Defined contribution workplace pension market study

Decision not to make a market investigation reference to the Competition Commission

February 2014
FINAL DECISION ON A MARKET INVESTIGATION REFERENCE TO THE COMPETITION COMMISSION

1.1 The OFT published its defined contribution (DC) workplace pension market study report on 19 September 2013. Among other things, the market study considered the question of whether to make a market investigation reference (MIR) of the DC workplace pension market to the Competition Commission (CC) at this time.

1.2 The provisional decision on the MIR was subject to a public consultation, which closed on 31 October 2013. The following report sets out why, having considered the responses to our consultation, the OFT has decided not to make an MIR of the DC workplace pension market to the CC.

The reference test

1.3 In order to make a MIR, the OFT must have reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK (‘the reference test’). Where the reference test is met, the OFT has discretion as to whether in fact to make a reference.

1.4 Section 131(2) of the Enterprise Act 2002 (EA02) states that a feature of the market is to be construed as a reference to:

- the structure of the market concerned or any aspect of that structure
- any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or

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any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

**Exercise of the OFT’s discretion**

1.5 The OFT has the discretion, rather than a duty, to make a reference in relation to a market which it believes meets the threshold set out in section 131. The OFT’s guidance on market investigation references sets out four criteria which guide the exercise of the OFT’s discretion to make a reference. These are:

- **Alternative powers**: it would not be more suitable to deal with the competition issues identified by applying the Competition Act 1998 (CA98) or using other powers available to the OFT or, where appropriate, to sectoral regulators.

- **Undertakings in lieu**: it would not be more appropriate to address the problem identified by means of undertakings in lieu (UIL).

- **Appropriateness of an MIR**: the scale of the suspected problem, in terms of its adverse effect on competition, is such that an MIR would be an appropriate response to it.

- **Availability of remedies**: there is a reasonable chance that appropriate remedies will be available (to the CC, in the event of an MIR). ²

**The OFT’s provisional decision on a MIR**

1.6 During the course of the market study, the OFT identified a number of features of the DC workplace pension market that, in its view, met the reference test:

- **Weaknesses on the buyer side of the market** - Scheme members are reliant on their employers to make most of the key decisions about their pensions for them and many employers lack the

² Paragraph 2.1 of the MIR Guidance.
capability and/or the incentive to ensure that members of their schemes receive value for money in the long term.

- **Quality of scheme governance and ongoing scrutiny of performance** - Good quality, independent scheme governance can help to mitigate the impact of the weak buyer side of the market by ensuring ongoing scrutiny of value for money on behalf of scheme members. However we found that the governance of many schemes across the market is not sufficiently strong to provide this scrutiny. In addition nearly all the major contract based providers have a vertically integrated investment management arm. While there might be strong efficiency arguments for this, given the weakness of the demand side of the market and the lack of ongoing scrutiny of value for money, the potential for conflicts of interest gives rise to concern.

- **Quality of information and the complexity of the product** - DC workplace pensions are complicated products. Both their costs and quality are difficult to observe and outcomes may not be apparent for some years. For example, charges levied on scheme members can be difficult to understand and there are a wide range of different costs and charges. In addition, most charges are not paid directly by employers or scheme members but indirectly - usually through annual deductions from the latter’s pension assets. The market study also found that it is difficult to assess and compare pension scheme quality over the long term, making it very difficult to generate competition on the quality of administration and investment strategy and execution. Overall the market study found that this makes decision making on value for money very difficult.

1.7 However, having considered the features identified in the market study in the context of the above discretionary criteria, we were minded to conclude that despite the reference test being met, this was not a case in which the OFT should exercise its discretion to refer the market at this point in time. Rather, we considered that the remedies and recommendations, as set out in chapter 9 of the market study report and outlined in paragraph 1.20 below, rendered a MIR to the CC a disproportionate response to the competition problems identified:
1.8 In this context, the OFT made the following provisional assessment against the four discretionary criteria for making an MIR.

**Alternative powers**

1.9 The OFT did not consider that alternative powers could address the market features it had identified in an effective and efficient manner. In making this assessment, the OFT considered both the competition and consumer powers available to it and the powers of other relevant bodies, such as the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR).

