ASSOCIATION OF CONSULTING ACTUARIES

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FMandICguidance@tpr.gov.uk

Louise Spicer
Regulatory Policy
TPR
Napier House
Trafalgar Place
Brighton BN1 4DW

Dear Louise

Consultation on CMA's recommendation to produce guidance to trustees on engaging with investment consultants and fiduciary managers

I am writing on behalf of the Association of Consulting Actuaries in response to the above-named consultation issued by the TPR on the above.

Setting objectives for providers of investment consultancy services

To avoid adding confusion as to when setting objectives is required we believe that it is important to replicate the exact and full wording from the definition of Investment Consultancy in the CMA Order, which includes:

"The reference to 'advice' means the provision of advice on the merits of the Pension Scheme Trustees taking or not taking a specific course of action and includes a recommendation or guidance to that effect.

The services do not include:

(a) the provision of advice by a provider to the Pension Scheme Trustees of a pension scheme of which the provider (or an Interconnected Body Corporate of the provider, or a partnership or joint venture with the provider) is the Principal Employer or Controlling Employer;

(b) the high-level commentary provided by the scheme actuary in or in respect of triennial valuation reports and with regard to the link between the investment approach and the pension scheme's funding objectives."

As a wider point, it would be extremely helpful for you to include practical guidance on in which circumstances and to which advisers' objectives need to be set by trustees. Outside of investment consultants, we believe it is unclear which parties this is intended to apply to, and could be interpreted to include Scheme Actuaries (see below) and potentially investment managers.

In the case study, we would suggest the objective of the assets outperforming the liabilities is removed. Whilst clearly important, it is difficult to measure accurately, and market volatility will determine whether this objective is met in the short to medium term. We believe it would be more helpful to focus on objectives that contribute to the assets outperforming the liabilities, for example giving good advice, proactivity, raising relevant ideas, and helping the trustees in understanding and managing risks, which are in the control of the investment consultant.

Scheme Actuaries

Considering specifically the role of the Scheme Actuary, the draft regulations published by the DWP are drawn more widely than the CMA Order.

In particular, the draft regulations refer to advice "in connection with" investment matters and do not preserve the explicit exclusion for scheme actuaries that was present in the CMA Order. In respect of the explicit exclusion for scheme actuaries, the DWP expresses the view (in paragraph 25 of their consultation) that "a service meeting the definition of one appears to have no practical possibility of meeting the definition of the other". In other words, their view is that it is so clear that such commentary by the scheme actuary would not meet the wider definition of investment consultancy services that there is no need for an explicit exemption. We have written to the DWP to suggest that the draft regulations be amended to more closely reflect the scope of the CMA Order. TPR's guidance should reflect the regulations following consultation.

If the draft regulations remain in their present state (i.e. without the explicit exclusion for scheme actuaries) then our preferred approach would be for you to remove the suggestion that the scheme actuary might provide investment consultancy services.

The wording in the draft guidance on this point might leave some scheme actuaries uncertain over whether they are able to make any comment on investment strategy, even if they consider a proposed strategy inappropriate, because they are not appointed to provide investment consultancy services.

The exemption for actuaries as formulated in the CMA Order referred only to scheme actuaries and did not address the role of actuaries assisting the scheme actuary and/or individuals or firms carrying out the role of actuarial advisor. If the eventual regulations do include a reference to the scheme actuary but there is ambiguity around the position of individuals assisting the scheme actuary or appointed actuarial advisers then it would be helpful for your guidance to address that ambiguity.

Even if the DWP do not alter their draft regulations, the text on page 8 is misleading in relation to the period in between 10 December 2019 and the coming into force of the proposed DWP regulations. During this time, we understand that the language "you are still required by law to set objectives" may not be appropriate given that the CMA Order is in force during this time and contains a carve-out for the scheme actuary.

Choosing an investment governance model

We believe that there is a wide spectrum of options of governance model, but the guidance largely focuses on two extremes - fiduciary management and investment consultancy. We suggest it would be helpful to cover the pros and cons of the many options in-between (some of which are mentioned briefly), including professional trustees, sole trustee, investment platforms, trigger monitoring, multi-asset investment funds and funds of funds. Fiduciary management is just one solution to addressing governance challenges, and we believe that many others should be considered alongside it.

We believe that the example of partial fiduciary management governance model is confusing, and it would be better to reflect full fiduciary management, noting that this is the extreme contrast to the example advisory model.

Tendering for investment consultancy services

Given this guidance is being launched alongside that mentioned in the CMA review, we believe you should make clear that trustees do not have any legal requirement to follow this guidance and that the CMA did not instruct TPR to produce this guidance.

There is much within the guidance on governance models and situations where the consultancy model is appropriate. We suggest this is removed – it is best covered in the governance model guidance (and is largely a repeat of that).

Tendering for fiduciary services

In the section on "setting objectives for the exercise" (p17), we suggest removing the third bullet, on enabling liabilities to be hedged efficiently and collateral to be managed, as this would not be a reason for appointing a fiduciary manager.

In the case study in Appendix B, in the first paragraph, it notes that the trustees never felt comfortable implementing a significant level of hedging – again we believe this is not relevant to the decision and therefore is not a detail that should be included.

We suggest a full fiduciary mandate would be a more realistic and more widely applicable case study. A 50% fiduciary mandate introduces many questions and complexities not covered in the case study.

We hope that you find the contents of this letter of assistance. We would be happy to discuss them further if that is helpful. In this event, please contact Peter Williams, Deputy Chair of our Pension Schemes Committee, at peter.williams@aon.com or Simon Cohen, Chair of our Investment Committee, at simon_cohen@spenceandpartners.co.uk

Yours sincerely

David Robertson
Secretariat
On behalf of the Association of Consulting Actuaries Limited

About the Association of Consulting Actuaries (ACA)

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes.

The ACA is the representative body for UK consulting actuaries, whilst the Institute and Faculty of Actuaries is the professional body.

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