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11th September 2019

Dear Louise,

**PLSA Response: The Pensions Regulator (TPR) consultation on draft guides to deliver the Competition and Markets Authority (CMA)'s recommendation to produce guidance to trustees of occupational pension schemes on engaging with investment consultants and fiduciary managers**

**About the PLSA**

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 Pensions Regulator's (TPR's) consultation on its 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.

We supported the referral of the market for investment consultancy and fiduciary management services to the CMA as our members had long-standing concerns about the potential for misalignment of interests in the industry. We have also supported the principles behind the CMA remedies which this guidance aims to support, believing it is good practice for schemes to be encouraged to undertake meaningful consideration of how their consultants have helped them achieve a stated set of goals (Remedy 7) as well as to consider the broader market for fiduciary management services prior to choosing a provider (Remedy 1).

Our response to this paper is based upon our previous engagement on these issues with the CMA as well as further discussions with the full breadth of our membership on the draft guidance itself. This paper should be read in conjunction with our response to the recent Department for Work and Pensions' (DWP) consultation on the draft regulations behind their implementation of relevant CMA Order remedies.

We believe that the guidance is for the most part clear, relevant and well-written. We highlight some specific issues and suggestions for additional drafting below. At a general level, we would like to see greater clarity around the applicability of this guidance to the Local Government Pension Scheme

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(LGPS) funds: we note that although DWP has said implementing regulations are a matter for the Ministry of Housing, Communities and Local Government (MHCLG) TPR's guidance on setting objectives refers *in part* and at the beginning to applicability to LGPS funds but otherwise there is a lack of explicit emphasis on LGPS funds throughout the guidance which is not as helpful as it could be.

We also believe that TPR should explicitly acknowledge in its guidance the role that many investment consultants play in assessing and comparing costs and charges information for investment services. Given the impact that charges can have on ultimate retirement outcomes, it is important to ensure that trustees are holding their consultants to account on their performance in this respect.

Finally, we would appreciate clarity from TPR on the future of these guides and how it fits into TPR's plans to shortly consolidate its Codes of Practice for trustees. Although we below make some comments regarding how we think the guidance should seek to fit in with TPR's current library on investment governance issues, we are aware that the guidance framework is likely to change very shortly.

### **Overarching comments on guidance**

We believe that generally, the guidance is clear and well-written. We particularly note the draft scorecards and templates – both of which are considered to be useful approaches by scheme trustees.

It will be vital that trustees are taken on a logical journey through the guidance and the decisions they need to take, and that they are directed quickly and efficiently to the information which is most appropriate to their circumstances and objectives. We hope that when TPR consolidates its guidance, it will consider more fundamentally how the guides specific to the CMA Order fit into its approach.

Some members have also expressed concerns at the amount of new guidance to be given to trustees in this area; this is an issue which we hope will also be explored in TPR's consolidation of its Codes and guidance.

We would also appreciate greater clarity from TPR, or from DWP through designing the regulation, on where the boundary is drawn for investment advice which is provided by 'non-traditional' investment consultancy providers. While investment advice from legal advisers is explicitly out of scope in DWP's regulations, it is less clear at what stage – for instance – a statement from, or discussion with, a scheme's actuaries on the investment return needed to achieve a certain funding objective would cross the boundary into investment advice on e.g. strategic asset allocation.

### **Choosing an investment governance model**

Some of our members have pursued a model of multiple investment advisers on specialist issues (for instance they will employ separate advisers on areas such as ESG investment, illiquid investment, achieving their funding objectives and so on). Although this will not be a realistic model for many schemes as it requires significant resources, we believe that the option to pursue such an approach should be recognised explicitly in the guidance.

We would also welcome better signposting and linking to the existing guidance on investment governance structures, such as the role of investment sub-committees, or alternatively clearer explanations of the difference between internal and external structures.

We welcome TPR's decision to explicitly include a section on the costs of a given investment governance model as a key criterion for assessment. However, we do not believe that it is sufficient to mention a sentence on the need to consider the impact on performance (currently on page 12). We believe that a separate section on the importance of assessing broader value for money from the governance models under consideration is required.

