

Oversight of Investment Consultant Objectives moves from CMA to TPR, what do trustees need to do?

Executive Summary

- Trustees must not enter into an agreement for the provision of investment consulting services without setting objectives for their investment consultant.
- Trustees must review their investment consultant against the objectives they have set at least every twelve months.
- Trustees must review the objectives they have set for their investment consultant at least every three years and without delay after any significant change. For many schemes a review will be required by 10 December 2022 if they have not been reviewed since the Competition and Markets Authority ('CMA') order came into effect.
- Trustees will not be required to submit an annual compliance letter to the CMA. Evidence of compliance is expected to be via the annual Scheme Return.

Background

The CMA conducted a review of the provision of investment consulting and fiduciary management services to pension schemes, which resulted in the issue of an order by the CMA in June 2019. The order required trustees to email a letter annually to the CMA certifying they had complied with the order. Trustees had to confirm they had complied with both remedies the CMA had identified.

Two particular parts trustees were required to report compliance with were:

1. Part 3 of the order required a tender process to be followed when 20% or more of a scheme's assets are delegated under a fiduciary management mandate. By definition this only affected trustees using, or intending to use, fiduciary services. If such a process had not been followed for existing agreements, the order required a re-tender process to be completed within 5 years of the appointment.
2. Part 7 of the order required trustees to set strategic objectives for providers of investment consultancy services. With effect from December 2019 trustees have been required not to enter into a contract, or to continue to obtain existing investment consultancy services, unless objectives have been set.

What has changed?

The CMA's report also made a recommendation to the Department for Work and Pensions (DWP) that it should make the necessary legislation to enable TPR, rather than the CMA, to oversee these additional trustee duties.

The DWP has since conducted a consultation on trustee oversight of investment consultants and fiduciary managers. The consultation followed the CMA's investigation into investment consultants and fiduciary management as described above, and set out regulations to put the two remedies into the main body of pension's law. Following this consultation the DWP regulations have been laid before Parliament and have now come into force on 1 October 2022. The Pensions Regulator's updated guidance can be found [here](#).

What do trustees need to do?

The DWP has elaborated on specifically what it expects including:

1. Trustees must set objectives for their investment consultant that have regard to the scheme's SIP;



- Trustees must review the performance of the investment consultant at least every twelve months; and
- Trustees must review the objectives they have set at least every three years and without delay after any significant change in investment policy.

Additionally, the DWP stated that they expect the objectives:

- to include a clear definition of the expected outcome and timescale over which it will be delivered;
- should be relevant to the services provided; and
- should also enable the trustee to measure the performance of the IC services provided.

In summary trustees should:

- Make sure the objectives you have set for your investment consultant are relevant and up to date;
- Have a framework in place to review the performance of your IC against the objectives every twelve months; and
- Make sure that the objectives have been reviewed within the last three years. For many schemes a review will be required now if they haven't been reviewed since the CMA Order came into effect.

How will trustees report compliance with these requirements going forward?

- Previously the CMA's Order required trustees to submit compliance statements to the CMA confirming the extent to which they had complied with the articles of parts 3 and 7 of the CMA Order during the reporting period. Trustees will not be required to submit a compliance letter to the CMA this December.
- The Pensions Regulator will communicate how compliance should be reported by trustees in due course, but the new regulations now enable TPR to oversee the CMA remedies and to carry out the appropriate monitoring, compliance and enforcement activity. Trustees will therefore now be required to instead report compliance within the existing annual Scheme Return process (TPR will therefore now ask additional questions for trustees to complete to certify compliance or non-compliance with these new regulations - we assume beginning in March 2023).

What assistance can Cartwright provide to trustees in order to comply with these regulations?

- We can provide trustees with a template set of objectives that they can adapt as required
- We can provide assistance with completing your annual Scheme Return.

If you would like to discuss any of these matters further, please get in touch with your usual contact at Cartwright.

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