Financial Advice Market Review (FAMR)

Response by David Severn

This response is not confidential. The response is made in a personal capacity.

Overview – Part 1

The stated aim of the FAMR is "to look at how financial advice could work better for consumers".

I suspect some in the industry have a somewhat different agenda. Some parts of the industry remain dependent on the acquisition of new business through one-off transactional product sales. Some of these sales may be detrimental to consumers and hence the interest of some parts of the industry in securing from the present review limitations on their liabilities for poor advice – it's the mentality of "flog it and run before you can be found out" which has dogged financial services for decades.

In the absence of specific FCA rules on financial advice firms would still be subject to common law obligations, such as the duty of care, when advising customers. It would help if the FCA published a legal analysis of the extent to which firms would still be subject to obligations analogous to those of the regulator's rules even in the absence of those rules.

What do consumers need and want from financial advice – part 2

I do not think it would be helpful for the FCA to try and categorise different types of advice. All the research I saw in my days as regulator – whether conducted by the industry, consumer bodies or the regulator – told the same story. Consumers tend to make very basic distinctions. If there is any element of persuasion or recommendation in what a firm tells a consumer it is seen as “advice”, no matter whether that advice was the result of a comprehensive review of the consumer’s circumstances or a quicker and more superficial look at needs. Dressing up advice as “guidance” doesn’t fool consumers – they view it as getting advice. It is only when factual material is presented in a neutral way that consumers regard it as being given information rather than advice.

Comments were invited on the Consumer Spotlight segmentation. It may be a helpful way of considering consumer needs but it should not be applied in an unthinking way. The FCA needs to remember that:

. consumers are not an homogenous group – even within some of the segments identified by the FCA there may be marked differences in actual consumer behaviour when dealing with financial matters;

. consumer needs and priorities change over time, it is a dynamic rather than a static picture. Therein lies the importance of consumers ideally having an on-going relationship with an adviser rather than a transactional one. The latter is likely to lead to sub-optimal outcomes for consumers particularly where investments are at issue.

Where are the advice gaps – part 3

The analysis given in section 3 is somewhat superficial. Over the past 30 years the changes in financial advice have followed a pattern seen in other professions. Training and competence for advisers was introduced. As the level of qualifications and the professional standards were increased some individuals were unable to meet the new standards and fell away from the industry while those who did meet the standards were able to command higher salaries. In order to meet the higher salaries firms had to ensure that advisers put more focus on those clients with more to save or invest. Over 30 years there has been a reduction in the number of advisers but this does not tell the full story. There has also been a big increase in productivity per adviser. None of this is news and if the FCA had looked back to the analysis which my department produced during the review of the polarisation (CP12, CP166 etc) regime more detail could have been found there. As a section of consumers became uneconomic for firms to advise indicatives such as Basic Advice were introduced to try to meet the needs of consumers.

What options are there to close the advice gap – part 4

The comment "Much of the regulation of advice is drawn from EU legislation" is a bit of a cop out by the FCA. In my report for the Financial Ombudsman Service on Mortgage Endowments (see in particular pages 11 to 12 at http://www.financialombudsman.org.uk/assets/pdf/DavidSevernReport.pdf) I briefly traced the history of the standards of advice which already had a familiar ring when the Government published, around 1984, the White Paper which preceded the Financial Services Act 1986 and when self-regulatory bodies such as Fimbra consulted on their draft rules which would take effect when the 1986 Act was implemented. The UK then did much to promote these standards as a model for the EU to follow when it was constructing Directives dealing with investment advice.

I still think Basic Advice – which because it was dependent on the use of software could be viewed as an early use of robo-advice – could make a contribution towards bridging some of the alleged advice gap. As I pointed out in my response to HM

Treasury's consultation on "Simple Products" a lot of industry mis-information was used to try and rubbish the Basic Advice process and some at the Treasury and FSA were gullible enough to believe the mis-information. I also dealt in my research report for the Financial Services Consumer Panel on "Safer Products" (see in particular pages 74 to 81 at https://www.fs-cp.org.uk/file/publication/safer-products-research-fscp-david-severn)with various other forms of simplified advice that had been canvassed over the years.

The longstop review

I have repeatedly made clear my view that consumers must continue to have a means of redress for poor advice on products that may have a lifetime of 30 to 40 years after the initial advice was given. If firms want to deny responsibility for advice they give on long-term investments then they should simply not be in the business of giving such advice. If the FCA is foolish enough to bow to industry pressure and introduce a limitation then this should be coupled with an obligation on the firm which gave advice to send a "red warning" letter to affected customers before the limitation date is reached alerting customers to check that they are satisfied with the advice given and if not that they should complain to the firm before the limitation date is reached.

In the context of the longstop, I do think the FCA might profitably carry out a review of the value of PII market. I have to say that my experience of the market over some 30 years is that it has been as much use as a chocolate teapot in shielding good firms from the consequences of the actions of bad advice given by poor firms.

Background information

Rather than repeat here points I have made over the past decade and more in responses to the FCA and its' predecessors, HMTreasury and the EU I am enclosing a selection of some of my responses as annexes where these responses cover points relevant to the FAMR.

Annex 1

My response to the FSA's consultation on its draft guidance on simplified advice.

Annex 2

My response to HM Treasury's consultation on "Simple Products"

Annex 3

My response to the FSA's Discussion Paper 07/1

Annex 4

My response to the FSA's Consultation Paper 09/18

Annex 5

My response to the FSA's Consultation Paper 09/31

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Response to the FSA's consultation on its draft guidance on simplified advice

Introduction

1. This response is made on my own account, not on behalf of any client. The response is not confidential.

2. **General Comments**

I agree with the overall thrust of the proposed guidance to the extent that it does not propose any wholesale removal of consumer protections. I think, however, that it will create a confusing situation for consumers with simplified advice sitting alongside Basic Advice and full advice. Full advice will in turn consist of independent advice and restricted advice with the latter of these in turn consisting of single-tied advice through various levels of multi-tied advice. I am also dubious that consumers will be able to distinguish between those individuals present merely to act as facilitators in a simplified advice process and those able to make personal recommendations to the consumer. Notwithstanding general support for the guidance I am disappointed that the FSA has not used the opportunity offered by publication of the document to address some wider issues. This has nothing to do with the bare wording of the draft guidance but more to do with the tunnel vision approach which the FSA has taken to the issue, as explained below.

3.**Timing.**

The Review of Retail Distribution (RDR) was launched in June 2006 and by the time of the 2007 Discussion Paper on the RDR there had already been substantial time devoted to consideration of whether some form of truncated advice process might be used for investment products. Although it is understandable that the FSA should have given the industry the opportunity to see if it could devise a simplified advice process anyone familiar with the industry's track record would not have been optimistic about its ability to devise a process that was even half-way acceptable in consumer protection terms. The FSA should have recognised long before now that the industry's efforts were heading nowhere and have issued its guidance sooner. That said, there is nothing in the FSA's guidance that is new or remarkable. The industry was presumably hoping that the FSA would remove or dilute one or more of the protections available to consumers. The fact that the FSA proposes to maintain the standards that will be expected post-RDR implementation means in my view that the idea of simplified advice is dead in the water as it is difficult to see how any firm can make a commercial success out of the process. It would have been far better had the FSA made clear long before now the matters on which it was not prepared to budge rather than leaving it to little more than a year before implementation of the RDR.

4. **The lack of analysis of consumer needs.**

It *may* not matter that simplified advice is not a commercial proposition if it means that consumers do not get sold investment products which either they do not need or which they would prefer not to have (because they are risk averse). However, the FSA guidance makes an assertion that the potential market for simplified advice is likely to be small without producing any new evidence to refute industry claims that the market is substantial. It may be, as the Guidance notes, that 49% of the population do not have enough money to cope in an emergency but that still leaves 51% of the population for whom that is not the case and that must run to many millions of consumers. Meanwhile the industry points to the decline in the savings ratio in support of its claims that the market is large but the savings ratio may not necessarily indicate a problem in meeting consumer needs (for example, the UK has an ageing population so that many consumers are in the decumulation phase of life rather than needing to save more).The FSA does not therefore seem to be helping itself against inevitable industry claims that there is a substantial and unmet “savings gap” which, in the industry’s view, the regulator is exacerbating by its refusal to “simplify” (for which read “dilute”) advice standards. The claim will be that the FSA is contributing to consumer detriment by putting unreasonable barriers in the way of consumers’ needs being met. My own very limited analysis when preparing a report for the Financial Services Consumer Panel suggested to me that the potential size of the market may be relatively limited but I suggested that there should be a serious study to try and resolve the conflicting views on the size of the market. I still believe that the FSA and the industry need to put work in hand so that both sides have a realistic idea of the likely size of the market for simplified advice.

But it is not just a question of the number of consumers at issue but also the nature and extent of their financial needs. In my view one of the flaws in the FSA’s past approach has been that its focus has been too much on the supply side. It is possible to imagine a paradoxical scenario where on the one hand regulation is counted a success because those financial products that are sold to some consumers are sold to a high standard, but on the other hand the majority of other consumers are left with unidentified and unmet needs because regulatory barriers prevent their needs being met in a way that would allow firms to make a reasonable return on their capital. The Approach document for the new Financial Conduct Authority (FCA) indicated that in future the regulator may enhance its capacity to carry out more research among consumers and in my response I strongly supported that. It seems to me that the FCA will not be able to achieve some of its objectives unless it has a much better grasp of what it is that different groups of consumers need and the different ways in which those needs might be met consistent with a high standard of consumer protection.

5. **Avoiding the silo approach to regulation.**

In almost every response I have made to FSA consultations (and to European Commission consultations) I have made the point that regulators need to avoid a "silo" mentality when addressing issues. That is, when faced with regulatory intervention in one area regulated firms that operate across a number of business areas have the option of seeking to compensate for loss of revenue and profitability in one area by creating problems in others subject to a lighter touch regulatory regime. The scope for doing this has declined over the years first with the wider regulatory scope created for the FSA and second by the beginnings of guidance on product design that is now appearing. But the opportunity to create mischief elsewhere still exists (for example, one can anticipate that attempts will be made to see if non-advised distribution can be made to work) and it ought to be part of the role of a regulator that claims to be more pro-active to try and anticipate what some firms might do in the light of the simplified advice guidance and to give early warning of what will not be tolerated.

6. **The supply side.**

It is astonishing that after almost 25 years of financial services regulation parts of the industry are still locked in a cycle of either designing some rubbish products or using poor selling standards (and sometimes both). This is not a “touchy-feely” corporate governance point. It surely cannot be good business for companies to get themselves into a position where they transact business that sooner or later results in complaints to the FOS, the possible need for a pro-active review of past business, the payment of significant amounts of compensation, possible disciplinary action and fines, and reputational damage. The only ones who seem to benefit from such messes are the CEOs of some companies (who rarely seem to get any grief from their own Boards, and sometimes move on with a golden goodbye) and those advisers out to make a quick buck while the going lasts. One has to ask what the NEDs of some companies are doing sitting on their backsides when they should have been posing a serious challenge to the product development or distribution plans of their executives and determining whether or not those plans are in the interests not only of consumers but also the long term interests and profitability of the company. Instead what we get from the industry is another bright idea to de-risk distribution for themselves by proposing simplified advice with fewer consumer safeguards. In my view the ideal is for consumers to pay a fee to an independent planner or adviser for professional and full advice covering existing holdings as well as any possible new investments and an on-going advice service to keep matters under review. But I am a realist and it may be some time before that state can be achieved. In the meantime there might be a role for simplified advice, assuming the market is large enough, providing that the issue is approached responsibly by firms instead of trying to take away regulatory protections from consumers.

The FSA is also not doing itself any favours by burying its head in the sand over the likely reduction in the number of advisers. It should be putting itself in the position to mount a robust defence of such a reduction if it does happen as the industry will be quick to blame the FSA. The reduction will happen because some advisers will not be up to the new qualification standard, some will be averse to oversight by a professional body, some will regard it as an uphill task to get their customers to accept adviser charging (and so they won't try), and consumer demand for investment advice which has always been weak is not likely to be enhanced by the introduction of adviser charging. Any reduction in the number of investment advisers will matter only if the number of advisers remaining is insufficient to cope adequately with genuine consumer demand for investment advice. If it simply the case that there is an oversupply of investment advisers there is no case for providing them with a "soft landing" any more than the Conservative Government of the 1980s was prepared to provide a soft landing for coal miners and steel workers.

6. **Basic advice, MAS and simple products.**

It is disappointing that when issuing the draft guidance the FSA has not take the opportunity to comment on the interface of simplified advice with other related developments. These include Basic Advice, product intervention by the regulator, the Money Advice Service and HM Treasury's announcement for further development of the concept of "simple" products. As I have noted in responses to the FSA and the Treasury the FSA did say that it would consider at a later stage whether or not the Basic Advice process might be extended to non-Stakeholder investment products if it was convinced that the design of such a product posed a lesser risk of detriment to consumers and the FSA said that at a time when it had no plans for a more interventionist approach in the design of products by firms. It is therefore surprising that the FSA has given no indication as to whether or not it might consider enlarging the range of products capable of being sold through Basic Advice now that it is prepared to take an enhanced interest in product design. Similarly, I think it would have been helpful if the FSA had given some indication of how it might regard "simple" products, assuming such are designed. It is naive to believe that "simple" investment products will sell themselves and the Governments plans in this regard seem doomed to failure if attention is not also given to distribution issues.

HM Treasury Consultation “Simple Products”

Response by David Severn Consulting

General

1. I am responding to the HM Treasury (HMT) consultation on “Simple Products” as an individual. I have had, however, an extensive involvement with similar initiatives in the past as follows:

. I was Head of the Policy Development Division at the Personal Investment Authority (PIA) and in that capacity had extensive discussions with HMT officials regarding the introduction of CAT standards for products. Also, I recommended to the Board of the PIA the introduction of Regulatory Update 64 (“RU64”).

. As Head of the Retail Investment Policy department at the Financial Services Authority (FSA) I had extensive discussions with Ron Sandler and his team prior to the publication of his report.[1] Also, my department provided technical advice to the Department for Work and Pensions (DWP) and HMT about the design of “stakeholder pensions” and “stakeholder products”. In parallel, my department was responsible for the design and implementation of the “Basic Advice” process and also for “decision trees” for stakeholder pensions.

. In my consultancy capacity I was commissioned by the Financial Services Consumer Panel to prepare a report on “safer” products which was published in 2010.[2]

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[1] “Medium and Long-Term Retail Savings in the UK: A Review”, HM Treasury, July 2002.

[2] “Safer Products”, Research for the Financial Services Consumer Panel by David Severn, September 2010.

2. I will try later to offer some constructive views in answer to the specific consultation questions. As a preliminary, however, I should express my serious disappointment in this consultation.

. The document shows on the part of Coalition ministers a mind-boggling combination of naivety and Micawberish hopes that something will turn up. No explanation is given as to why the industry will now be incentivised to voluntarily design simple products when it has had 25 years or more to do just that.

. The document is superficial in its analysis, contains some internal contradictions, and draws inappropriate conclusions from some evidence.

3. As a preliminary I would also like to make the point that the approach of the Coalition Government (as indeed of the previous Labour administration) is founded on two beliefs. The first is a political one that it is for individuals to make their own provision in many areas of financial provision rather than that the state should ensure they do so. The second is an economic belief that competition works or can be made to work to the benefit of consumers, although at long last serious reservations are beginning to emerge about this belief.

The consequences of the Government's reliance on voluntarism rather than compulsion and on the supposed power of competition are as follows:

. vast sums are needlessly spent on the marketing and distribution of products because of the absence of any strong consumer demand for many products. Those sums could better be spent on improving products for consumers.

. there is an astounding proliferation of products on the market. This is so that providers can differentiate their products from those of their competitors in the hope of increasing their market share. It is very questionable whether there is a need for the vast range of products on offer and whether some of the features they offer give any real value to consumers (or if those additional features are in proportion to the extra charges that providers make for them). The Government's proposals for simple products does not solve this problem, it exacerbates it. Simple products would sit alongside the existing population of products.

. the problem of financial exclusion will persist because the industry designs products which it believes will appeal to those with more to save or invest, or who will pay for additional features with their insurance, and sales and advice will similarly be focused more on the more affluent consumers. Trying to chase those consumers who have very little available cash and trying to persuade them to part with some of it for financial products does not make commercial sense for many companies.

. consumers as a whole will lose out because of the various ways in which the industry cherry picks. For example, according to the Poverty Site[3] half of the poorest households do not have home contents insurance, households with no home insurance are three times more likely to be burgled, and more than half of all renters of property are without home contents insurance compared with hardly any owner

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[3] www.poverty.org.uk

occupiers who lack such insurance. So, insurers collect premiums from those for whom they are less likely to have to pay out and fail to service other sectors of the market. Similar considerations apply to health and life insurance. Young and fit people can get cover at affordable prices whereas those who are older, and particularly if they have any hint of a health condition, may find that they are uninsurable or that they insurable only at an unacceptable level of premium.

There is an alternative to the political belief which is effectively that set out by Beveridge in his 1942 report[4]. Beveridge made similar criticisms to those above about the patchwork of voluntary provision that had grown up in the UK:

"at a cost in money and trouble and anomalous treatment of identical problems for which there is no justification"

Beveridge went on to describe the essential characteristics of what he termed "social insurance":

"It has been found to accord best with the sentiments of the British people that in insurance organised by the community by use of compulsory powers each individual should stand in on the same terms; none should claim to pay less because he is healthier or has more regular employment"."The term 'social insurance' to describe this institution implies both that it is compulsory and that men stand together with their fellows. The term implies a pooling of risks".

An alternative approach, therefore is to indentify certain core consumer needs and introduce some form of compulsion, or auto-enrolment, to ensure that consumers who are able to do so make some provision to meet those needs. Such an

[4] "Social Insurance and Allied Services", Sir William Beveridge, Cmd.6404, HMSO 1942

approach really would have an effect in closing the savings and protection gaps. It would also allow the vast sums consumed at present on marketing to be redirected to product improvement.

In the 1990s I was asked to brief John Denham MP on various pensions issues. I put it to him that the problem of consumers saving for retirement could be easily solved by Government and yet still retain elements of choice and personal ownership by a system which involved:

. compulsory contributions being collected through the NICs system;

. those contributions for individuals being directed to the individual's choice from one of an approved list of institutional fund managers, so that consumers still had choice and ownership of their own "fund", but with a default pension investment fund for those consumers unwilling or unable to make a choice.

Slowly the UK is moving to some similar kind of solution in the pensions area. Instead of compulsion there will be auto-enrolment. There will be a choice of funds but also a default fund.

There is no reason why a system combining compulsion (or auto-enrolment) should not work for other areas. The system could be combined with individual choice over the provider of the product.

Consultation questions

Question 1 – The Government would welcome general comments on the vision and objectives for a new regime of simple products.

If any simple products are to be developed then it is sensible to aim for an "80/20" approach to the issue. That is, target those product areas that would satisfy the needs of 80% or more of the population. Those product areas are likely to be the simpler ones of basic protection for the family, protection for home contents, and non-investment savings (bearing in mind that the vast majority of consumers have little in the way of financial assets or regular amounts to save and in general are both risk and loss averse), and affordable credit.

Question 2 – Should this work be led by industry and consumer groups and not Government?

The Government has really answered its own question here by its statement at paragraph 3.8 of the paper and by comments elsewhere in the document. This leaves open the fundamental question I have already posed as to what possible reason the Government thinks exists for the industry to start designing and selling simple products now when it has had this opportunity for the past 25 years and has failed to make use of it. It is also unclear what appetite exists on the part of consumer groups to become involved in product design, how the Government envisages the mechanism would work for consumer group involvement with product providers, what responsibilities and consequences would attach to any consumer group that became involved in product design, and what sanctions (if any) a consumer group might suffer should any fault emerge in the design of a simple product. The FSA has already given guidance on the matters to which it thinks product providers should have regard in the process of product development in, among other things, its guidance on Treating Customers Fairly. That guidance does not currently afford consumer groups any formal or informal role in relation to the development of products, although of course there would be nothing to prevent any provider that wished to do so from engaging with consumer groups. Does the Government envisage consumer groups being given some formal role? Would it be a necessary condition for the industry to market products as “simple” that the design criteria had received some form of endorsement from consumer groups?

Question 3 – How can industry and Government ensure a voluntary set of standards offers sufficient protection for consumers?

Why the reference in the question to Government? Throughout the document it seems to be made clear that the Government does not see any role for itself in framing the specifications for simple products or setting price caps. According to the Government, therefore, it is to be a matter entirely for the industry to decide whether or not a set of standards for any product or products offer sufficient protection. Those standards may, or may not, gain some form of endorsement from consumer groups. The Government needs to work through clearly how its ideas will work with the proposed powers of the new Financial Conduct Authority (FCA). The FCA may wish to take a view on whether or not any proposed set of industry standards provide sufficient protection for consumers. Is the Government expecting that the FCA will give some form of recognition to product standards set by the industry, in the same way as the FSA can currently give recognition to trade association guidance? If that is the Government’s expectation then the FCA will be joined in the process of deciding whether or not the standards provide sufficient protection. If, however, the Government sees no role for itself or the FCA in assessing the adequacy of standards then it becomes a matter of an industry (which already is mistrusted by many members of the public) self-certifying its products as “simple” and there is no obvious reason why this should make consumers eager purchasers of the products in comparison with those already on the market.

Question 4 – Are there any reasons that simple products should have price caps or other standardising pricing features?

The Government shows a touching faith in competition between providers keeping prices low when the evidence is that competition has failed to achieve this goal in the past. As just one small example I point to the Ron Sandler’s report, an extract from which I quoted in my report for the Financial Services Consumer Panel, which highlighted that for passively managed funds annual charges varied from 0.3% to 2% across providers of broadly similar products. How can competition be claimed to keep prices low given facts like that?

One of the problems with price caps in the past is that they have had to cover not only the administration and management costs for the product but also the costs of distribution. The costs of distribution can represent a major variable which can make or break the prospect of operating profitably within any price cap. For example, if a provider is promoting a product to a large number of employees of a major company and the company has given encouragement in terms of facilities and time then that provider may well be able to distribute within a price cap. If, however, a provider is trying to pick up small bits of business through the small number of reluctant employees employed by small firms then a price cap may prove a real obstacle.

In the investment area the UK will soon be moving to a regime where the product costs and the “distribution” costs are unbundled. This might make price caps more of a practical proposition for investment products as the major variable of distribution costs will be removed from the equation.

Question 5 – How could simple products be used as a benchmark or a comparator? Is there a case support this with regulation, as with the RU64 rule?

As the person who recommended to the Board of the PIA the introduction of RU64 I feel entitled to offer a view on this. The first point to be made is that RU64 dealt with a situation where regulated investment advice was being given. As the prime focus of the simple products initiative is currently on non-investment products where no advice will be given, or where any advice will not be investment based, it follows that exact comparisons with an investment situation are meaningless.

At the time RU64 was invented the personal pensions market tended to be divided into two distinct areas. There were regular premium policies which tended to be sold by bank and insurance company sales staff. And single premium policies sold in the main by IFAs. A further feature was that many of the regular premium policies had a charging structure that was heavily front-end loaded. A consequence such a charging structure was that any consumer who terminated a pension policy early would suffer a very significant financial loss. The annual “Disclosure Surveys” that the PIA pioneered gave ample evidence on the extent of financial loss some consumers could suffer. The legislation under which the PIA operated gave it no power to determine either the level of charges made or the way in which charges were structured. The PIA could operate only by setting standards for those giving investment advice. In the run up to the introduction of Stakeholder Pensions it was anticipated that there would be a heavy push behind the sale of regular premium personal pensions and that once in such a policy a consumer could only transfer to the potentially more advantageous Stakeholder Pension, once it became available, by terminating the personal pension and suffering a significant financial loss. RU64 was designed to tackle this problem. It did not prohibit the sale of regular premium policies, rather it specified that where such a policy was sold a consumer should be able later to transfer to a Stakeholder Pension without suffering “material disadvantage”, that is suffering the heavy surrender penalty that had previously attached to personal pensions.

There was a parallel issue which RU64 addressed. The PIA pioneered the publication of annual “persistency” reports. These reports showed that for both tied and IFA sales of personal pensions very many consumers failed to keep up their payments for more than two or three years and in consequences colossal sums were being lost by consumers by stopping their policies so soon. Some of the worst types of policy were effectively stopped by the introduction of RU64.

It should be noted here that RU64 was effectively product intervention by the back door. That is, the PIA did not have the power to say to providers that they must structure their product charges in a particular way but it could achieve the same effect by warning advisers that they could be found in breach of suitability obligations if they recommended to customers products whose product charges were structured in such a way that they could cause detriment to those customers.

Question 6 – Are there any groups that simple products should be targeting? If so what implications would this have for the development and promotion of simple products?

I see no reason why a simple product should be designed for any particular segment of the population. If the product meets a real core consumer need and gives good value for money then it could be an appropriate purchase for any consumer. It is true that a purchase may not be the most suitable one for a particular consumer if there is another product available with added features that may be relevant to that particular consumer. However, as a general proposition many of the "bells and whistles" that attach to existing products may have little value for consumers but do allow providers to charge more for the product and give advisers scope to "blind with science" their customers when at heart the customer decision may be a very simple one.

Question 7 – Is it practical or desirable to have a range of completely standardised products? Is standardisation more practical for some products than others?

Although it must be beneficial to consumers to have some choice and differentiation in the market I cannot see that the degree of choice and differentiation that currently exists is desirable. The Treasury's document mentions over 2,000 savings products. In my report for the Consumer Panel I mentioned that there were around 7,000 different investment funds available, over 4,500 different unit-linked life and pension funds, and I quoted the estimate by Lipper that in

Europe as a whole there is around one mutual fund for every 1,000 active investors. Yet, most consumers have a limited number of core needs and it simply does not need that degree of product proliferation to meet those needs. Accordingly I think some standardisation is feasible for most products and highly desirable for many.

Question 8 – Beyond standardisation what other measures could be used to help improve consumer understanding of product features?

I would give some credit to the industry that the explanations it gives, both written and orally, are far better than they used to be although thematic work by the FSA indicates that there is still much scope for improvement.

Part of the problem for the industry is that many consumers have poor literacy and numeracy skills let alone their lack of skills in financial capability. It will be all the more important for simple products that providers concentrate on a few key features of the product, explain those in plain terms without the use of any industry jargon, and give a balanced view so that consumers are being alerted to any limitations, exclusions, or risks with a particular product as well being told about its benefits.

Question 9 – Should someone "police" the standardisation of products?

The question is ambiguous. If neither Government nor the FCA have any role in policing the setting of product standards it will nonetheless still be the case that the FCA will have to police the marketing of simple products or any advice on them. I presume that the present Government is not about to propose a further layer of regulation of self-regulation outside of both the FCA and existing industry bodies. So it would seem to come down to self-certification by providers that their products meet whatever standards are agreed. This was actually the solution used for CAT standards and all the evidence was that it worked, that is I cannot recall any instance where the regulator had to take action because a provider was making a false claim that its product met the CAT standards when in fact the product did not.

Question 10 – How could the simple products brand be developed?

I am not convinced that the ISA brand is quite so embedded in consumers' minds as the document claims. The vast majority of ISAs, according to HMRC statistics, are cash ISAs. Deposit takers and others have probably been careful to ensure that consumers take out a cash ISA partly because of concern about what the regulator might say if ISAs were not brought to the attention of customers but also out of commercial self interest. Cash sitting in an ISA represents a stable source of funds for deposit takers and once the money has been taken in they can rely on consumer inertia for the money not to be moved elsewhere. Hence all the concern about introductory rates being offered to bring in money and those rates then being cut once the money is in the clutches of the ISA provider. To the extent that consumers have shown any enthusiasm for cash ISAs it is probably because product providers have used the magic words "tax free". Given the small amounts saved by the average basic rate taxpayer (short of the maximum allowed each year, according to HMRC statistics) in cash ISAs and the low interest rates the actual tax savings to most individuals is likely to be quite small.

More generally the Government ought to look at other experience in trying to promote brands or concepts, whether by the public or private sectors. It takes large sums of money over a long period to start to make an impact on public consciousness and that is likely to be particularly the case with financial products where on the whole consumers are uninterested, disengaged and confused.

Question 11 – How can consumers be reassured that these products meet the required standards?

I do not see that the Government needs to invent any additional layer of regulation here. The experience of CAT standards shows that a voluntary system can work because ultimately regulators (such as the FCA) can take action against any provider that falsely or misleadingly claims that its product meets the criteria for a "simple" product when in fact it does not.

Question 12 – Do you agree that deposit savings products and protection products should be the initial areas of focus? Are there significant features or product characteristics in these categories that would lend themselves to standardisation?

I agree with initial area of focus as this accords with the 80/20 principle I mentioned earlier.

I think the process to be adopted should be to survey existing products on the market and to catalogue the different features they exhibit. The industry, consumer interests and any other relevant party should then try to reach a consensus on the particular features that simple products should be expected to exhibit and the degree to which those features should be subject to standardisation.

Question 13 – Do you have views on how simple financial products could be developed to benefit particular age-groups or sections of the market?

In my report for the Financial Services Consumer Panel I was strongly critical of the Government for its decision to cause to be withdrawn from sale National Savings and Investment's index-linked savings certificates. I therefore welcome the announcement this week that the certificates are to become available again during 2011/12. The certificates meet a real need for the many consumers who are both risk and loss averse, and particularly for older consumers, because they provide a guarantee that a real return, however small that might be, can be obtained compared with many other forms of deposit.

I think the Government should do more to promote the role that credit unions could play. The new legislation for credit unions mean that they are no longer so limited in what they can offer members. Credit unions could play a major role in providing a range of simple products to consumers.

Question 14 – The Government would welcome any evidence about costs and benefits of developing a new regime of simple products.

It is very difficult to offer any sensible views on this question at present in the absence of a clearer idea as to what products might be subject to the simple products initiative, which features of those products might be subject to standardisation, and how the products are allowed to be distributed.

Developing, promoting and distributing new simple products will absorb capital and product providers will need to be convinced that they can obtain an adequate return on that capital to satisfy shareholders. So another important element in assessing the costs and benefits of simple products will be the assumptions made about the extent to which consumer demand is increased, the extent to which firms have still to proactively sell products, the potential size of the market and likely average savings levels or premiums.

Question 15 – What would be the benefits and disadvantages of linking simple products to CFEB's national financial advice service, including within the financial health check?

