

For the attention of:

Louise Spicer
Regulatory Policy
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
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20 August 2019

Dear Louise,

Draft TPR guidance response

We are writing to provide Muse Advisory's feedback on the draft guidance produced by TPR on the CMA's orders covering trustee engagement with investment consultants (ICs) and fiduciary managers (FMs). Our feedback refers to the following guidance documents:

- Tendering for fiduciary management services;
- Tendering for investment consultant services;
- Setting objectives for providers of investment consultancy services;
- Choosing an investment governance model.

In addition to the comments below, we will respond to the specific questions as set out in the *Draft guidance consultation document*.

Overall, the draft guidance covers the key elements of the orders as we would expect, although, in our view, it could be restructured in a number of ways to make it more 'accessible'. This would be particularly useful for smaller schemes that may lack the resource to easily assimilate and act on all of the guidance. If they cannot do so, there is a danger that they will revert to their existing investment service providers for assistance, which (as you point out in the guidance) may recreate some of the conflict issues that the CMA orders were seeking to alleviate.

We would suggest that a brief, introductory document could be produced covering:

- Why the CMA review was undertaken;
- What the CMA found;
- The specific issues that the guidance is designed to help with;
- A 'route map' for considering the issues.

The last item above is key and should be used to emphasise the need for trustees to consider high level objectives, investment beliefs, scheme context and governance¹ before tendering or setting their investment consultant's objectives. This process is essential to help trustees answer fundamental questions on the type of investment service they need. For example, do they want/ need to pursue a complex investment approach and if so, do they have the time and resources to manage the complexity. If they do not, is resource available internally, could they recruit, should they simplify, or should they outsource to an FM?

Clearly some trustees will have gone through these thought processes before deciding on, for example, switching to an FM, so they may be unnecessary. However, we anticipate that many schemes (in particular smaller ones) will not have done so. Even if trustees have reviewed high level objectives, beliefs and governance prior to deciding how to use external investment resource, revisiting each area will help to ensure that appropriate objectives are set and, where applicable, tenders are issued that accurately describe the investment service required.

If the approach of considering objectives, beliefs and governance first is accepted and a 'route map' is developed, we would also suggest reordering the guidance such that *Choosing an investment governance model* comes first, as this more naturally leads on to the other items.

In terms of the structure of the guidance documents themselves, we think it may be helpful to adopt an 'in brief' and 'in more detail' structure together with a reminder of the issues the CMA identified in each area and where improvement is required plus notes on how trustees can identify and avoid the issues. The documents could also include key questions trustees should consider to help identify what is right for their scheme.

Some of the content may also be overly complex for some trustees – for example the balanced scorecard could be explained in principle with more/ less complex examples provided an appendix. Also, the use of a partial fiduciary management model in the *Choosing an investment governance model* document may be unhelpful for the trustees who really need the guidance. In our view, the CMA remedies are largely designed to alleviate the engagement issues that exist at schemes with limited governance that may have been 'flipped' into FM by their incumbent investment consultant – the majority of these schemes seem likely to be using a full FM service that covers all of the activities listed in the example. Presenting a more complex structure therefore seems inappropriate and potentially confusing for those schemes. Also, those schemes which have a partial FM solution of the type described are likely to be higher governance schemes that have considered the implications of different models and consciously opted for the more governance intensive model of using multiple investment service providers.

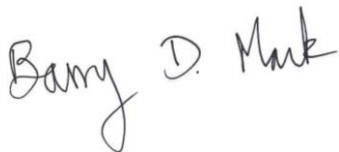
The two guides that cover tendering for investment services make very little reference to creating opportunities for ICs and FMs to engage with trustees who are putting services out to tender. In our view, engagement of this type is essential as it enables ICs and FMs to fully understand the motivations for the tender, the scheme context, the nature of the mandate and the type of service required. Avoiding the need for ICs and FMs to make assumptions about what is required in this way helps to ensure that tenders received accurately reflect a scheme's requirements. Doing so also makes the tenders received more easily comparable.

¹ We note that when trustees review these items, they frequently do so in conjunction with their incumbent investment advisors. However, this can lead to the potential for conflicts of interest - using a third party (e.g. a TPE or professional trustee) to assist is therefore likely to be appropriate. The investment implications of the trustees' objectives and beliefs should then be worked through with the investment consultant or fiduciary manager, which in turn will help to clearly define the IC or FM's objectives. This approach also helps to ensure that trustees, ICs and FMs are clear on who is accountable for different elements of the outcomes achieved.

We view tendering key service contracts such as FM appointments an essential part of good governance. It is an unfortunate consequence of compulsory tendering that some schemes will tender simply to satisfy the legal requirement to do so. Whilst there may be legitimate reasons for doing so (e.g. satisfaction with the incumbent provider, scheme fully funded and close to buy in/ buy out) allowing FMs to engage with the trustees will help them to establish how 'real' the tender is and hence if/ how to respond. This in turn will help to reduce the costs of running FM businesses, which should ultimately be passed on to trustees.

We hope the comments made above are clear and we would be happy to meet with you to talk them through in detail.

Yours sincerely,



Barry Mack
Director