

New rules

✓ New requirements for trustees in relation to investment consultancy and fiduciary management services

On 10 June 2019, the Competition and Markets Authority (CMA) issued the *Investment Consultancy and Fiduciary Management Market Investigation Order 2019* (Order). The Order implements the bulk of the CMA's remedies following its December 2018 findings that there are features of this market which adversely affect competition.

Whilst the majority of the new requirements under the Order fall on investment consultants and fiduciary management services providers, some are also directly relevant to trustees of occupational pension schemes who use such services. In particular, **trustees who currently use investment consultancy services will need to take action ahead of 10 December 2019.**

The requirements on trustees will be replaced with equivalent obligations within the main body of pension legislation, probably in April 2020.

New requirements for trustees

• Mandatory competitive tendering for fiduciary management services:

Trustees will be required to use "reasonable endeavours" to obtain bids from three or more unrelated providers when tendering for fiduciary management services as follows:

- **New mandates:** trustees must run a competitive tender for any new FMA(s) which would result in 20% or more of scheme assets being delegated

- **Existing mandates in place before 10 June 2019 covering 20% or more of scheme assets:** trustees must run a competitive tender within five years

from the date of the commencement of an FMA not originally subject to a competitive tender process (a shorter two-year deadline applies in some cases)

- **Existing mandates covering less than 20% scheme assets:** trustees must run a competitive tender at the point the assets covered by existing FMA(s) increase to 20% or over.

The regulator has published draft guidance for trustees on tendering for fiduciary management services as part of a suite of new guidance on investment governance.

- **Objective setting for investment consultants** - from 10 December 2019, trustees will be required to set strategic objectives in respect of their investment consultancy services. The draft guidance indicates the regulator's expectations in this area.

- **Reporting** - the requirement for annual compliance statements to be submitted to the CMA is likely to be replaced with a different process and deadline (involving the regulator and via Exchange) before trustees are required to take action under the Order.

Enforcement

In due course regulatory oversight will pass from the CMA to the regulator who will have the power to impose financial penalties for non-compliance.

New requirements for investment consultants and fiduciary managers

These are summarised as follows:

- To separate advice in respect of investment consulting or fiduciary management services from marketing material, and to label such marketing

material clearly.

- To provide disaggregated fee information in respect of fiduciary management services to existing trustee clients regularly.

- To disclose and itemise all costs and related charges to all potential trustee clients when involved in a tender process.

- To provide potential trustee clients with information on the past performance of fiduciary management services using a standardised methodology and template (based on a standard to be approved by the CMA).

- To provide potential trustee clients with information on past performance of recommended products or funds using a basic minimum standard.

Getting ready for the new regime

Based on the provisions of the Order and the draft guidance, trustees should consider taking the following action:

- Review contractual documentation under which any current investment consultancy and fiduciary management services are provided. This will require an assessment of the underlying nature of the services, which can be complex – trustees should not rely on how services have been 'labelled'.

- Start considering the strategic objectives that might be appropriate for any existing contracts for investment consultancy services. In due course, update processes to ensure that objective setting is incorporated into any new contract for investment consultancy.

- Update policies and procedures to ensure that necessary compliance statements are made by the required deadlines.



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