In theory there would be some merit in linking CFEB and simple products but in practical terms I cannot see how this could be achieved without involving CFEB in giving specific recommendations to consumers.

In my response to the Thoresen report I dealt at length with issues relating to the link between a consumer getting generic advice and that then being translated into positive action by the consumer. It still seems to be the case that having had a health check a consumer is then left to his or her own devices as to whether that it is translated into action. Even if a consumer does take some action they may then be deterred if they approach a product provider or adviser and get from them information or advice which is different to or contrary to that they obtained from the health check. Also, where advice is at issue, it seems almost certain that an adviser will repeat the "fact find" process which may itself deter consumers.

Question 16 – Should the new regime of simple products be linked to regulated advice? If so, how might this work?

This is confusing. Regulated advice usually refers to investment advice. The thrust of the document is to leave investment products on one side and instead focus the simple products initiative on the likes of deposits and protection. Also, at various points in the document there are references to simple products being sold direct (i.e. non-advised sales).

Question 17 – The Government would welcome evidence on the role of savings stakeholder products in the market and the effects of removing or keeping them.

This Government, and indeed any future Government, needs to think carefully about the damage it does to consumer confidence in financial products and the confusion it causes for consumers by the constant changes it makes and new initiatives it launches. Even if the “simple” products initiative gets off the ground, which is questionable, then on all past experience both product providers and consumers can expect that at some future stage a new Government will find cause to modify the regime or abandon it altogether and replace it with something else. That is exactly what the Government is now proposing in relation to stakeholder products. If the Government thinks there will be “duplication” between stakeholder products and simple products then why not simply keep the stakeholder name, since money has already been spent by Government and the industry in trying to promote it, and subsume the proposals for simple products within it.

Question 18 – The Government would welcome evidence on how the basic advice regime is working, if it is understood by consumers and profitable for providers.

Again, I should declare that the basic advice regime was designed and implemented by my department while I was at the FSA. I still believe that the regime has the potential to provide a cost-effective means of distribution for firms while at the same time securing an adequate level of protection for consumers. Unfortunately much of the industry has never allowed facts to get in the way of its views and it has promoted a number of myths and propaganda about the regime that do not have a foundation in fact. Add to this that some former executives at the FSA seemed to have had an attitude of malign neglect towards basic advice it is not surprising that take up of basic advice has been low. The following deals with some of the industry myths.

1. General insurance cannot be sold. Wrong. The filter question approach used by basic advice asks about whether the consumer has protection in place. It was a clear aim of basic advice that if a consumer had a protection need the basic adviser should be able to sell to it, subject to the appropriate FSA ICOB rules. There is no reason why other forms of insurance (e.g. for contents) should not also be sold by basic advisers.

2. Cash products cannot be sold. Wrong. The filter questions ask about savings and again it was a clear aim that where appropriate basic adviser should be able to sign up a consumer for a cash ISA.

3. Basic advice can only ever be used for stakeholder products. Wrong. When the basic advice regime was launched it was made clear that it might be extended at a future date to other non-stakeholder products, subject to those products having a design that was beneficial for consumers. The FSA was supposed to have reviewed this matter when it carried out the post-implementation review of basic advice but it appears to have reneged on that commitment.

4. You can't sell anything by basic advice if a consumer has debt. Wrong. Consumers should be advised that it is sensible to pay off high levels of debt but the existence of debt was not a barrier to making a sale.

5. Basic advice takes too long. Wrong. The cost benefit analysis presented in the FSA's CP04/11 showed that basic advice represented a very substantial time saving compared with the time being spent by bank and insurance company sales advisers in giving full advice.

6. There is too much Ombudsman risk. Wrong. An agreement was reached with the Financial Services Ombudsman (FOS) over the matters to which it would have regard in considering any complaint about basic advice. The FOS has published guidance on this on its website. There have been very few complaints in relation to basic advice and those there have been show that the FOS has stuck faithfully to its guidance.

7. Basic advice has to be face to face. Wrong. The FSA has made clear that basic advice can be delivered over the telephone or internet.

8. Consumers don't understand basic advice. Wrong. The FSA published a number of Consumer Research papers from which it was clear that not only did consumers understand the limited nature of the advice but they also that those who could make a comparison with full advice welcomed the shorter process.

Foresters Life is one company that has used basic advice and according to accounts I have had from the company it has done so successfully and profitably and without any of the regulatory concerns which some in the industry seem to harbour about the process.

The industry is now putting its support behind “simplified advice” and the FSA/FCA has announced that it will produce some guidance on this. The consumer protection concern about this proposed process is that the industry seems to want to have the ability to sell any rubbish product through it (there is no trade-off between safeguards built in to the product in return for a simpler selling regime) and also to be given a “get out of jail free” card from any complaint to the Ombudsman.

Question 19 – The Government would welcome views on any other wider issues that need to be considered alongside simple products, including the impact on the wider market.

The UK is part of the European Union (EU) and is likely to remain so. For some time now much of UK financial services regulation has effectively been determined by EU measures aimed at securing a single market. The Government needs to satisfy itself that if simple products are devised this can be reconciled with any appropriate EU measures. This is even more important in the case of the sales regime for simple products where three EU initiatives could represent a major stumbling block to the Government’s plans:

. Packaged Retail Investment Products;

. Review of the Insurance Mediation Directive; and

. Review of the Markets in Financial Instruments Directive (Mifid).

When basic advice was devised it proved possible to structure it in such a way that it could be reconciled with Mifid. It is unclear whether lack of action on the part of the FSA could now result in basic advice being put at risk because of changes to be made to the Directives. If basic advice is affected then so too will the so called “simplified advice” in which many in the industry now seem to be placing their faith.

DAVID SEVERN CONSULTING

RESPONSE TO FSA DISCUSSION PAPER 07/1
A REVIEW OF RETAIL DISTRIBUTION

GENERAL COMMENTS

1. The Review of Retail Distribution (RDR) will for many UK consumers be an irrelevance because they do not have sufficient assets or disposable income to purchase investment products. Most UK consumers stand to benefit more from implementation of the proposals in Thorsten's Review for a system of impartial generic advice to help with basic budgeting and non-investment financial issues. To the extent that ordinary UK consumers will be affected by the RDR, for example those who take out a personal pension or stakeholder pension, entry into the investment product market will be infrequent and so a process with which consumers will not be able to gain familiarity from experience. Accordingly, the FSA's approach should remain reliant primarily on the protection of consumers and it should reject calls from some in the financial services industry who are seeking to use the RDR to dilute standards of protection.

2. The initial scope of the RDR was too narrow. A cursory examination of the history of financial services regulation since 1986 would have shown the capacity of the financial services industry to get round increased regulation in one area by moving business or incentives to another area. One example is the important role played by FIMBRA in refusing to authorise under the 1986 Act a number of businesses that were not considered fit and proper to conduct investment business. Many of those

businesses continued to trade, however, in the mortgage and general insurance areas which at that time were unregulated. Another example was the introduction by the PIA in 1994 of a requirement for all financial advisers to tell customers in cash terms the precise amount of commission that would be paid on recommendation of an investment product. At that time the trade press for financial advisers was full of advertisements from product providers telling advisory firms of the improved commissions payable on non-investment products which would not have to be disclosed to customers. The message for the RDR is clear. If the FSA improves standards in the investment area it needs to be careful that it is not simply shifting potential abuses or poor practice to another area. Now that mortgage and general insurance business are both regulated by the FSA the scope for the industry to evade regulatory changes has been reduced. Nonetheless, the recent announcement by the FSA that it will take account of the mortgage and general insurance areas when finalising the outcome from the RDR is very much to be welcomed.

3. The FSA's aims for the retail market and its approach to the RDR are with one exception understandable and appropriate. The one exception is the FSA's concern with the sustainability of retail distribution. This is rather like Mrs. Thatcher’s Conservative Government adopting a sympathetic approach to the sustainability of the UK coal mining industry. It is not the FSA's role to sustain a particular level of retail distribution for investment products. The FSA should concern itself with removing any barriers to distribution that are inappropriate, or ineffective, or disproportionate and then let the market determine the level and type of distribution to meet consumers' needs for investment products. The FSA should not be seeking to sustain distribution by reducing the level of protection available to consumers.

4. Parliament's intention in passing the Financial Services and Markets Act was to establish a system of statutory regulation to replace the system of self-regulation which had existed prior to the passing of the Act. Some of the proposals in the RDR appear to signal a wish by the FSA to effectively delegate some of its functions to self-regulatory bodies. There are possible questions here about an unexpected or unusual use of its powers by the FSA in a way not anticipated by Parliament.

5. At its inception the FSA committed itself to an "Open" approach to regulation and it has a generally good track record in this regard. In the case of the RDR, however, the FSA appears to have adopted an undesirable process of effectively handing over policy making to industry participants and then sitting on the fence about whether the FSA itself endorses or rejects individual elements of the RDR. It is not surprising that taken as a whole the RDR falls short of representing a coherent strategy for the retail market. While some individual proposals in the RDR have merit there are others which are over-engineered, and a few which seem thoroughly undesirable in consumer protection terms. The FSA maintains an extensive (and costly to the industry) retail policy function and it has to be asked why the FSA could not itself have produced a more coherent strategy.

The Future of Retail Distribution

6. Chapter 2 of the DP sets out an overview of a possible future structure for retail distribution. Before answering the specific questions posed by the FSA I offer some general comments on the proposals. The proposed structure put forward is simply too complicated and it is doubtful that it will be understood by consumers. In my view the fundamental distinction to be made in the market is between those firms which are paid a fee

directly by clients for their services and those firms which derive a significant proportion if not all of their remuneration from the providers of certain types of product. It is a bizarre situation that financial advice is a service for which consumers are said to be unwilling to pay directly for the service when in other contexts consumers are expected to , and have no issue of principle with, paying for services as diverse as plumbing and will writing. It is only those firms which derive their income from fees who are in a position to tell clients that their financial affairs are in order and that they need take no action, or that if some financial product is needed the firm can regularly recommend non commission paying products such as National Savings or exchange traded funds. A firm which ultimately depends for its livelihood on selling a certain volume of investment products from those providers paying commission is no more and no less than a sales outlet. This is not necessarily to disparage the activities of such firms. So long as the products sold meet a real need of a consumer and the consumer can afford the product then salesmen can perform a useful function. But salesmanship should not be confused with impartial advice or planning. On this analysis, the fundamental distinction which should be made for consumers is between those advisers to whom one pays a fee for impartial advice (and only these should be allowed to call themselves independent financial planners or advisers) and the rest, who might be called "sales advisers".

7. *Question1.* It is worth the FSA considering the issues here in a different way. Investment advice can have a fundamental effect on the financial well being of a consumer. If the industry gets the advice wrong then it is the consumer who pays the price, and that price can be substantial. Advisers therefore need to have the qualifications and professional standards necessary to deliver the services consumers need. If this has a cost for the

industry it is a necessary cost to avoid detriment to consumers. The FSA should do more to promote to consumers the view that like any other service financial advice is something for which it is desirable to pay a fee if you want impartial advice. Even for consumers on relatively modest incomes using a fee based adviser can pay for itself. (See the research sponsored by AXA and conducted by Saran Allot-Davey)

8. *Question2.* No. CAR still involves advisers being paid commission in return for selling products. CAR should not be confused with a customer paying a fee to an adviser for impartial advice. CAR might still be introduced as a mechanism to improve transparency about commissions and possibly to exert some competitive pressures over the amounts of commission paid.

9. *Question 3.* The term "independent" should be linked to the firm's means of remuneration.

10. *Question 4.* Grandfathering is always a difficult issue. There are some advisers who do an excellent job but are now at the stage in their careers where requiring them to undertake several years further study may not be worthwhile in terms of any gains to consumers. A better option might be for the FSA to set a lengthy transition period by the end of which all advisers then practising should have the qualifications necessary. This would allow some advisers to remain active for the next few years without the need to start studying again.

11. *Question 5.* No. As indicated, any firm dependent on selling products should be termed a "sales adviser".

12. *Question 6.* An increasing number of firms are wanting to put themselves on a proper professional footing. The changes

being made as a result of the Legal Services Act will further enhance the standing of the more professional firms. The FSA and others could do more to make clear the distinction between fee based firms and others.

13. *Question 7.* Yes, but not the two tiers proposed in the RDR! As indicated my two tiers would be fee based advisers and sales advisers.

14. *Question 8.* Jim Gower argued in his report on Investor Protection
(even though he knew it would be objectionable to the Conservative Government of the day) that the Government needed to control commissions because his belief was that competitive forces would not operate sufficiently to keep commissions in check. Over the years numerous attempts have been made to try and use disclosure to bring competitive forces to bear on commissions with very limited success. The FSA has said that it does not want to be an economic regulator, which seems to rule out any control of commissions (although the FSMA contains no prohibition, as the predecessor Act did, on the FSA making rules to control commissions). A possible option is for the FSA to make vigorous use of TCF to get product providers to address the structure and level of commissions they pay for the sale of products.

Primary advice

15. *Questions 10 to 13.* With some reservations I support the concept of primary advice but not in the form in which it is put forward in the DP which seems entirely unacceptable in consumer protection terms. When "Basic Advice" was first designed it was to be used in connection with "stakeholder products" for which certain standards, in particular a charge cap, were defined by Government. Despite the presence of

safeguards in the products the FSA Board was concerned to minimise the extent for any potential miss-selling of inappropriate investment products. Accordingly my team at the FSA devised a filtering process (which was computerised for the market testing) based on a hierarchy of needs which ensured that , for example, debt and protection issues were addressed first, and that where a consumer might have access to an occupational pension scheme that possibility needed to be dealt with by a qualified adviser. The Basic Advice process was a success in the sense that it stopped consumers being sold products which they did not need, or could not afford, or that might cause them detriment in some other way. It was also made clear, however, that unlike the outcomes expected from the existing standards of advice the Basic Advice process would not necessarily deliver an optimum outcome for each and every consumer but rather an outcome that was adequate. The fact that the industry failed to take up the Basic Advice process may be due more to the failure of Government to recognise that accessing potential customers and selling to them appropriately had a distribution cost for which the charge caps on the products did not provide sufficient compensation. It was made clear when Basic Advice was launched that there was no reason in principle why the process should not also apply to the selling of non-stakeholder products providing the FSA could satisfy itself that the products concerned did not pose undue risks to consumers. There is, therefore, nothing novel about Primary Advice being introduced, the concept was contemplated when Basic Advice was introduced. What is different now is the suggestion in the DP that the FSA may need to " reduce significantly some of our existing suitability requirements". This suggestion seems wholly unacceptable. Those consumers most likely to be in the target market for Primary Advice are those with relatively little to invest and for whom the consequences of making wrong financial choices are likely to be significant. If the

FSA implements a Primary Advice process with significantly reduced suitability standards it would need to be asked if the FSA was adequately meeting the statutory objective of consumer protection laid down in the Act. Although I offer qualified support for Primary Advice I still think that better options for consumers with modest means are generic financial advice or paying a small fee for truly impartial advice from a regulated adviser.

Non-advisory services

16. *Question 14.* The RDR should consider if there are unnecessary or disproportionate barriers to firms providing non-advisory services. The evidence collected by the PIA was that direct offer business had better persistency than that which had been advised (regardless of the type of adviser) and Ombudsman complaints statistics indicated fewer complaints in respect of direct offer business compared with advised business. The Disclosure Task Force I chaired in 1993 had as one of its tasks the removal of the barriers preventing providers differentially pricing a product according to the costs of the distribution channel through which it was sold (see pages 6-9 of SIB's consultative paper 77). The evidence seems to be that few if any providers have taken advantage of the opportunity to price differentially, possibly for fear of upsetting advisory distributors. The FSA ought now to examine whether providers can be treating their customers fairly if they charge a customer the same amount for a fund regardless of whether the consumer approaches the fund manager director is advised by an advisory firm.

Other implications of service propositions

17. *Question 15.* Confusion. As indicated in my general comments, consumers need a clear distinction to be made between those firms whose business is advice and planning, and

those firms that are sales outlets for life and pensions companies and retail fund management companies.

18. *Question 16.* No. Many consumers who are unable or unwilling to pay a fee to an advisory firm would be better served by getting generic financial advice which is not contingent on the sale of a product.

Conclusions

19. *Question 17.* No. The different conditions attaching to different types of advisory firm are too complex for consumers to understand. Consumers need a simple distinction between advisers to whom they pay a fee for advice and planning on the one hand and on the other hand sales advisers whose aim is to sell them an investment product and who will be paid to do so by the provider of the product. CRA should not be equated with being fee based.

20. *Question 18.* Ultimately the market will decide this. At the professional end of the market firms are already changing as the recent establishment of the Forum for Fee Based Advice shows. In other areas there are still too many uncertainties to make even a guess as to how the market will respond. For example, the establishment of Primary advice seems dependent among other things on whether or not a generic advice service is established, on the products that may be sold by Primary Advice, and on suitability obligations on Primary Advisers.

Making the transition

21. *Question 19.* The length of any transition period will depend on the final package of measures from the FSA and cannot be settled at this stage.

22. *Question 20.* The FSA needs to be careful here. It is a

regulator, not a consultancy firm. It should not be using the regulatory fees paid by firms to subsidise free consultancy to a minority of firms. It is the responsibility of the senior management of firms to run the business profitably and to make sure it is compliant. If the senior management of a firm cannot do this they should not be in business. That said, the FSA's current practice of providing help via its website and through workshops/conferences probably gives the right level of help, particularly for smaller firms.

Higher standards of competence and behaviours
23. *Question 21.* There is no doubt that if financial advice and planning is to be taken seriously as a profession qualifications need to be higher. The level suggested in the DP seems right. However, the FSA having decided in the past to withdraw from the details of qualification setting should stick to that decision and leave it to the Financial Services Skills Council to determine the levels of qualification for different roles. The Council is best placed to do this as it is free from the conflicts of interest that others, such as the CII, have in providing examinations from which they derive revenue.

Role profiles
24. *Questions 22 and 23.* The FSA is right to want to stick to its principles based approach to training and competence and not to involve itself in the introduction of role profiles in the industry. If the industry finds it helpful to introduce role profiling for purposes of recruitment, career development, CPD and so on then it should be left to develop such a system itself and not have it imposed by the FSA. The industry is probably deluding itself if, as suggested in the DP, it thinks role profiles will be understood by or be of any interest to consumers.

Better labelling of services

25. *Question 24.* In principle better labelling of services would be of help to consumers but labelling needs to be kept simple and straightforward. There is a discussion of this issue in the PIA's Consultative Paper 23 (pares 20-24) which still seems appropriate. As that paper observed, the financial services industry does not have an equivalent of the term "solicitor". The word "solicitor" signals certain things to consumers about qualifications and professionalism without details needing to be spelt out. Financial services should aim for this, with "independent financial adviser/planner" being reserved for those who are paid a fee by their clients and have the highest standards of qualifications. Others would then be "sales advisers".

Enhanced role and focus of professional bodies

26. *Questions 25 to 28.* In principle there are merits to an increased role for professional bodies but this is a matter that should be driven by the industry itself rather than by the FSA. The FSA needs to bear in mind that in financial services as in other areas the professional model has not always stood up to scrutiny. The changes now taking place as a result of the Legal Services Act are the result of perceived concerns at the inadequate regulation of solicitors by the Law Society and the Society's potential conflict of interest in acting as both trade body and regulator. The key question here is to do with the extent to which confidence can be placed in a professional body to operate an effective system of supervision and sanctions and therefore the extent to which the FSA can place reliance on a professional body. Under the 1986 Act the FSA's predecessor still had a supervisory role in relation to recognised professional bodies (RPBs) even though the RPBs were the front line regulators of firms. Does the FSA see something similar operating in this instance? Will there be sharing of information

between the FSA and professional bodies? (Even though it looks like the FSA will remain the regulator of the firm and the professional body will regulate the individuals within a firm the system can hardly be said to be "joined up" if the FSA and professional body operate in silos and do not share information.) Finally, the FSA's track record in exercising effective oversight of other regulators is not outstanding, witness the FSA's supervision of IMRO and the Maxwell affair. If an effective means of control by professional bodies can be introduced then there should be a "dividend" for the firms concerned. The most tangible form would be lower regulatory fees. Indeed I would go further and say that if the FSA can introduce risk ratings for personal investment firms and collects more date about such firms it should be possible for it also to introduce a fee structure which ensures that those firms posing the greatest risks and needing the most supervision effort pay more in fees.

Regulatory and prudential standards to manage liabilities
27. *Question 29.* One of the best suggestions in the RDR is that a system of risk-based financial resource requirements should be introduced for personal investment firms, with higher minimum requirements than at present. A properly run business should have sufficient capital to cushion it from business shocks, to undertake necessary investment, to protect it from going under if it has to meet claims from customers, and so on. Unfortunately, since 1986 something in the region of 1,500 IFA firms have defaulted and their customers have had to be compensated by the FSCS. That compensation cost has had to be met by the more professional and better capitalised IFA businesses but to prevent the burden being too great on such firms there have been periodic "hand outs" from the life and pensions industry to help the IFA sector as a whole (hardly a situation to encourage a view of the advisers as being "independent"). I recall the outrage from some quarters when

the PIA first introduced a £10,000 capital requirement for personal investment firms and the absurd lengths (e.g. asking for the value of a stamp collection to be taken into account) to which some firms went to try and scrape together the necessary funds. A firm which is in the business of advising consumers on financial matters and which can be life changing consequences for those consumers really ought themselves to be on a sound financial footing.

28. *Question 30.* Another excellent suggestion is that firms that give financial advice be required to make provision for liabilities to customers that come to light after they cease trading. This proposal is in the collective interest of professional advisory firms who would be shielded from having to meet the compensation costs that would otherwise arise in respect of those firms which had ceased trading.

29. *Question31.* I note here that as an occasional supplier of consultancy services I have a personal interest in this issue. In fact, I disagree with the DP that small firms should be given an incentive to employ me or any other consultant. Most regulatory requirements have a clear, common sense purpose even if the FSA's lawyers have not always been particularly adept in expressing the requirements in terms a lay person can easily understand. The move to a more principles based approach and the use of TCF as a touchstone should make things easier for smaller firms. Ultimately the senior managers of a firm are responsible for understanding and ensuring compliance with regulatory requirements. Giving incentives to firms to use consultants may encourage an unhealthy attitude that regulation is too complex without the help of an expert and that the firm can simply outsource the responsibility to a consultant and forget about it. Also, I do not think that firms that do decide to use a consultant should then be expected by the FSA

to slavishly follow any recommendations from the consultant. The FSA should expect the senior managers of a firm to give serious attention to the views of a consultant the firm has employed but consultants clearly wish to "cover their backs" and shield themselves from any possible claim by a firm and so in some cases (in my experience) will make recommendations which are disproportionate to the risks posed. (I always try and make sure recommendations I make are proportionate to the risks I see in a firm.) Senior management should therefore have the freedom to reject a consultant's recommendations where they are regarded as OTT and without fearing that by so doing the firm will suffer adverse consequences from the FSA.

30. *Questions 32 to 34.* The suggestion that a 15 year long stop be introduced is a disgrace. It reminds me of Samuel Butler's novel "Erewhon" in which a poor woman whose money had been embezzled would have faced prosecution in the "Misplaced Confidence Court" had it not been for the fact that she died first. The fact is that many consumers have put misplaced confidence in the life and pensions industry and advisers. Consumers have been sold products for terms of 20 or more years and have a reasonable expectation that those products remain "fit for purpose" for their full term. The suggestion here is a shabby attempt to allow advisers to walk away unencumbered with the consequences of any poor advice they may have given.

31. *Questions 35 and 36.* There is more merit in the suggestion that consumers should get better and more regular information on the progress of their investment and on condition that such information is timely and adequate it should be something that should be taken into account when the FOS decides whether or not a consumer has a valid complaint against a firm.

32. *Question 37.* The FSA should resist any attempt by the industry to shuffle off its responsibilities to consumers by agreeing a set of consumer responsibilities. As mentioned in my general remarks, most consumers are infrequent entrants into the investment market and cannot learn from experience as they can in other areas. Moreover, investment products are generally complex and difficult for many consumers to properly understand. Consumers will vary considerably in their knowledge of and capacity to understand investment matters and whether or not an individual consumer's action can be regarded as sensible or not will depend on the facts of the individual case.

33. *Questions 38 and 39.* No. This sounds like a bureaucratic, costly, unrepresentative and ultimately pointless exercise. There is an extensive range of products and services such a system would need to cover. Moreover, it would not be sufficient to take a single "snapshot" of a particular product or service. The investment area is dynamic and changes in the general economic conditions, or in tax and social security benefits, or in product developments, or in technology might alter views of what is "good market practice". How regularly would the view of "good market practice" be updated? Who would select a "group with strong industry and consumer representation" and who would fund their activities over the years? How would differences of view within the group be resolved? If the FSA and the FOS might have regard to statements of practice how will those statements be brought to the attention of all regulated firms whose activities might be judged by reference to the statements of practice? Would the FSA and the FOS necessarily be bound by such statements of practice if they considered in the circumstances of a particular case that consumers had suffered detriment? If the market feels a need for statements of practice it should be the FSA which issues them in the form of guidance which has been the subject of public consultation.

34. *Question 40.* Risk rating of firms by the FSA and publication of those risk ratings.

Transparency of remuneration

35. *Question 41.* A decade ago the PIA suggested in its Evolution Project that IT could be used to collect increasing amounts of data from firms and to better target supervision efforts to areas of need. PIA's consultative paper 23 specifically mentioned the collection of persistency data in respect of individual IFA firms as a possibility. It is now a decade on from the PIA's proposal and there have been significant advances in IT and in the use which is made of IT by both firms and the regulator. It ought not to be beyond the capabilities of the FSA and the industry to develop a reporting system at acceptable cost which is able to collect persistency and other data from IFA and other firms and to use intelligent software to analyse the date and direct supervision effort on a more targeted basis. The FSA might consider other IT techniques. As an example, I understand that some insurance companies are now using voice analysis software to look at claims made by the public to try and identify instances where the insured demonstrates a "stress" pattern that might be indicative of a fraudulent claim. If the FSA is aiming to survey by telephone all personal investment firms to gauge the state to which they have embedded TCF within the firm the FSA might to advantage make use of voice analysis software to identify those firms to whom they might make a follow -up confirmation visit.

36. *Questions 42 and 43.* It is surprising that the FSA should again be posing questions about the transparency of the services provided to consumers and the cost of those services. These issues have been looked at the regulators on other occasion including the FSA's various consultations connected with the

Review of Polarisation. It is essential that consumers be told whether or not their adviser is undertaking to keep under review the progress of their investment and if the adviser is making such an undertaking what he will get paid for that service. If the adviser ceases to provide such a service or the consumer is not satisfied with the service he or she is getting then the consumer should have the right to switch trail to another adviser. If the original adviser or the product provider put barriers in the way of a consumer switching trail then the FSA should take the view that the firms concerned are not treating the customer fairly.

Customer agreed remuneration

37. *Questions 44 to 49.* It is difficult to see how CAR differs to any marked extent from the "Menu". The aim of both is for firms to be more transparent about the commissions they might take on different products and to gain the agreement of the consumer to that commission. Potentially there might be scope under both systems for the consumer to "negotiate" the level of commission paid to the adviser. There are some advantages to CAR, as there were with the Menu, but the FSA should not see in CAR a panacea. In practice it is likely to remain the case that:
a) the level of commission is a matter of negotiation between individual distributors and the providers whose products are distributed;
b) distributors will not give individual advisers the power to negotiate the commission to be paid to the firm;
c) even if there is limited scope for discussion with a firm about the level of its commission it is not realistic to expect the majority of consumers to have the ability or aptitude to negotiate such a matter.

38. In respect of Question 45, this issue has been looked at in the past by the Disclosure Task Force (see pages 50 to 53 of SIB consultative paper 77). Commercial factors already exist but

given the consistently poor persistency of much advised business such factors are not going to be overeager to finance advisers.

39. In respect of Question 46, it is unfortunate that consumers who pay a fee to an adviser also have to pay VAT. The FSA has raised this issue with Government in the past and there appears to be no way of getting round the VAT Directive. It might ,however, be possible to level the playing field between fees and commissions in other ways and the FSA might explore this Government.

Primary advice

40. *Questions 50 to 52.* In my general comments above I have made clear that in principle I see a role for Primary Advice providing that it does not imply a significant dilution of standards of advice.

41. *Questions 53 to 54.* The analysis and the market testing done for Basic Advice already seem to give adequate answers to these questions. Existing debts should not be a complete barrier, it depends on the level and nature of the debt.

42. *Question 55.* As with Basic Advice and with Stakeholder Decision trees it remains the case that some consumers will waste money by saving for a pension if they are likely to be dependent on means tested benefits in retirement. It appears that the introduction of Personal Accounts will do nothing to resolve this issue.

43. *Questions 56 to 57.* The issues of standardised and portable fact finds have been looked at by regulators in the past. This issue is likely to come to the fore as well with the introduction of generic financial advice. The first and possibly easiest issue for the FSA to answer is the "sell by" date to be attached to any

portable fact find. A rough rule of thumb might be that a fact find might be regarded as valid if it is no more than a year old but a firm should be under an obligation to ask the customer if there has been any change of substance in their circumstances before placing reliance on the fact find. (The logic here is that for many customers who have an ongoing relationship with an adviser an annual review is fairly normal.) The second and more difficult issue is whether or not a portable fact find is comprehensive and accurate enough for the purpose for which an adviser is to use it. What the FSA might consider is producing itself (or accrediting) standard fact finds on which firms could place some reliance so long as the fact find had not passed its sell by date. This could be useful in the generic advice context. If sufficient information is obtained through generic advice and recorded on a portable fact find it might then be possible for a regulated adviser to place some reliance on the information without putting a consumer to the inconvenience of going through their personal and financial circumstances again.

44. *Questions 58 to 60.* As already indicated, when Basic Advice was launched it was made clear that the process might also apply to non-stakeholder products. A necessary consequence of that is that the FSA would need to have some criteria which it or firms could apply to products to determine whether they could be sold by Basic Advice. These were issues also addressed by the PIA in its Evolution Project (see the PIA's Discussion Paper and consultative paper 23 which followed). The UK financial services industry is rife with product differentiation and there is an issue about whether the extent of this differentiation and the cost which comes with it is proportionate to any value it adds to consumers. Many consumers who have need of an investment could probably have their need met by a low-cost index tracking vehicle.