1.10 First, the OFT did not receive evidence that the prohibitions in Chapter I or Chapter II of the Competition Act 1998 had been breached, nor that there is behaviour which might breach Articles 101 or 102 of the Treaty on the Functioning of the European Union (TFEU).

1.11 Second, the OFT did not consider the potential use of its consumer powers to be more appropriate than the set of remedies that we consider offer a more expedient and efficient solution.

1.12 We also considered whether the FCA, the regulator of contract based pensions, or TPR, the regulator of trust based pensions, could use their regulatory powers to address the features of the market identified. Having discussed this possibility with both regulators, the set of remedies and recommendations made by the OFT – some of which include actions by the FCA or TPR - were considered an expedient and efficient solution to the features identified.

**Undertakings in lieu**

1.13 Under section 154 of the EA02, the OFT has the power to accept undertakings in lieu (UIL) if it considers that it has the power to make an MIR under section 131 and otherwise intends to do so. In accepting UIL, the OFT must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned, and any detrimental effects on consumers as may result from it.
1.14 The ability to acceptUIL is limited to occasions when the OFT considers that all the other discretionary criteria for making a reference have been met, which was not the case in this instance as the OFT had secured a set of remedies that it believed would make a reference disproportionate.

1.15 Therefore, the OFT considered that acceptance of UIL would not be appropriate in this instance.

**Appropriateness of an MIR**

1.16 A critical factor in assessing whether an MIR is appropriate is whether it is proportionate to the scale of the competition concerns identified. The OFT guidance on MIRs notes that an MIR will only be made when the OFT has reasonable grounds to suspect that the adverse effects on competition of features of a market are significant. The following three criteria are relevant to whether adverse effects on competition are significant, and thus whether an MIR may be appropriate:

- the size of the market
- the proportion of the market affected by the features that prevent, restrict and distort competition, and
- the persistence of the features identified as adversely affecting competition.

1.17 Overall, the OFT considered that the features it had identified were likely to have a significant detrimental effect on consumers. First in relation to the particular factors in the guidance, the OFT noted that:

- The DC workplace pensions market is large, with the value of assets invested in these schemes currently standing at £275 billion. This should at least double by 2022.
- For the contract and bundled trust side of the market, we have identified around £30 billion of scheme assets that are at risk of having charges that are too high to represent value for money.
• For the trust based side of the market, we have also identified around 2,900 trust based schemes holding around £10 billion assets where there appears to be a high risk that scheme members are not receiving value for money.

1.18 Therefore, we considered that even a relatively small reduction in any adverse effect on competition indentified by the CC, would offset the costs of an MIR and would have a beneficial impact for large numbers of consumers.

1.19 Second, the OFT considered that a significant proportion of the market was affected by the features which give rise to the OFT’s competition concerns. For example, the inability of many scheme members or employees to evaluate value for money or stimulate competitive rivalry between providers in the market impacts a significant part of the pensions market - including both contract and trust automatic enrolment (AE) qualifying schemes.

Persistence of the features

1.20 However, in considering use of its discretion, the OFT considered that the remedies it secured as part of the market study, and the additional recommendations it made to Government have the potential to impact the persistence of the features identified and, therefore, render a MIR to the CC disproportionate. In summary, these were:

• **Dealing with old and/or high charging schemes.** To address the OFT’s concerns about old and high charging contract and bundled-trust schemes arising from weaknesses on the demand side and governance, the Association of British Insurers (ABI) and its members agreed to an immediate audit of these schemes, aimed at ensuring savers are getting value for money. This will be overseen by an independent project board (IPB).

• **Dealing with issues with small trust based schemes** - To address the OFT’s concern about small trust based schemes, including the quality of scheme governance, the OFT recommended that the Pensions Regulator (TPR) should consider a suite of interventions
aimed at ensuring smaller trust based schemes are delivering value for money. The Department for Work and Pensions (DWP) also agreed to consider whether the TPR needs new enforcement powers to tackle the problem.

