

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**

**FCA PROVISIONAL VIEW ON UNDERTAKINGS IN LIEU OF A MARKET
INVESTIGATION REFERENCE OF INVESTMENT CONSULTANCY SERVICES:
CONSULTATION RESPONSE BY THE PENSIONS AND LIFETIME SAVINGS
ASSOCIATION**

Date 26th July 2017

INTRODUCTION

We're the Pensions and Lifetime Savings Association; the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels.

Our purpose is simple: to help everyone to achieve a better income in retirement. We work to get more money into retirement savings, to get more value out of those savings and to build the confidence and understanding of savers.

FOREWORD

The Pensions and Lifetime Savings Association (the Association) welcomes the opportunity to respond to the FCA's consultation on the referral of the investment consultant sector to the Competition and Markets Authority (CMA). This is an important issue for occupational pension schemes which account for 57% of all institutional assets under management in the UK (£1.9tn) with both DB and DC schemes utilising the services provided by investment consultants.

We have discussed with our members the FCA's provisional view to reject the UIL. We believe that investment consultants can play a positive role and add value for institutional investors and, ultimately, for scheme members. The investment consultancy services sector is not homogenous, however, and our members have long-standing concerns about how elements of the market operate. We therefore support the FCA's provisional view to reject the UIL and refer the market to the Competition and Markets Authority (CMA) for the following reasons:

- ▶ Our scheme members have consistently highlighted their concerns about the potential misalignment of interests within the investment consultant sector, particularly regarding fiduciary management and management of the wider business relationships between consultancy firms and asset managers
- ▶ Although we believe that the UIL outlines several welcome and positive commitments, there is insufficient market coverage or detail within the UIL for it to provide a truly comprehensive solution
- ▶ The investment consultancy market is complex and evolving. The FCA highlighted issues on both the supply- and demand-sides. A CMA investigation could probe these competition issues in greater depth and could recommend, if necessary, structural remedies to the sector

It is important that a CMA investigation is thorough, effective and efficient. We would urge the CMA to work with pension schemes and the wider industry to deliver

this goal. We would also ask the CMA to conduct its investigation in as cost-effective a manner as possible. Competition investigations typically impose significant costs on the industry being scrutinised and we are concerned that these costs may be passed on to pension schemes in the form of higher charges and ultimately have a detrimental impact on member outcomes. Given the importance of the review to our members and the nature of our representation, we would be happy to work with the FCA and CMA during the investigation.

We would also support further regulation of the investment consultancy sector by the FCA, particularly in the area of asset allocation advice. We look forward to working with our membership, the FCA and others to ensure that the demand and supply sides of the market work effectively and in scheme members' interests.

RESPONSE

Investment consultants can play a positive role which adds significant value to pension schemes and the performance of their investments. In response to both this consultation and the Interim Report, many members spoke highly of the consultancy services they received, including fiduciary management, which can add value for schemes which do not have the resources or skills to manage the investment process themselves.

Broader issues

However, scheme members – both large and small – have also expressed concerns about transparency and alignment of interests within the investment consultant sector. Whilst many schemes have the resource and budget to challenge the advice they receive from consultants, we know from the PLSA's DB Taskforce analysis¹ and the FCA Market Study that some do not. This can have an impact on the trustees' ability to negotiate fees and scrutinise performance, as well to manage risks around excessive complexity and churn in their strategies. Such an issue can be exacerbated in circumstances where a consultant is providing both the advice and the implementation solution e.g. fiduciary management.

In practice, this can result in a) a significant 'push' from consultants towards other services they can provide, in particular fiduciary management and b) the absence of advice (from those consultants which do not offer fiduciary management services) to examine or recommend the services of others which may be more appropriate for the scheme. Although some firms have processes in place to deal with these conflicts, it is not always clear to clients – nor to regulators – what these processes are or how widespread good practice is. Some of our larger schemes have tried to manage this by using a panel of consultants for different services or to assess each other, but this

¹ The PLSA DB Taskforce's *Interim Report* (October 2016) and *Second Report: The Case for Consolidation* (March 2017)

is not necessarily an approach that can be readily taken by some smaller schemes which make up a significant proportion of the market.

Members tell us that ‘gifts and hospitality’ has become a much less significant motivation for conflicts of interest than in previous years. However, concerns have been raised about the lack of transparency and understanding surrounding how the nature of the relationships between broader business groups contribute to, or influence, how asset managers are rated by consultants. In our view any CMA investigation should also look to address these issues.

The Undertakings in Lieu

We believe that the Undertakings in Lieu took a considered approach towards addressing the issues raised by the Interim Report. We welcome the general thrust of many of the commitments made in the UIL.

Nonetheless, we believe that the UIL alone cannot provide the comprehensive solution to the issues identified in the investment consultancy market. This is in part because the consultancy firms which have made these commitments represent only 56% of the sector, but also because we believe that a CMA investigation is now the best way to provide the in-depth examination that such a complex market requires.

More specifically, we and our members believe that there were areas in which the UIL could have gone further, including the following:

- Introducing but not recommending Fiduciary Management Services to an Advisory Services Client was thought to perhaps still allow room for undue emphasis on the consultant firm’s own solutions. It also did not consider priority access.
- It did not provide specific explanations of the penalties that would apply if not abiding by the Investment Consultants’ Code of Conduct
- The redress mechanism was considered insufficiently independent
- An overly narrow emphasis on whole-funds fiduciary management, which fails to acknowledge/cover the other fiduciary management approaches
- The draft performance and fee disclosures were insufficiently granular or failed to properly segment e.g. the fiduciary management and investment management elements

Regulation

Although technically outside the scope of the FCA’s current view-seeking on its UIL decision, we highlight here our emerging views on the adjacent recommendation that

the asset allocation service provided by investment consultants be regulated by the FCA.

Both the Myners Review in 2001 and the Kay Review in 2012 noted the relative lack of regulation faced by institutional investment advisers. The Kay Review called this situation “anomalous” when compared to the level of regulation elsewhere in the UK investment market. Asset allocation is a significant driver of investment performance and the value of scheme members’ benefits and we believe that this area should be regulated in a proportionate manner. We look forward to engaging with HM Treasury and the FCA further on this issue.

NEXT STEPS

The PLSA would be very happy to discuss the positions outlined in this response in more detail, or to act as a conduit for engagement between the FCA and our members. For more information, please contact Caroline Escott, Policy Lead for Investment and DB via caroline.escott@plsa.co.uk.