Miscellaneous

45. There are a number of issues which do not appear to be touched on at all in the DP and that I think might be worthy of some further consideration by the FSA:

a) "unbundling" of life assurance. It may not always be clear to consumers that what they are buying is principally an investment contract to which is attached some life cover (the actual value of which can vary considerably). This lack of transparency is as bad as that which was of concern to the FSA in the case of with profits. The FSA might do more to make sure consumers are clear that they are buying a combination with life assurance, and that their needs might be better met by buying the elements separately.

b) the industry's terminology is unhelpful and confusing for consumers. The life industry refers to "bonds". The fund industry to "unit trusts", "OEICS", "investment trusts" and so on. In all these cases consumers are buying a pool of investments which may be actively or passively managed.

c) the debate about the RDR tends to get hijacked by the life and pension providers and retail fund managers. For many consumers who are risk averse (and basic or higher rate taxpayers) more emphasis should be given to the merits of index linked savings certificates. Then there are new, low cost investment vehicles in the form of exchange traded funds which can give those consumers prepared to take some risk in return for better rewards ready access to different markets and asset classes and for these to be switched rapidly. The FSA should make sure the outcome of the RDR is not one which just suits the interests of the life and pension providers, unit trust managers, and their distributors.

d) the FSA should recognise that IT has brought about a revolution in the support available to advisers to give consistently accurate and comprehensive advice(and with a clear audit trail) and the potential for consumers to do some diagnosis of their own needs. I have argued on previous occasions that the FSA should consider giving accreditation to software so that both firms and consumers can have confidence in its use.

DAVID SEVERN

RESPONSE TO FSA CONSULTATION PAPER 09/18

General comments

1. This paper offers some comments on consultation paper 09/18. The response is not confidential. The response contains some cross references to my responses to the FSA discussion paper 07/1 and HM Treasury's consultation on the Thorsten Review and so copies of those two responses are attached for ease of reference.
2. I think it is unfortunate that the FSA has chosen to consult now on rule changes to implement some aspects of the RDR. This is principally because there is a parallel exercise in train within the EU ("PRIPs") the aim of which is to set a European framework for the regulation of retail investments. The FSA seems continually to want to anticipate or pre-empt EU developments. In my view it would be better if the FSA was to start to recognise that a natural consequence of having a single market is that it is now the EU that has the pre-eminent role in setting standards. The FSA would therefore have been better advised to await the outcome on PRIPs rather than pressing ahead with domestic changes which it may later have to modify (as it did with the "menu") when the outcome of the EU's review is known. An additional reason, in my view, for the unseemliness of the present paper is that it gives only a partial prospectus for change. It is therefore difficult to judge the adequacy of the current FSA's proposals in ignorance of what the FSA may bring forward at a later stage in other areas. As I will argue later I think the FSA's current proposals will provide a significant boost to platforms and yet it is only now that the FSA is embarked on a thematic review of platforms. So respondents have no means

of knowing how the current proposals might fit with any the FSA might later bring forward in respect of business transacted on platforms. Or again, the FSA appears to want to abdicate its front line responsibility for the statutory regulation and supervision of investment advice by setting up a Professional Standards Board. But respondents are given no information about how the PSB will be established, funded and operated with all this being left to a later consultation. This is a key issue. To date instances of consumer detriment have not been due so much to shortcomings in the FSA's rules but rather in inadequate supervision and enforcement of those rules. Consumers need to be satisfied that the creation of the PSB will make things better, not worse. And finally there are other areas where the FSA is still engaged on work or has not yet made up its mind and so respondents have no means of knowing how those other areas might eventually interact with the current proposals.

3. In my response (paragraph 1) to DP 07/1 I made the point that with the exception of pensions the majority of UK consumers have very basic financial needs covering bank accounts, credit cards, mortgages and general insurance. To that extent the RDR is an irrelevance as it covers only investments. It is, however, an absurd omission for the FSA to leave structured products that are deposit based out of the scope of its current proposals. Structured products are presented to investors in terms of what they are claimed to do rather than in terms of the legal nature of the underlying product. It is very difficult for investors to appreciate that some structured products may be covered by regulatory protections while others are not. Recent evidence shows that once again there has been a failure both on the part of firms and the FSA in the case of certain deposit based structured products. This must surely be evidence enough for the FSA to recognise that deposit based products intended to meet the same needs as

investment products really ought to be included within the scope of the RDR.

4. In my response (paragraph 2) to DP07/1, and on previous occasions, I warned that the FSA needed to be alert to the risk that by tackling problems in the investment business area it might simply shift the problems to other areas. It is therefore to be welcomed that the FSA is now giving consideration to whether or not aspects of the RDR should be read across to the general insurance and mortgage markets.

Consultation questions

Q1.Do you agree with our proposal to widen the range of products to which the new independence standard will apply?

5. Yes. In my response (paragraph 45) to DP07/1 I argued that the RDR should not be confined to life, pension and collective investment scheme products but should cover all those products that are capable of meeting the same consumer need. There are, however, two significant qualifications that link with the FSA's other proposals on remuneration and competence. It is still my belief that the ability to call oneself "independent financial adviser" should be confined to those who are paid a fee direct by their clients for the advice and other services provided. I cover this topic in more detail below. On the subject of competence there have been too many instances in the past of advisers having a poor understanding of what they have been advising clients to buy and the FSA needs to put in place arrangements to ensure that as the scope of retail investments is increased advisers are in a position to give competent advice on new products and it does not simply become another opportunity for misselling.

Q2. Do you agree with our proposals for a new standard for independence that requires firms providing independent advice *to make recommendations based on a comprehensive and fair analysis of the relevant market, and to provide unbiased and unrestricted advice?*

6. It is difficult to take any exception to what the FSA describes but I fail to see how this standard can said to be "new" when it is surely already what is required of firms even if in practice some fail to deliver.

Q3. Do you agree with our proposals new disclosure requirements for firms?

Q4. Do you think we should introduce a mandatory form of words for firms to use when explaining restricted advice?

7. I start from the basis that the FSA's proposals will do nothing to clarify for consumers the service they will get from an advisory firm. The FSA's proposals bear only on those advising on investment products but consumers may at the same time be dealing with the same firm in relation to general insurance and mortgage business where the firm may be operating in a different capacity to that which it is for investment business. Even within the investment area a firm may be independent or restricted; in relation to independence it may be operating only across a specialist area; in relation to restricted advice it may be multi-tied, or tied, offering full advice, or simplified advice or basic advice. I am not sure how the FSA can present this as clarification. As I argued in my response to DP07/1 crystal clarity could be introduced for consumers were the FSA to make instead a simple distinction between those firms to whom consumers have themselves to pay a fee for any services (and who alone should be allowed to call themselves independent financial advisers or planners) and the rest (who should be termed salespeople or sales advisers). The fact is that if a firm is paid a fee by clients it is indifferent to whether or not the client purchases an investment in consequence of the advice given. In contrast, those firms that are principally or exclusively

dependent today on commissions and in future will be dependent on Adviser Charges deducted through an investment have to sell enough investment products to make a profit. They are salespeople and it is this simple fact that should be flagged clearly to consumers. I repeat here what I have said many times before and that is that I do not mean to disparage salesmanship. Providing a sales adviser acts with competence and responsibility and sells only what a consumer needs, can afford, and that matches the consumer's risk profile then the salesman is doing a good job for the customer. But it is only the firm which is remunerated solely by fees from clients which is in the position to break the link between advice and product sales.
I do not think the FSA needs to prescribe any form of words. If it is still attached to principles- based regulation it is surely a matter for individual firms to describe their own offering just so long as the description is fair,clear and not misleading and importantly that the FSA critically examines how firms describe their offering.

I support the framework which the FSA outlines in paragraph 4.3 for the way in which firms should set their Adviser Charges responsibly.

I am concerned about the exception outlined in paragraph 4.11. There is a risk that some firms might seek to disguise how much they are taking in Adviser Charges by having them spread over the lifetime of a product. The FSA therefore needs to be alert to the possibility that there will be an unwarranted shift from lump sum investment business to regular contribution business once its proposals are implemented. I am also concerned about the FSA's comments in paragraph 4.12. If I have understood correctly, there could be here the risk of a "double whammy" for consumers. The evidence is that regular contribution business continues to have poor persistency so is there the risk that in future a consumer who terminates a contract early will not only get a poor return from the investment but also be saddled with a consumer credit debt?

Q6. Do you agree that we should not create a new regime for simplified advice processes, but continue to work as needed with firms and industry?

8.Yes. The question of whether or not the FSA needed to create any bespoke regime for anything less than "full advice" (whatever that may mean) was fully examined when the FSA considered the introduction of the Basic Advice service. It was recognised at that time that the existing standards applicable to fact finding and standards of advice were sufficiently high-level and flexible to admit of a diverse range of advisory services being accommodated.

Surely the FSA can hardly refuse to work with firms and the industry if it is believed that there is a viable "simplified advice" regime needing some form of regulatory endorsement? The FSA might, however, consider if it should be charging firms a separate fee for such work.

In my view the proponents of "simplified advice" want to find some way of cutting costs (advisers with lower or no qualifications, skimping on the questions asked in fact finding) and transferring responsibility to consumers for any "miscuing" (the earlier description of the service as "guided sales" rather gave the game away about what the industry wanted). In my view, therefore, simplified advice is not likely to prove commercially viable unless the FSA is prepared to compromise significantly on consumer protection standards.

Q7. Do you agree that the professional standards set out in Chapter 5 should also apply to simplified advice processes?

9. Yes.

Q8. Do you agree that we should retain Basic Advice, and require those offering Basic Advice to disclose that they are providing restricted advice?

10. Yes. As I said in my response (paragraph15) to DP07/1 the Basic Advice process was a success and I am glad that the FSA has now done a U-turn on this issue. As I also said in my earlier response, although Basic Advice was initially designed to cater for stakeholder products (which incorporated additional safeguards for consumers in the product design) there was always the recognition that the process should be capable of being extended to non -stakeholder products providing it could be demonstrated that the characteristics of such products presented lower risks or better safeguards for consumers. Products with such safeguards do not necessarily mean that they will be suitable for the circumstances of every consumer, as the pilot for Basic Advice demonstrated. But if the industry could devote more effort to devising a suite of core products with transparent and good value features, instead of the needless product differentiation which exists at present, it might be possible for the FSA to allow such products to be sold through the Basic Advice route. On this issue I would like to draw attention to the "excessive charges" rule which was a longstanding feature of the FSA Handbook. The FSA was ambiguous about this rule. On the one hand claiming not to be an "economic regulator" but when provided with opportunities to abolish the rule it finked them. But while retaining the rule "just in case" it never showed the gumption to make use of it. Using such a rule the FSA could do more to ensure that products offer fair and transparent charges and this might also make a contribution to allowing more products to be sold via Basic Advice.

Although the CP makes reference to the current pilot on Money Guidance I am disappointed that the FSA has not taken the opportunity of the CP to start to outline how it sees things operating when a consumer is referred from Money Guidance to the post-RDR regulated advice area. In my response to the Treasury's consultation document I highlighted a large number of issues which it is for the FSA to decide how to handle when a consumer is referred to regulated advice.

Q9. Do you agree with our proposals on Adviser Charging for firms that give advice?

11. It is a step in the right direction but I think the FSA is being naive if it believes that Adviser Charging is going to bring about any revolution in consumer behaviour or that at long last competition will begin to operate to the advantage of consumers. Adviser Charging is the latest in a 20 year history of trying to stop remuneration contributing to misspelling or bias. In 1988 the life industry operated a voluntary system of commission control (the Maximum Commissions Agreement - MCA) which at least imposed some moderating effect on commissions paid to intermediaries. After the MCA was abolished, because of objections to it from the competition authorities, commissions started to rise. There then followed years of wrangling between the regulators and the Office of Fair Trading (OFT) over the disclosure of commission. The OFT took the view that independent advisers who were meant to be acting for their clients should as a matter of course disclose to their customers the amount of commission they were receiving from product providers. The theory was that such disclosure would be a pro-competitive force. Eventually a "task force" of regulators was established which among other things introduced the requirement for all advisers (not just independent ones) to disclose in cash terms the commission they would receive with this amount later confirmed in writing by the product provider. There is no evidence that this requirement to disclose commission in cash had any effect (let alone a significant one) in influencing consumer behaviour or in keeping commissions

within moderation. The next attempt to change the landscape was the FSA's CP121 and the proposal that only fee based advisers should be allowed to call themselves independent but this proposal was eventually abandoned in favour of the "menu" approach because CP121 met with opposition from both industry and consumer quarters. The FSA's latest panacea is that Adviser Charging will at last allow competition to operate in the consumer interest. I do not believe for one moment that it will have this effect. After 20 years I think it is time for the FSA to ask whether competition is an effective mechanism in this particular market (and the EU should also consider this point). When the "task force" I mentioned was operating it had no option but to try and use disclosure as a regulatory tool because the Financial Services Act 1986 specifically prohibited the regulators from making rules which limited the structure or level of commissions. The FSMA contains no such prohibition and so it is open to the FSA to impose limits on the structure or levels of commissions instead of pinning its faith in Adviser Charges.

Q10. Do you agree with our proposals on Adviser Charging for product providers?

12. If Adviser Charging is introduced then clearly the FSA needs to prohibit providers from also being allowed to pay any commission to advisory firms. I strongly agree with the FSA's proposals at 4.15 of the CP that if a provider is offering lower charges through a particular distributor then the distributor should pass these on completely to clients. I also agree strongly with the proposals at 4.17 to 4.18 of the CP placing a ban on negative charges.

Clearly the FSA cannot oblige any provider to offer the facility whereby an investor can have his or her Adviser Charges deducted from an investment and paid to the relevant adviser. This, however, raises some major issues about the whole concept of Adviser Charging as follows:

I) There is a tension between the FSA expanding the scope of retail investments on which it expects advisory firms to advise and the willingness of some of the providers of retail investments to offer the facility whereby consumers can have their Adviser Charges deducted from their investments. The providers of Exchange Traded Funds, for example, do not pay commissions and it is difficult to see such providers being willing to set up Adviser Charges deduction arrangements for those advisory firms that will depend to a significant extent on providers offering this facility. Will this not simply undermine the FSA's approach and mean that there will be many advisory firms who recommend nothing but life and pension products and some collective investments because those providers are the only ones that offer deduction facilities?

ii) There is a particular issue in relation to collective investment schemes which is to some extent recognised in the CP. Such schemes cannot offer an infinite number of options for the deduction of Adviser Charges because for each option there would have to be a separate share class in the scheme. This is simply not practicable and the FSA recognises this by saying that only a reasonable number of options need to be offered. On cost grounds some operators of schemes may simply not consider it worth offering even a limited number of share classes but where an operator does offer this facility is this not simply reintroducing provider influence on adviser remuneration which the FSA says it wants to end? That is, operators and advisory firms will reach agreement on what facilities will be offered and consumers will have no option but to accept or reject those facilities, they will not be able to negotiate for something which is not on offer.

iii) There is a risk that the system of Adviser Charges may be anti-competitive in relation to EU recognised schemes. Such schemes can be freely marketed in the UK and schemes based in Dublin and Luxembourg have achieved some penetration of the

UK market. The operators of such schemes are most unlikely to offer the deduction facility just for the benefit of UK investors and so there is the issue of whether a side effect of the FSA's proposal will be to deter advisers from recommending such schemes. Some schemes have in the past offered commission to advisers and if this is still the case there is an issue for the FSA about how it can effect a ban on the payment of commission for operators based in another EU state.

iv) There is one way in which advisory firms can have Adviser Charges deducted and paid to them even if the providers of some products (ETFs, investment trusts, recognised schemes etc) do not themselves offer a deduction facility. This is for the advisory firm to effect the business on a platform with the platform provider undertaking to operate the deduction facility for advisory firms and their clients. This could represent a major boost to the business of platforms but it is only now that the FSA has embarked on its thematic review of platforms so it is not clear if any significant problems may exist with such a migration of business to platforms. It is also forcing firms and clients to place business on platforms which they may not wish to do. In particular, there could be an overall increase in costs to consumers because there will be platform charges as well as those of the adviser.

I disagree strongly with the FSA's proposal that providers should effectively police Adviser Charges on behalf of the FSA. It is absurd for the FSA to be claiming on the one hand that it wants to remove provider influence from remuneration but then expects those same providers to take a view on what constitutes a reasonable Adviser Charge and to whistle blow to the FSA if it considers a particular case to be unreasonable. It is the FSA's job to police advisers and to use the excessive charges rule if it considers that a firm is being unreasonable.

Q11. Do you agree with our proposals on Adviser Charging for vertically integrated firms?

13. Yes.

Q12. Do you agree with our proposals on the disclosure of Adviser Charges?

14. This again is another area where surely it would have been better to await the outcome of the EU's work? Currently the FSA is asking respondents to agree with proposals which ultimately may be quite different if the EU decides matters should be addressed in a different way.

Q13. What approach should we take to the remuneration of individuals giving investment advice?

15. It is unfortunate that the FSA rather seems to have swept under the carpet its TCF initiative which among other things gave illustrations to firms about how they might embed TCF in their approach to the remuneration of its staff. However, rather than leave it to individual firms to devise their own framework for remuneration practices I think it would be beneficial for the FSA to promulgate this in the form of a Code.

Q15. Do you think that changes are needed to the way that we regulate wrap platforms and fund supermarkets?

16. It is premature for the FSA to be asking this question in the absence of empirical evidence from its thematic review on how the current wrap and fund supermarket business areas operate and what problems there might be with their current operation

Q16. Do you think that the principles of Adviser Charging, or any other alternative approaches to remuneration, should be applied to non-advised services?

17. In the interests of transparency I think it would be desirable for the distribution and product charges for non-advised business to be disaggregated and disclosed. This would provide a level playing field between advised and non-advised business.

Q17. What are your views on this model Code of Ethics as the basis for father PSB/FSA consideration and consultation

18. I have no time for "motherhood and apple pie" statements. What firms need is a clear set of rules (preferably principles based) and what consumers need is for those rules to be properly supervised and enforced by the FSA.

Q18. Do you have any comments on this approach to CPD for investment advisers, including comments on any changes that it would involve to current practices?

19. I support any move by the FSA to enhance the role of CPD.

Q19. What consumer detriment, if any, would arise if we implemented the RDR proposals for the sale of retail investment products and took no action on regulating the sale of pure protection products under ICOBS by retail investment firms? We would welcome any evidence on this?

20. It is disappointing that with all the resources at its disposal the FSA has not collected evidence on the extent to which treating investment business separately from general insurance and mortgage business may create risks and distortions. The FSA may operate with a silo mentality but the industry does not. A firm which sees that its revenue is being squeezed in one area of its business, or is facing especial scrutiny of one area of its business, has the option of simply seeking to sustain its revenue, or avoid regulatory attention, by switching more effort to another area of business. I have made the point before, by way of illustration, that when disclosure in cash of commissions for investments was first introduced the trade press was full of advertisements suggesting to advisers that they might recommend protection products on which commission was not required to be disclosed (because at the time general insurance was not regulated). The FSA should long before now have been looking to see if the consequence of tightening regulation in one area was simply to shift problems to another area.

Other issues

21. In my response to DP07/1 I raised a number of issues which I am disappointed to note the FSA has decided not to address. In particular:
I) accreditation of advice software;
ii) tackling confusing industry jargon;
iii) "unbundling" of life assurance.

On the other hand I am pleased to see that the FSA proposes to tighten up its supervision and reporting requirements as I suggested it needed to do

DAVID SEVERN

RESPONSE TO CONSULTATION PAPER 09/31

This response is not confidential.

General comments

1.1 In my response to DP07/1 I expressed reservations about the FSA's plans for some form of independent professional body external to the FSA. That was because Parliament's intention in passing the Financial Services and Markets Act (FSMA) was to establish a system of statutory regulation to replace the system which had existed prior to the FSMA. I am pleased that the current CP makes clear that there will be no body independent of the FSA and that authorisation, regulation and supervision of firms will remain with the FSA. It is now only individual investment advisers who will be subject to an additional tier of supervision (albeit some of this supervision may be delegated to recognised professional bodies) through professional and ethical standards. I think, however, that the system now proposed by the FSA could lead to:
. complexity
. confusion
. costs over and above those necessary to achieve the FSA's aim of more effective scrutiny of individual advisers
. and may fail to achieve some of the objectives for which the FSA is hoping.
The first three of those points might be acceptable if the proposals had a significant effect in achieving the FSA's laudable objectives to:
. reduce the incidence of mis-selling
. restore trust and confidence in investment advice

. encourage more people to actively engage with the sector and to recognise when seeking investment advice would benefit them.

1.2. *Reduction in mis-selling* - it is not clear that the introduction of higher professional standards with governance arrangements will make a significant contribution to reducing mis-selling. The standards applicable to investment advice are simple and long-standing (they were consulted on well before the 1986 Act). Advisers should obtain personal and financial information about a customer relevant to the services to be provided to that customer (in particular, understanding of and attitude to risk) and should only recommend a particular investment to that customer if it is suitable having regard to what is known (or ought reasonably to be known) about the customer's circumstances. Had those simple requirements been subject to a reasonable level of compliance by investment advisers since the 1986 Act came into effect there would not have been the chronic problem with mis-selling that has dogged investment advice for almost 25 years. The FSA's own CBA to CP09/18 does not attribute any benefits (from reduced mis-selling) to the creation of professional bodies. Instead it attributes the benefits as resulting from the move to adviser charges. This it is claimed will remove various forms of bias in advice (provider and product bias) as well as improving persistency. On the analysis in CP09/18 I offer the following observations:

a) adviser charging will not tackle the fact that for some advisory firms their existence is contingent on them being able to sell investments when for some consumers whom they will be advising the most suitable outcome might be to "do nothing" or just to keep their money in some form of deposit or savings account. This may particularly be the case for those consumers who are very risk averse. A failure to take due account of a consumer's attitude to risk (or even in some cases to assess it) has been a common cause of mis-selling and complaints to the FOS. This problem may persist so long as some firms have a bias towards advising the purchase of an investment, which will pay them, in preference to any other recommendation which will bring them no remuneration. As I have said in previous responses, if the FSA wants to put advice on a clear professional footing only those independent advisers or planners who are paid a fee by their client should merit the term "independent adviser" as only they are likely to give advice unaffected by what product, if any, is purchased by the client. All others should be required to include the word "sales" in their description so that the consumer is alerted to the fact that they are dealing with a sales situation as well as an advice one. As I have also said previously I see nothing wrong with selling so long as what is sold is appropriate to a consumer's circumstances and is affordable.

b) adviser charging ought to make some contribution to reducing product bias but not on its own. In my response to DP07/1 and again in the response to CP09/18 I argued that the RDR should not be confined to life, pension and collective investment schemes but should cover all those products that are capable of meeting the same consumer need. It is the fact that the FSA is now proposing that the scope of investment advice is expanded, as I had suggested, coupled with the fact of adviser charges (that are not meant to vary unreasonably among products) that should help to tackle product bias. However, there are some important reservations to this. The first is that in my response to CP09/18 I argued that it was a serious omission to exclude from the scope of advice deposit-based structured products given the problems there have been with some and the fact that they are clearly substitutable for some investments. The second is the extent to which the FSA will allow firms to "specialise". There is a risk of product bias if a firm holds itself out as a specialist in one particular product type when there are other product types that could potentially meet the needs of the consumers being served. The third is the extent to which the FSA checks that firms which claim to cover the expanded range of investments actually do so.

c) there should be less provider bias as a consequence of adviser charging although the FSA will need to watch that providers do not seek to influence firms in other ways, from indirect benefits to hospitality. Also, although the FSA proposes a ban on factoring by providers, with which I agree, the FSA will need to be alert to the possibility of providers devising some mechanism to facilitate factoring on less than commercial terms through some (possibly unauthorised) third party.

d) I have a concern that adviser charging may not be as effective in tackling poor persistency as the FSA's consultants suggest it will. This is particularly important in the context of regular premium business. The FSA has proposed that in the case of regular premium business there should be an exception that firms can continue to receive adviser charges over time without the need to provide ongoing advice to the customer and this seems a necessary relaxation. If I have read CP09/18 correctly, however, there are no conditions being set by the FSA for the "shape" which the firm gives to its adviser charges for regular premium business. In other words, the firm could set the charges for the initial years of a contract higher than for later years (no doubt justifying this on grounds of "set up" costs). If firms structure charges in this way then their incentive to ensure that business persists is that much less because of the amount they could earn in the early years of a contract. Another risk is that firms might make use of some type of contingency fee arrangement. That is, the firm might sell business on the basis of a relatively low adviser charge to be deducted from the investment but couple this with getting the customer to agree that in the event of early termination of the contract they would be liable for a fee (for which the customer could be pursued through the Courts if they did not pay).

e) the FSA's consultants do not address the possibility of a new form of bias arising and that is a shift from single contribution business to regular contribution business. It is debatable how engaged consumers will be in negotiating with firms over the level of adviser charges. Nonetheless it seems probable that firms will look for ways to make their adviser charges look low, partly so as not to deter consumers from dealing with the firm and partly so as not to appear expensive in comparison with other firms. One way in which firms might be allowed to make their adviser charges appear low is by shifting to regular contribution business so they can disclose adviser charges as £X per year which is likely to be a lot less than the sum the firm would have to disclose if they advised a lump sum investment. Whether or not this risk crystallises depends on how the FSA requires disclosure of adviser charges. A way of safeguarding against the risk would be for the FSA to require firms to disclose adviser charges not only on an annual basis but also the total the firm would receive if the contract is held for its full term (or in the case of contracts without a fixed term for a specimen period of 5 or 10 years).

f) the FSA's consultants have focused in their analysis on mis-selling resulting from commission bias. An important source of mis-selling which has not been addressed is the lack of due diligence (sometimes bordering on reckless gullibility) on the part of some firms. Product provider firms should certainly be punished for product literature which is opaque, confusing or misleading but this should not absolve advisory firms from some responsibility. Advisory firms ought to understand what it is they are advising consumers to buy and should be prepared to challenge product providers on their product literature. If advisers don't understand clearly what they are selling then they should not sell the product concerned at all.

g) in my response to CP09/18 I argued that there could be a significant shift to business being transacted on platforms if there are a significant number of providers who do not provide a facility for adviser charges to be deducted from a customer's investment. If a customer values having investments on a platform and is willing to pay for that then there is no problem. But this will not be the case for all customers and as it is probable that platform charges will increase the overall charges for each customer there could be a dis-benefit from the introduction of adviser charges that the FSA's consultants have not taken into account.

h) there is some risk of "overselling" although the effect might not be that significant. My assumption is that in many cases a firm will in future get less by way of adviser charges per £ invested than it does at present in commission. One response to this by firms could be to encourage customers to invest more in order to boost the amount of adviser charges. There ought to be a limit to this, however, if consumers feel they are going beyond the comfort level of what they can pay. Nonetheless there may be some cases where consumers may be encouraged to go beyond what is affordable by them in the long term.

1.3. *Restoring trust and confidence* - the FSA has published along with its CP some work on professionalism and trust. Although these provide a useful summary of work that has been done in these areas in the past they cannot be said to provide any significant new material nor to offer any hopes of there being a "quick fix" to restoring trust. As one of the reports comments " Restoring trust in a sector, organisation or an individual once it is lost is complex and a long-term job and requires initially an acknowledgement of the violation and an acceptance of responsibility." There are some in the industry who have not even made it yet to first base. The report also draws attention to a long known feature, the fact that those consumers who have a personal financial adviser tend to trust that individual while at the same time tending to mistrust financial advisers in general. None of these observations are new, witness the following comments taken from the 1995 annual report of the Consumer Panel of the Personal Investment Authority:

" participants repeatedly referred to financial services as a minefield....citing poor product performance, well publicised scandals in the media.... participants also had a long memory for failure, suggesting that when companies make a mistake with clients, winning back their trust takes a long time."

" Investors have an ambivalent attitude towards advisers. They usually trust...their own adviser, but consider advisers in general to be untrustworthy".

1.4. *Encourage more people to seek advice* - This is the key objective but it is the one where it appears the FSA has not worked through some of the possible consequences of its proposals or to have established a baseline from which the success or otherwise of its proposals can be measured. It is at least possible that the FSA's proposals may reduce the supply of advice and/or make it less accessible to some consumers. That is because:

a) past experience suggests that raising the qualification level for advisers will lead to some reduction in the number of advisers and so the supply of advice. This happened when the Personal Investment Authority first introduced mandatory training and competence requirements for investment advisers. At that time there was a marked reduction in the number of advisers in the "restricted advice" area (the FSA's CP121 estimated the reduction as from 190,000 direct sales staff in 1991 to 37,000 in 2000.) On this occasion any reduction in the number of advisers should be much less marked. Nevertheless there are currently some industry surveys suggesting that 1 out of every 7 independent advisers may exit the industry (JP Morgan Asset Management survey). The FSA's own work in CP09/18 also suggested some exits from the industry and some advisers moving from the independent category to the restricted one.

b) past experience also suggests that as investment advisers become more qualified they are able to command higher salaries and in consequence of that firms understandably want to focus advisers on more affluent consumers so that enough revenue can be generated to meet higher salaries. A consequence of the professionalism proposals could be, therefore, that not only is there a reduction in the total population of consumers able to access investment advice but also that within that population there will be fewer consumers who are able to access independent advice. It would have been informative in assessing the FSA's current proposals if it had updated the analysis on the size and shape of the advice market which was contained in CP121. Among other things, that earlier analysis showed that :
i) the findings of an NOP survey into the use of financial advisers (rather than the more narrowly defined investment advisers) revealed that 57% of consumers in the social grades

C2/D/E did not take financial advice of any sort and of the consumers in those social grades who did take financial advice only 35% did so from an independent adviser.
ii) the Touchstone database used by the industry and covering 13 product types revealed that independent advisers had a higher penetration rate across all product types among more affluent consumers. The one exception was where independent advisers serviced consumers in lower social grades was in the course of advising on pension scheme arrangements or through redundancy counselling. In my response to DP07/1 I argued that for many consumers the RDR will be an irrelevance because they do not have sufficient assets or disposable income to purchase investment products. The main exception to this which I mentioned was the purchase of a personal pension. In para.2.3 of the present CP the FSA say that " we must note that consumers who seek advice are currently in a minority" and then in para. 3.18 the FSA states "GPPs represent a significant proportion of the retail market. For example, in 2008 GPPs accounted for almost 40% of the new regular contribution investment business..".
iii) although there had been a marked increase in the business share, when measured by value, taken by independent advisers over the period 1989 to 2000 a very different picture emerged when market share was looked at in terms of the number of people using different distribution channels. That had shown that the market share of IFAs had remained fairly static at 20% of consumers over the same period, and so 80% of consumers were getting their advice from "restricted" sources or were using non-advised channels.
iv) when consumers were asked about what would be a reasonable hourly fee for financial advisers they suggested £70 an hour (compared with £90 for an accountant, £130 for a doctor). My impression is that an hourly rate of just £70 would have significant consequences for the revenue of firms. On the

other hand if the hourly rate was raised to a level that sustained the existing revenue of firms this would probably be a significant deterrent to consumers dealing with firms. I appreciate that it would have been a difficult exercise for the FSA but it would have been helpful if it could have done some modelling to try and assess what would be needed to sustain firms but not dampen demand for advice.

c) one possible conclusion that may be drawn from the above analysis is that the current FSA proposals may well put investment advice on a more professional footing but will do so at the expense of reducing the number of consumers able to access such advice (and particularly independent advice). There is an urgent need for the FSA to consider how best to provide for the needs of those consumers with modest means. Basic Advice might be one means of doing so. It is fortunate that the FSA has now done a U-turn on its original proposal to abandon the Basic Advice concept.

