your comments to remain anonymous, please make this known and we will take the necessary steps to meet your request.

However, please be aware that, should we receive a formal request under the Freedom of Information Act, we may be required to make your response available. When responding, please advise whether you are responding as an individual or on behalf of an organisation (and, if the latter, which organisation).

Closing date

This consultation document was published on **31 July 2019**. The closing date for responses is **12 noon on 11 September 2019**.

Government consultation principles

For the purposes of this consultation paper, we are following the government's consultation principles at: <http://bit.ly/ContPrin>.

The key principles state that consultations should:

- be clear and concise
- have a purpose
- be informative
- be only part of a process of engagement
- last for a proportionate amount of time
- be targeted
- take account of the groups being consulted
- be agreed before publication
- facilitate scrutiny

Background

The CMA investigated the investment consultancy and fiduciary management market following a referral made by the Financial Conduct Authority (FCA) in September 2017. Trustees of occupational pension schemes are among the largest institutional investors that use these services in the UK. The CMA therefore focused on trustees as customers in this market.

The CMA published its final report³ in December 2018 and concluded that there was an adverse effect on competition in the investment consultancy and fiduciary management market. It found low levels of engagement by trustees when choosing and monitoring their investment consultant and low levels of tendering when first moving into fiduciary management. The CMA also found that it was difficult for trustees to access and assess the information needed to evaluate the quality of their existing investment consultant and to identify if they would be better off switching adviser. The costs of switching out of fiduciary management were found to be high and it was identified that it was also difficult for many trustees to access and assess the information they needed on the fees and charges within their existing fiduciary manager agreement to consider if they would be able to receive better terms from another provider. These features were considered to result in substantial detriment to scheme and member outcomes.

The final report set out a number of remedies to improve the information that investment consultants and fiduciary managers provide trustees on fees and performance and to facilitate trustee engagement when tendering for services and assessing the performance and quality of service of their providers. These remedies apply to trustees and providers of investment consultancy and fiduciary management services. The specific remedies that apply to trustees are as follows:

- **Remedy 1:** Requirement to tender for fiduciary management services when 20% or more of scheme assets are delegated.
- **Remedy 7:** Requirement to set strategic objectives for providers of investment consultancy services.

The CMA has introduced the remedies via the Order,⁴ which was published on 10 June 2019 and the duties that apply to trustees will take effect from 10 December 2019. The CMA has recommended the DWP legislates to bring the new duties for trustees into pensions legislation so we can be tasked with regulating compliance. The DWP is currently consulting on amendments to regulations. References to the new duties in the guidance currently relate to the CMA Order. Following the DWP's consultation to transition the requirements of the order into pensions legislation, we intend to update the guidance to reflect the final regulations.

³ <https://www.gov.uk/cma-cases/investment-consultants-market-investigation#final-report>

⁴ https://assets.publishing.service.gov.uk/media/5cfdfa86e5274a090f9eef8e/Order_investment_consultants.pdf

The CMA also recommended that we produce guidance for trustees to support them in meeting these new requirements in relation to Remedies 1 and 7. The CMA also included further recommendations, including that we produce guidance to assist trustees in tendering for investment consultancy services.

Investment consultants and fiduciary managers perform an important role for trustee boards and have a significant influence over investment matters that affect member outcomes. It is therefore important that trustees are well-informed in order to select good quality suppliers of investment management services and are able to monitor their performance to ensure that the expected quality of service is delivered.

We support the CMA's recommendations and we believe this guidance will help to address the underlying issues.

We are consulting on a suite of guidance aimed to support trustees in meeting the new duties and engaging with their providers of investment consultancy and fiduciary management services:



- 1. Draft guide to tendering for fiduciary management services**
- 2. Draft guide to tendering for investment consultancy services**
- 3. Draft guide to setting objectives for providers of investment consultancy services**
- 4. Draft guide to choosing an investment governance model**

We welcome comments on any aspect of the guidance. We have provided some specific questions on areas where we have a particular interest. Following the consultation, we will consider comments and make appropriate changes before publishing the final guidance.

Consultation

1. A guide to tendering for fiduciary management



Click on the question below to go to the response form at the end of this publication

- **Question one: Is the language used in the guidance clear and unambiguous? If not, what would provide clarity?**

From 10 December 2019, trustees will be required to run a competitive tender exercise for any agreement with a fiduciary manager provider that would result in 20% or more of scheme assets being delegated. Trustees who appointed a provider prior to 10 June 2019 without conducting a competitive tender process will be required to conduct a competitive tender process within five years after the first appointment of a fiduciary management services provider. Where the five year period expires before, on or within two years of 10 June 2019, trustees must complete a competitive tender no later than 9 June 2021.

