First Briefing, August 2019
Investment Consultants and Fiduciary Management: New Duties for Trustees

Introduction

This Briefing note looks at the new stronger governance arrangements around investment duties which will apply to trustees and managers of occupational pension schemes from 10 December 2019.

Background

Last year the Competition and Markets Authority (CMA) carried out an investigation into the effectiveness of competition in the investment consultancy and fiduciary management market.

The CMA identified a number of factors that have an adverse effect on competition, including:

- low levels of engagement by some trustees,
- some investment consultancy firms steering trustees towards their own fiduciary management services,
- lack of information to help trustees determine whether they were getting value for money from their investment consultant or fiduciary manager, and
- lack of information to assist trustees in comparing the performance of their fiduciary manager against others.

The CMA found that these weaknesses led to some trustees entering into fiduciary management arrangements on uncompetitive terms or failing to switch to potentially better providers. By contrast, where trustees had arranged competitive tenders for investment services and reviewed the performance of their investment consultants and fiduciary managers, they were more likely to receive a better quality service and value for money.

In June 2019, the CMA issued an Order which sets out new legal duties for trustees and managers of occupational pension schemes (with some exceptions), which apply from 10 December 2019:

- A requirement for trustees to set objectives for their investment consultant.
- Mandatory competitive tendering for fiduciary management services where more than 20% of the Scheme's assets are under fiduciary management.

As recommended by the CMA, the Department of Work and Pensions (DWP) is currently consulting on bringing the new requirements into existing pensions legislation from April 2020. This will allow The Pensions Regulator (TPR) to oversee the requirements, with trustees confirming compliance through the Scheme Return.

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TPR guidance

The CMA required TPR to issue guidance to trustees to assist them in meeting the new duties. On 31 July 2019, TPR issued four guides for consultation, aimed at helping trustees to put in place a stronger governance framework and meet their new legal duties.

1. Choosing an investment governance model

This guide focuses on two models of investment advice; investment consultancy and fiduciary management. It looks at the roles and responsibilities of each party and the different levels of delegation of the two models. It also considers the different factors that may influence trustees in choosing a particular model, including the trustees' governance capabilities and costs.

2. Setting objectives for providers of investment consultancy services

To enable trustees to better monitor the performance of their investment consultancy provider, trustees are required to set objectives for their investment consultant.

The objectives must be in place by 10 December 2019, otherwise it will not be permitted for the trustees to seek advice from their investment consultant, or the investment consultant to continue to provide their services.

The range of advice and services provided by investment consultants is broader than those subject to the legal requirements set out by the CMA Order. However, TPR encourages trustees, as a matter of good governance, to set objectives even where the legal requirement may not directly apply.

The TPR guide provides examples of possible objectives, which may be qualitative or quantitative, and cover both the short and longer term. They also provide an example of a possible scorecard which will enable the trustees to monitor the performance of their investment consultant.

Trustees will be required to review the performance of their investment consultant at least every 3 years and following any significant change to investment policy or objectives.

TPR's draft guidance also highlights that trustees may be receiving advice that amounts to 'investment consultancy services' from someone who may not regard themselves as an investment consultant. Examples given include an independent financial adviser, a wealth manager, or advice from the scheme actuary on whether the scheme's strategic asset allocation is appropriate for the scheme's liabilities. In these cases, the trustees will be required to set objectives for the provider of those investment consultancy services.

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3. Tendering for fiduciary management services

From 10 December 2019, for any agreement(s) with a fiduciary manager that would result in 20% or more of scheme assets being delegated, trustees must:

- not enter into an agreement with the fiduciary manager without carrying out a competitive tender process.
- provide the fiduciary manager with confirmation in writing that they have been selected as a result of a competitive tender process before entering into an agreement. Fiduciary Managers are also prohibited from entering into an agreement without this confirmation.

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 of first appointing a fiduciary manager. 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.

Trustees who have fiduciary manager agreements in place should determine whether they were put in place following a competitive tender process, and if not, plan when they will run a tendering exercise.

TPR has issued guidance for trustees on tendering for fiduciary management services, which sets out the recommended stages of this process.

4. Tendering for investment consultancy services

Although not required by the CMA, TPR has also issued a guide for trustees on tendering for investment consultancy services.

Further information

For further information, please contact your usual First Actuarial consultant or investment adviser.

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