Section 2: Professionalism

2. *Q1. Do you agree that the internal model is the least costly and the least complex to establish and will achieve broadly the same outcome as an external PSB?*

2.1. It is not clear to me why the FSA needs to characterise the new structure as a Professional Standards Board (PSB). The functions of the new structure appear to be to set standards in certain areas for investment advisers and to supervise them. In carrying out these functions there will be oversight by the FSA Board. This sounds no different to what other divisions and departments within the FSA already do so why the different title? Is the FSA envisaging that in addition to oversight by the FSA Board there will be also a separate Board, with practitioner and consumer representation, operating in the professional standards area? Such a possibility does not seem to be covered in the outline CBA so why refer to a "Board"?

2.2. An internal model ought to be less costly than an external PSB. It seems to me that the FSA and the industry were living in a fool's paradise if they thought there was a realistic chance of any Government being prepared to devote scarce legislative time to setting up an IPSB when it is clearly possible to achieve higher professional standards for investment advisers through the powers available to the FSA under the FSMA.

2.3. There appears to be a significant missing element in the CBA. It will not be obligatory for investment advisers to join an RPB in which case supervision of those advisers who are non-members will fall to the FSA/PSB itself. It is not clear what assumption the FSA has made about the number of non-member investment advisers and therefore what cost will be incurred in supervising them.

3. *Q2. Are there any additional criteria that should be included for the initial and ongoing recognition of professional bodies?*

3.1. The FSA has confined its question to the recognition criteria for RPBs. There are a host of other questions about the position of RPBs that the FSA could have asked but has not. In addition to answering the FSA's specific question I raise also below some other questions about the RPBs.

3.2. *Recognition criteria* - in addition to the criteria listed by the FSA it might consider adding five more:

. that the governance arrangements for an RPB include public interest/consumer representation.

. that those industry representatives on the governing body of an RPB do not at the same time hold positions on the governing body of a trade association (so as to avoid actual or perceived

conflicts of interest).
. that an RPB has arrangements for the independent investigation of complaints against itself (whether by members of the RPB or by consumers).
. that there is information sharing not only between an RPB and the FSA but also among RPBs (so that RPBs have continuity of information about individual advisers when they move from one RPB to another).
. that an RPB consults publicly on its proposed standards.

3.3. *Competition among and sustainability of RPBs* - The FSA says that it wishes to encourage competition among RPBs which it thinks may benefit advisers and consumers. In its CBA the FSA estimates there may be around 60,000 investment advisers and that currently only around 40-50% of these are members of a professional body. The FSA also says that it believes there may be some 6 to 8 organisations that might seek recognition. If one now makes some optimistic assumptions that there is 100% take-up of professional membership by advisers, that only 6 bodies obtain recognition from the FSA, and that there is an even spread of membership among the 6 RPBs, then that would provide a situation where there should be competition among the RPBs and where all 6 RPBs should be sustainable. It is unlikely, however, that those optimistic assumptions will obtain for the following reasons:

a) it is not clear to what extent the take-up of professional membership will increase beyond its current rate of 40-50%. The rate is likely to be dependent on cost of membership compared with professional oversight by the FSA itself and also on the extent to which advisers and their employing firms perceive the intensity of scrutiny of professional standards by an RPB compared with the FSA.

b) those advisers who are currently members of a professional body seem unlikely to change professional body in any significant numbers assuming that the body of which they are currently a member seeks and obtains RPB status. The FSA must have available to it information about the current membership numbers of the 6-8 bodies it says might seek recognition. This information presumably shows that there is not currently an even spread of membership among the bodies concerned. It is possible that it is only those bodies with a large membership and able to charge membership fees that advisers will find affordable will be able to meet the criteria for initial and ongoing recognition.

c)existing professional bodies will have a distinct advantage over any possible new entrants in gaining membership from among those advisers not currently belonging to a professional body. This may make it very difficult for any new body to reach the critical mass necessary to be viable.

d) the FSA does not appear to reckon with the possibility that rather than the current membership of professional bodies increasing there is some risk of a fall. That is because membership of the current bodies is relatively "painless" but in future the professional bodies (which will effectively be regulatory agencies of the FSA) will be in the position to censure/discipline individuals against a higher standard of professional standards and ethics. This situation may not appeal to some advisers particularly when it seems inevitable that they will have to pay higher membership fees to meet the cost of the additional functions their professional body will need to undertake.

All these factors suggest that the number of sustainable and effective RPBs may be fewer than the 6 to 8 the FSA is suggesting and if that is right then the benefits of competition will be less. It also raises the question as to what is the FSA's "Plan B" and what will it cost. If there is no significant increase in professional body membership from current levels that could leave the FSA with some 30,000 or more investment advisers to supervise as to their professional standards. It is not clear what assumptions the FSA has made about this in its CBA, or indeed if it has factored in the risk at all.

3.4. *Firms and individual advisers* - the FSA says " We plan to propose a new requirement that firms obtain independent confirmation that their employees have met requirements for attaining and maintaining technical competence. We expect to recognise certain professional bodies, so that firms which have employees that are members of such bodies will be able to rely on that membership for this confirmation." A number of issue arise from this on which clarity is needed:

. in respect of those firms which cannot look to an RPB for the necessary confirmation do they then obtain that confirmation from the FSA itself?

. the FSA will presumably be leaving it to individual firms to decide whether or not they make it a condition of employment for their advisers to belong to an RPB?

. it will presumably be for individual firms to decide whether or not they pay the membership fees for their advisers?

. a firm can presumably make it a condition that advisers belong to a single RPB which it designates, but in that event what happens when an adviser belonging to another RPB joins the firm, does the adviser get compensated for the fee that has already been paid to the other RPB, are the records relating to the adviser transferred from one RPB to the other?

. has the FSA tested its proposals against employment and data protection law?

. assuming a firm is allowed to make it a condition of employment that its advisers belong to a particular RPB that could put some large firms in a significant position of influence. What steps if any does the FSA propose to guard against any unfair inducements being offered by an RPB to gain membership from large firms (which would undermine competition) and what steps would the FSA take to guard against very large firms exercising any undue influence on an RPB (it is conceivable that the threat by a large firm of withdrawing its advisers from membership of an RPB could undermine the viability of that RPB. Such a situation might undermine the independence of the RPB and make it reluctant to make any adverse findings against the ongoing competence of the firm's advisers).

. should the situation arise where an RPB is de-recognised would the FSA assume responsibility for assessing the ongoing competence of advisers and supervising professional standards until such time as the firms/advisers affected have the opportunity to consider membership of another RPB?

. is the FSA proposing in any way to recognise in its fee structure the lower costs it will incur in supervising those advisers working for firms which encourage/compel their staff to belong to an RPB?

3.5. *Complaints* - The FSA says that "In some cases, it may be appropriate for the firm to direct the complaint to the investment adviser's professional body." This throwaway remark needs clarification so that consumers have a clear and simple way to make a complaint. Among the issues that need clarification are:

. DISP1.7 currently allows a firm to refer a complaint to another "respondent". Is this rule to be amended so that firms can refer complaints to non-respondents such as an RPB?

. is the right to refer a complaint confined to a firm or can a consumer pursue a complaint with either or both the firm and an RPB?

. if a firm tells a complainant that a complaint has been referred to an RPB does that constitute a "final" decision under DISP regarding the firm's handling of the complaint?
. can a consumer object to the firm referring the complaint to an RPB?
. if a consumer is told by a firm that a complaint has been referred to an RPB must the consumer then await the outcome of the RPB's investigation of the complaint before taking matters to the FOS or can a complaint be taking straightaway to the FOS?
. if a complaint is before both the FOS and an RPB how will matters be resolved if there is a dispute about the extent to which any complaint (and therefore any compensation) is attributable to a breach of regulatory standards by the firm or a breach of professional standards by the investment adviser?
. will RPBs have power to order compensation (probably for distress an inconvenience) against an investment adviser and how will such awards be enforced?
. can the FSA give guidance on the sorts of issue which might be matters for RPB investigation rather than by a firm (bearing in mind that any breach of professional standards or ethics by an adviser could arguably also be said to be a breach of the principle of integrity and fair dealing by the firm).

3.6. *Conflicts of interest* - the arrangements described by the FSA could lead to the situation where some investment advisers consider that their professional/ethical standards are being compromised by their employing firm (e.g. because of targets set for business production). How does the FSA see such conflicts of interest (loyalty to the firm versus loyalty to the profession) being resolved? If an adviser "whistle blows" to his/her RPB is it then a matter for the RPB to take up with the firm concerned or does the RPB have to refer the matter to the FSA for investigation?

3.7. *Professional indemnity insurance (PII)* - The FSA says that higher professional standards should mean, among other things, a reduction in the incidence of mis-selling. If the FSA is correct in that assumption then ultimately it may lead to a reduction in the premiums that need to be paid for PII cover. Initially, however, it seems possible that there may be an increase in the costs of PII and this possibility has not been assessed by the FSA. Initially the PII market will not have evidence that there is a reduction in mis-selling. It will, however, be clear that the scope for complaints (and therefore possible claims on PII) has increased. That is because there will be new professional standards and a code of ethics which investment advisers may breach, and there may be additional complaints to the RPBs or to the FOS.

4. *Q3. Do you agree that the arrangements described will deliver the required increase in the quality and consistency of professional standards across investment advice sectors?*
There should be some improvement.

5. *Q4. Do you agree that updating the FSA register with further information about advisers' qualifications, and introducing practising certificates for advisers, will contribute to the restoration of consumer trust and confidence?*

5.1. It is difficult to answer the FSA's question about including further detail on the Register in the absence of information on a number of points. They are:
. what information does the FSA have about the extent to which consumers currently access the Register and more specifically is it known how many consumers access the information about individual advisers rather than information about firms?
. what information does the FSA have about how consumers use

the information currently available on the Register (for example, is there any evidence to show that consumers use the information to check out advisers before dealing with them)?

. how would the FSA envisage presenting the information and making it usable by consumers? For example, a mere "alphabet soup" listing of qualifications is not likely to be helpful to consumers without some explanation of their meaning.

. how does the FSA envisage consumers making use of the new information? Is it envisaged that consumers will "shop around" and choose an individual adviser and then ask a firm to deal with that person? Is such consumer behaviour a realistic expectation and even if it is would a firm necessarily meet the consumer's expectations?

. according to the FSA's CBA there are around 60,000 investment advisers. Even if the population of advisers was relatively static, in terms of the firms they work for, their functions within a firm, and the qualifications they hold, it would be a major task to keep the Register up-to-date. Is the cost worth the value consumers might derive from the additional information?

5.2. As part of its "Evolution Project" the Personal Investment Authority (PIA) asked if advisers should be required to display a " licence" (or "practising certificate" as the FSA is now calling it). Views on the PIA proposal were divided and it was not pursued. Once again it would help to take a view on the FSA's current proposal had more context been provided, such as:

. the extent to which other professions are required to display a practising certificate.

. what evidence does the FSA have that consumers actually read and understand practising certificates displayed by other professionals?

. what do other professions do to try and make practising certificates meaningful to consumers?

. to what extent do FSA regulated firms and their advisers

already display similar material, such as qualification certificates, membership of professional bodies?
. would firms and advisers be prohibited from displaying too many (or indeed any) certificates other than the practising certificate to avoid consumers being presented with too much information?
. how does the FSA see the practicalities working (e.g. some advisers see clients in a meeting room used by other advisers so does one adviser put up his certificate when seeing one of his/her clients and take down any certificate that another adviser may have had on display? What about advisers operating from more than one office, are they allowed to have one certificate for each office?)

5.3. My view is that there is probably not much value in the FSA requiring practising certificates to be displayed unless it can produce clear evidence that the use of such certificates in other professions has produced a measurable increase in consumer confidence in the profession concerned. While there might be merit in the FSA including on the Register more information about advisers it is really dependent on what the answers are to the questions I pose in para. 5.1 above.

6. *Q5. Do you think the arrangements described will support the aim of beginning to improve the reputation of retail investment advice?*

6.1. The arrangements should not harm the reputation of retail investment advice but it is debatable how much they will improve the reputation.

7. *Q6. Can you provide evidence of any other qualifications meeting all three of the stated criteria?*
No comments on this question.

8. *Q7.Do you agree that option iv is the most pragmatic solution and do you agree that these proposals will provide advisers with transferable evidence of their qualifications?*
No comments on this question.

Section 3: Corporate pensions

9. *Q8. Do you have any comments on our analysis of the current GPP market?*

9.1. The analysis of the current GPP market which the FSA presents in Chapter 3 of the CP is very worrying and suggests that it would be appropriate for the FSA to carry out thematic work with a view to determining whether there is case for an industry wide review of GPP sales. As the FSA notes, GPPs represent a significant proportion of the retail investment market. The FSA also notes the risk that the availability of initial commission may encourage advisers to re-broker existing schemes more frequently than necessary and at times when not justified. From its own persistency report for 2008 the FSA notes that only 41.7% of GPPs arranged by IFAs in 2003 were still in force after four years. The FSA then says " Some lack of persistency will result from changes in individual employees' circumstances .... but the overriding conclusion is that GPP business is being moved around the market, with comparatively little true new business". The FSA is meant to be a risk-based regulator. Yet, here is a risk of major detriment to consumers which the FSA could have spotted earlier from its own persistency returns and other data and which it does not seem prepared to do anything about.

9.2. More generally on persistency, data has now been published for almost 20 years and it has consistently told a sorry tale. It is not good enough to say that this is because of "changes in circumstances". It **is** predictable that **some** consumers will be subject to changes such as divorce, redundancy, or change of job but not which consumers. Given that a change will be inevitable for some consumers both investment products and advice should cater for this. I have covered this in a little more detail in the annex to this response.

10. *Q9. Do you agree with our proposals for applying the principles of adviser charging to the GPP market?*

10.1. The FSA does not appear to have followed through the logic of adviser charging to the GPP market. As I read the draft rules it is the employer in discussion with the investment adviser who will determine what can be charged for those employees who avail themselves of the opportunity to receive advice. Surely the logic of adviser charging is that it is those individual employees who want advice who should be able to negotiate with the adviser about how much that advice should cost? An employer may not simply care what it agrees to by way of the charges for advice as it will be the funds of the employees who take advice that bear the charges. Indeed, the FSA gives some evidence of this in its CP:

. "We understand that few employers opting for the adviser commission model negotiate the level of commission to be paid".

. "Employers that do not pay fees to their advisers may not always fully engage with the amount of their advisers' remuneration".

It appears that the FSA is not even proposing that employees be told of the charge which is being made for advice (and which will come from their own pension fund) and agreed by their employer. In para.3.11 of the CP the FSA says "there would be no need for adviser firms to disclose advice charges to employees". That is surely wrong.

10.2. I agree with the FSA's proposal at para. 3.13 that it should extend to GPPs the ban on factoring.

10.3. I am concerned that the FSA is not being more pro-active and vigorous in safeguarding the interests of consumers in relation to GPPs. In para.3.14 the FSA says "Commission will be allowed to continue on existing schemes, including for new scheme members and for contribution increases for existing members, where those arrangements are put in place before the new rules come into force. We will monitor the market closely between now and 2012 to mitigate the risk that, to take advantage of commission offerings, GPPs will be recommended to employers whose workforces are likely to be better served by Personal Accounts". This simply does not sound good enough. What exactly does the FSA propose to do to unwind the position if it is shown that consumers have been put in to a GPP when they would clearly have been better served by a Personal Account? What exactly is the FSA going to do if between now and 2012 the merry-go-round of re-brokering existing GPP schemes gathers pace so that firms can generate as much commission for themselves as they can before the shutters come down?

10.4. There is another admission of inaction by the FSA in relation to the levels of commission on GPP business. In para.3.11 the FSA says "At present there is evidence to show that commission-based adviser remuneration does not necessarily depend on the breadth and duration of services provided and can sometimes exceed what might be considered a 'fair value' ". Then, in para. 3.34 the FSA says " An adviser's commission-based initial remuneration could amount to a substantial sum, say around £36,000 for a not untypical GPP scheme" (The FSA assumes 50 members, each paying £200 a month) . It has to be asked why the FSA has not taken action before now (on TCF or "excessive charges" grounds) to tackle this issue and why it seems prepared to let matters drift on in the same way until 2012.

10.5. I agree that the FSA should give further consideration to the possibility of allowing commissions to continue to be paid on stakeholder pensions given that there is a cap on the overall charges that can be taken from a stakeholder pension. This is consistent with what I said in my response to CP09/18 that after more than 20 years of trying to get consumers to exercise a pro-competitive influence on advisers' remuneration (adviser charging being the latest attempt) it is now time for the FSA to consider an alternative approach such as a cap on commissions.

10.6. I agree that the FSA should introduce a ban on commission on investment products linked to occupational pension schemes so as to avoid the risk that advisers select the occupational pension route to avoid the regime being introduced for GPPs.

11. *Q10. Do you have any suggestions for the fairest way of allocating consultancy charges among different members of a GPP?*

In a principles-based regulatory regime in which firms have a responsibility to treat customers fairly is it necessary for the FSA to lay down any rules or guidance on how charges should be allocated? Might a solution be to require that a firm of employee benefit consultants or actuaries independent of the firm which advises on the GPP to certify that charges have been allocated in a reasonably fair manner?

12. *Do you have any comments on the CBA?*

No

Section 4: Pure protection

13. *Q12. Please provide any analysis or evidence you may have on the application of professional standards to pure protection advice.*

13.1 In my response to DP 07/1 and to CP 09/18 I argued that the FSA needed to be alert to the risk that by tackling perceived problems in the investment business area it did not simply shift problems to another business area. This because firms do not have a silo mentality and when subject to regulatory attention in one area can look for ways to maintain their revenue and /or escape regulatory attention by shifting problems to another area of business. I am therefore pleased that the FSA has now paid some attention to potential knock -on consequences for protection and mortgage business if it raises standards in the investment business area. However, the FSA's proposal that firms should be required to disclose commission on protection business when that business is sold alongside investment business raises many questions over the practicalities and in particular whether firms could easily find ways of side-stepping the requirement. For example:

. if the same adviser sells protection business to a customer on a different occasion to advising on investment business does that trigger the disclosure requirement?

. if an adviser completes investment business work and then passes the customer on to a colleague to deal with protection business does that trigger the disclosure requirement?

. if a firm splits itself into different trading arms so that protection business is done in a separate part from investment business does disclosure operate then?

Other matters

14. When commenting on other FSA documents I have drawn attention to the increasing importance of IT, not only in delivering advice but also in carrying out supervision. I would like to make some further observations on this subject.

14.1. The pilot exercise conducted for the Basic Advice consultation paper illustrated how some fairly basic IT could help in delivering fairly good advice to consumers. For the pilot exercise a piece of software was developed in a very short timescale and on a very low budget and it delivered outcomes which when assessed by qualified independent advisers constituted "good advice". As long ago as the mid-nineties a major computer company had aspirations to build an "expert system" for financial advice and held discussions with the PIA over this. 15 years ago that idea was probably just too ambitious but it ought now to be in the realms of the possible given sufficient investment. As an example, I point to the article " An Agent - Based Hybrid Intelligent System for Financial Investment Planning" by Drs Zili Zhang and Chengqi Zhang describing an experimental system. Such an intelligent system might not take too long to develop nor cost too much if the 80/20 principle is adopted, that is build something which caters for the majority of retail investors and for those whose circumstances are really out of the ordinary they could be referred to qualified advisers. An intelligent system could :

. reduce the costs of delivering high quality investment advice and so make it more accessible to a broader consumer base

. provide comprehensive coverage of the expanded range of investments which the FSA now wants to see as part of the RDR

. include non-investments and so remove the bias which may still exist even with the introduction of adviser charging for advisers to recommend an investment product in preference to

a non-investment
. carry out a more thorough exploration of every consumer's attitude to risk and recommend product types that accord with that attitude (bearing in mind that one of the big issues over mis-selling has been the failure of advisers to give proper, or any, weight to a customer's attitude to risk)
. open up the internet as a delivery channel for investment advice
14.2. I have also commented to the FSA previously on the application of IT to supervision. I drew the FSA's attention to the fact that some insurers were using voice analysis software when dealing with claims from consumers as a means of identifying those claims that might warrant more thorough investigation. In the context of TCF, where the FSA was conducting telephone interviews with some firms, I suggested that the FSA itself might use voice analysis software as one means of identifying those firms which might merit more thorough investigation. More generally, the FSA might look more closely at the use of artificial intelligence in its supervision work to enable it to work smarter and to at least keep staff costs under control if not to actually reduce them. Artificial intelligence is now being used in a variety of contexts - medicine, pharmaceutical, military, and also in finance (e.g. to help detect money laundering).
14.3. In my response to CP06/19, DP07/1 and CP09/18 I have argued that the FSA should set up some form of accreditation system for computer software used in financial advice (just as there is accreditation for exams). In this context the FSA may like to note that recently the U.S. Department of Labor announced new rules for 401Ks one of which was that "computer models used to offer advice would have to be certified as objective and unbiased".

15. The package of RDR changes resulting from the current CP and the previous one are unlikely to be effective unless there is

a communications strategy explaining in simple terms to consumers what is going to happen and how they can best look after their own interests. As a theme running through the RDR is the aspiration to raise trust in the investment advice sector a communications strategy is probably best left to the FSA which ought to be seen by consumers as a trusted source for messages about the RDR. At present it is not clear:

. what the FSA's communications strategy is for the RDR
. when the FSA will begin to implement its strategy
. what resource the FSA will devote to the strategy, and
. how the FSA's strategy will dovetail with anything planned by industry and consumer bodies in this regard (indeed, there might be value in the FSA establishing and chairing a steering group on this with other interested parties).

16. The Treasury Select Committee called on the FSA to devise a simple and clear system of risk rating for investments so that consumers could be helped to safeguard their own interests. It is a pity that neither the FSA nor the industry have yet responded to the challenge as clearer and more balanced product information would help to build trust.

17. It is a pity that the FSA has not taken the opportunity to tackle a long-standing issue with the GPP market. That is, employers being advised to close down existing occupational arrangements and replace them by a GPP so that the employers can save money. In the GPP context the employer is the client of the investment adviser and the adviser would be failing in his/her duty to the employer if he/she failed to recommend a solution which did not achieve the employer's objective to save money. Unfortunately the new arrangements may be detrimental to employees compared with the employer's previous pension arrangements. In these circumstances it is a bit rich for the adviser then to "change hats" and be expected to

look after the best interests of individual employees when advising them. I appreciate that the FSA has major problems in trying to resolve this issue but I wonder if a disclosure by the investment adviser to the employees to be advised might meet the case. Something on the lines:
" I have been engaged by your employer to replace the company's existing pension arrangements with what is called a Group Personal Pension (GPP) so that your employer can save money. Although the GPP now available to you is less generous than the previous pension arrangements it still makes sense for most people to save for a pension than not to do so. I can advise you on whether or not it makes sense for you to join the new GPP."

3 March 2010

Annex

1. The first information about poor persistency of business in the retail investment market came as long ago as 1991 when the Securitas and Investments Board (SIB) published a survey (derived from the annual returns to the Department of Trade and Industry) of industry-wide data about persistency. The SIB Chairman at that time commented ".. depending on the type of regular premium policy, the industry is losing up to a quarter or a third of new savers within two years of signing them up - and this for products sold on the basis that they will run for 10, 15 or as much as 25 years." He went on to question whether firms were paying sufficient regard to possible future changes in the circumstances of their customers.

2. When the Personal Investment Authority (PIA) was established it made rules in 1994 requiring life and pension product provider firms to report annually on persistency. The

PIA published annual reports on persistency from 1995 onwards which gave company specific information on persistency according to different product types, different distribution channels and whether single or regular premium business. Taking as an example the PIA's 1999 report, this showed that for regular premium pensions (which would have included much GPP business) the industry-wide average for business sold through company representatives was just 59.8% for policies sold in 1994 and the corresponding figure for sales made by IFAs was only a little better at 68.3%. In its general commentary on the persistency returns for 1999 the PIA commented:
" The purchase of a regular premium ...pensions policy involves a long-term commitment by the investor. The charging structure of most policies means that ceasing to pay premiums early often results in a loss to the investor. If investors buy policies on the basis of good advice, therefore, they would not normally be expected to cancel premiums to their policies unless forced to do so by unexpected changes in their personal circumstances. This means that persistency can be a powerful indicator of the quality of the selling process."

3. Another initiative by the PIA was the publication of its "Disclosure" reports. The first such report for life and pensions business was in 1996 and from 1998 the PIA also published similar information for unit trusts and investment trusts. These reports contained information about commissions, charges, early surrender values, reductions in yield and so on, again on a company specific basis. In the present context, the reports drew attention to the fact that investors often got back less (and sometimes very much less) than they had paid in to a regular premium personal pension if they stopped the pension in the first 5 years.

4. The poor persistency and the poor surrender values to which

the PIA drew attention were the basis on which the report "Polly Put The Kettle On" (to which the FSA refers in its CP) was founded.

5. In 1995 the PIA consulted (Consultative Paper 9) , among other things, on requiring persistency returns from IFA firms so that the persistency level could be seen at individual IFA firm level rather than just at the aggregate level for IFA distribution channel obtained through the returns from product providers. At the time it was not considered a practicable proposition to collect such data from individual IFA firms for cost and IT reasons.

6. The FSA continues to publish persistency reports but it now only does so on an aggregate basis (i.e. individual companies are not named). The 2009 report comments:
" If investors buy policies on the basis of good advice, they would not normally be expected to give them up, unless unforeseeable changes in their personal circumstances means that they genuinely felt they had no alternative". There have been several studies over the years of the causes of poor persistency all of which have come up with the not very startling information that changes such as divorce, unemployment and job change figure large in the changes of circumstances which cause policies to lapse. While it is understandable that consumers may not wish at the time they are advised to take out a pension to consider the possibility that in future they may be getting divorced or will lose their job these are circumstances which surely ought to figure in the thinking of those who design personal pensions and those who advise on them. Divorce, unemployment and job changes cannot be predicted but they are common enough that the industry and the regulator ought to reckon with them as being a likelihood for some consumers. As examples:

- the Office for National Statistics gives the divorce rate in 2009 as 11.2 divorcing people per 1,000 married couples.
- the ILO Labour Force Survey for September 2007 (i.e. before current economic problems really started) gave the number of those on Jobseekers allowance as 835,000 but estimated the true level of unemployment as1.66 million. In January 2010 the number on Jobseekers allowance had risen to 1.64 million and again the true number of unemployed will be much higher.
- a National Statistics Feature highlighted the relatively short duration of employment with one employer for many UK workers and that the duration was falling. In 1996 half of all employees had been with the same employer for 5 years or less (i.e. the period during which a consumer is at risk of suffering loss due to early surrender of a policy) and by 2001 the period had fallen to 4 years or less.

7. The FSA is right to point out that over the years there has been some improvement (mainly due to the attention that the PIA drew to poor surrender values) in the returns consumers get when terminating a contract early but the FSA does not attempt to quantify this. I think in its next persistency report the FSA should report not just on the number of contracts that have been terminated but also makes some attempt to estimate how much consumers have lost as a result.

From:
Sent: 17 December 2015 14:32
To: FAMRSecretariat
Subject: Davies Financial Limited

Dear Sir/Madam

Firstly I| would like to start by saying there appears to be a lack of provision for advice for the mass market.

In recent years, the number of financial advisers has decreased, the price of advice has risen and the focus has moved to higher net worth individuals. The cost associated with providing advice is a significant aspect of the 'advice gap'. Part of the solution in making financial advice more accessible to a wider market must be to reduce the cost of giving advice. Addressing the issue of costs will significantly extend the availability of financial advice to a wider market. However, we accept that this is part of the solution as there are limits to how far bespoke advice can be made cheaper. To develop cheaper models of advice for a greater number of consumers provision of a new form of simplified advice (a 'safe harbour' governed by a set of simpler guidelines) will be needed.

The advice gaps

The Citizens Advice analysis is a useful way to consider the issue, although we must accept that their numbers provide a broad brush approach. They identify an 'affordable advice gap', consisting of 5.4 million people who are willing to pay for advice, but not at current price levels; the 'free advice gap' consisting of 14.5 million people who would benefit from advice, but are not in a position to pay for it and the 'awareness gap' relating to 10 million people who miss out on the benefits of advice because they do not know advice is available or how to get it.

The 'affordable advice gap' can be addressed if appropriate changes are made to the market framework. Whilst advice is readily accessible for general insurance, mortgages and protection, this is not the case for holistic financial planning and investment advice for those with lower asset levels. In particular, with the pension freedoms, there is far greater choice at retirement, so the challenge is especially around financial planning and investment advice at retirement for those with small to medium sized pots (in the region of 30-60k). For these small to medium pots the cost/benefit equation becomes very relevant and the higher the cost of delivery of advice, the greater the challenge to demonstrate it's worth.

Possible Solutions

Lowering the cost of advice will improve access. It would help address the 'value for money' issue and would make seeking financial advice more appealing to a wider number of consumers. For this reason, we believe that reducing the costs of advice firms is a fundamental step in tackling the problem. We recognise however, that individual bespoke financial advice will inevitably always involve a certain level of costs, placing it out of reach for a section of consumers with more modest income and asset levels, but who have capacity to pay. We believe a form of simplified advice could address this group – a simpler process in conjunction with a limited range of products should be close to suitable for anyone.