- **Improving governance** - To address the OFT’s concerns about lack of independent scrutiny of contract based schemes, the ABI agreed that their members will establish independent governance committees (IGCs). The IGCs would recommend changes to providers and escalate issues to regulators where they see risks of poor outcomes for savers. The OFT also recommended that the key elements of this governance solution should be embedded by the DWP in a minimum governance standards for all pension schemes.

- **Improving the quality of information available on costs and charges** - The OFT recommended DWP consult on improving the transparency and comparability of information about pension charges - including whether providers could disclose all costs and charges\(^3\) in a single framework that will allow employers to compare a commonly defined single charge - and of information about quality of schemes in order to make employers' initial choice of scheme easier.

- **Preventing future risks of detriment** - The OFT recommended that DWP consult on preventing schemes being used for auto-enrolment that contain in-built adviser commissions or that penalise members with higher charges when they stop contributing into their pensions.

**Availability of remedies**

1.21 It is not for the OFT to determine which remedies would or would not be appropriate were a reference to be made. In the context of a decision on a MIR, the OFT is required to assess whether there is a reasonable chance that remedies would be available to the CC if it finds one or more adverse effects on competition following a detailed investigation.

\(^3\) Except investment management transaction costs which the OFT recommended should be disclosed separately to IGCs and trustees.
1.22 In respect of this discretionary criteria, the most likely remedies available to the CC, for example recommendations to the DWP, the regulators and industry, had been made by the OFT. In addition, the recommendations made by the OFT and the forthcoming regulatory intervention by the DWP, may make it difficult for the CC to reach robust judgements about how competition is likely to evolve in the short term, and how to design appropriate, effective and proportionate remedies to any adverse effects on competition.

1.23 The CC could, arguably, enforce alternative remedies to those pursued by the OFT, such as prohibiting vertical integration of investment management or requiring increased information disclosure. However, we considered that the OFT’s remedies on improving the quality of governance and the DWP’s consideration of mandating the disclosure of information on scheme quality, means that such direct intervention by the CC might be unnecessary.

1.24 The OFT also committed to maintain an active interest in the implementation of its remedies to ensure they remained the most appropriate solution to the problems identified.

**Responses to the consultation**

1.25 The public consultation on the provisional decision set out above took place from 19 September to 31 October 2013. The OFT received 13 responses to this consultation, from organisations including pension providers, trade associations, consultancy firms, action groups and individual consumers. The OFT also received a response from one Member of Parliament.

1.26 None of the respondents to the consultation questioned the OFT’s finding, as set out in paragraph 1.6 above, that the DC workplace pension market contains a number of features that meet the reference test. Rather, the responses to the consultation which questioned the OFT’s provisional decision, focused on the effectiveness of the remedies developed.

1.27 Four of the respondents were supportive of the OFT’s provisional decision not to exercise its discretion to make a market investigation
reference of the DC workplace pension market. However, one of these respondents commented that, despite its support for the OFT’s provisional decision, the OFT needed to ensure that its remedies alleviate the problems identified before finally concluding that a MIR wasn’t necessary. Respondents that were supportive of the OFT’s provisional decision included a current pension provider, as well as a number of trade associations.

1.28 The OFT also received four responses which disagreed with the provisional decision, citing a concern that the OFT’s remedies would not be sufficient to alleviate the problems identified in the market. There was a particular concern that the IGCs, as described, would not be sufficiently independent or have the required power to ensure good outcomes for scheme members. Conversely, there were also some respondents who questioned whether the OFT’s remedies were required at all, especially the recommended bans of AMDs and adviser commission.

1.29 The respondents to the consultation concentrated on the effectiveness of the following remedies:

- The Independent Governance Committees.
- The audit of high cost and legacy schemes.
- TPR’s work aimed at small trust based schemes.
- Improving the quality of information available about pension products.
- The impact of charges, including the proposed ban of AMDs and adviser commission.