### **Tendering for investment consultancy services**

We agree that the key principles outlined by TPR in its guidance are sensible and appropriate. However, we believe that "setting criteria for selection" should be placed much earlier in the process. At present, it is placed after "selecting a longlist" but trustees should be encouraged to use and stick to a consistent set of criteria throughout the tendering process.

We agree that a separate section for smaller schemes would be helpful and would help counter the perception amongst the industry that TPR's guidance does not cater sufficiently to the needs of schemes with limited resources.

### **Tendering for fiduciary management services**

Moving to a fiduciary management approach can have benefits for schemes, particularly those with a limited governance budget. However, we believe that the guidance at present could be more balanced regarding some of the challenges which are potentially associated with moving to a fiduciary management arrangement such as the relative difficulty of unwinding this approach.

We welcomed the decision of the CMA to shift the requirement for mandatory tendering to involve at least three providers from a *best endeavours* to a *reasonable endeavours* basis, in response to concerns expressed by the PLSA, the APL and others. We acknowledge that *reasonable endeavours* is a legal term and that schemes will likely need to seek legal advice on its application, but we think that there would still be merit in TPR's guidance providing further clarity on some of the potential practical implications for scheme trustees. This could also help in reducing the cost to schemes of complying with the new regime.

We thought the table setting out the differences between investment consultancy and fiduciary management governance models was clear and helpful. However, we think that in this part of the guidance in particular, the fact that trustees retain oversight and ultimate responsibility despite delegation should be more explicitly referenced throughout the document.

### **Setting objectives for providers of investment consultancy services**

#### **A.LGPS funds**

We note that TPR specifically states that it is keen to hear LGPS views on its guidance on setting objectives for investment consultancy services. The LGPS has only explicitly been in scope of the Order relatively recently and we hope that this will be taken into consideration in the monitoring and enforcement approach in the short-term.

We understand that discussions are ongoing regarding the approach that the Ministry for Housing, Communities and Local Government (MHCLG) will take towards regulation for LGPS funds in this area. We hope that greater clarity will be given as a matter of urgency to LGPS funds on this issue so that they can prepare for compliance with the new regime.

We undertook a survey of LGPS funds on this issue. Several said that they already set explicit objectives for their consultants, though the documentation of this process and the precise nature of the objectives set would need to change in light of the new Order. There was also some support for requiring LGPS funds to set objectives for their consultants.

Concerns were also raised about the application of the new regime to ‘independent advisers’ which some LGPS funds use and which provide advice on issues such as strategic asset allocation but are neither investment consultants (nor external service providers more generally) nor members of the relevant decision-making formal governance structures. We would welcome explicit consideration of this issue in guidance from TPR.

### **B.Additional guidance on costs and charges**

We believe that there should be an additional and specific objective for investment consultants to analyse costs and charges for investment services, and that there should be clear and accompanying guidance from TPR on this additional objective.

We believe that this is particularly important in light of the Cost Transparency Initiative (CTI), an industry-led initiative to standardise how asset managers report costs and charges information to asset owners and investment consultants and which is expected to be adopted widely. We believe that a thorough analysis of costs and charges of investment should form part of all value for money assessments: an important input to trustee decisions.

Please also see our response to the DWP’s consultation on its draft regulations to implement the CMA Final Order.

### **C.Trustee responsibility for setting objectives**

We welcome TPR’s recognition in its guidance that investment consultant input will form an important part of the trustee objective-setting process.

However, we understand that some incumbent consultant firms have already got in touch with their client schemes to offer to draft the objectives in response to the new CMA Order requirements. It must be made as clear as possible that trustees should *consider* input from their investment consultants but that they themselves, potentially with the help of a neutral third party provider, are responsible for the ultimate decision on what objectives would be appropriate. Any circularity, where a given consultant is essentially setting its own objectives, must be avoided for this Remedy to have real impact in ensuring trustees better hold their consultants to account.

We hope that the above is helpful. Should you have any queries or need any further information, please do not hesitate to get in touch.

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