<u>Reducing the cost of advice</u>

1. Liabilities and the cost of compensation
    - Lack of a longstop – the cost of advice is driven by the need to manage future liabilities and having an open-ended liability significantly increases the uncertainty and ability of firms to model and manage that risk. The uncertainty around liability not only increases the cost of advice for consumers, but also inhibits the development of simplified advice models and encourages the growth of non-advised models which offer less consumer protection. It is also a major barrier to investment with the consequence that

firms remain small and fragmented and unable to become more efficient and cost-effective by, for example, introducing more stream-lined services and economies of scale.

- High cost of FSCS levies - levies have increased to an unsustainable level and their unpredictability undermines good business planning. They are also perceived as unfair as the whole profession has to pay for the bad advice of a few 'bad apples'. Again costs for this are passed on to clients. A product levy is desperately needed which would cover the cost and be neutral for a firm's finances. The scope of compensation should be limited to certain products, through the creation of a 'whitelist' of products which are compensable together with caps on maximum compensation levels. This would have the consequence of lowering the overall costs of adviser firms and increasing accessibility of financial advice to a wider market.

2) Regulatory Costs

In our case the costs of regulation can be broken down into two categories;

1. fixed 'tangible costs that we pay each month/year and represent approximately 7% of our turnover. As mentioned previously this has been rising dramatically over the last few years.
2. this one is more difficult to quantify and represents the time spent on preparing regulatory reporting requirements such as GABRIEL and over-cautious research and reporting to comply with the high levels of compliance needed, to work within the very onerous compliance framework imposed upon us. At best estimations we anticipate this represents more like 15%-20% of our time and therefore with the fixed costs represents 22%-27% of our total revenue each year.

There is need for 'better regulation' with the aim of:

- Reducing reporting requirements
- Freezing regulatory bodies' budgets
- Simplifying the Handbook
- Bringing back regulatory fines to reduce the cost of regulation - this one being a significant contributor to reducing costs to the adviser industry.

Development of simplified advice models

In order to provide advice at a lower cost, the process must be scalable to realise economies of scale. Whilst such models may not be optimal and personalised, they should still provide good solutions for the consumers. It could only work with a limited range of designated safer products that were suitable for a wide range of consumers.

How to create cheaper advice models on a greater scale?

- Clarification and distinct boundaries between 'full advice' and 'simplified advice'. The FCA guidance leaves much to ambiguities about 'context' and how the consumer feels they have been advised. There needs to be clarity in respect of the definition of investment advice and it must rely on objective criteria.
- Clear guidance on key elements of suitability.
- Limited range of designated safer products suitable for a wide range of consumers.
- FCA to set parameters for a simplified process.
- Creation of a 'safe harbour' for defined product or processes. If the limits and scope of the advice were explained and made clear, the consumer should not have recourse in relation to matters outside that scope.

Reform of FOS

Any simplified advice model would require reform of FOS, as there needs to be certainty as to FOS's approach regarding simplified processes. There are also general concerns about the way FOS handles complaints. These relate principally to a lack of clarity as to processes and procedures, inconsistency of decisions, lack of training and guidance provided for adjudicators and a bias towards complainants.

Therefore a reform of FOS is necessary to ensure that it is a fair process that follows legal principles. It should be impartial and fair at every stage, including having an independent appeal procedure separate to FOS. It is important for there to be no perception of bias and separation provides more effective scrutiny of decisions. And separation of appeals processes is the more conventional approach.

I trust these points will be considered in making your decisions regarding FAMR.

Regards

Julian Davies Dip PFS
Managing Director

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DAWN SLATER WEALTH MANAGEMENT
Independent Financial Advisers

FAMR Secretariat
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

15 December 2015

Dear Sirs

FAMR Call for input – Response letter

We, the undersigned, are all member firms of the Berkshire IFA Group and wish to make our response to the Financial Advice Market Review as recently requested. The Berkshire IFA Group was established in 1992 as a voluntary self-help and learning group to assist members who are directly authorised by the Financial Conduct Authority. The intention of the group, who meet formally once a month at Maidenhead Golf club, is to assist members by giving a forum to discussions about industry topics and specifically compliance matters, whilst also providing two industry speakers each month to assist with meeting ongoing CPD requirements, and to promote professional standards of advice.

We have in the past received speakers from both the PIA (Richard Cockcroft) and FSA (Linda Woodall), as well as representatives of the IFA community (Roddy Kahn and Garry Heath).

We have chosen to respond to 5 key points that we believe are the most important

Please would you be good enough to treat this letter as being from each authorised member as listed below rather than as one response from our Group as a whole, and we should also like to add that one or two members have responded in their individual capacity rather than on behalf of their authorised company.

Yours faithfully

Berkshire IFA Group members

Dawn Slater

Dawn Slater Dawn Slater Wealth Management Newbury

Christopher Culley	Culley Financial Services Ltd	Newbury
John Ashworth	The Safe Insurance agency	Maidenhead
Lachhman Banwait	Amar Financial Services	Hayes
Gary Brooks	Jarvis Watson	Reading
Anton Cross	The Devereux Partnership	Windsor
Ian Davis	Hynes Davis Limited	Newbury
Helen Fraser	Orchard House (IFAs) Ltd	Marlow
Elaine Given	Orchard House (IFAs) Ltd	Marlow
Carl Hope	Douglas Hope Financial	Newbury
Kevin Hopwood	Hopwood Ash Financial	Newbury
Hugh Hornby	The Devereux Partnership	Holyport
Paul Howard	Box Financial Planning	Theale
Hugh Morton	Morton Financial Services Ltd	Whitchurch
Linda Hulls	Cameron Trinity	Charlton
Geoff Mason	Geoff Mason Associates	Didcot
Charles McCarron	Carlin Insurance Services	Guildford
Andrew Nicholls	Beaufort Asset Management	Reading
Peter Chesworth	Ethikos LLP	Reading
Tony Ross	The Ross Partnership LLP	Windsor
Baldev Sihota	Guardian Financial Planners	Slough
David Stephenson	Wise Investments	Reading
Andrew Watt	Watt Money	Maidenhead
Mark Wilkin	Alexander Rowan LLP	Reading

Addendum

May we start by making comment regarding the make-up of the advice panel for the FAMR. As far as we can tell, only one member is actively involved in advising clients on an ongoing basis, which given the aims of the review, seems outrageous and something that urgently needs to be addressed.

1) The extent and causes of the advice gap for those people who do not have significant wealth or income.

As essentially we are all small firms, it is very difficult to provide any real documented evidence relating to the increase in the advice gap that has undoubtedly occurred since RDR. In some senses for this particular group of consumers this was already happening, as more consumers have joined employer pensios schemes (group stakeholder and now auto-enrolment) through their employers, who may previously have been IFA individual clients for their retirement planning.

- We agree that for general insurance, banking and deposits, credit products and even the lowest levels of savings, consumers have not generally sought advice from advisers and this is likely to remain the case in the future. However, historically IFAs have been the main source of advice for retirement planning, but less so in the future. This has helped to cause the problem now occurring with pension freedoms, as many clients seek to access their pensions, but have no adviser relationship to support them. As from a consumer point of view, RDR increased all associated costs of advice (and restricted consumer choice as to how to pay for advice). This resulted in closure of advice channels and the loss of a great many IFAs (either at the date of RDR or earlier knowing that it was coming and unwilling/unable to comply with exam requirements and other issues). Other advice channels were lost to the consumer as a result of increased regulation and the conversion to fees rather than commissions.

We have all been faced with turning away potentially new clients with relatively small pension pots as they were unwilling to pay the level of fee that we feel we need to charge to cover full compliance with FCA rules (especially for insistent clients) and the potential future liabilities that all business could entail. Previously these clients may well have had a relationship with an IFA and would probably have been offered ongoing advice, including at retirement.

- Whilst there may well be potential clients who have a lack of trust in advisers (according to your Mintel survey), this is not an issue for those clients who use an IFA, as this has been the major (and at very many firms the only) method in which IFAs obtain their new clients, through existing client referrals. Clearly therefore there is trust between IFAs and their existing clients, as without this client referrals would not happen. A great many small IFAs do not advertise their services whatsoever, relying only on client referrals for expansion. The 'lack' of trust referred to as a reason why clients will not approach IFAs is largely based on the continued negative press that the industry receives (with little or no positive press coverage), but really is a damning confirmation of the complete failure of regulation to stop scams and frauds from taking place, despite the seeming billions spent of this.

- Small IFAs are reluctant to assist certain types of client as interpretation of regulation is unclear creating known unknowns. It could be argued that the cost of over-regulation has added to the advice gap, as advisers cannot operate cheaply under current requirements. It is also the case, despite what the FCA say, that Small IFAS are running scared of FOS. The effect of this is to over document for protection against FOS, with the consumer having to pay for this, or in perhaps more cases, being rejected as a new client on a cost basis.

- Pre-RDR, a great many advisers used larger commission business cases to subsidise smaller unprofitable business, which has subsequently become impossible. This has had an effect on the advice gap, and also to a large extent, on 'pro-bono' work, which has increased the advise gap. Now that most pay fees, which tend to be lower than commission payments, advisers do not have the spare financial capacity to offer lower paid clients advice for next to nothing. And although many advisers offer pro bono advice to some clients who can't afford advice such clients tend to be the ones who seek Claims Management Companies when opportunities arise.

- Perhaps the biggest reason however for the increase in the advice gap has been the removal of commission from advice, as the consumer had been willing to seek advice on the basis that there was not initially a direct cost to them personally, but now the middle wealth/ mass affluent no longer think advice is worth paying for when the result of the advice is 10 + years ahead. It is this lack of ability to see value short term that has put off consumers seeking advice, as pre-RDR, even though they undoubtedly knew that they were paying for the advice, they were not having to pay out of their own bank accounts here and now. Also, the compliance costs of taking on a new client are so high that unless the client's future fees can cover that cost, the adviser makes a loss on that client.
- It also appears true to say that consumers are having difficulty in understanding what constitutes 'free guidance' and what is advice. Feedback seems to suggest that consumers do not understand these mixed messages.

2). The regulatory or other barriers firms may face in giving advice and how to overcome them.

- Costs – The biggest barrier faced by firms is the cost of regulation; the fact that large parts of it are totally unknown in advance; and that these costs in no way relate specifically to what the firms actually do (i.e. FSCS levies). Costs for seemingly unexplained reasons go up by much more that the rate of inflation annually, whereas firms find it difficult to increase fees to consumers accordingly.

- Regulatory rules are complex, shifting and require a great deal of effort to be understood, even by advisers of many years standing. Far too much time is spent generating suitability reports, which cover every possibility in order to be compliant and which the majority of clients do not read, often fear, certainly only file. That same information is then included in the product information and documentation – again far too lengthy, drowning the essential points in legalese and compliance statements which are intended to inform the consumer, but in fact confuse them. Simpler rules and regulation are needed along with simpler products.

- FOS – Acting somewhat like an ambulance chasing Claims Management Company, by rejecting actual complaints and then ruling on something that was not actually complained about. It is also alleged that FOS apply current rules to historic complaints.

- Claims Management firms marketing alarming headlines, but mostly submitting speculative claims not based on any actual facts, with no penalty or restrictions for doing so. This appears to create an open-ended liability for advice firms, and which result in the adviser's insurers excluding insurance cover at the next review.

- FSCS levies - Exiting firms reduce the pool from which these and other levies may be requested. This in turn creates higher costs for the remaining advisers. Taken to its logical conclusion it must follow that as costs increase ever more for advisers, most of whom, who are nearing retirement age, will wind up their businesses until there are no personal adviser businesses remaining. Younger advisers can see that the business of running a financial service firm is fraught with difficulty and uncertainty and are reluctant to take the financial risk of joining a business or setting up a new one. The funding of the FSCS needs a fundamental rethink.

- Clients don't know the value of advice or what sort of advice they are looking for. There is surely a strong case for making financial planning mandatory at schools for 15 year olds upwards.

- The 'Long Stop' – The lack of a time scale for bringing a complaint is a major disincentive for advice firms. Your report suggests that only 64 cases have been upheld by FOS where a 15 year period has elapsed since the advice was given. As we know, that may well be 76 advisers now living in poverty in retirement through being financially wiped out.

3) How to give firms the regulatory clarity and create the right environment for them to innovate and grow

- All new products to be screened and approved by the FCA – meaning that if the product subsequently failed through fraud, the adviser would not be liable for claims made for losses incurred.

- A new regulator to be set up to regulate the provision of professional advice only – perhaps called the 'Professional Advice Regulator'. All other firms would remain regulated by the FCA or the PRA. This would bring together under one roof all the better qualified advisory firms, with one rulebook specifically for professional advice. Currently advice firms are amalgamated with Investment, Life Assurance, Pension companies and banks and the bad news sticks to the wrong sector.

- The introduction of low risk products and specify who/ which type of client the products may be sold to as overseen by independent due diligence provider. And perhaps drop the concept that of products being low/medium/high risk. The idea that anyone can quantify the risk associated with any investment is flawed and misleading. In particular, it misleads the consumer into thinking that someone, somewhere, typically the adviser, has measured the risk of a product. Risk as a relative measure may be used, but again, the consumer tends to confuse the concept of risk as a relative measure with risk as an absolute value. Instead, the measure of risk to the client's financial well-being should be measured against the strategy promoted and recommended by the adviser, not on the basis of a product being deemed suitable or otherwise.

- Better guidance on insistent client versus best interest rules. Currently the rules put the adviser on an un-even playing field. One adviser confirms inappropriate advice, another may have a different motivation and end up with a claims management issue. In fact consider a rule that an insistent client who signs a disclaimer cannot therefore approach FOS at a later date. The relationship between the adviser and the consumer must be stated and clear at the outset. The adviser provides advice concerning a single product for a specific need and/or advice that encapsulates a range of products comprehensively. Advice is only an opinion to which the consumer is free to adopt or reject. Insistent clients have a right to determine how to spend their money, even if the adviser does not agree. However, the blame for a subsequent change of heart should not be laid at the door of the adviser and their insurance companies.
- Meaningful due diligence is extremely difficult at small adviser form levels – introduce some system to assist firms in this area. Perhaps make this the responsibility of the regulator when approving products.

- Reintroduce the 'Long Stop' for future liabilities.

- Fund the FSCS through product levies, which is how it should have been set up originally.

4) The opportunities and challenges presented by new and emerging technologies to provide cost effective, efficient and user friendly advice services.

- Robo user friendly advice opportunity is vast, as is the cost. An older generation may struggle. The above points without protection of a 'Sand Box' for 18 months, are likely to overshadow development

5) How to encourage a healthy demand for financial advice, including addressing barriers which put consumers off seeking advice

- Promote proper client focused labelling of what is guidance, but not advice, and what is advice – consumers remained confused.

- Proper promotion of independent advice – the benefits of using an independent financial adviser. Fragmented trade bodies appear unable to do this effectively. Planning should be considered in the same light as an MOT for the car. Only once a year, nothing might need to be done, and if it does, then up to the client as consumer to decide whether to proceed or not.

- Financial education in schools.

- Publicity for the benefit of advice and the good news associated with planning. Media education that independent advisers offer a different service to those offered by banks in the advice sector.

- Simplify the products and the regulation that covers them. The constant obsession by governments to introduce new rules for pensions and ISAs mean that the consumer does not acquire a working knowledge of these two main means of saving. The rules for both must be reduced, must be fair so that genuine errors – especially in relation to pensions - are not penalised severely. It might also be a chance for the FCA to examine proposals for new products before they are marketed. Back in 1997 "Which" recommended that the focus of regulatory attention should be on the product rather than the advice. This advice was ignored by the government of the day, which preferred to place the onus for failed investments on the shoulders of the adviser. However, it is the product that makes the money, and not the adviser. So back to basics: what about an insurance policy by all product advisers to ensure that the consumer is protected in the event that the product failed? Consumers would then be able to choose products that were insured and perhaps choose to avoid the uninsured ones, which would be treated as "relatively high risk".

- Promote transparency of the product apply a guide like T.E.R.

- Reduce the paperwork needed for basic advice

- Inform FOS that there is such a thing as Limited Advice

- Consider reintroducing choices of remuneration including commission payments on all business. Whilst it is unlikely that clients now on a fee basis would switch back, it may encourage those less well affluent to seek advice, knowing that there is not likely to be an immediate up-front cost to them. Why not simply have fixed commission rates that apply to all institutions and insurance companies. If the consumer pays fees to the adviser the commission can be rebated.

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18th December 2015

Financial Advice Market Review (FAMR): FCA Call for Input

Dear Sir or Madam:

Defaqto has been a leading researcher of retail financial products and services for over twenty years. We have developed the largest "whole of market[1]" database of retail financial products[2] in the UK market. Our data is independent and unbiased and underpins our vision to provide better financial decisions for the end consumer.

Our data and intelligence is used extensively by the financial services industry (providers, advisers, aggregators and public bodies including the regulator), and our independent product and fund ratings are used by consumers and advisers to help understand how a proposition fits amongst others in the market.

We have strong views on a number of the questions raised in the Financial Advice Market Review (FAMR) Call for Input document dated October 2015. Our responses to these questions are noted below. We have not submitted responses to questions where we do not have strong views, nor evidence to back-up a point.

We are happy for our response to be shared between the FCA and HM Treasury, and for public inspection as required.

Q38. What do you consider to be the main consumer considerations relating to automated advice?

Consumers need to be able to identify how different automated advice propositions compare with one another before deciding upon whether they wish to use one, and which they wish to proceed with.

Defaqto provides a useful role to consumers by dissecting financial products and services (including potentially automated advice propositions) into relevant populations, and providing an independent and unbiased rating of how that proposition fits into that population based on transparent rating criteria.

[1] We do not intentionally omit products from our database
[2] We also research a number of "commercial line" products, where they are standard in nature and not bespoke to a customer

We believe that the ability for the consumer to compare automated advice propositions, and how these may impact their outcomes is an essential consideration that they need to make before then signing-up with such a service.

We believe that the **FAMR should mandate the transparency of the automated advice propositions in the market** to allow consumers, and agencies such as Defaqto to be able to compare and provide useful insight to consumers of the different propositions. This information should include (but not be limited to):

- The scope of the service being offered;
- The definition of what outcome (or outcomes) that the automated advice aims to deliver to consumers;
- The total cost of the proposition, along with any costs of the component parts;
- Historic performance of the advice proposition (by segments if relevant);
- The population of products and/or funds from which the advice proposition draws to create a solution for the consumer;
- What service standards the consumer can expect in terms of response, processing, servicing and complaint handling;
- The extent to which the consumers' data will be held confidentially, and whether it will be shared with other third parties;
- The financial security and ownership structure of the entity offering the automated advice service in order to ascertain whether the organisation was viable to continue servicing the consumer in the future;
- Other relevant features of the proposition (where relevant), including impacts on the consumers' tax affairs, investment asset allocation, impact using the service on the consumers' credit rating, impact on consumers' insurance capacity etc.

Entities offering such automated advice should be mandated by regulation to provide information on their propositions to consumers and also to organisations like Defaqto.

Q40. What steps should we take to ensure that competition in the advice markets and related financial services markets is not distorted and works to deliver good customer outcomes as a result of any proposed review?

The underpinning of competitive forces in any market is the freedom of information that allows different propositions to be compared with one another by the end consumer and other participants.

Regulation should go further than its current boundaries and mandate that entities providing financial products and services have an **obligation to be transparent about the services that they provide** to the end consumer. This will allow propositions to be compared with one another, and for the consumer to then identify the service that best delivers their desired outcomes.

Transparency also allows those delivering financial services to compare their offerings, and to innovate to produce propositions that help market evolution.

Defaqto stands in a unique position within the industry by collecting feature data for products and services, and allowing the comparison and rating of propositions, that ultimately help better financial decisions by the customer, and enhance competition.

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Conclusion

We hope that our comments around the **transparency of proposition data** are considered and acted upon by the relevant regulatory authorities to ensure that:

- Consumers are better informed as to the different propositions that are available in the market, how they differ from one another, and how they may help with providing them with better outcomes.

- Competition in the advice markets is not distorted and works to deliver good customer outcomes.

Yours faithfully,

Zahid Bilgrami
Chief Executive Officer

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22 December 2015

Dear Sirs

Financial Advice Market Review; Call for Input

1. Introduction

I am writing to you as an impartial and disinterested party. I wish to respond to the FAMR Call for Input, even though I have never been regulated under FSMA 2000. As an impartial bystander, as it were, I hope my concerns (and *examples* of the reasons for my concerns) will be taken seriously, when the Treasury considers how best to restore faith in the industry.

Nobody is paying me to write to you now; I am doing so purely on a matter of principle. I am also willing to assist further. I have offered my experience and input on the "long-stop debate" to Rory Percival at the FCA previously, but have heard no more. As a matter of record, I attended the FCA Annual Public Meeting in July 2015 and a response to my question on the long-stop and my (separate) suggestion of product risk-ratings by the FCA was published by the FCA. I return to these same issues later; see Q18 at the following link: https://www.fca.org.uk/static/documents/apm-2015-post-event-unanswered-questions.pdf

Also for the record, I have over 30 years' industry experience of handling claims and complaints against firms and advisers; I began my career with London and Manchester Assurance Co in 1983, and recall seeing their first factfind way back in 1986 (prior to the Financial Services Act on 29 April 1988), later giving me good knowledge of LAUTRO Rules.

Following redundancy after two promotions, prior to their takeover by Friends Provident, I moved to work in compliance with what was then the IFA network Countrywide Independent Advisers Ltd (now part of the Sesame Bankhall Group, later owned by FP and now Aviva), leaving following redundancy again in 2003. This gave me an excellent knowledge of FIMBRA and then PIA Rules (and the rules for *exempt* firms – Appointed Representatives).

My experience showed me that there was a widespread willingness among advisers to provide a professional service and to engage with clients over the long term by recognising and satisfying client needs while attempting to meet rather basic compliance rules – note the enclosed extract of the FIMBRA Rules on suitability, later adopted in the PIA Rules too.

I then spent some years contracting through my own company before joining two different Birmingham law firms, where I specialised in helping IFAs and especially departed IFAs (i.e firms no longer trading or authorised). However, after 8 years commuting from Oxford to Birmingham, I now prefer to work from home on a self-employed consultancy basis.

The reason for setting out the above is to show that I possibly have more knowledge than most of the *past* rules in place for IFAs, whether on suitability or complaints, of FIMBRA (for IFAs) from 29 April 1988 (the start of the Financial Services Act 1986) or of PIA (into which LAUTRO and FIMBRA were merged). I also follow changes in the Rules of the FSA, now the FCA, especially those contained in COB or COBS, ICOB or ICOBS, and those in DISP.

The same applies with my knowledge of the FIMBRA Consumer Arbitration Scheme (CAS) and the PIA Ombudsman Bureau (PIA OB) and also now the FSA/FCA and FOS, and the creeping regulation and creeping increases in the assertion of jurisdiction by FOS over the last few years. My memory is excellent and I also retain many relevant documents.

2. My concerns

Once firms resigned from FIMBRA, they were only bound to comply with later CAS adjudications in respect of a complaint for one year after resignation; this became three years after leaving the PIA (although legal claims could still be brought up to six years after the advice date). While firms remained regulated the period was six years after the advice, and firms surely had a legitimate expectation that this period would never be changed. Even the FCA has accepted, with regard to parties facing PPI claims, that: *Firms have a legitimate interest in being able to plan for the potential scale and duration of their future liabilities from PPI mis-sales.* (See: http://www.fsa.gov.uk/static/pubs/guidance/gc12-04.pdf).

Although the FCA denies that firms which join it should be able to rely on the "long-stop" (15 years) this guidance by the FCA appears to suggest that the Banks should be able to rely on the six-year limit, and that the secondary three-year period is unlikely to be relevant if the client was provided with all policy documentation, and that documentation was compliant. In other words, complaints should not be brought later than six years afterwards and the courts have interpreted this in the same way. Notwithstanding this, the long-stop is denied to all.

What is truly shocking is that due to the difficulty and expense of legal challenge to a FOS Final Decision, individuals and firms which left the industry in some cases twenty years ago, remain susceptible indefinitely – according to FOS – to the Compulsory Jurisdiction of FOS in respect of advice given dating back as far as 29 April 1988 (or even further, if the firm concerned was willing enough to submit to the "Voluntary Jurisdiction").

The FOS can award up to £150,000 with little fear of challenge, especially if a file no longer exists – which could usually be destroyed after 6 years (and is supposed to be, under Data Protection legislation if the file is no longer "active"). Indeed, some files can be destroyed under FCA Rules after three years, leaving some with no means of defence – especially once they no longer have "servicing rights" and cannot even obtain copy proposals from the product provider, years later, which they themselves sent in when selling the plan.

This cannot ever have been the intention of regulation, at least not when there is rarely the slightest evidence of any actual negligence, the test by which solicitors, architects, surveyors and others would normally be judged (and then only – usually – up to 15 years afterwards).

During my 30+ years in the industry, in one role or another, I have noticed repeated *regulatory* failures in the financial services industry where the costs are eventually passed to the adviser, usually an independent financial adviser (IFA), often long-departed, despite having no involvement in product design, life office consolidation, charging structure, fund performance or ACD duties, for example. Due to mergers, some life office consolidators have little interest in ensuring good long-term performance returns on now-closed funds, whether applicable to endowments or pensions. This behaviour is not Treating Customers Fairly, once a target of the FSA, and the behaviour now only benefits shareholders.

Regrettably, it is usually the IFA who pays the price, if they sold the policy and a complaint is made later about "poor performance". The FOS will decide the complaint was instead about "unsuitable advice", and despite the limits of the FIMBRA or PIA Rules on suitability will still attempt to uphold it, with little evidence of knowledge of the circumstances of the time.

Please note the representations of Sir Howard Davies to the TSC on 7 November 2000 – in particular, his answers confirming that, overall, few buyers of endowments were any worse off in 2000 (and house price inflation allied to low interest has clearly improved the situation since then, despite lower endowment returns) and so a formal endowment review was not required. Despite this logic, and despite the basic rules on suitability in place in the 1980s and 1990s, and the fact that every endowment maturity then had exceeded its target, advisers continue to be penalised for "poor advice" by FOS. The answers given to Q 178 and Q179 are not correct in IFA cases (in terms of who pays for the redress) and perhaps could be considered potentially misleading by some. See: http://www.publications.parliament.uk/pa/cm199900/cmselect/cmtreasy/336/0110707.htm

In the past, when investigating endowment complaints, FOS often took the view that, if a client had never held investments before, how could they understand the risks of a shortfall at maturity? This was even with a traditional low-cost, with-profits endowment, sold from 1988 when interest rates and investment returns were far higher than now, and – in cases I have seen – where clients signed factfinds confirming their attitude to risk as "medium" or "balanced" (which the FOS *dismissed*, without evidence of *prior* investments). To take this view to its logical extreme, no adviser could risk selling *any* investment to first-time investors.

Claims made are driven by the compensation culture of which we are all aware, and may be upheld at FOS, usually without any hint of *negligence*; and only ever a highly subjective view of what is (or was) suitable, allied to a perceived low level of responsibility placed on consumers of financial services to read product or provider literature, often issued at great cost by both adviser and plan provider (along with Cancellation Rights if still dissatisfied).

The evidence of the failure of FSA and FCA regulation is shown firstly by the withdrawal by many large banks and insurers from giving advice. Despite their size and the economies of scale open to them, most recognise the inability to budget for future costs caused by the retrospective regulatory nature of many product "reviews" and fear of fines and adverse publicity caused by alleged poor advice processes and poor complaints handling. Worse, the likelihood of FOS ignoring legal precedent and finding against them with no appeals process can make the simplest transaction fraught with danger and immense cost – up to £150,000 (or more, if FOS split a complaint in two). The fact that many PI insurers have left the adviser market, or quickly insert exclusions at renewal, reflects their similar concerns.

While I have no particular interest in or sympathy for the banks, I cannot help but feel that one case history exemplifies the typical approach taken by FOS (in ignoring the problems of a busy office). In this example, the bank would have earned only a small sum for a foreign currency transaction, but it later cost them nearly £9,000. In my view, far more responsibility rested on the complainant not to purchase a second-hand car abroad, unseen, in the first place, rather than to blame the bank which acted on his instructions. It is also highly unlikely that any attempt to recover funds, once transferred abroad, would have succeeded (and the complainant did not even attend the bank to cancel his earlier instructions). See 76/1 at: http://www.financial-ombudsman.org.uk/publications/ombudsman-news/76/76.pdf. I would certainly have every sympathy for that bank if it withdrew from offering that service.

Further evidence of the failure of FSA and FCA regulation is provided by the huge growth in complaints being received and handled at FOS, and the growth of staff levels at FOS since the PIA OB existed prior to 2001, despite the creation of an entirely new rulebook by the then FSA following FSMA 2000 and the explicit warnings to "fear" the FSA/FCA handed down in the recent past. I do not have the figures available any more, but believe there to have been reportedly 30,000 - 40,000 IFA firms regulated under FIMBRA, with most of these joining the PIA when FIMBRA was being forcibly wound up. (Some joined networks instead and became *exempt*, and were never directly regulated at all after that; I return to this later).

The PIA Ombudsman Bureau respected the law and time-barred complaints six years after the advice date; by the time FOS began I believe there were fewer than 100 staff and fewer than 10 Ombudsman (ignoring the new staff needed because of the replacement of the Banking and Building Societies Ombudsmen etc under the new FSMA Compulsory Jurisdiction). Reportedly there are now more than 2000 staff and around 100 Ombudsman.

No doubt FOS would argue that they are "needed" because of the "failures" of products such as PPI (allied to the growth of CMCs) but this failure should be laid at the feet of the FCA, and not paid for by the adviser community. This point leads on to my suggestion of the need for the FCA to take a lead, and how to safeguard both consumers, investors and advisers – and perhaps the future of the entire industry. Please refer to the Conclusions section.

However, it is clearly in the interests of FOS to increase their alleged jurisdiction, to increase their growing empire still further. Regrettably, they see their growth as a "success story" whereas I regard this as proof of the failure of FSMA 2000 and the various regulators.

The growth of FOS is in contrast to the fact that the number of advisers has fallen, perhaps to 20,000, with many banks and insurers also no longer advising. Numbers seem unclear but no adviser I have spoken to in the last 15 years would recommend joining the industry; many are leaving quietly.

IFAs have long recognised the value of a long-term rewarding client relationship, with existing clients perhaps subsidising those with only £30pm to save (but perhaps – or at least hopefully – with more to invest later). IFAs cannot now afford to act for such clients at all, due to the ever-spiralling costs of compliance, FCA fees, FSCS fees and so on; those that remain now will follow the banks who openly court only those with £50,000+ to invest.