**Independent Governance Committees**

1.30 In relation to the IGCs, a number of respondents considered their success or otherwise was dependent on them being independent from the pension provider and them having the power to act in scheme members’ best interests. In particular, a number of respondents
expressed concern that the IGCs would not be genuinely independent if they were appointed and re-appointed by the pension providers. This, they considered, would reduce the incentive of the IGCs to make decisions that conflicted with those of the pension provider.

1.31 In addition, a number of respondents were concerned that the IGCs would lack the necessary power to make and implement decisions in scheme members’ best interests. For example, one respondent questioned whether the IGCs would have the ability to appoint or remove vertically integrated fund managers or veto a pension provider’s decisions.

1.32 The OFT has been clear when securing the remedy from the ABI and industry that the IGCs should be subject to a legal duty to act in the interests of members and have the expertise and resource to carry out these duties effectively. As stated in the market study report ‘where there is a risk of poor value for money, it is vital that the Committees are able to take independent action backed up by the regulator where necessary.’

1.33 Additionally, the OFT recommended that the key elements of the IGCs - namely independence, expertise and an ability to consider value for money and act appropriately to address any concerns that arise - should be embedded by the government in minimum standards that will govern the functioning of the IGCs. In this context, the OFT report also recognised that in the detailed implementation of IGCs, careful consideration will need to be given to the potential for conflicts of interest with the providers’ duty to shareholders, and the information asymmetries that the Committee may face in monitoring the provider.

1.34 The DWP, via its call for evidence on scheme quality which closed to responses in September 2013, is considering these implementation issues in more detail and will be reporting their conclusions in early 2014. The OFT has, however, retained an active interest in DWP’s policy considerations in order to ensure that the IGCs are implemented effectively.

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4 Please see paragraph 9.13 of the OFT’s *Defined contribution workplace pension market study*.
5 Please see paragraph 9.13 of the OFT’s *Defined contribution workplace pension market study*.
1.35 In respect of the IGCs powers to act in scheme members' interests, the OFT proposed that IGCs can make recommendations, including changes to investment strategies, to the pension provider’s Board, who may act on those proposals or explain why they do not propose to act. In addition, if the Board fails to act on the Committee’s recommendation in a way that satisfies the IGC, then the IGC will have the power to make the matter public, to inform the employee and employer and to escalate the matter to the relevant regulator.

1.36 A number of respondents questioned whether these powers were sufficient or whether it would be more appropriate for the IGCs to have power over the appointment and re-appointment of fund managers and, where problems do arise, to act against the wishes of the provider and its Board.

1.37 We maintain, however, that the proposed escalation process - where pension providers are afforded the opportunity to remedy any problems the IGC identifies before the issue is escalated externally to the appropriate regulator if necessary- will be sufficient where, in line with the OFT’s remedies and recommendations, the IGCs have independence and there is an effective regulatory backstop.

1.38 One respondent to the consultation also questioned whether the IGCs would be better placed at employer, rather than provider, level. In addition, they considered if an employer was unable to provide a sufficient governance solution, then the pension scheme should be automatically placed within a master trust arrangement. The OFT does not agree with this suggestion. We recognise that some well resourced employers may be able to put in place good scheme governance. However, AE will see a growth in the number of employers in the market that do not have the resources to provide ongoing governance or scrutiny of schemes’ value for money. We therefore considered that any requirement for all employers to provide governance arrangements would be unduly burdensome and unlikely to work. The OFT also does not consider it necessary to transfer all schemes whose employers are unable to provide a governance solution into a master trust arrangement. Such an intervention would be

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6 Please see paragraph 9.10 of the OFT’s Defined contribution workplace pension market study.
burdensome, and would not necessarily produce improvements in governance or outcomes given uncertainties around the regulation of master trust arrangements. The OFT remains of the view that IGCs provide the most efficient, practical and effective remedy to problems of governance in contract schemes.

1.39 Lastly, one respondent questioned whether the IGCs should predominantly focus on bundled providers, whether they are contract or trust based schemes. The OFT does not agree with this suggestion. We consider that it is vitally important to ensure that all schemes, regardless of whether they are bundled or un-bundled, can benefit from independent and effective governance that acts in members best interests. This is why the IGCs will review the functioning of all contract based schemes. We acknowledge however that the IGCs may have a more limited purview over un-bundled schemes, than over bundled schemes.