The guidance aims to provide practical information to support trustees in meeting the legal requirement. We also set out that it is good practice to tender, even when the legal requirement does not apply. When describing a legal requirement, we have used language such as ‘the law requires’ and ‘you must’. ‘You should’ is used when describing good practice.



Click on the question below to go to the response form at the end of this publication

- **Question two: Do you consider that there are any areas of a competitive tender process missing?**

Under remedy 3 of the CMA’s final report, they recommended that we produce guidance to support trustees in running a competitive tender process to select a fiduciary manager. The CMA Order sets out a definition of a competitive tender process and the requirement for reasonable endeavours to be adopted. The aim of this guide is to provide a set of key principles to illustrate a good practice approach to tendering and outline how these may be applied to tendering for fiduciary management services. These are supported by an illustrative case study to demonstrate how tendering for a fiduciary manager may be approached in practice.

1. A guide to tendering for fiduciary management continued...



Click on the question below to go to the response form at the end of this publication

- **Question three: Are the key principles of running a tender exercise reasonable and proportionate? In particular, are there any scheme types or sizes for which the principles would not be reasonable and proportionate?**

The guidance outlines a set of key principles for running an effective tender exercise as an example of good practice that could be applied when tendering for services. However, trustees should design an exercise which is proportionate and appropriate for the needs of their scheme. We explain how trustees can apply the key principles of tendering for fiduciary management, which includes developing a good understanding of the current fiduciary management market, outlines a process for shortlisting candidates and highlights the need to assess bids in a consistent and comparable way. We also explain that by documenting the fact that the trustees have followed a structured process and recorded key outcomes, it helps trustees to demonstrate that they have made an informed decision.

We are interested to understand if there are any challenges for trustees in applying the key principles outlined, particularly whether there are any steps which trustees of smaller schemes may find difficult and whether a simpler process would be more appropriate. We would also be interested in understanding whether any such simpler process could be expected to deliver the same level of potential benefits, for example in relation to fee savings over the term of the contract and improved terms and conditions.

2. A guide to tendering for investment consultancy services



Click on the question below to go to the response form at the end of this publication

- **Question four: Is it clear how trustees can apply the principles of a competitive tender exercise to the selection of a provider of investment consultancy services?**

In its final report, the CMA recommended that we consider how the competitive tender process could be applied to the appointment of an investment consultant. We have produced a shorter guide to tendering for investment consultancy services with the aim to provide guidance to trustees on the key matters to consider when tendering. We outline how the key principles of a competitive tender may be applied to the tender for investment consultancy services with an illustrative case study.

3. Setting objectives for providers of investment consultancy services



Click on the question below to go to the response form at the end of this publication

- **Question five: Is the language used in the guidance clear and unambiguous? If not, what would provide clarity?**

From 10 December 2019, trustees and managers will be required to set objectives for their providers of investment consultancy services. The guidance aims to provide practical information in meeting the duty. For the purposes of the new duty, ‘investment consultancy services’ has a particular meaning in the Order.

However, we recognise that the range of advice and services offered by providers of investment consultancy services is much broader and that services may be bundled. The guidance therefore sets out that it is good practice to set objectives for the other services provided by investment consultants. When describing a legal requirement, we have used language such as ‘the law requires’ and ‘you must’. ‘You should’ is used when describing good practice. We also aimed to clarify where we are describing investment consultancy services more broadly than the definition in the Order.



Click on the question below to go to the response form at the end of this publication

- **Question six: Are the case studies useful in illustrating the elements of services trustee should consider setting objectives in relation to? Do these present an accurate representation of how trustees may set objectives for their investment consultants? Do you have any other examples that could be usefully included to demonstrate the different approaches that schemes of different sizes, and with varying available resources, might take to comply?**

From December 2019, trustees and managers are required to set strategic objectives for those providers that meet the definition of investment consultancy services in the Order. The objectives trustees decide to set should be bespoke to their scheme and relevant to the services they have instructed their consultant to provide. We have set out in the guidance the requirement to set objectives, together with matters to consider when setting them and monitoring progress. We include a number of case studies to illustrate how this might be applied by a defined benefit and defined contribution scheme.