This is risky too, given that the FCA and FOS effectively expect them to operate on the basis that if a client invests £100,000 and that investment fails, even if this is due to fraud (see Arck's Richard Clay, or Keydata's David Elias) the advisers are expected by FOS to underwrite the <u>entire</u> loss, once the FOS decides the product was "unsuitable" for a client claiming to be lower-risk than the product ultimately proved to be. Bear in mind that the Keydata product was at one time acceptable as an ISA (as was the Eurolife product too).

Of course, the Arch cru failure was also the subject of Parliamentary scrutiny; respected commentator Jeff Prestridge wrote about this on January 14 2015 in an article entitled: "The Arch Cru scandal still festers". Fortunately, despite failures by various other parties, again IFAs seem to be expected to carry the can for "not doing enough research" into the glossy marketing and promises that the fund was "low-risk" and suitable for cautious investors when it was, of course, "anything but". This reflected what occurred with Eurolife a decade earlier.

PI insurers tend to have the common sense to insert exclusions at renewal once they hear that funds have been suspended or the FCA/FSA have intervened. This is irrelevant to the musings of the FOS when a complaint is received some months or years later, and perhaps rightly so. However, the situation cannot continue, as is shown by the numbers of IFA firms failing or being declared "in default" by the FSCS, usually after a PI insurer declines cover where a large claim is received. "Default" usually only occurs where a limited company IFA enters liquidation, or where a sole trader cannot meet claims, or all members of a partnership cannot meet claims on a joint and several basis. The FSCS must then charge the remaining "good" IFAs a levy to meet claims.

Eventually, were this situation to continue to its ultimate conclusion, just one IFA would be footing the bills for all the "mis-selling" of all the departed IFAs – patently, a flawed situation.

It is compounded firstly by the fact that declination of cover may be a sensible business decision by the PI insurers, but is compounded secondly by the actions of the FOS, who will generally disregard any ability (or not) to pay; if a complaint comes to them (rather than to the FSCS, which will at least consider the IFA's financial situation) then FOS would simply proceed with the case, usually requiring replies to correspondence within 14 days, (previously 21) and on occasion refusing entirely reasonable requests for extensions of time, even if the file has been archived or the office long closed. This is even though the FOS themselves have been known to take very substantial periods to reply to correspondence.

In simple terms, the FCA would be unable to take any disciplinary action against a firm or individual departed a certain number of years ago, and yet for the small retired IFA, without PI cover once departed six years, the stress of a complaint being upheld with redress costs up to the £150,000 cap cannot be over-estimated. With a number of cases, the stress is increased. I am personally aware of some former IFAs who would say they felt "hounded". Banks, building societies and insurers have budgets with which to meet claims; in the case of partners and sole traders, whether retired or not, they do not. This is irrelevant to FOS.

The enormity of the costs arising caused by the approach of FOS when there is no possibility of appeal (other than via the prohibitively expensive option of a Judicial Review) has caused bitterness at an extraordinary level among small advisory firms.

Bearing in mind that the costs usually fall on those (such as sole trader and partners) who have not chosen to "hide behind" the corporate veil, it is disappointing that such individuals face claims brought in a manner which seems to ignore the requirements of ADR, where the law (especially that on limitation) would normally be considered. FOS make no secret of their willingness to "unashamedly make new law", as stated in the past by Walter Merricks.

This issue is now becoming more of a personal crusade for me about the inherent unfairness of the FCA Rules and the FOS process, especially in respect of IFAs and departed IFAs. My comments here therefore reflect only my own personal views, although probably also those of much of the small IFA population, especially those no longer trading.

3. The long-stop

The FSA's CP 158 was designed to prevent endowment complaints being time-barred (or at least not too early). The FSA clearly decided to decline to allow any long-stop to be used – at least for endowment plans (only) at that time. My memory is also long enough to recall that CP 158 was issued on or around 4 December 2002 and required responses before 4 January 2003, presumably in order to avoid widespread awareness of the proposed changes to limitation of complaints, or indeed any criticism. The changes came in (with dubious swiftness) via Policy Statement 158 by February 2003.

At the time I privately warned my then employer and others that the new FSA stance on limitation could easily be extended (by FOS) to be applied with any long-term contract, whether pensions, annuities, mortgages and so on. Indeed, given this risk, I advised firms not to dispose of files even though FIMBRA, PIA and FSA (now FCA) Rules allow it (in most cases) after six years, and the provisions of the Data Protection Act of course positively discourage the "unnecessary retention" of personal information by this time and no later.

Please note the enclosed ABI response traced from 2003 underlining the need for FOS to adhere just to the three and six-year elements of the Limitation Act 1980, in line with DISP 2.8.2, *let alone* the long-stop. It appears that this reasoned argument was ignored, to the clear detriment of the industry, perhaps only so that the then FSA could be seen to help consumers. In my view the pendulum has swung too far.

I mention just a few cases where I am aware of difficulties for former IFAs dealing with FOS.

4. Example complaints and the problems (not all involving the long-stop)

Complaint One; Departed Firm A (departed in 1995)

An endowment complaint taken to FOS on a plan sold in **1993** (under FIMBRA Rules) by a partnership formally dissolved in **1995**, which joined the PIA only briefly and then resigned in around October 1995, over six years *before* FSMA 2000 (1 December 2001) due to retirement. FOS now regard the partnership as liable to their jurisdiction forever, and presumably reserve the right to pursue the partner's estate (or, more correctly, issue legally binding FOS awards that will enable complainants to pursue his estate) long after his death.

The relevant partner never actually gave any advice, being a chartered surveyor. He is now aged over 84 and still receives complaints. In one of the cases where the file could not be found, so upheld at FOS, the complainant confirmed receiving a warning of the high risk of a shortfall from the insurer via the re-projection letters, many years earlier, but FOS decided that the "admission of knowledge of cause for complaint" was inadequate.

Without a file or servicing rights, my client was hamstrung; although the same complaint taken to the life office, had they sold it rather than an IFA, would surely have been time-barred. Even if not, the life office would have access to proposals, premium history and so on denied to the selling agent, once retired or if no longer the client's current adviser.

It most certainly should have been time-barred under either FIMBRA or PIA Rules, after 6 years, rather than seeing FOS able to argue that by simply joining the PIA for six months the former firm gave FOS the ability to impose the FSMA Compulsory Jurisdiction (forever). As stated earlier, the PIA itself would have had no opportunity to discipline the firm after three years (and I believe this was also the position with the FSA until relatively recently, until the banking crisis precipitated some other changes).

Worse than this, when the complaint was upheld as "unsuitable", FOS argued that redress must be paid in line with the then FSA Rules in DISP, introduced by a regulator created over 6 years after the firm's resignation from PIA in 1995.

The then FSA rules required firms to disregard "savings" that may have been made through the benefit of cheaper premiums on the endowment mortgage route, or from the benefit of MIRAS for example. In other words, the notional "loss" could be £20,000 but with a saving (due to lower payments overall, perhaps over 20 years) made of £19,000. A firm would expect to pay £1,000, in line with the Courts, to avoid "betterment" for the client, but became required, via the binding awards issued by FOS, to pay the entire £20,000. This applies even if the client received demutualisation benefits from the life office. The plan might even mature with an excess over the target – the former IFA will never be allowed to know.

The partner in that case faced the stress of many other claims. As he has equity in his property, his former partnership (or the same would apply if he were a sole proprietor) can never be declared "in default" until he (and his wife) is or becomes bankrupt. Claims against the firm continue, made by clients who have had no contact with the firm for 20 years.

The essence of the FOS argument is that the firm was bound "immediately before" FSMA by an earlier jurisdiction (the PIA OB) even though *that* body would have time-barred every complaint received six years after the advice, in line with its own Terms of Reference (and of course would have been less likely to find an endowment sale in 1993 "unsuitable").

Complaint Two (Departed Firm B; departed in 2005)

In a more recent case, involving a client who had purchased a geared TEP portfolio in 2003/4, yet received annual statements and warning (FSA/ABI "red") letters since at least 2004-6, the Ombudsman has (thus far) declined to agree that the letters are adequate to start <u>any</u> time-bar clock ticking at all, if they were not linked to a mortgage. This makes a mockery of the work done by the FSA to ensure that as many people as possible did complain about endowments, by amending the time-bar rules in 2003 (and again in 2004) to extend time to complain further.

It has also been suggested that a client was entitled to await the last possible maturity (at a shortfall) before complaining *at all,* even though even the FOS website suggests that *any* maturity at a shortfall might reasonably be expected to trigger a complaint. Given that the portfolio may have included up to a dozen plans, it is disappointing that the complainant is not being required by FOS to explain why they did not complain earlier.

Even a 2008 warning letter and then a 2009 "review" letter required by the FSA to be issued to certain specified geared TEP investors during a s166 review of the 2003/4 advice, mentioning a three-year time limit to request further action (i.e. complain) is seemingly now deemed inadequate (by the FOS) to start the three-year clock ticking, before a complaint made at last in 2014. Oddly, the FOS decided that the same letters <u>were</u> sufficient to trigger a complaint received earlier, and seemingly decline to discuss the disparity in approach.

The retired IFA once again cannot obtain copy red letters or maturity figures from the relevant insurers (even if FOS felt they would help) as he no longer holds "servicing rights" (see earlier case).

Complaint Three (Departed Firm C)

In a case which could have involved any departed IFA, unfamiliar with DISP, the firm had first issued a final response letter. The firm took the time and trouble to enclose a FOS leaflet and asked the complainant to read it carefully. That leaflet states that any complaint must be referred there within six months. The client referred the complaint to FOS well over 6 months later.

FOS decided that the complainant was not obliged to read the leaflet as the IFA had failed to comply with the rules; the complainant now apparently had an *infinite* period in which to refer the matter due to the failure to comply with the Glossary definition of a final response letter (FRL) rather than the rules by then in place. I pointed out that there was something highly suspicious about the disappearance of the requirement to warn of the 6-month rule in writing from the rule-book. In 2002 it showed:

DISP 1.4.12 (now removed)
When a firm sends a complainant its final response, the final response must:
(1) inform the complainant that he may refer the complaint to the Financial Ombudsman Service if he is dissatisfied with the final response ***and that he must do so within six months****; and*
(2) enclose a copy of the Financial Ombudsman Service's explanatory leaflet (unless it has already done so under DISP 1.4.5 G(2)(b)).

That wording later disappeared; no firm (departed or otherwise) could have known this if attempting to comply later, especially if it had not received previous complaints.

This position has now become even more curious and perhaps suspicious. The FCA has introduced further rule changes with required wordings to be used by firms handling complaints, in DISP 1, Annex 3, as per:
https://www.handbook.fca.org.uk/handbook/DISP/1/Annex3.html#DES539 .

This is an example of "creeping regulation" increasing the remit of the FOS, because any firm that has already left or resigned from the FSA or FCA would have no reason to monitor changes to the Rules in DISP. However, unless the former or departed firm (or indeed any firm still authorised but without the resources to monitor every rule change) ensures that they insert the correct wording into their Final Response Letters, if they receive a complaint and try to respond (as most do, in my experience) they will now also face the removal of further limitation arguments.

In other words, most Final Response Letters (FRLs) warn that if a complainant wishes to refer matters to the FOS, they must do so within 6 months. They must now also warn that they will not waive this defence, as otherwise they will be deemed to have lost it...forever.

As set out in Complaint One, why should a long-departed firm be bound in such a fashion by such retrospective rule changes, which have such a devastating impact upon firms?

Complaint Four (Departed Firm D; departed in January 2007)

This firm never gave advice at all. It was a partnership, which was dissolved in 2006 and ceased to be authorised in January 2007, having never received a complaint in 20 years. Due to the PPI scenario, various CMCs have made complaints against the firm. In one case, the CMC was a law firm which issued a legal Letter of Claim (to the wrong firm) stating that it was not a complaint, yet FOS decided that it was, and was referred to them (FOS) in time, despite never having been directed to or received by the correct party.

FOS consider that they may change the "respondent" as they wish, in order to bring a complaint "within time" that might otherwise be time-barred, relying on:

DISP 2.8.2
The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:
(1) more than six months after the date on which the respondent sent the complainant its final response or redress determination; or3(2) more than:
(a) six years after the event complained of; or (if later)
(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;
unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; etc

My view, firstly, is that FOS should be unable to change the initial respondent stated by the complainant *at all*. Secondly, the section in red needs to be removed, to oblige a complainant to trace the adviser or firm responsible and to complain, in writing, in time. As with the courts, and presumably applicable with ADR principles, a complainant should not be able to rely on a complaint and then a referral made ONLY to FOS against firm A to be regarded by FOS as being legitimately received "in time" against firm B, or even firm C, perhaps ascertaining the correct or responsible party only many years later (as in this case).

Complaint Five (Departed Firm E)

I am also aware of a firm which joined a network as an AR in 1994, when FIMBRA was being wound up and firms were obliged to resign, join the PIA or join a network. The firm previously gave the advice under FIMBRA Rules and the complaint (made within the last three years) relates to pre-network days. The firm then left the network in 2000. Clearly, this date is before the Compulsory Jurisdiction was implemented on 1 December 2001.

FIMBRA firms were only obliged to comply with the then FIMBRA complaint rules and these confirm that they only bind ex-members of FIMBRA for 12 months after resigning. The firm ceased to be directly regulated in 1994 and in the circumstances it is clear it is not bound by the FIMBRA Consumer Arbitration Scheme (mentioned earlier).

It is probable that while a member of the network the firm became contractually bound to comply with the network's rules on compliance and complaints, and this may have included offering referral rights to the PIA OB, but clearly only while an AR of the network.

Under Section 226 of FSMA 2000, the conditions for a complaint to be eligible include that "the respondent was an authorised person at the time of the act or omission ... **and** "compulsory jurisdiction rules were in force ...". Clearly, no such rules were in place in 1994.

DISP 2.3.2 states or stated:
The Ombudsman can also consider under the Compulsory Jurisdiction:
(1) as a result of the Ombudsman Transitional Order, a relevant existing complaint or a relevant new complaint that relates to an act or omission by a firm or an unauthorised person which was subject to a former scheme immediately before commencement;

By becoming an AR, the firm did not itself become subject to the Rules of PIA or the Terms of the PIA OB, then or ever. They became an exempted person and so were exempt from direct authorisation or regulation. They would never even have seen the PIA Rulebook, although there may have been a contractual obligation to comply with rules set by the network, but that was to protect the network only against PIA regulatory action in respect of its ARs, similar to analysing any poor reference requests etc.

Clearly, FOS assert jurisdiction on the basis that the AR joined a network that itself later joined the PIA, thus becoming subject to the PIA OB. They also ignore the long-stop defence. The long-stop would have been respected by the 1994 contract between the AR and the network (assuming that it was written under or in accordance with the law).

We know that in general, a firm which resigned under FIMBRA Rules (i.e. in 1994) will not be caught by the compulsory jurisdiction created by FSMA 2000. However, the FSA/FCA argue that any firm which joined the PIA, even for just six months, is liable, apparently *indefinitely*, to the decisions of FOS (even though neither the PIA nor the FSA/FCA regulated *this AR*).

Conclusions

In most cases where I have been involved, the IFA firm's advice was given under FIMBRA Rules, or PIA Rules, set up in accordance with the Financial Services Act 1986, in place from 29 April 1988 (but replaced by FSMA 2000 from 1 December 2001). Both FIMBRA and the PIA followed the rules on limitation enshrined in the Limitation Act 1980 and dealt with further under the Latent Damage Act 1986.

In fact I am given to understand that HM The Queen stated, in a speech given on 12 November 1986, that: "*Legislation has been passed to extend and reform the regulation of investment business. This will protect the interest of investors while encouraging the continued development of strong, efficient and competitive financial services… Legislation has been passed for England and Wales to set fair time limits for cases involving latent damage…*" Unfortunately, if this was stated, and was the intention, it has failed.

Despite this, the FOS usually takes the view that "*If it had been the intention of Parliament or the FSA, for this service to apply the time limits contained within the Limitation Act 1980, it would have been very easy for it to have been specified within the statutory framework applicable to the Financial Ombudsman Service*".

Parliament must specify that the Limitation Act 1980 should be applicable to the FOS.

It must also specify that where a regulatory review has been conducted in line with instructions from the relevant regulator, such as the (statutory) SIB Pension Review or the FSAVC Review, or indeed a s166 review, then FOS should not be able to argue that a policyholder should still retain the right to complain about the advice which was the subject of the review, possibly far more than three years after that review. I am aware of cases where FOS seek to argue that the policyholder should be permitted to complain at retirement, or the final policy maturity, for example, as he may not have fully understood the implications of the earlier review.

In other cases, it can be shown that the firm complied with or even exceeded the rules of the then regulator, and was even visited and complimented on their sales processes and file documentation. This has not impressed the FOS when they receive a complaint.

This makes a mockery of the work done by the regulator. When examples of such an approach by FOS are drawn to the attention of the regulator, they decline to comment on the basis that the FOS is independent so they cannot interfere. This is despite having previously invited examples of such issues.

My further suggestions:

A. The way forward for the FCA and FOS

The above examples are given, perhaps in a little too much detail, but to set out the stress that can be caused for firms which are sole traders or partnerships, and may be long-retired and often of advanced years, with awards which can be made of up to £150,000 (+ interest).

In most cases departed firms cannot even have any idea of the need to warn of the six-month rule to refer a complaint to the FOS, nor now to warn that it will not be waived, let alone know about DISP 2.8.2. All of the limitation issues are in need of clarification, not only the long-stop, and not only to benefit departed firms. However, I use them as the best example of the impact of the current assertions of compulsory jurisdiction by FOS.

Worse even that this, it is being reported that the FOS and FCA are looking to reduce the time during which a firm may raise jurisdictional issues, and will simply not allow them to be raised later. FOS ensured the removal of the question on the "date of knowledge" (of a problem) to be removed from the FOS form, and have taken other steps with little fear of legal challenge (due to the costs of a Judicial Review) to bring cases within time which should clearly be time-barred. Even the three-year issue is often disregarded; a client who invested £100,000 in, say, 2006 and saw that value fall to £30,000 in 2009, should not (normally) be able to bring a complaint about "mis-selling" in 2015, but such cases do occur.

My suggestion is that any firm which resigned from FIMBRA or the PIA should, with immediate effect, no longer have to respond to any complaints received after 1 December 2016, whether by them or by FOS (as any resignation would have occurred on or before 1 December 2001, almost 15 years ago now).

Complainants may use the courts if they wish, rather than taking advantage of a free service to bring speculative complaints. This will draw a line for all retired advisers and firms, allowing them (finally) to enjoy their retirement.

My further suggestion is any firm which resigned from the FSA or FCA should be agreed to remain subject to the FOS Compulsory Jurisdiction for three years after resignation.

Alternatively, if "run-off" PI cover can somehow be arranged to cover all claims received, then any such firm should be agreed to remain subject to the FOS Compulsory Jurisdiction for six years after resignation. This may have to be done via a product or industry levy.

On the rare occasions where claims might arise after that date, where a long-stop might also be necessary (and useful to protect the industry), they should all be passed to the FSCS, which usually follows strict rules before upholding complaints.

However, there needs to be a robust defence of all three elements of the long-stop, so that where a date of knowledge has arisen a claim cannot be brought more than three years later. The FCA accepts that it cannot pursue bankers and others indefinitely, yet FOS is far more punitive and asserts an infinite jurisdiction, which is far more dangerous to an adviser.

It seems discriminatory to me to hold former partners and sole traders liable to the whims and caprices of FOS (where inconsistent decisions are taken on subjective views of suitability) indefinitely, when a limited company can be wound up at any time and the directors can escape liability. Of course, there should be no infinite liability in any event, if there is no negligence.

There should be no "regulation by the back door" via FOS. If the FCA accepts that individuals may exit the industry and only remain susceptible to discipline for three years, then the same should apply with FOS. Unfortunately it is in the interests of FOS to be seen as a form of consumer champion, as this invites still further complaints, and further growth.

B. Caveat emptor and the FCA

The FSA confirmed in December 2008 (Discussion Paper 08/05) that the Financial Services and Markets Act 2000 ("FSMA") directs that the protection to investors provided should be "appropriate", rather than absolute or all-encompassing and it should be assessed or considered with reference to:

- The differing degrees of risk involved in different kinds of investment or other transaction;
- The differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;
- The needs that consumers may have for advice and accurate information; and
- The general principle that *consumers should take responsibility for their decisions.*

In a speech to the Financial Services Forum in February 2006, Callum McCarthy (then Chairman of the FSA) noted the importance of the role of the consumer.

According to the report, he said: *"Were the FSA to aim to relieve consumers of all adverse consequences, an environment would be created in which they no longer needed to weigh up the reasonableness of their financial decisions. No market can work effectively without involved customers. To relieve consumers of retail financial services of the consequences of their actions would destroy this as an effective market. Consumer* ***responsibility*** *[our emphasis] is therefore vital to the effectiveness of financial markets".*

In summary, it is clear that a potential investor has a number of responsibilities:

- To provide honest and accurate information in replies to questions asked (if any) by the advising firm, or to volunteer information that seems relevant, to enable suitable advice to be given
- To provide honest and accurate information to the firm during the application or proposal completion process. Failure to do so (such as medical non-disclosure) could make the contract void or invalid.
- To read **all documentation and information provided by the adviser firm and product provider (where different) so as:**

to be able to point out errors;
to ensure he understands the product;
to ask for help if he does not understand any information given to him [our emphasis, where added]

It is unclear why this public stance has disappeared, or is ignored by the FOS.

C. Product risk ratings and a possible product levy

I repeat here part of the content of my question posed to the FCA at the Annual Public Meeting, together with some amendments. I do not feel that the FCA's answer adequately addresses the merits of the suggestions made, or understands how seriously the problems appear at present.

Given the reported need for new leadership to come from the very top, the FCA should provide templates for an "acceptable factfind", an "acceptable risk profiling tool" and "acceptable suitability letters". There is clearly a huge disparity between the FOS and FCA on what is required; in most cases the product providers can be prevailed upon to provide "Key Features Documents" and "illustrations" (around in any event since 1 January 1995, but frequently deemed irrelevant when assessing suitability by FOS).

The FCA does not wish to set out what is an acceptable factfind, or even the minimum content, and states: *A similar principle applies to risk profiling tools where we have previously pointed out that, for a variety of reasons, they may not provide the right answer in all circumstances.*

It is therefore unreasonable for the FOS to find an adviser "guilty" of giving "unsuitable" advice (never negligent) when the adviser tries his best to assess a client's profile. The FCA's assistance here is what is required, so that the adviser knows what to do, and knows that the FOS cannot lightly dismiss a client attitude to risk identified as "6" on a 1-10 scale, and "decide" that it should have been assessed at a "4". This also avoids 20,000 IFAs and 100+ banks, insurers and building societies developing separate tools, all of which are deemed "questionable" by either the FOS and FCA, or both.

Allied to this there should be a form of regulatory risk-rating of every new product, so that a client with a risk profile of 6 out of 10 could only be sold a product with that rating. It is simply unedifying for the FCA to expect 20,000 IFAs and 100+ banks, insurers and building societies to do separate research into diverse products such as Keydata, Arch cru and others, and come up with "correct" results. Should Europe provide this lead? Perhaps. Can we be sure that FOS will place due regard on the evidence in the event of a complaint 15 years later, when the complainant claims to have been risk-averse, and a product fails? No.

With the above suggested improvements, it should not then be possible for the FOS to decide that a product marketed and sold by an adviser or indeed a provider as a "4" is in fact an "8" and therefore "unsuitable" for a client who appeared to be a "4" but FOS now decide is a "2".

Lastly, with a simple premium levy, clients could pay, say 5% or 10% extra on their premium, whether a single premium lump sum, or a monthly amount, and have a protection of up to 75% or 80% of their capital, and up to 100% if they wished. This should remove their later claims, perhaps made with the benefit of hindsight, that they would "never have taken any risk". This would also lessen the burden of FSCS claims on remaining advisers.

I do hope that these suggestions will be of interest. After more than 30 years in the industry, and innumerable conversations with advisers on the point of despair, because their advice made with the benefit of perhaps 20 years of experience (with not one single complaint when regulated) is now being judged at FOS by someone with every interest in simply "resolving matters" as quickly as possible.

Yours sincerely

Dexter J Perrott
07732 612965

Encs:

1. ABI Response to CP 158 3 January 2003

2. Extract of unanswered questions answered later by the FCA – my own shown at Q18
https://www.fca.org.uk/static/documents/apm-2015-post-event-unanswered-questions.pdf

3. Extract of 7 November 2000 Treasury Select Committee
http://www.publications.parliament.uk/pa/cm199900/cmselect/cmtreasy/336/0110707.htm

4. FIMBRA rules on suitability from 1992 (adopted into the PIA Rulebook until c.2000)

Financial Advice Market Review

DT’s response to the call for input

Introduction

This paper sets out DT's (Distribution Technology's) views and responses to the call for input issued by the FCA as part of the Financial Advice Market Review.

Our submission is based where possible on quantitative data from the use of Dynamic Planner, the UK's most widely used digital risk profiling and financial planning service. We have also recently conducted research with a number of our clients to assess their interest and concerns around the provision of digitally supported advice services. We have included relevant outputs from that research.

Dynamic Planner is licensed by over 9,000 financial planners and a wide range of financial institutions to provide risk profiling and an end-to-end financial planning and investment process.

Key facts about the Dynamic Planner service:

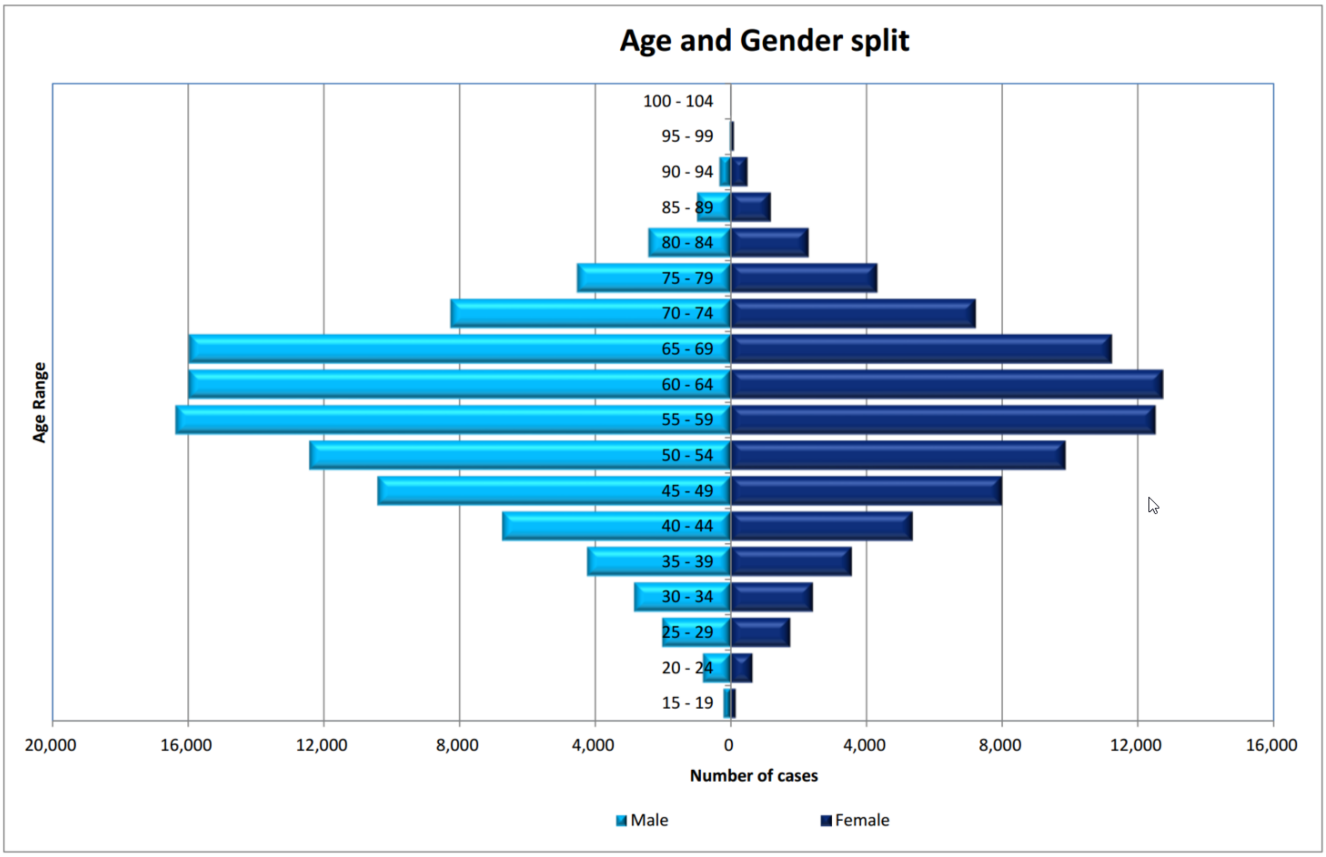
- Winner of both the European Wealth Briefing Award for Best Risk Profiling Tool and the Aberdeen Platform Award for Leading Integrated Planning Tool Provider in 2014
- Used by more than 9,000 financial planners from over 800 firms to ensure investment suitability
- Over 900 investments are risk profiled from more than 90 asset managers each quarter
- £2.3 billion of funds are now managed against Dynamic Planner risk profile targets
- £1.2 billion of client recommendations were made in 2014 using Dynamic Planner
- 550,000 risk profiles have been conducted since 2011
- Dynamic Planner is integrated with over 25 investment platforms, providers and back office systems
- Supports over 1,000 financial planning sessions (more than any high street bank) each working day and over £150 million of recommendations each month.

1 Response to the call for input

Q1 Do people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, have particular needs for financial advice or difficulty finding and obtaining that advice?

Through aggregated analysis of the end customers receiving advice or financial planning where their financial planner uses Dynamic Planner we can provide general demographic data about this population.

Figure 1. Age and Gender of Investors. Taken from Dynamic Planner Intelligence Report - 12 months to End Q3 2015, 188,670 cases



From the total of 188,670 individual cases that were planned within the 12 months to end of September 2015, the largest proportion were in the 55-59 years age bracket for males and the 60 – 64 years for females, consisting of 14.9% males and 15.2% females respectively. As can be seen in Figure 1 overall 72.5% and 74.4% of males and females respectively profiled were aged 50 years or over.

Q2 Do you have any thoughts on how different forms of financial advice could be categorised and described?

