

The Investment Consultancy and Fiduciary Management Market Investigation Order 2019

Compliance Statements

Between 10 December 2020 and 7 January 2021 (a 4 week window) most Trustees of UK pension schemes will need to send a signed letter, via email, to the Competition and Markets Authority (CMA) certifying compliance with the above Order. More details are set out below.

Background

As you may recall, the CMA conducted a review of the investment consulting and fiduciary management industries, which found that certain features of these markets adversely affected competition. Of particular relevance now are two of the “remedies” that the CMA identified to improve the process of engaging and assessing the performance of investment consultants and fiduciary managers, which are set out in the Order.

Part 3 of the Order ([click this link to see the Order](#)) requires a tender process to be followed when 20% or more of scheme assets are delegated under a fiduciary management mandate. By definition, this only affects Trustees using, or intending to use, fiduciary services. If such a process was not followed for existing agreements, a re-tender process must be completed within five years of the appointment or, if later, by 9 June 2021.

Part 7 of the Order requires Trustees to set strategic objectives for providers of investment consultancy services. With effect from 10 December 2019 Trustees must not enter into a new contract, or continue to obtain existing investment consultancy services, unless objectives have been set.

One of the areas the Pensions Regulator (TPR) is keen to improve is the level of governance across all schemes. Trustees of small schemes who have not previously taken investment advice should take note of their legal duties in this regard. As [TPR regulatory guidance](#) points out ‘No decision to make an investment should be made without first obtaining and considering the proper advice.’

What do Trustees need to do?

The vast majority of UK pension schemes need to sign a statement confirming that they have complied with these two ‘remedies’ i.e. when investment consultants provide advice there must be objectives in place and where fiduciary management is used tender exercises must have been completed appropriately.

The list of schemes that are exempt is relatively limited - unregistered schemes, certain overseas arrangements, schemes with less than 12 members (all members must be trustees of the scheme and additional conditions must also be met, contact us to check if you think you might fall into this category), some public sector schemes and master trusts.

Schemes are required to confirm compliance with both ‘remedies’. Even those schemes who have not taken investment advice and don’t have an investment consultant or objectives in place, will need to confirm that they haven’t taken investment advice without objectives being in place. Similarly, trustees will need to confirm that they haven’t conducted an improper selection of a fiduciary manager, whether or not they use a fiduciary manager.

Trustees will need to email the CMA a letter certifying that the Trustees have complied with the Order for the year to 10 December 2020 (and do so within 4 weeks of that date). We will shortly be sending a draft letter to all our clients for whom we provide investment consulting services. If you do not receive a draft letter and would like one, or if you believe you may be non-compliant, please contact us.



Why do I need to issue this letter?

The CMA is still the body officially responsible for overseeing compliance with the new rules and these self-certifying statements are crucial to them being able to complete this function. We expect that responsibility will be passed to TPR in future years when it is likely it will form part of the annual Scheme Return (and therefore become administratively easier). Unfortunately, delays in the UK parliament due to Covid-19 has slowed down the proposed hand-over.

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

October 2020

Cartwright Benefit Solutions Limited is registered in England & Wales N. 08327237. Registered Office: Mill Pool House, Mill Lane, Godalming, Surrey GU7 1EY. Cartwright Benefit Solutions Limited is Authorised and Regulated by the Financial Conduct Authority: Registration No. 607200.

No action should be taken based on this research note without the trustees of the relevant occupational pension scheme receiving written investment advice from Cartwright Benefit Solutions Limited confirming the suitability of the investment decision for that particular occupational pension scheme.

Mill Pool House
Mill Lane
Godalming
Surrey GU7 1EY

T: 01483 860201

E: enquiries@cartwright.co.uk

250 Fowler Avenue
Farnborough Business Park
Farnborough
Hampshire GU14 7JP

T: 01252 894883

E: enquiries@cartwright.co.uk

Marlborough House
Victoria Road South
Chelmsford
Essex CM1 1LN

T: 01245 293300

E: enquiries@cartwright.co.uk

The Mansley Business Centre
Timothys Bridge Road
Stratford Enterprise Park
Stratford-upon-Avon
CV37 9NQ

T: 01245 293300

E: enquiries@cartwright.co.uk