Click on the question below to go to the response form at the end of this publication

- **Question seven: Is the example balanced scorecard an effective way to assess the performance of providers of investment consultancy services? Are there alternative methods trustees could use?**

We provide an illustrative example of a scorecard trustees can use when reviewing the performance of their investment consultancy service provider, using a set of illustrative weightings against which the services could be assessed. The level of the weightings and the specific structure of the balanced scorecard will vary between schemes. Trustees should design a scorecard which is bespoke to the needs of their scheme and the investment consultancy services they obtain. There may be other methods trustees could use and we are interested to hear if there are alternatives which might be appropriate.

4. Guide to choosing an investment governance model



Click on the question below to go to the response form at the end of this publication

- **Question eight: The guide to choosing an investment governance model describes the key features of investment consultancy and fiduciary management. Are there any other features missing which would support trustees in deciding on a suitable model for their scheme?**

In response to the findings in the CMA's investigation and feedback from industry, we have produced guidance on matters which trustees should consider when choosing an investment governance model. This guidance does not reflect new legal requirements and its aim is to support trustees to understand their investment governance capability and highlight key matters to consider when deciding on an appropriate level of delegation that will support them to achieve their objectives. We consider this to be an important step before deciding to tender for services.

We recognise that there are various services and levels of delegation available to trustees and there are other solutions which trustees can consider to improve investment governance. We have primarily focused on full investment consultancy and full fiduciary management for the purpose of this guidance and we signpost to our existing guidance, where appropriate.

Appendix: Consultation questions and response form

Consultation: Tendering for fiduciary management and setting objectives for providers of investment consultancy services

This form is interactive. Please save the whole consultation pdf to your computer, fill in your response to the questions as appropriate and return it by **12 noon on 11 September 2019** to the following email address: **FMandICguidance@tpr.gov.uk**

Your details

Your name:

Organisation (if applicable):

Job title (if applicable):

Postal address:

Telephone:

Email:

Which category best describes you or your organisation?

Please select one category from the drop down menu above.

Confidentiality

Please confirm whether you would like us to list your organisation on our list of respondents to this consultation:

Yes, I wish my organisation to be included on the list of respondents.

We may need to share the feedback you send us within our own organisation or with other government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your response, in whole or in part, to remain confidential, please tick the box below:

Yes, I wish my response to remain confidential.

If so, please specify which part of your response you wish to remain confidential and why:

Part 1: A guide to tendering for fiduciary management

1. Is the language used in the guidance clear and unambiguous?
If not, what would provide clarity?

Yes

No

Please give your reasons.

2. Do you consider that there are any areas of a competitive tender process missing?

Yes No

Please give your reasons.

3. Are the key principles of running a tender exercise reasonable and proportionate? In particular, are there any scheme types or sizes for which the principles would not be reasonable and proportionate?

Yes No

Please give your reasons.

Part 2: A guide to tendering for investment consultancy services

4. Is it clear how trustees can apply the principles of a competitive tender exercise to the selection of a provider of investment consultancy services?

Yes No

Please give your reasons.

Part 3: Setting objectives for providers of investment consultancy services

5. Is the language used in the guidance clear and unambiguous?
If not, what would provide clarity?

Yes No

Please give your reasons.

6. Are the case studies useful in illustrating the elements of services trustee should consider setting objectives in relation to? Do these present an accurate representation of how trustees may set objectives for their investment consultants? Do you have any other examples that could be usefully included to demonstrate the different approaches that schemes of different sizes, and with varying available resources, might take to comply?

Yes No

Please give your reasons.

7. Is the example balanced scorecard an effective way to assess the performance of providers of investment consultancy services? Are there alternative methods trustees could use?

Yes No

Please give your reasons.

Part 4: Guide to choosing an investment governance model

8. The guide to choosing an investment governance model describes the key features of investment consultancy and fiduciary management. Are there any other features missing which would support trustees in deciding on a suitable model for their scheme?

Yes No

Please give your reasons.

How to contact us

Napier House
Trafalgar Place
Brighton
BN1 4DW

www.tpr.gov.uk

www.trusteetoolkit.com

Free online learning for trustees



Consultation

Draft guides to deliver the CMA's recommendation to produce guidance to trustees of occupational pension schemes on engaging with investment consultants and fiduciary managers

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