Our clients typically operate two propositions – holistic Independent Advice or Focused Advice. Anecdotally, we hear that some firms are hesitant to provide Focused Advice due to the potential for future suitability issues which may arise where information about the customer outside of the specific need being advised upon has not been uncovered and assessed.

Q3 What comments do you have on consumer demand for professional financial advice?

We agree with the key areas of demand for advice. In a recent survey of Dynamic Planner users from 55 firms from large nationals to small local firms; retirement (accumulation and income planning), general financial planning and investment planning were the most widely provided.

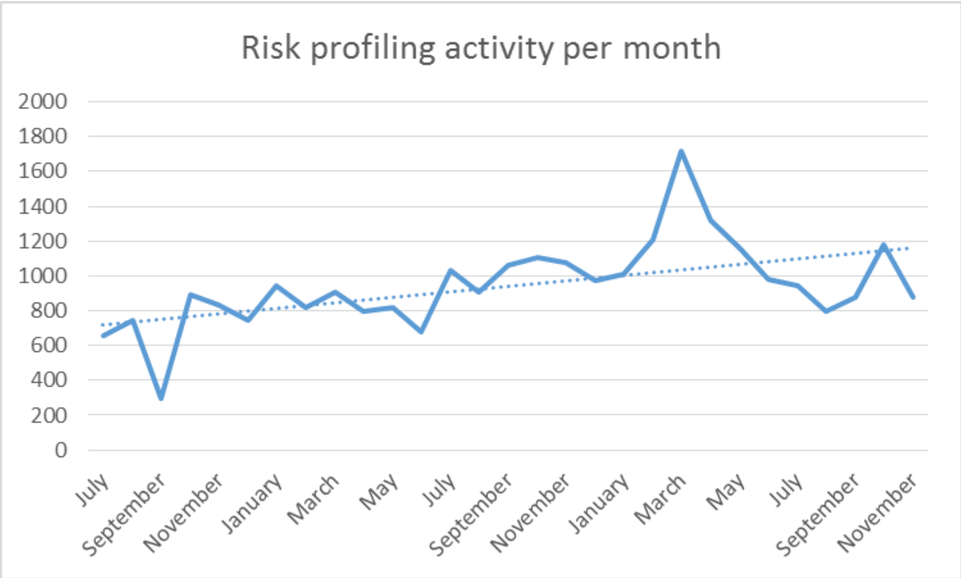
Figure 2. What type of advice does your firm mostly provide?

Advice type	We don't do this (%)	We do this at the moment (%)	Not now, but planning to do this in the future (%)
Estate planning	5.6	91.7	2.8
Financial planning	1.4	98.6	0.0
Inheritance tax	4.2	93.1	2.8
Investments (new)	2.8	97.2	0.0
Investments (managing existing)	2.8	97.2	0.0
Mortgages	52.8	45.8	1.4
Retirement (saving into pensions)	0.0	100.0	0.0
Retirement (taking income)	0.0	100.0	0.0

Q4. Do you have any comments or evidence on the level of demand for advice from sources other than professional financial advisers?

We are seeing an increase in demand for and use of technology based solutions which provide help, guidance and advice. Dynamic Planner powers a growing range of consumer facing financial planning tools including for corporate pension schemes, where members face choices around how much to save, how much risk to take and which funds to invest in. We have seen an increase in demand for these tools and where well designed, an increase in their usage too (see figure 3 below).

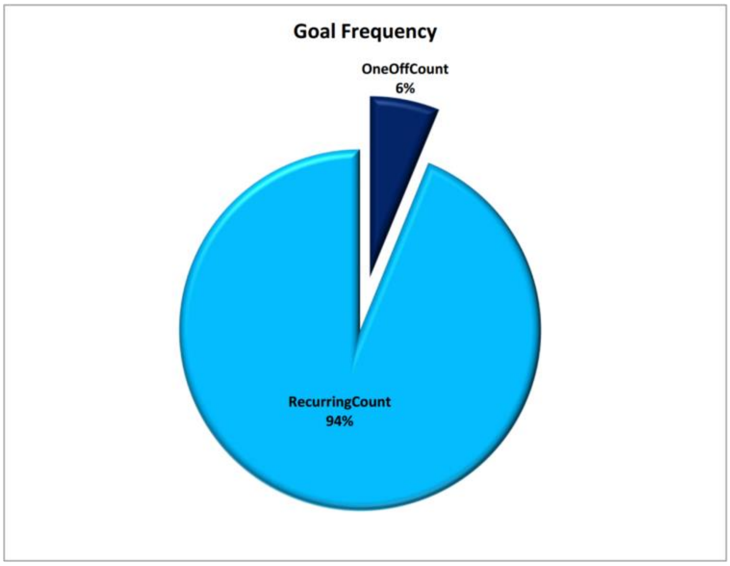
Figure 3. Number of risk profiles completed in a Dynamic Planner powered pensions' guidance tool (July 2013 – November 2015)



Q5 Do you have any comments or evidence on the financial needs for which consumers may seek advice?

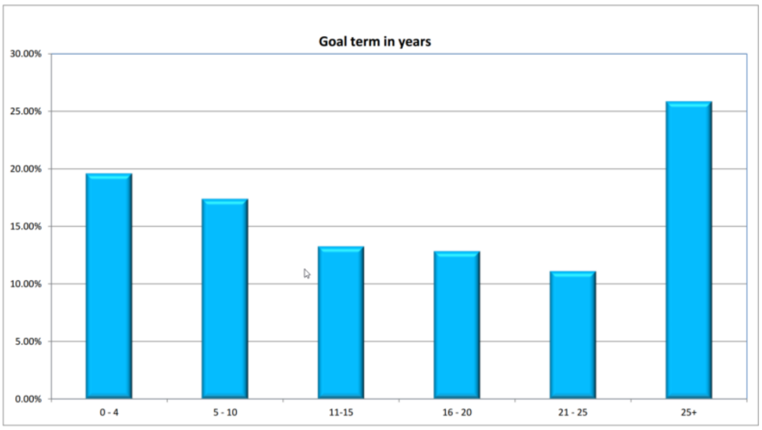
Aggregated analysis of the financial plans created through Dynamic Planner provides insight into the needs of the end investor. Looking at the financial goals (objectives) stated by the investors, the vast majority are for recurring needs, mostly around retirement income planning.

Figure 4. One off v recurring financial planning goals. Taken from Dynamic Planner Intelligence Report - 12 months to End Q3 2015, 188,670 cases



It's also evident that the term of the objectives are generally in the mid to long term. Goals and objectives are future events, planning for the future. We can see how far into the future customers typically plan:

Figure 5. Distribution of goals by term. Taken from Dynamic Planner Intelligence Report - 12 months to End Q3 2015, 188,670 cases



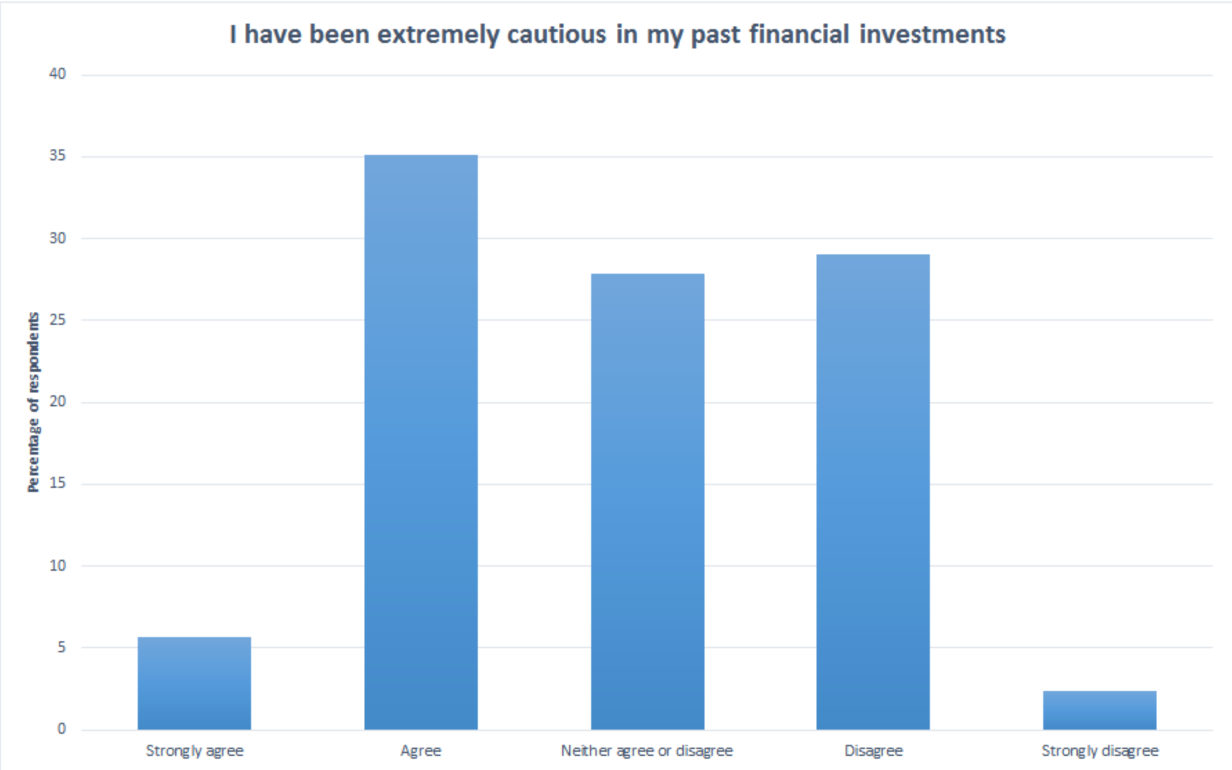
Q6 Is the FCA Consumer Spotlight segmentation model useful for exploring consumers' advice needs?

In general, we find this kind of consumer segmentation useful and use similar tools when developing our tools and services.

The proposed framework does not however explicitly address the individual's confidence or willingness to delegate their financial needs. We see these as key differentiators in how individuals access advice and the types of services they are likely to positively engage with.

Based on the responses to questions asked as part of the Dynamic Planner risk profiling process, it is evident that consumers are spread across a spectrum of confidence.

Figure 6. Analysis of Dynamic Planner attitude to risk questionnaire responses, 2014



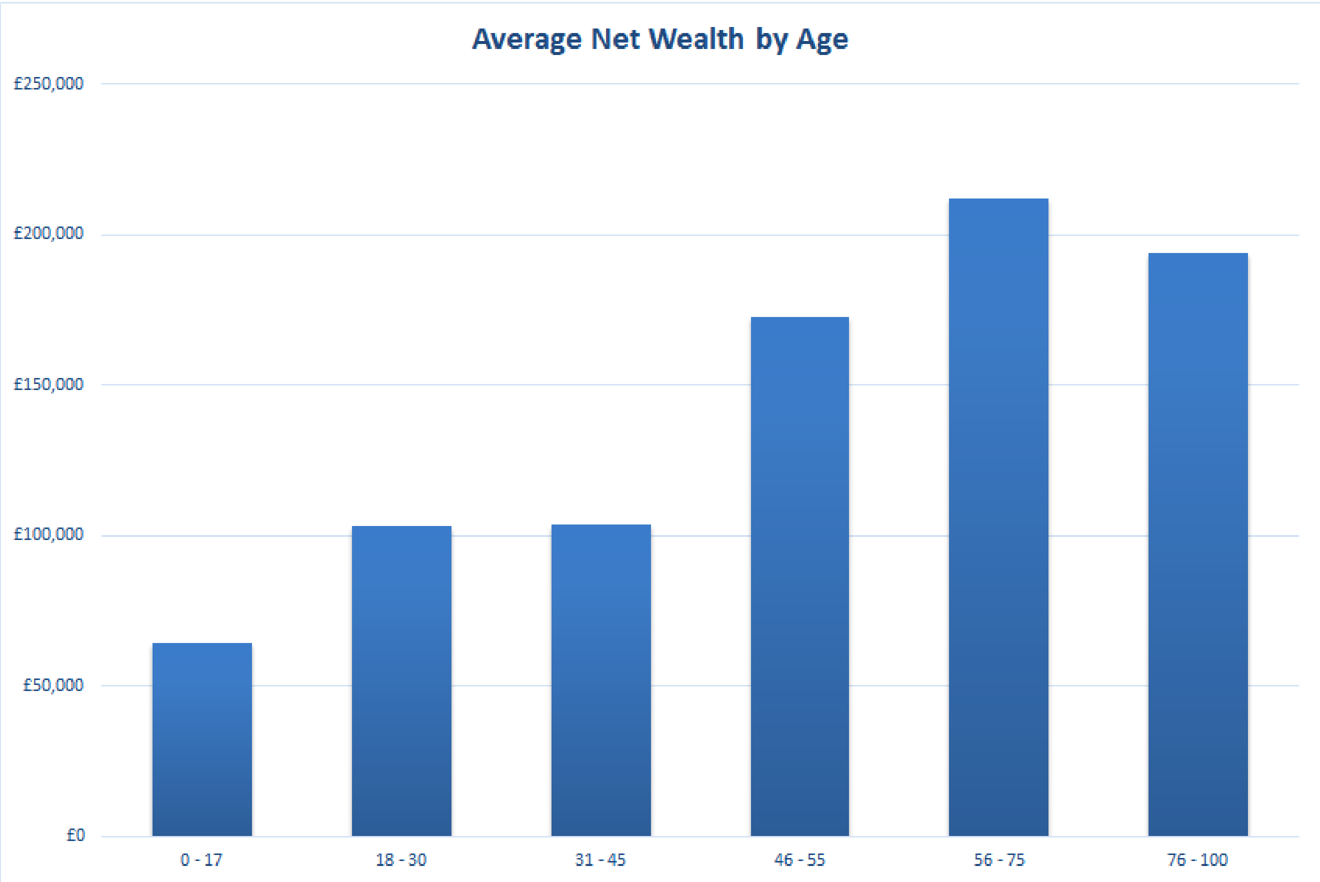
Q7 Do you have any observations on the segments and whether any should be the subject of particular focus in the Review?

As evidenced above, the dominant customer segments addressed by Planners today are those near and in retirement. Following the introduction of pensions' freedoms, retirement income planning is now considerably more complex and is relevant to a greater section of the UK population. It would be worth exploring how these segments in particular are better able to access the advice and planning they need.

Q8 Do you have any comments or evidence on the impact that consumer wealth and income has on demand for advice?

As you can see from Figure 7 below, typically customer net investable wealth is over £100,000 and this rises with age. Between 56 and 75 the net worth of advised clients is over £200,000. Net wealth is calculated at a household level i.e. where a husband and wife for example are planning together in a case, their combined assets and liabilities are used to calculate this figure.

Figure 7. Net wealth of customers of Dynamic Planner users. Taken from Dynamic Planner Intelligence Report - 12 months to End Q3 2015, 188,670 cases



Q9 Do you have any comments or evidence on why consumers do not seek advice?

Supply. The combination of the withdrawal of the banks from the provision of retail advice and the decline in IFA numbers post RDR, with the increase in people approaching retirement, accessing professional advice has become more difficult.

Confidence. Anecdotally finding an adviser requires an evaluation of professional services which most people are not well equipped to deal with. Since the introduction of RDR, firms are transparent with their fee structures and costs – however the consumer must evaluate, compare and contrast different options from different firms to make a selection, and therefore accessing advice is difficult.

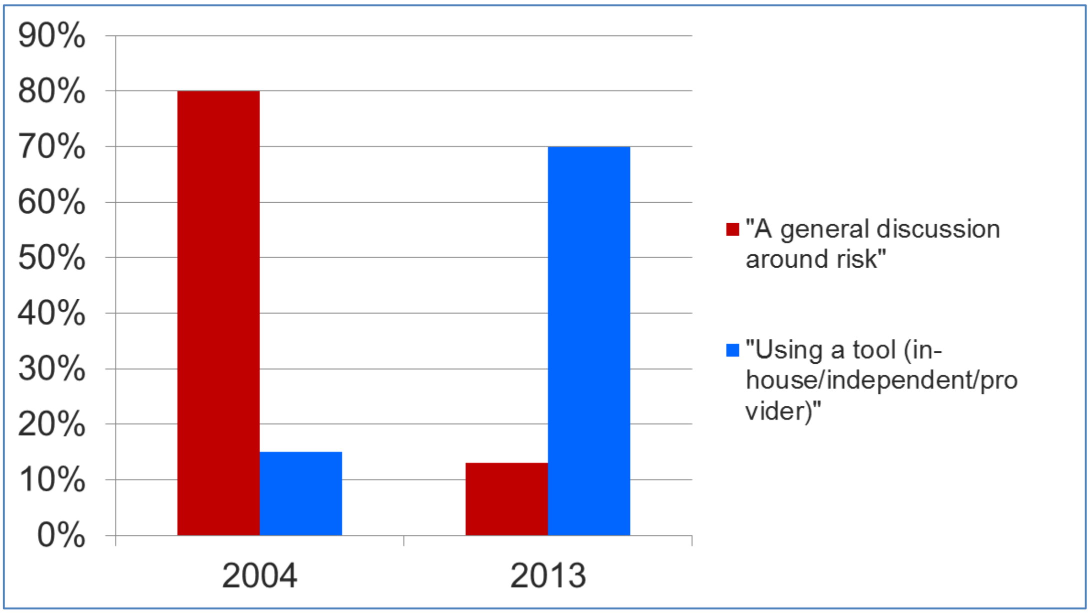
Firm proposition. As can be seen in Figure 7 the average net wealth is £100,000-£200,000. Some advice firms are selective about taking on customers with lower balances. Some firms clearly do take on these customers and the distribution around the average shows this. That said accessing advice is more challenging for customers with smaller amounts to invest.

Q12 Do you have any comments or evidence about the role of new and emerging technology in delivering advice?

Role 1: Reduction in the cost and risk of delivering planner-driven advice

DT has seen a continual increase in the number of financial planners and firms adopting our technology in the last 5 years, growing from a 300 IFAs in 2011 to over 9,000 today. Overall the industry has undergone a scientific revolution in the last decade as can be seen in figure 8 below.

Figure 8. How do you determine a client's attitude to risk? Source: NMG Consulting, IFA Census (250+ advisers each month)



By embracing digital technology planners can see significant increases in productivity and efficiency which allow them to service more customers at lower cost and with better outcomes.

Earlier this year, we commissioned a review by the Finance & Technology Research Centre to assess the time savings that technology could bring to a typical review process. The analysis highlights that Dynamic Planner can save planners over five hours in each review, which is an 86% time saving.

Role 2: Planner-driven use of digital technology with customers to increase engagement

Part of the savings come from the use of technology with the customer. We have found a great appetite from planners to utilise our technology in particular our iPad risk profiling app in customer meetings, cutting the time taken to risk profile the customer from 2 hours to 35 minutes. These savings are driven by the use of native mobile technology that works both on and offline at the customer's home, reducing the time taken by the planner to rekey and confirm facts with the customer.

Role 3: Customer-led use of digital technology to access help, guidance and automated advice

We also see a strong demand for technology accessed directly by the consumer. Both from consumers themselves (see Figure 3) as well as from financial advice firms and financial institutions.

DT has invested significantly in the last 3 years in developing its customer facing digital services through Dynamic Planner's widely used My Planning™ apps and its application programming interface (API) which is used to power 3rd party digital advice solutions. My Planning apps already enable financial planner's customers to risk profile themselves and research funds and share these ideas with their planner. My Planning also provides a market leading iPad app that incorporates portfolio aggregation and contract enquiry valuations from across UK investment platforms and providers automatically tracking portfolio value, asset allocation and drift. Apps can be branded by firm and enable secure communication and sharing of documents between customer and planner.

In a recent survey of 55 IFA firms from large nationals to small local firms there was clear interest in the provision of digital solutions and automated advice with 37% considering it as an option over the next 1 or 2 years. Firms see the benefit of providing online advice, mainly around providing cost-effective support to existing customers (33%) or attracting new customers (22%).

Anecdotally firms told us that they are aware that some of their customers have lower balances and / or are younger and they want to begin to engage these segments such that they can build their business for the future.

Figure 9. Are you actively considering providing online advice to clients? Source: Dynamic Planner adviser user survey 72 respondants from 55 firms; ranging from nationals to local firms. December, 2015

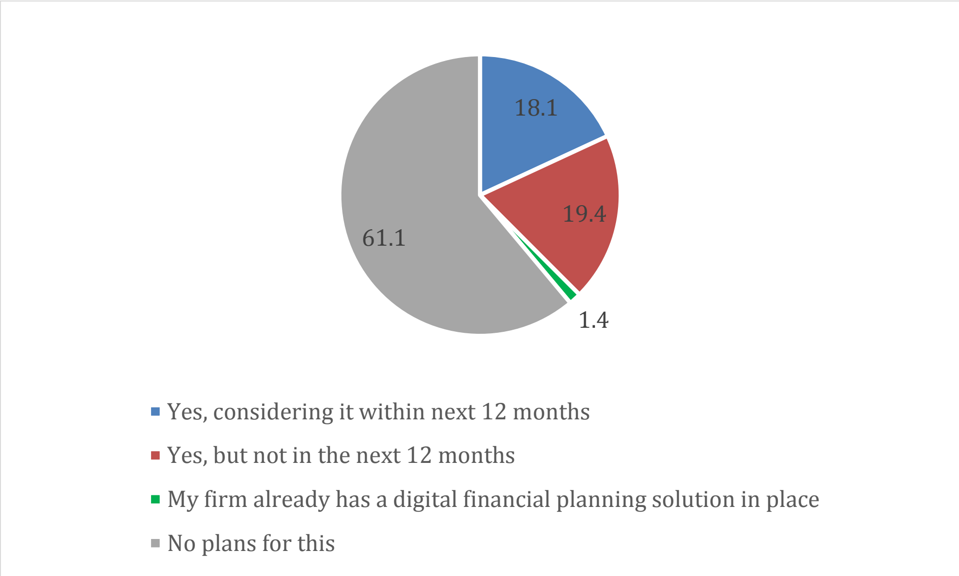
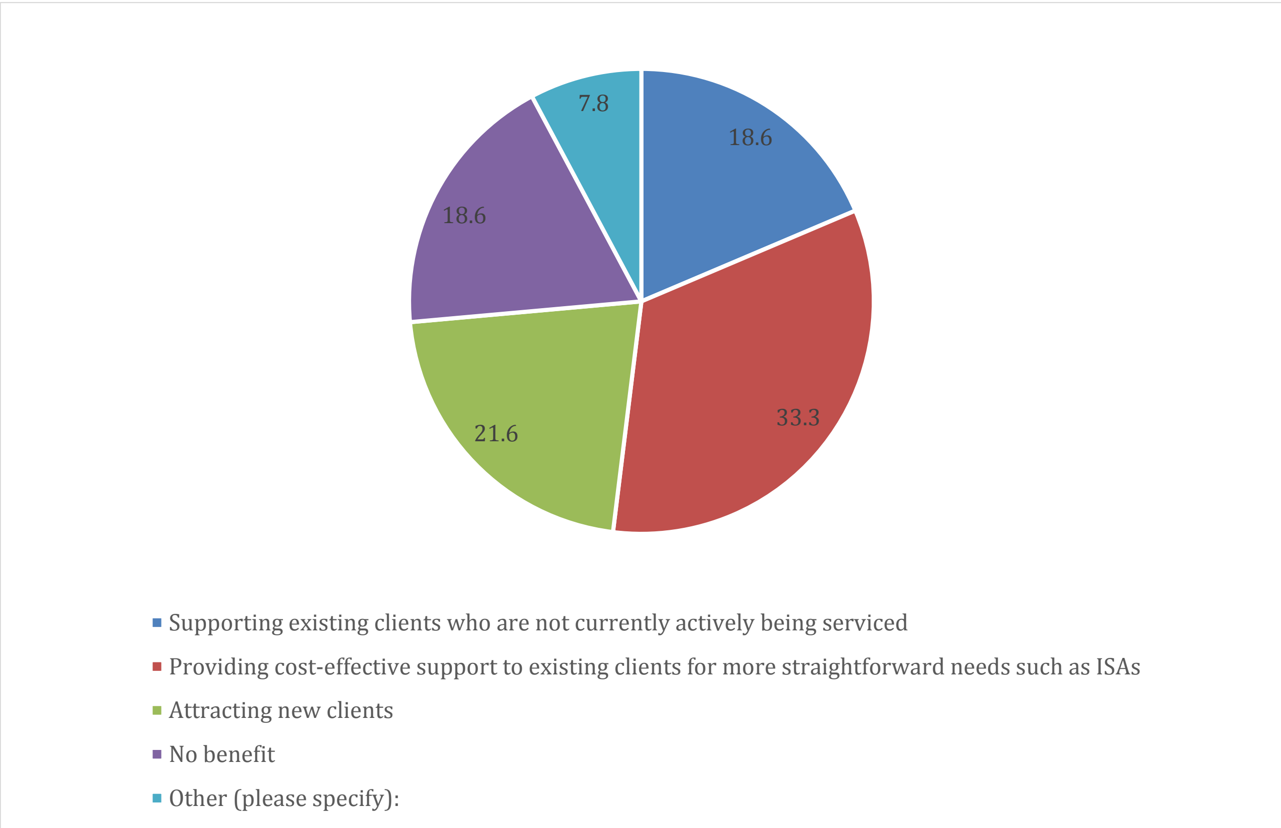


Figure 10. What do you feel are the main benefits of providing online advice? Source: Dynamic Planner adviser user survey 72 respondants from 55 firms; ranging from nationals to local firms. December, 2015



Q14: Do you have any comments on the different ways that firms do or could cover the cost of giving advice (through revenue generation or other means)? Do you have any evidence on the nature and levels of costs and revenues associated with different advice models?

The cost of advice. We commissioned an independent study from the Finance & Technology Research Centre on the cost of delivering advice manually and with Dynamic Planner technology. A summary is provided here:

Figure 11. Building a Robust and Efficient Review Process Source: Financial & Technology Research Centre, April 2015

Task	Typical Time taken in manual process	Typical Time taken using Dynamic Planner	Typical Time saving
Obtaining Valuations	45 minutes	2 minutes	43 minutes
Creating a Review Report	2 hours 10 minutes	1 minute	2 hours 9 minutes
Risk Profiling the client	2 hours	35 minutes	1 hour 25 minutes
Transacting Recommendations	1 hour 13 minutes	11 minutes	1 hour 2 minutes
Total	**6 hours 8 minutes**	**49 minutes**	**5 hours 19 minutes**
86% time saving from a manual process			
Over 700% Potential increase in productivity			

A full analysis can be found here http://www.ftrc.co/ftrc-co-uk/_img/06-03-2015_-_Building_a_Robust_and_Efficient_Review_Process.pdf

Most financial planners charge fees which are either deducted from the investment or paid separately. Assuming a qualified planner needs to charge an average of £150 an hour to cover the cost of their work and time when they are not utilised on billable work then the case above would need to cost around £900 if carried out manually. This could be reduced to less than £150 if technology were fully utilised and the majority of the process carried out by lower cost administration or para-planner staff with the planner reviewing any recommendations made.

It is not just qualified planner time however that generates cost. A preliminary study of our data shows that an *average* simple new business case, investing cash takes 9 days to complete from first meeting to completion. The average more complex investment and pensions case with review takes around 15 days elapsed to complete. There are cost implications for the firm and its administrators as well as inconvenience for the customer. There is a critical need for straight through processing and the removal of re-keying between planner practices and product providers.

Q15: Which consumer segments are economic to serve given the cost of supplying advice?

Based on the economics above and assuming a maximum fee of 3% of any capital invested initially (firms do charge more than this however anecdotally our clients typically charge fees of between 2-3%) the minimum investment would be around £45,000. This is in line with the average case value in Dynamic Planner which is around £42,000.

Were technology used to reduce the time and cost to deliver as set out in the F&TRC study, a charge of £150 would allow advice to be provided on an investment as small as £7,500.

We are currently working with a group of foundation clients on the evolution of fully automated customer-led advice solution which can be utilised by Financial Planners and Wealth Managers to service their existing customers simpler investment needs. We believe that the *marginal cost* of advice delivery can be reduced to significantly below £150 with full automation.

Q22: Do you agree we should focus our initial work on advice in relation to investing, saving into a pension and taking an income in retirement?

Yes. See answer to question 3.

Q23 Do you agree we should focus our initial work on consumers with some money but without significant wealth

Yes. As set out above while the average net wealth of planners' customers is £100,000+ the average individual investment is £42,000, meaning that there is a range of investment amounts around this, both higher and lower. We believe there is a strong and active market for investors with £100,000 of capital to invest.

Consumers with less than this and certainly less than £42,000 are likely to find that there will be fewer advice firms willing to take them on as customers and so this might be a good threshold.

Q24 Are there aspects of the current regulatory framework that could be simplified so that it is better understood and achieves its objectives in a more proportionate manner?

Risk profiling on a website. In spite of the Finalised Guidance on Retail investment advice in FG15/1 our experience is that there remains confusion and concern over the provision of websites by firms and financial institutions which provide risk profiling tools to help customers decide on the right level of risk for them alongside lists of funds ranked by risk. While examples were provided in the Guidance which show that this can be done without providing a personal recommendation, it may still be Regulated Advice and the customer may still have access to the Ombudsman as if they had been advised. Clients have told us that this does not feel proportionate and have therefore not developed services in this direction.

Focused Advice. We believe that further clarity around reasonable 'gating' / suitability assessment for Focused Advice would be very helpful. While firms are able to limit the scope of a service, they cannot limit the depth of the suitability obligation and this causes firms we believe to opt for longer and more costly fact finding. If more examples were provided on what level of assessment was reasonable under different circumstances providers of traditional and digital advice would be more likely to adopt this route.

Q36 Do you have any comments on the extent to which firms are able to provide consistent automated advice at low cost? Are you aware of any examples of this, either in the UK or other jurisdictions?

In the summer of 2000 London Economics published a report for the FSA on Polarisation in Financial Services. It questioned how consumers who needed good investment advice might be able to access it and whether technology might hold the key. 'Online financial advice is a new phenomenon in the UK, but one can look at the first entrants sort.co.uk into the market to gain some idea how this market might develop.' Sort was founded by Ben Goss the founder of DT and went on to advise over 1,000 individuals per day at its height. Sort was acquired by mPower and later by Morningstar where their online advice capability is still used to provide advice to 401k pension scheme members in the US.

15 years later we believe the industry may have reached a turning point, where there is a clear acceptance that digital financial planning technology has a fundamental role to play in extending access to advice.

