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PLSA Response: DWP Consultation on delivering the CMA Final Order

The PLSA is the voice for pensions and lifetime savings in the UK, representing over 1,300 pension schemes with just over £1 trillion in assets under management and over 400 supporting businesses – including asset managers, investment consultants and other service providers. Our purpose is to help everyone achieve a better income in retirement.

Introduction and summary

The PLSA welcomes the opportunity to respond to the Department for Work and Pensions (DWP) consultation on delivering the Competition and Markets Authority (CMA) recommendations.

The PLSA supported the referral of the sector to the CMA owing to member concerns about the potential for misalignment of interests in the industry. We also supported the principle behind those specific remedies considered in this paper. On Remedy 1, we believe it is good practice for schemes to consider the broader market for fiduciary management services prior to choosing a provider – particularly upon first time adoption or consideration of a fiduciary management approach, which can be difficult to unwind.

On Remedy 7, we think it is important for decision-makers at all schemes to undertake meaningful consideration of how their consultants – and how all service providers more generally – have performed and helped trustees achieve their scheme's specific goals. We therefore agreed with the CMA that there is merit in ensuring trustees of schemes of all sizes set strategic objectives for their consultants.

We believe that the majority of the Statutory Instrument as drafted by DWP seems sensible and will effectively bring the policy intent of the CMA Order into law. We also believe that for the most part, the deadlines for implementation are realistic if regulations are put into place according to current timescales.

However, we have concerns that the way in which the definition of Investment Consultant (IC) provider is currently drafted does not align with the policy intent of the CMA in that there does not appear to be an exclusion for schemes' co-owned in-house investment arms which provide IC services.

We also suggest that an additional, specific objective for ICs to analyse costs and charges information for investment services should be added to the regulations.

Our response to this consultation builds on previous PLSA submissions to the CMA market study itself, as well as discussions with PLSA members including scheme investors, private sector DB and DC schemes, LGPS funds, consultants and pensions lawyers.

The definition of fiduciary management services

We understand that DWP has sought to replicate the CMA's policy intent behind the definition of fiduciary management (FM) services of a narrow focused on bundled providers. However, concerns have been raised by some pensions lawyer members that the way in which the regulations have been drafted may have made it more challenging for trustees to invite bids from a sufficient number of providers of FM services as the definition currently seems to imply that a FM will only meet the definition of a FM provider if it is connected to the scheme's existing investment consultant. We notice that there has been dissent within our pensions lawyer member community on this issue which we believe emphasises the need for greater clarification.

The definition of investment consultancy services

As highlighted in our previous response to the CMA Final Order, schemes' in-house investment staff do not have the same incentives or potential for conflicts of interest as commercial providers of fiduciary management services. We therefore welcomed the CMA's decision to exclude these from the Order. However, we believe that the way in which an IC provider is currently defined in the draft regulations may still catch co-owned scheme investment arms within its scope. We would urge the DWP to clarify its definition in line with the CMA's policy intent and understand that the Association of Pensions Lawyers will be making a similar point in its response.

Although we note that investment advice provided by scheme lawyers will be exempt from the regulations, we would appreciate greater clarity either within the regulations or from TPR's accompanying guidance regarding the applicability of the regulations to advice provided by actuaries on investment issues as they pertain to advice on valuations and objectives.

Inclusion of asset-backed contributions

We believe the decision to include asset-backed contribution (ABC) structures in the definition of manageable assets of a scheme could result in difficulties when putting the regulations into practice, due to the subjective nature of any valuation of an ABC structure. As such, we believe ABCs should be excluded to make valuations more straight-forward for schemes.

We welcome DWP's clarification that the 20% threshold for sectionalised schemes will be calculated for the whole of the scheme and although out of scope for this specific consultation, we believe it worthwhile emphasising here that it would be helpful to schemes if this decision was reflected in TPR's accompanying guidance.

LGPS and regulatory scope (Remedy 7)

Although out of scope for this consultation, we believe it worthwhile restating the points we will be making in our response to TPR's consultation on the accompanying guidance on the CMA Order remedies: namely that greater clarity with regards to how MHCLG intends to implement the CMA Order Remedy 7 for LGPS funds is needed as a matter of urgency. This is particularly the case given that LGPS funds have only been brought specifically into scope of the CMA Order.

An additional objective: costs and charges analysis

We agree with the aim that pension scheme trustees better monitor the performance of their IC provider by setting and measuring them against an appropriate set of strategic objectives – and must only enter into an agreement with an IC where these objectives have been set. However, we suggest that there should be an additional, specific objective for trustees to ask their ICs to analyse costs and charges information for investment services.

We believe this objective is especially important in the context of the Cost Transparency Initiative (CTI), an industry-led initiative to standardise how asset managers report costs and charges information to asset owners (and ICs) which is expected to be adopted widely. This will help to ensure that ICs fully participate in the initiative. A thorough analysis of costs and charges information should form part of all value for money assessments – a central obligation for trustees to oversee.

We hope that the above is helpful and that you will get in touch should you have any queries or want any further information.