1.40 In summary, for the reasons set out above, the OFT still considers that the IGCs are an appropriate remedy which will, if implemented as anticipated, reduce the persistence of the features identified. Specifically, the IGCs will compensate for the weakness in the buyer side of the market and improve the quality of scheme governance by ensuring that all scheme members can benefit from independent and effective governance that acts in their interests.

1.41 The OFT acknowledges, however, that the details of how the IGCs are implemented are important for their success, and will maintain an active interest in the implementation process.

The audit of high cost and legacy schemes

1.42 In general, most respondents to the consultation welcomed the proposed audit of legacy and high charge schemes. Two respondents, however, felt that the audit should be an ongoing process. One of the respondents also questioned whether the threshold of one per cent annual management charge (AMC), above which all schemes will be reviewed, was set too high. In addition, there was concern expressed

7 Please see paragraph 8.26 of the OFT’s Defined contribution workplace pension market study.
over the IPB’s ability to migrate poor functioning schemes towards those offering better value, as bulk transferring of contract schemes can be problematic. There was also a concern that, as pension providers have a vested interest in the outcome of the audit, they should not be allowed to sit on the IPB.

1.43 In response, the OFT disagrees that the audit of high charge and legacy schemes should be conducted more than once. The audit’s purpose is to ensure that existing legacy and high-charging schemes, whether they are to be used for AE or not, are offering value for their scheme members. In part, this stems from a concern that the existing governance of these schemes is not effective enough to highlight that there is a problem or achieve an effective solution. Any future reviews would be conducted by the IGCs which are designed to work alongside the audit by reviewing schemes on an on-going basis and ensuring they are offering value for money for scheme members.

1.44 In respect of whether the one per cent threshold is set too high, it should be recalled that the purpose of the audit was to address contract schemes that were clearly at risk of being poor value for money. The OFT considers that schemes with an AMC above one per cent – which was the threshold set by Government for stakeholder pensions in 2001 – clearly present such a risk, as do schemes set up before 2001 which tend to have higher AMCs than those set up in 2001 or after. That is not however to suggest that schemes with an AMC below one per cent, or schemes set up after 2001, are not at risk of being poor value for money. However, as above, it is intended that any schemes that aren’t subject to the audit will fall under the auspices of the IGCs, therefore their value for money and appropriateness for scheme members will still be continually assessed.

1.45 With respect to the other concerns raised, the OFT recognises that transferring contract schemes can be difficult as it may require the signature of each individual scheme member to affect a switch. Accordingly it is intended that the IPB will also have a duty to consider how to transfer any poorly functioning schemes identified and/or how to ensure that the terms of the schemes are amended to ensure value for money for scheme members.

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8 Please see paragraph 6.12 of the OFT’s Defined contribution workplace pension market study.
1.46 The OFT also considers that there is a strong case for pension providers to be allowed on the IPB (along with consumer representatives and regulators) as they will have specific industry and provider knowledge that will be invaluable to the audit. However, ultimately, the OFT considers that the membership should be for the independent Chair of the IPB to decide.

1.47 For the reasons set out above, the OFT still considers the audit of high charge and legacy schemes to be the most effective solution to the problems identified and will impact the persistence of the features identified. Specifically, the audit will compensate for the weakness in the buyer side of the market and a lack of ongoing scrutiny of scheme performance by ensuring that scheme members in high cost and legacy pension schemes are receiving value for money.

1.48 As with the IGCs, the OFT will maintain an active interest in the implementation of the audit to ensure it remains the most appropriate solution to the problems identified.

TPR’s work aimed at small trust based schemes

1.49 In general, most respondents to the consultation were also supportive of the proposed work of TPR looking at small trust based schemes. There was also some support for TPR needing increased powers to fulfil its duties effectively.

