Institute
and Faculty
of Actuaries

Draft guidance consultation (in response to CMA recommendation)

IFoA response to The Pensions Regulator

09 September 2019

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Institute and Faculty of Actuaries

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Vicky Bird
Department for Work and Pensions
Policy Group
Private Pensions and Arm's Length
Bodies Directorate
Third Floor South
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9 September 2019

Dear Ms Spicer and Ms Bird,

RE: IFoA response to:

- **TPR Consultation on 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; and**
- **DWP Consultation on delivering the CMA recommendation for trustee oversight of investment consultants and fiduciary managers**

1. The IFoA welcomes the opportunity to respond to the Pensions Regulator's (TPR) consultation on draft guides to deliver the Competition and Market Authority's (CMA) recommendation to produce guidance to trustees of occupational pension schemes on engaging with investment consultants and fiduciary managers; and, the DWP consultation on delivering the CMA recommendation for trustee oversight of investment consultants and fiduciary managers.

2. The IFoA has not commented on the individual questions of the consultations, but we would like to raise two particular concerns about the proposals. In brief, these are:
   i. The proposed scope of the regulations and guidance moves beyond the CMA's intention and has the potential to encompass significant amounts of professional advice, including actuarial advice, owing to the inextricable links between the funding and risk management of a scheme and its investment strategy. Therefore the widened scope of the proposals could have unintended adverse consequences, as we explain in detail later.

   ii. The proposals to adopt different definitions of "Investment Consultancy Services" for different purposes, seems inappropriate and have the potential for widespread regulatory confusion and intervention, outweighing any perceived benefit.

3. For ease of reference, we have shown relevant extracts from the three definitions of "Investment Consultancy Services" in the table below:

Source	Definition
CMA Final Report	"…services where the provider advises the Pension Scheme Trustees in relation to…. investments…… The services do not include… the high-level commentary provided by the scheme actuary in or in respect of triennial valuation reports and with regard to the link between the investment approach and the pension scheme's funding objectives."
Draft regulations	"….advice…..on, or in connection with,….the preparation or revision of the scheme's statement of investment principles [or] investment strategy." And it is "advice otherwise than in P's capacity as a legal adviser."
Draft Pensions Regulator's Guides	"….the provision of advice to the trustee board to support decisions on matters such as investment strategy, strategic asset allocation and manager selection." Also: "We would expect trustees, as a matter of good practice, to consider setting objectives for all their providers of advisory services."

4. Regarding the definition set out in the CMA Order, we have some concerns that the specific reference to triennial valuations is unnecessarily narrow and might not cover all the actuarial advice we believe it was intended to cover. For example, it appears not to cover funding advice *between* statutory triennial valuations, such as in connection with a revision to a recovery plan to reflect a change in covenant, or a situation where the trustees choose to undertake more frequent statutory valuations. It may also not cover actuarial advice in connection with risk transfers, covenant advice or potentially even standard advice about the trustees' transfer value basis. However, we are comfortable with what we assume was the policy intention, namely to exclude actuarial advice which is not regulated investment advice, albeit we suggest that non-actuarial advice which is not regulated investment advice should also be excluded.

5. Whilst we appreciate that the CMA's definition only has a bearing until it is replaced by legislation, at this point we would anticipate that the regulations largely reflect the CMA Order. However, the draft regulations take a different approach and appear to widen the scope again by omitting any exemptions for actuarial work, although, unusually, there is a new exemption - for legal advice. The IFoA believes that the phrase "in connection with", included in the draft regulations, could bring non-investment professional advice into scope, including most actuarial advice given the links between funding and investment strategy.

6. TPR's draft guidance has yet another definition for 'Investment Consultancy Services', which further widens the scope to *all advice*, for the purposes of 'good practice'. The IFoA feels the definition should reflect the definition ultimately in the regulations and that any widening for the purposes of 'good practice' should stress the need for proportionate adoption and clearly distinguish between legal requirements and 'good practice'. As it stands, we believe the definition could embrace any professional advice, including actuarial advice, which is simply a precursor to formal investment advice. For example, advice relating to funding, risk transfers, covenant and risk management could fall into scope, given that advice in these areas may be deemed to 'support decision making on investment strategy.'

7. The IFoA is supportive of a proportionate and well-defined requirement for trustees to set objectives for their investment advice. However, comments on investments given in an actuarial (or other) capacity are usually, when trustees choose to pursue them, followed up with separate investment-specific advice, for which objectives will have to be set. Therefore our concern is that requiring additional objectives for other advisers, whose advice impacts on the need for investment advice, would add little value for trustees and scheme members, but could have the following negative consequences:

- An undermining of progress on Integrated Risk Management, by inadvertently discouraging advisers from mentioning the impact of their advice on the scheme's investment strategy;
- The creation of a tick-box compliance culture, where trustees have to set objectives for multiple advisers within a short period and are incentivised to by-pass careful consideration from a scheme-specific perspective;
- Unnecessary and burdensome compliance, which could have an adverse impact on the cost of advice and its timeliness;
- Confusion amongst trustees and advisers, exacerbated by the possibility of penalties, and a consequently disproportionate regulatory burden for the Regulator; and
- Regulatory 'creep' meaning that all professional advice, and actuarial advice in particular, becomes treated as regulated investment advice, and in our opinion this does not seem to be in trustees' or members' interests.

8. The IFoA urges DWP and TPR to work together to ensure the regulations and guidance are consistent and that the scope is more tightly defined. With tight definitions in place, and a very clear difference between legal requirements and 'good practice', the IFoA remains comfortable with the Regulator's proposals to encourage trustees to follow 'good practice' and set objectives *on a proportionate basis* for other advisers. However, for the changes to be effective, we believe the legislative and regulatory requirements, and the application of penalties for non-compliance with the legal requirements, need to be clear and consistent.

9. Please note that, as the regulations and regulatory guidance will ultimately need to complement each other, we have covered both in this letter and we are sending it to both the DWP and TPR.

10. Should you wish to discuss the concerns raised above, please contact Henry Thompson (Henry.Thompson@actuaries.org.uk) in the first instance.

Yours sincerely,

Mark Williams

Chair, IFoA Pensions Board