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UK Pensions briefing

New Investment Consultancy and Fiduciary Management requirements from the Competition and Markets Authority

September 2019

Introduction

On **June 10, 2019**, the Competition and Markets Authority made its final Investment Consultancy and Fiduciary Management Market Investigation Order 2019. The main part of the Order comes into effect after six months, on **December 10, 2019**. This briefing looks at the actions trustees should be taking to comply with the new requirements.

What is the background to the new Order?

The implementation of the CMA's new Order followed its 2018 investigation and report into factors it identified as adversely affecting competition for Investment Consultancy and Fiduciary Management services provided to and received by pension schemes.

Following a consultation earlier this year, the CMA decided on a package of remedies, which have been effected by the Order.

What are the Order's new requirements for trustees receiving Investment Consultancy services?

Where trustees receive Investment Consultancy services they must

- be provided with clearer information about the services being provided
- put in place strategic objectives and monitor the performance of their Investment Consultancy advisers before being able to rely (or continue to rely) on such advice
- ensure that their Investment Consultants follow a standard approach when providing past performance data and comparison of recommended investments. This is to facilitate the trustees' assessment of alternative providers' value for money.

What are the Order's new requirements for trustees receiving Fiduciary Management services?

Where trustees receive Fiduciary Management services, they must

- (as new customers) be provided with clearer information on fees and performance in a standard template form, for the purposes of comparison with other service providers. Existing customers of Fiduciary Management services must also be provided with clearer information on fees.
- be incentivised to shop around for Fiduciary Management services. Where trustees plan to delegate investment decisions relating to more than 20 per cent of trust assets, a competitive tender must be run, either within five years from the original Fiduciary Management appointment or by **June 9, 2021**, if later.

How will the CMA monitor compliance?

Under the Order, trustees will need to send an annual compliance statement to the CMA confirming their adherence to the applicable new rules. The first compliance statement must be received by the CMA within 12 months and 4 weeks of the implementation of the relevant requirement. The trustees' compliance statement will normally be signed by the chair. Providers of Fiduciary Management and Investment Consultancy services will also need to prepare annual compliance statements.

However, as outlined below, this notification of compliance requirement for scheme trustees is likely to be overseen by the Pensions Regulator instead of the CMA under the DWP regulations.

What is the impact of trustees' non-compliance?

Where trustees fail to comply with the requirements of those parts of the Order that apply to them, a report must be made to the CMA within 14 days of becoming aware of such failure, and confirmation must be provided of the steps being taken to address any shortcomings. The CMA is able to take action against trustees who fail to comply.

When do the new provisions come into force?

The Order provides that the parts relating to Fiduciary Management information provision and CMA monitoring and compliance will come into effect **immediately** (that is, from June 10, 2019).

The parts relating to mandatory tendering, Fiduciary Management fee and advice separation, Investment Consultancy objective setting and minimum performance information will come into force in **six months** – that is, by **December 10, 2019**. In practice, this means trustees are likely to have to prepare their first compliance statement by **December 2020** – although it is likely this will then be provided to the Pensions Regulator instead, as outlined in the comments on the DWP's intentions below.

Is there any guidance available?

The Pensions Regulator has issued draft guidance in response to the CMA's recommendations and the closing date for responses on the related consultation is **September 11, 2019.** This means that time will be short for trustees to establish which parts of the Order are applicable in terms of the services they use, and what action needs to be taken.

What action is being taken by the Department for Work and Pensions?

On **July 29, 2019**, the DWP published a consultation on draft regulations imposing the obligations on trustees relating to the Fiduciary Management and Investment Consultancy services they receive. The regulations are designed to implement into pensions law the requirements under the CMA's Order, and to enable the Pensions Regulator to oversee the new regime. This consultation closed on **September 2, 2019.** The DWP's regulations are not expected to come into force before **April 6, 2020**, so the CMA's Order will apply to pension schemes in the interim period from **December 10, 2019.** Once the DWP's regulations come into force, obligations under the Order, such as compliance reporting to the CMA, will instead be fulfilled by notification to the Pensions Regulator.

How can we help?

Although the approach between the CMA, the DWP and the Pensions Regulator currently appears confusingly piecemeal, the main part of the CMA's Order comes into effect on **December 10, 2019.** Trustees should therefore start making preparations to comply with those parts of the Order that are applicable to them, and engage with their Investment Consultants and Fiduciary Managers as appropriate. It should be noted that the policy intention of the DWP is to mirror the CMA Order, and hopefully the final regulations will dovetail on points of detail such as the role of investment advice given by the actuary. Trustees may need to reacquaint themselves with the requirements when the DWP proposals and the Pensions Regulator's guidance are finalised.

The timetable is fairly short, particularly when other recent changes (such as revised SIP requirements and Chair's Statement obligations) are also taken into account. For help and advice to implement processes to comply with the new requirements, including drafting the objectives for Investment Consultants, please contact your normal Norton Rose Fulbright adviser.

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