1.50 The main concern, raised by two respondents to the consultation, was that the OFT should ensure that the approach being taken to the trust and contract sides of the market were aligned. This would ensure that consumers benefited from the same level of protection regardless of whether they are enrolled into a contract or trust based pension scheme. One respondent also raised the concern that small trust based schemes may not have the knowledge or resource to fully partake in TPR’s work programme.

1.51 In response, the OFT can confirm that it has been working closely with DWP, FCA and TPR to ensure that the approaches to the audit of high cost and legacy contract schemes and TPR’s work aimed at small trust
based schemes are aligned as far as is practicable. In addition, TPR have also confirmed that they will be taking steps to support small trust based schemes’ that have decided to wind-up or transfer members assets to alternative provision.

1.52 Accordingly, we still consider this approach to be an effective solution to the problems identified and that it will still impact the persistence of the features identified.

**Improving the quality of information available about pension products**

1.53 Nearly all respondents to the consultation supported the need for improved transparency of pension costs and disclosure of information on scheme quality. One respondent, however, expressed concern that the OFT’s remedy would only lead to incremental improvements and that a more fundamental review of pensions charges was required. A further respondent considered that the market should be referred to the CC as consumers are not able to understand their pensions charges and therefore are unable to make clear comparisons between providers.

1.54 In response, the OFT is unclear what benefit a fundamental review would achieve over the OFT’s remedy and the current DWP consultation on charges. The OFT also maintains that ensuring charges are visible, understandable and comparable will be sufficient to address our concerns in this area. We still consider, therefore, that the OFT’s remedy will impact the persistence of the features identified.

1.55 Three respondents also expressed a view on the OFT’s recommendation that investment management transaction costs should be omitted from the OFT’s recommended comparable and commonly defined single charge. The OFT’s rationale for not including the investment charge was that it would potentially create incentives for investment managers to avoid carrying out transactions in order to keep costs down, even where this is contrary to scheme members’ best interests.
1.56 Although no respondents to the consultation disagreed with excluding transaction costs from the commonly defined single charge, two respondents wanted the OFT to ensure that these charges would be disclosed to consumers. This information, they considered, would allow scheme members to properly assess the functioning of their pension schemes. Another respondent, however, agreed with the OFT’s concern that transaction costs are complex and may confuse pension savers, potentially deterring them from making good investment choices.

1.57 OFT remains concerned that transaction charges have the potential to confuse scheme members who are, therefore, unlikely to make informed decisions based on this information. Accordingly, the OFT does not recommend disclosure of investment charges to consumers at this stage but does support full, uniform and comparable disclosure of transaction charges to trustees and IGCs who will understand and be able to act upon this information on scheme members’ behalf.

1.58 In addition, the OFT has also recommended that the FCA, as part of its review of wholesale markets, propose a consistent and transparent method for reporting transaction costs and portfolio turnover. Part of this work might also consider whether there is scope to disclose transaction costs to scheme members in a meaningful way. We also note that DWP’s consultation includes the option of disclosure of transaction costs to members.

1.59 In summary, despite some concerns over the impact of the OFT’s remedy and questions over how transaction charges should be disclosed, the OFT considers it has adopted an effective solution to the problems identified. Specifically, we consider that improving the transparency of pension costs and the disclosure of information on scheme quality will address our concerns over the quality of information available and the complexity of the pension product.

1.60 Accordingly, we still consider that the OFT’s remedy will impact the persistence of the features identified.
The impact of charges, including the proposed ban of AMDs and adviser commission

1.61 In relation to the recommendation that Government should consider introducing a ban on AMDs, respondents to the consultation mainly agreed with the OFT’s recommendation.

1.62 There were two respondents, however, that disagreed with the proposed ban. The first considered that AMDs encouraged scheme members to continue pension contributions, and that they are commensurate with other incentives used in financial markets, such as a higher interest rate for regular savers. The respondent also felt that deferred members aren’t disadvantaged by the AMD charge as it is proportionate to other scheme charges available and lower than a private pension’s charges. They also considered that, as AMDs don’t include any exit penalties, scheme members are free to move their pension to a new employer if they so wished.

1.63 The second respondent considered that a ban on AMDs would create consumer detriment where employers have chosen to pay part of the charges for active members. This would mean, if the ban was enforced, that active scheme members would have to pay the full AMC, decreasing the size of their pension pot over its lifetime.

1.64 The OFT has considered these concerns carefully but maintains that the Government should consider introducing a ban on AMDs. The concerns raised by the two respondents were considered in detail during the market study and before the OFT made the recommendation. In particular, we still consider that, as scheme members lack understanding and engagement with their pension product, and as charges are not incurred directly, they are liable to be unaware that they may pay increased charges as deferred members of a workplace pension scheme. In addition, employers are likely to focus on negotiating a competitive charge for current employees (rather than deferred or ex-employees) and despite deferred members being cheaper to administer, they pay on average 0.47 percentage points more AMC. Over time this can substantially reduce a pension’s value. We therefore maintain our concern that there is likely to be only
limited or no competitive pressure bearing down on the size of AMCs for deferred members.

1.65 In relation to the recommendation that Government consider introducing a ban on schemes containing adviser commissions being used for AE, there was a split between respondents agreeing or disagreeing with the OFT’s recommendations.

1.66 One respondent was concerned that the OFT had unfairly concluded that schemes containing adviser commission equated with low quality. They considered it would be fairer to make a value for money assessment of the pension scheme which considered more than just the charging structure being used. Another respondent considered that it would be fairer for employees, rather than the employer, to pay the adviser commission as they would directly benefit from the advice being given. One further respondent considered that a ban would unfairly penalise those advisers that had adopted a longer term business model, which included ongoing support to pension scheme members in return for the commission paid.

1.67 In the first instance, the OFT considers that the majority of concerns raised the question of whether a ban of adviser commission is required at all – the setting up of new pension schemes with adviser commission was banned in January 2013 - and not whether the ban should be extended to all AE qualifying schemes. The OFT maintains that the proposed ban of schemes containing adviser commission being used for AE is still required. In summary, the OFT is still concerned that scheme members are liable to pay these charges without realising it and/or without having a say on the amount of charges incurred and that the existence of commission creates a significant disincentive for advisers to recommend switching away from an incumbent, commission generating, scheme.

1.68 In addition, as highlighted in paragraph 1.28 of the OFT’s market study, there are also two factors that give us particular concern that a significant number of employees could be enrolled into these schemes:
• employers have told us that they are keen to minimise the cost of AE and would therefore be prepared to use their existing schemes for AE, and

• we have been told that in 2012, prior to the ban on setting up these schemes in January 2013, a significant number of new schemes were set up with in-built commission charges for use in AE.

1.69 Accordingly, for the reasons set out above, the OFT still considers that the proposed bans of AMDs and adviser commission are required to address the features of the market identified. Specifically, we consider that the proposed bans will help address our concern over the weakness of the buyer side of the market and the quality of information and the complexity of the pension product.

Decision on a reference

1.70 Having carefully considered the responses to the consultation, the OFT has decided not to refer the DC workplace pension market to the CC.

1.71 As set out in this document, no new evidence or argument has been received as a result of the consultation that gives us reason to change our view that an MIR to the CC would not be appropriate. We remain of the view that although there are a number of features of the DC workplace pension market that satisfy the reference test, the remedies developed by the OFT will impact the persistence of the features identified. In particular:

• Weakness of the buyer side of the market – The IGCs, the audit of high cost and legacy schemes audit, TPR’s work aimed at small trust based schemes and the information disclosure and charges remedies are designed to address the weakness identified in the buyer side of the market.

• Quality of scheme governance and ongoing scrutiny of performance – The IGCs, the audit of high cost and legacy schemes audit, TPR’s work aimed at small trust based schemes and the information disclosure and charges remedies are designed to improve the quality
of scheme governance and the ongoing scrutiny of pension scheme performance.

- Quality of information and the complexity of the product – The information disclosure and charges remedies are designed to increase the quality of, and reduce the complexity of, pension schemes.

1.72 Accordingly, the OFT will not be making an MIR to the CC in respect of the DC workplace pension market. However as noted above, the OFT will continue to maintain an active interest in how these remedies are implemented.