In the last 12 months we have supported a number of financial institutions in the provision of both online automated advice, simplified phone based advice as well as online tools.

We are accelerating the delivery of both planner-driven and customer-led digital apps which enable our clients to enhance access to their high quality advice at lower cost and risk.

We are working with a group of foundation clients on the evolution of fully automated advice which can be utilised by financial planners and institutions to service their customers' simpler investment and retirement income needs.

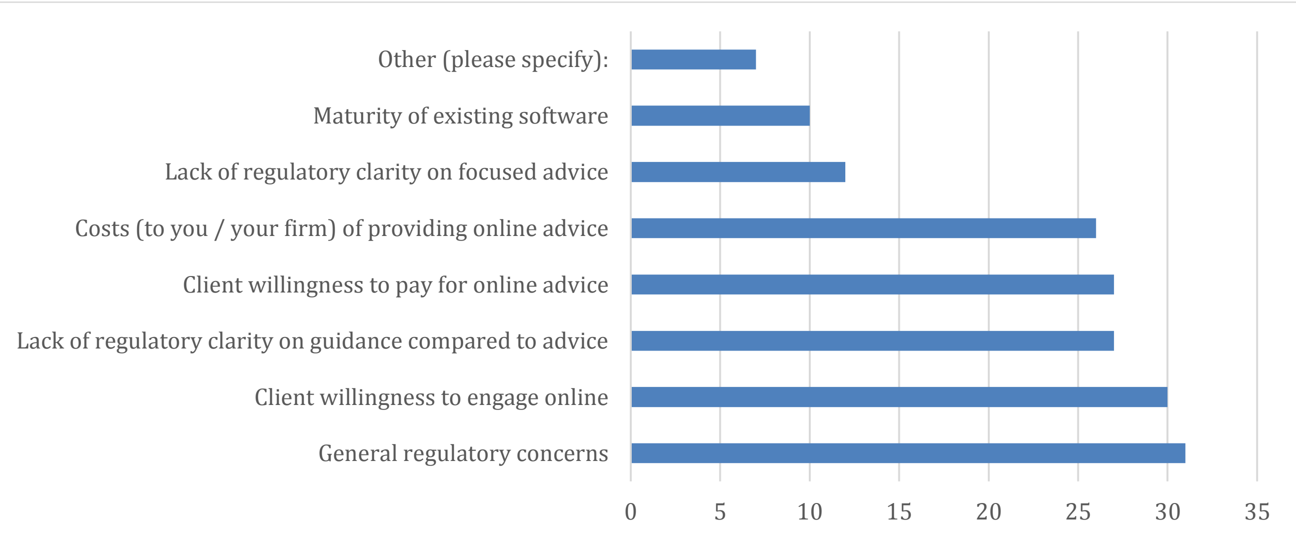
Q37 What steps could we take to address any barriers to digital innovation and aid the development of automated advice models?

We feel that a clear regulatory framework for the provision of Focused Advice coupled with greater clarity around the use of risk profiling tools online (see answer to Q24) would drive an unprecedented level of innovation, both of planner-driven and customer-led solutions.

Our recent research (see figure 12) shows that the single largest barrier is ‘general regulatory concerns’. We believe that the use of the Sandbox initiative would be appealing to more innovative firms who want to adopt an automated model and would help address this general concern. Specifically if the Sandbox can:

- Provide proactive guidance to firms on the scope, testing and delivery of an automated advice service and
- Provide a clear and helpful approach to enforcement letters

Figure 12. What are your main concerns about providing online advice? Source: Dynamic Planner adviser user survey 72 respondants from 55 firms; ranging from nationals to local firms. December, 2015



To encourage the successful and compliant adoption of digitally supported advice, technology alone is not enough. It needs to be married with;

1. Quality asset and risk modelling to ensure high standards of suitability
2. Best practice financial planning rules
3. Financial planners and human interaction.

The FCA should continue to encourage high standards of suitability and ensure these are translatable to automated advice solutions.

The last decade (particularly the great financial crisis of 2007-2008) has proven that risk managed, diversified portfolios are a very good answer for investors who have been suitability risk profiled. Behind every major industry mis-selling episode (and many PIA, FSA, and FCA reviews) sits the issue of suitability. Is the client or customer willing and able to take on the risks that an investment represents? If risk profiling is carried out accurately and there is a robust asset and risk model consistently aligned to it, portfolios should broadly behave as expected. That is not the same as saying investors won’t lose money, but the range of losses and gains they receive should be in line with their plan, their comfort zone and their capacity. Asset and risk model integrity ensures that suitability is in the DNA of any advice or planning provided, regardless of channel and needs to be embedded in any automated advice technology. Automated advice will need high quality asset and risk modelling to help ensure suitability.

The FCA should continue to provide guidance on good practice suitability and ensure this applicable to automated solutions as well as adviser-driven.

Encouraging best practice financial planning rules particularly in the area of retirement income planning

Pension freedoms hugely complicate retirement planning. The freedoms are powerful but the challenge is making good decisions which meet customer goals and ambitions with so many variables and unknowns. Drawdown too much capital too early and risk running out of money, buy an annuity too soon and get a guaranteed income that's too low and capital that can't be inherited. That said the 'science' of decumulation is very young and there is a huge need for tools and techniques which help customers and advisers engage with, plan, build and test plans which are more likely to deliver financial security in retirement.

The FCA should continue to provide guidance on good practice financial planning and advice as regards suitability particularly in the area of retirement income planning.

Encouraging use of technology by financial planners and institutions both adviser-driven and customer-led

We know that people are not good at retirement planning. Humans are not good at projecting what life will be like next week let alone in 10, 20 or even 30 years' time. But this is the time horizon over which retirement planning needs to take place. Pensions are also boring; they are 'System 2' thinking activities according to Daniel Kahneman in Thinking Fast and Slow requiring slow, effortful, infrequent, logical, calculating, conscious thinking…

We do not believe that it Is likely that standalone 'robo' or automated advice systems will encourage large numbers of retirees (who are not already self-directed) over the next decade to start making and taking these complex decisions online.

It is far more likely that financial planners and institutions using apps with data and analysis input by customers prior to meeting (or speaking over the phone / skype / screen sharing), can discuss the risks and benefits of different approaches with engaging graphics, encouraging 'nudges' (e.g. 'look how your pension grows if you keep working for only 2 more years…'), combined with insights based on 'other people like you'.

Our experience is that this planner-driven approach to digitally supported advice is highly appealing to planners. Over 1,000 planners downloaded our latest iPad app this year and the feedback has been overwhelmingly positive.

The FCA should continue to provide guidance explicitly encouraging the use of technology by financial planners and institutions to help ensure suitability through the provision of guidance on good practice.

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From:
Sent: 17 December 2015 11:41
To: FAMRSecretariat;
Cc: Ed Smith
Subject: Douglas Baillie

You have asked for input.

The Problem:

1. The present FCA rules and accompanying regulations (Miffid, COBS, Perimeter Guidance etc.) are vastly complex, run to thousands of pages, and are thus open to misunderstanding and subjective interpretation.
2. Attempts to seek clarification from the FCA are always met by the same response: "our rules are clear, you make your own interpretation". This is both unfair and unsatisfactory.
3. Advisers are therefore faced with delivering masses of 'literature' and many pages of advice reports to clients in a 'fear culture' to try and avoid a 'sin of omission'.
4. Clients do not want reams and reams of paper. But advisers have been given no choice.
5. The consequences of this complexity, and lack of helpful engagement from the FCA are very serious.
   a. An increasing number of consumers, actively encouraged by a growing number of 'Claims Management Companies' – (CMCs) and specialist Regulatory Legal firms are now complaining to the FOS.
   b. The FOS are making retrospective and highly subjective interpretations of the FCA Rules to find in favour of complainants, when in fact often such complaints are unjust, meritless and vexatious.
   c. The cost of defending such complaints in line with the FCA rules, and an adverse FOS adjudication is well beyond the resources of most advisers firms.
   d. And with no right of appeal (whereas the customer does have that right), the Adviser is helpless and is unfairly treated
   e. This drives up the number of financial failures amongst otherwise very honest and experienced IFAs.
   f. Professional Indemnity Insurance become ineffective, the premiums soar, exclusions rise.
   g. The FSCS levy continues to rise exponentially and is unsustainable
   h. The new Pension Freedoms will be an abject failure – complaints will become a tsunami –
6. The FCA are failing to prosecute unregulated advisers as they continue to sell unsuitable and unregulated products
7. Consumers do not know the difference between Regulated and Unregulated advisers – this causes mistrust within the consumer and adviser community

The Solution:

1. New simple, easy to understand rules that everyone can apply on a 'level playing field'.
2. A clear definition of terms used in the rules: For example:
   a. What is Simplified Advice, and what are the COBs requirements?
   b. What does Restricted Advice actually mean? Simply defining it negatively as – 'not independent advice' is not good enough, and enflames the fire of misunderstanding
   c. What is focussed advice?
   d. A clear rule with regard to 'Know Your Client' (KYC) and when is a fact-find enough?
   e. Clients and Advisers want clarity and brevity
3. A 'joint written undertaking' document, signed by both the client and the adviser that clearly sets out the responsibilities of BOTH parties.
4. A proper and senior liaison among the Treasury, the FCA, the FOS and the FSCS and the Adviser community (preferably APFA).
5. The FCA to take a hard line against unregulated advisers, using their powers in FSMA 2000 to bring criminal prosecutions

Douglas RG Baillie
Director
Douglas Baillie Ltd
DOUGLAS BAILLIE

TAX PLANNING AND WEALTH MANAGEMENT

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FINANCIAL ADVICE MARKET REVIEW (FAMR)- 'CALL FOR INPUT'

The ea Change Group (EACG) welcomes this opportunity to respond to the various questions posed in the above paper. The FAMR has a very important role to play in improving the availability of advice to those without significant wealth or income.

By way of background, EACG was founded in 1998. It was originally set up to address the issues of euro integration. Since this time it has expanded significantly in providing project and programme management services including a consultancy arm. Our clients include all the major banking groups and building societies together with a number of leading insurers. The consultancy has offices in the UK, Australia, Hong Kong and Singapore. EACG is actively involved in the consultation processes associated with new financial regulation. We publish a range of informative materials for our clients and indeed anyone interested in the topics covered (www.eacg.co.uk). Feedback indicates our readers welcome the accuracy of our commentary and objectivity. EACG has responded extensively to FCA, HM Treasury and EU consultation papers impacting on retail and investment banking, including the RDR and MiFID. The author of this response also worked with the then FSA in the development of basic advice running the fieldwork pilots with Lloyds Bank non-regulated sellers.

The detailed responses to the questions raised in 'call for input' are to be found in the attached appendix. However, we also feel it appropriate to highlight the following points.

Financial education remains in its infancy in the UK. The vast majority still declare financial products as "too complex" and beyond normal comprehension irrespective of the evidence. This is often simply an excuse for inactivity. In many ways this 'call for input' is putting the cart before the horse. Sadly, a knowledgeable society concerning financial matters is still a generation away and the situation is not helped by an industry based internally on acronyms. The FCA must also share some of the blame with the use of terms such as '*restricted advice*' adding to the confusion.

The discussions around the 'advice gap' at this stage are, of course, self-inflicted. This outcome was forecast as the result of the RDR reforms as inevitably face to face advice would become the province of the HNW. Although commission bias had to be irradicated there was a place for commission where smaller ticket values existed. The consumer must always be protected but this must be balanced with a return to the distributor. The most evident result of the RDR was the withdrawal of the network regulated salesforces by all the high street banks.

We should never forget that the typical investor is risk adverse. Even the profile of Stakeholder products has proved riskier than many investors will contemplate even if a five year time horizon for any investment has been accepted.

The state must always take responsibility for the lower income groups where daily focus will be on subsistence and far from long term financial planning. Whilst on paper it should be easier to standardise advice for non-HNW segments seeking assistance, equally we should acknowledge that greater care and safeguards may be needed where savings are limited. This is particularly so in an era when final salary pension schemes and careers for life have all but disappeared.

We believe that the responses to the questions raised are self-explanatory but if more detail is required please contact the author directly.

Yours sincerely,

Roger Davies

ROGER DAVIES,
Principal Consultant,
EA Change Group.

21st December 2015

APPENDIX

Q1: Do people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, have particular needs for financial advice or difficulty finding and obtaining that advice?

Apart from well-known restrictions imposed through religious doctrine, we can find no evidence that individuals in these categories (including those with the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sex, and sexual orientation) have increased difficulty in finding advice. Penalties, of course, exist under the Equalities Act to discourage malpractice.

Q2: Do you have any thoughts on how different forms of financial advice could be categorised and described?

We agree that the consumer is often confused by the regulatory names given to different types of advice (eg basic, focused). For ease of understanding with investments, EACG has always promoted to the FSA/FCA the use of the depolarisation terminology. Advice can be called 'independent', 'multi-tied' or 'tied' depending upon the range of product manufacturers available to the client. These terms should be readily understood by the majority of investors.

Q3: What comments do you have on consumer demand for professional financial advice?

It can come as no surprise that the Mintel research indicates that consumers are more likely to pay for advice if dealing with complex products or if facing a decision which could greatly impact on their wealth. General insurance is effectively sold on price (eg price comparison websites) not on the quality of advice available.

We believe that consumer demand for holistic financial advice can only increase with the latest pension and annuity reforms plus the long term care time bomb waiting in the wings.

Q4: Do you have any comments or evidence on the demand for advice from sources other than professional financial advisers?

The conclusion drawn by the Mintel report, of the marginal shift towards channels that do not offer a personal recommendation being explained by consumers wanting to stay in control of their investments and believing they were as capable as an investment adviser, is open to debate. We believe cost is the real driver with investors often failing to recognise the value of professional advice or deeming it cost-ineffective.

Anecdotally, the cost of F2F advice will always drive unsophisticated investors to approach unqualified individuals with some experience of the marketplace. Such investors do not appear to be concerned with the lack of redress for poor advice. The scale of such unofficial advice is not known.

Q5: Do you have any comments or evidence on the financial needs for which consumers may seek advice?

The paper identifies all the core financial needs in the spectrum table.

Q6: Is the FCA Consumer Spotlight segmentation model useful for exploring consumers' advice needs?

Useful yes but, as with similar attempts in the past, standardising any approach to common descriptions is fraught with difficulty and potential error. There is no 'typical' investor or bank 'borrower' and the age bands will vary between families.

Q7: Do you have any observations on the segments and whether any should be the subject of particular focus in the Review?

Avoiding the lower net worth, we believe focus should be given to 'Striving and Supporting ' (6m UK adults),'Stretched but Resourceful' (7m UK adults}, 'Busy achievers' (3m UK adults) and 'Affluent and ambitious' (4m UK adults).

Q8: Do you have any comments or evidence on the impact that consumer wealth and income has on demand for advice?

The Bank of England statistics reveal an obvious inequality in wealth distribution across UK society. This information also underlines the need for cost-effective advice to be available for all those who need it. In addition, it would appear that over 50% of the UK population is concerned with daily subsistence with little opportunity to save.

Inevitably, the HNW segment has a greater propensity to pay for F2F advice and, of course, a wider range of financial needs (eg trust advice). Low income groups show little or no desire to seek advice as their priorities will lie elsewhere.

Q9: Do you have any comments or evidence on why consumers do not seek advice?

The core reasons have been identified in the text. Cost of F2F advice and poor financial education in general are believed to be the key issues.

Q10: Do you have any information about the supply of financial advice that we should take into account in our review?

Post-RDR there are obvious barriers to firms in providing F2F advice. Satisfactory remuneration in a non-commission environment is a key issue. The lack of clarity about regulatory expectations has stifled innovation and regulatory costs are increasingly seen as prohibitive. Most distributors are experimenting with non-advised and lower cost processes.

Q11: Do you have any comments or evidence about the recent shift away from sales based on professional advice, and the reasons for this shift?

We should not be surprised that the FCA's product sales data indicates that the proportion of retail investment products sold without advice has risen from 40% in 2011-12 to 66% in 2014-15. Whilst there may well be a general lack of trust, we believe it is the withdrawal of commission and the transparency of the cost of advice following the RDR that is resulting in a reduction in demand for professional advice.

Unless a large sum is available for investment, the majority will opt for a non-advised sale.

Q12: Do you have any comments or evidence about the role of new and emerging technology in delivering advice?

Without doubt greater use is being made of the internet and the access to generic advice. Whilst silver-surfers are active too, many in this age category still refuse to bank online. Many look to advances in fintech to deliver a superior and cost-effective advice service utilising all available customer data.

Q13: Do you have any comments on how we look at the economics of supplying advice?

We fully appreciate that the FCA will wish to understand how costs and revenues are affected by technology. This information is best provided by our clients.

Q14: Do you have any comments on the different ways that firms do or could cover the cost of giving advice (through revenue generation or other means)? Do you have any evidence on the nature and levels of costs and revenues associated with different advice models?

See response to Q13.

Q15: Which consumer segments are economic to serve given the cost of supplying advice?

Unsurprisingly the HNW segment, with more complex issues and higher ticket values, is broadly recognised by firms as the most remunerative available. The "*pile 'em high, sell 'em cheap*" approach is a potential minefield for all regarding both suitability and appropriateness. The Sergeant Review in 2012 essentially concluded that simplification in advice was only possible with general insurance products.

Many firms approaching segmentation through asset portfolio values will be flexible should a large potential investment arise from any quarter. Longstanding IFAs who have consistently delivered expert advice to their clients have prospered whilst it is proving far more difficult to establish a new advisory firm in the high street. In all cases, technology is replacing manpower.

Q16: Do you have any comments on the barriers faced by firms providing advice?

This section in the paper fully explores the issues. It is telling that the Association of Professional Financial Advisers has estimated the cost of regulation for the smallest firms to be around 20% of revenue, with indirect costs accounting for a further 16%.

Q17: What do you understand to be an advice gap?

We agree that the advice gap should be regarded as any situation where a consumer cannot get the form of advice that they want at a price they are prepared to pay.

The Savings Gap is another bag of worms! Savings and investments are intrinsically linked and should be viewed in light of the need for improved financial education. The pension freedoms being granted by this government will not be understood by the vast majority of adults without professional advice.

Q18: To what extent does a lack of demand for advice reflect an advice gap?

If financial advice was free (or tax deductible) there would be a surfeit of demand! A survey of consumer need would undoubtedly flag the requirement for a cost-effective financial advice process especially with pension reform.

Q19: Where do you consider there to be advice gaps?

Investment advice for the self-employed and middle income bands (with household earnings between £30,000 and £50,000 per annum).

In terms of the FCA's 'heat map', all the sections could be relevant to the 'Striving and Supporting', 'Stretched but Resourceful', 'Busy achievers' and Affluent and ambitious'! The less so, however, for the two general insurance boxes.

Taking an income in retirement is now a top priority following the government's pension reforms.

Q20: Do you have any evidence to support the existence of these gaps?

Anecdotal information only. Empirical research indicates few would consider approaching a financial adviser on grounds of cost but many will seek advice within the family or from a 'knowledgeable' friend. All professionals (eg accountant, solicitor) are deemed expensive and only contacted in cases of extreme need.

Q21: Which advice gaps are most important for the Review to address?

See response to Q19. Advice gaps exist across the FCA's 'heat map'. We agree that for the purposes of the "advice gap", the FCA should focus within these categories on consumers "*with some money but without large wealth*".

Q22: Do you agree we should focus our initial work on advice in relation to investing, saving into a pension and taking an income in retirement?

YES- Agreed, there are obvious benefits if the FCA looks initially at investing, saving into a pension and taking income in retirement.

Q23: Do you agree we should focus our initial work on consumers with some money but without significant wealth. What exact income/wealth thresholds should we use to determine which consumers we will focus on?

YES. We see value in focusing on those with less than £100,000 investible assets or incomes under £50,000.

Q24: Are there aspects of the current regulatory framework that could be simplified so that it is better understood and achieves its objectives in a more proportionate manner?

Clearly, all UK regulation must reflect EU legislation and the need for maximum harmonisation across the single market leaves little or no opportunity for simplification. The current rules applying to 'appropriateness' have caused real problems for the industry with non-advised sales processes. The cost of regulation and the potential penalties for mis-selling will stifle any innovation regarding simplification. Margins will discourage investment.

Q25: Are there aspects of EU legislation and its implementation in the UK that could potentially be revised to enable the UK advice market to work better?

The UK consumer could benefit from a single wave of regulatory changes rather than new UK rules often preceding similar but different EU-based regulations. For example, the situation with the KID and KFD can only be confusing for UK investors.

Q26: What can be learned from previous initiatives to improve consumer engagement with financial services?

There have, of course, been a series of initiatives launched in the UK to encourage consumer participation with proportionate financial advice. The Sandler Review proposed Stakeholder products where fund risk was managed by product design. Sadly, take up of Sandler products by manufacturers was poor as with a price-cap many feared contagion. The Stakeholder pension did drive costs down for the consumer.

MiFID largely scuppered basic advice and the expansion in the use of decision trees for the sale of stakeholder products. Nervous risk and compliance teams were reluctant to use decision trees but demand in telephone pilots also proved illusory. Basic advice proved that the consumer is risk adverse with Stakeholder products found too risky for most potential investors! Many product manufacturers promoted guaranteed products as an alternative strategy. The true costs of this type of investment (and the risks) were hidden and in the final analysis many early investors may well have been better off putting their savings in a bank deposit account.

The recent Sergeant Review has highlighted the difficulties of simplifying investment advice and in ensuring product suitability without a full fact find. MiFID-2 will offer even more barriers.

Q27: Are there any approaches to the regulation of advice in other jurisdictions from which we could learn?

Many have been impressed with the Australian FOFA regime where regulators have been flexible and readily identified where new rules have not worked as intended. There is, of course, no common tax regime and we should not forget that the UK, with its highly developed markets, is unique even amidst its close European partners. The EU is intent on a single rule book whereas, in terms of practicality, most if not all practitioners would prefer principles based regulation.

Q28: What steps can be taken to address behavioural biases that limit consumer engagement without face-to-face advice?

Experience says investment products are sold and not bought and in any sales process a recommendation is crucial to gaining investor commitment. Generic advice can only be accepted offer time if no mis-selling scares arise. Customer behaviour is normally influenced by incentives and some tax-free treatment or other government bonus may be necessary.

Q29: To what extent might the different types of safe harbour described above help address the advice gap through the increased incentive to supply advice.

The industry would certainly welcome any regulatory provision which reduces or eliminates uncertainty and potential liability, if certain conditions are met. Reputational risk is still a concern.

In terms of planning and commitment, the FCA should we believe specify precisely conduct which does and does not comply with a rule. The FSA/FCA has in the past not provided the necessary fillip to develop non-advised processes and by their very nature, risk and compliance teams are conservative in their approach. All firms are mindful that innovation is a cost that might not be recovered should the rest of the industry simply follow their lead.

Q30: Which areas of the regulatory regime would benefit most from a safe harbour, and what liabilities should a safe harbour address?

Regulatory uncertainty is the biggest barrier to innovation in providing consumer advice. The FCA should be prepared to support initiatives that are in the consumer interest by removing the threat of non-compliance fines providing specified safeguards are also available. Although the consumer should not be used as a testing laboratory, we cannot expect major changes in the marketplace without significant programmes being launched in the public space.

Q31: What steps could be taken to ensure that a safe harbour includes an appropriate level of consumer protection?

We do need a balance between cost-effective advice for all parties with consumer protection. The existing rules on suitability and appropriateness provide this backstop but it is hoped these could be streamlined for less complex products.

Q32: Do you have evidence that absence of a longstop is leading to an advice gap?
NO. We have no evidence to suggest that the lack of a longstop *(a limitation period which prevents claims being brought after a set time following the act or omission which the claim relates t*o) has led to an advice gap.

Q33: Do you have evidence that the absence of a longstop has led to a competition problem in the advice market e.g. is this leading to barriers to entry and exit for advisory firms?

NO. Anecdotally, the lack of a longstop may discourage new entrants although in these cases this is a long term risk. This in itself will not create an advice gap. However, the exit of advisory firms especially on the high street could be a significant trend.

Q34: Do you have any comments about the benefits to consumers of the availability of redress for long-term advice?

Overall, consumers should welcome the prospect of receiving compensation if they have been given unsuitable advice. Common sense says mis-selling should be identified early in the history of a product if it is being reviewed by an adviser on a regular basis. We do need a balance of customer protection with greater legal certainty for the distributor/manufacturer.

Q35: Do you have any comments or suggestions for an alternative approach in order to achieve an appropriate level of protection for consumers?

On balance, we prefer a general longstop of 15 years (similar to that applying under the Limitation Act 1980). Adopting a different standard for different products will be confusing for all parties.

Q36: Do you have any comments on the extent to which firms are able to provide consistent automated advice at low cost? Are you aware of any examples of this, either in the UK or other jurisdictions?

As recognised in the text, there are a number of digital models emerging online including execution only services, advised and fully managed investment solutions. Those that appear to operate best include access to a qualified adviser during the process, if required.

The issue for the main high street banks is that they are strapped by legacy systems with regard to the generation of accurate customer data across their organisations. Several challenger banks are hopeful of moving into this space which in proving product suitability can be seen as part of the digital revolution. Automated advice can offer a lower cost solution but is inherently risky should a customer end up with an inappropriate product for whatever reason.

Q37: What steps could we take to address any barriers to digital innovation and aid the development of automated advice models?

We are pleased that the FCA has taken the opportunity to expand Project Innovate and introduce a regulatory sandbox. Most importantly, this 'safe space' can be used by businesses to test innovative products, services and business models without incurring all the usual regulatory consequences involved with pilot activities. Such a test bed for robo advice could prove very significant in addressing the barriers to innovation.

Q38: What do you consider to be the main consumer considerations relating to automated advice?

We believe the FAMR has identified the key issues. Automated advice has the potential to be cheaper and quicker than F2F advice but it remains to be seen if the quality of advice can consistently match the accuracy of full or focused advice. Customer trust in an automated process can only be built over time and individuals must be convinced that they are getting value for money.

Q39: What are the main options to address the advice gaps you have identified?

See response to Q38. Automated advice should be considered for all low ticket situations or for individuals and families who have unsophisticated needs. It should always include a government health warning that it can never replicate full advice.

Q40: What steps should we take to ensure that competition in the advice markets and related financial services markets is not distorted and works to deliver good consumer outcomes as a result of any proposed changes?

The FAMR should monitor the dynamics of the relevant markets and through surveys ensure that good consumer outcomes are always achieved. Competition should drive consumer benefits in terms of pricing and product design.

Q41: What steps should we take to ensure that the quality and standard of advice is appropriate as a result of any proposed changes?

See response to Q40. As identified in the text, there is a balance to be struck between reducing costs and uncertainty for the industry, whilst providing an appropriate level of consumer protection. It is important to stress that consumers may suffer detriment through being unable to access advice. Advice in its simplest form, if accurate, must be seen as better than no advice at all for new or unsophisticated investors. It is very important that the FAMR overcomes the shortcomings in the RDR and results in an advice market that works for all segments of consumers with solutions that are economically viable for the industry.

From:
Sent: 22 December 2015 13:32
To: FAMRSecretariat
Cc: Jamuna Murphy
Subject: Edward Argar

I am writing in response to the call for comments in respect of the above review, and responding in advance of today's deadline to this advertised email address for responses, with comments specifically in respect of the Longstop review (Questions 32-35).

My comments are brief & general rather than specialist but highlight an issue that has been raised with me through a constituency case, which I think should be borne in mind in the context of the review, and I would welcome the opportunity to discuss this further with the review team.

1. It is entirely appropriate that IFAs continue to be properly regulated, with individuals using them having this reassurance, and furthermore that criminality can always be pursued regardless of time elapsed, however there does appear to be a clear injustice in potentially unlimited liability routinely hanging over IFAs indefinitely, a situation that does not apply to other similar professionals.
2. While the point made in the consultation document about the impact of long-term advice in some cases only becoming apparent some time after the event is quite right, the absence of the previous 15 year longstop can leave long-retired IFAs suddenly open to a potential claim many years after they have ceased trading, shut their businesses down, and moth-balled records.
3. I believe that the balance currently struck is not the most appropriate one and that the absence of a longstop, notwithstanding the time limitations that can apply in what the Financial Ombudsman will consider, leads to uncertainty and a lack of clarity about how long a potential liability against IFAs exists. I hope that the review will be able to consider and recommend changes that continue to provide customers with proper redress for complaints made in a timely way, whilst also addressing the current issue of time-unlimited liability hanging over people.

I believe that the current anomalous situation has been left unresolved for too long, hope that these comments can be fed in to the review process and, as noted above, and that there will be a further opportunity to discuss these particular aspects of the review in greater detail with the FCA review team.

Edward Argar MP
Member of Parliament for Charnwood
House of Commons, London, SW1A 0AA

ENGAGEINSIGHT
creative thinking

18th December 2015.

Engage Insight response to the FAMR Call for input

Engage Insight are a research and development consultancy that focus on consumer and business need alignment to ensure client centric business models, distributions strategies and stakeholder engagement.

Our latest research covers, FinTech (APPs, Cash flow modelling, Robo-advice or automated investment strategies in particular) and the role this has to play in incentivising a savings and investment culture in the UK. We focused on the middle market and assessed technological development within products and services along with the application of Behavioural Economic strategies to see what consumers thought would best suit their needs and help bridge the growing 'advice gap'.

We list below the key findings of our research and it is clear that technology has a role in:

1. Bringing down the price of advice
2. Offering clear and easy to understand products and services
3. Offering easy access to saving and investing

We also found that gaming technology such as APPs can also enhance emotional engagement in the savings and investment journey and the way product features and benefits are framed is also crucial to understanding.

Whilst we see an appetite for growth based investing due to perceived challenges such as education fees and long term parental care, there is also a lack of knowledge surrounding asset growth potential and where to access high quality financial advice.

The automated investment technology is trusted service for those with some money to invest, but the model that offers a 'phone a friend' approach i.e. access to human intervention whether through Pension Wise's guidance or Wealth wizards chartered financial advisers is a highly desirable and valuable.

We look forward to your views

Kind Regards

Chris Davies
Managing Director

ENGAGEINSIGHT
creative thinking

Robo-advice and incentivising a savings culture paper key findings

1. **General savings and investment preferences**
    - ISA is the 'Go to' Product 63% in favour
    - Influence desired in product design 91% - want a 'Co-Build' strategy
    - Bullet points – Key features/benefits & Comparison dashboard wanted for clear product and service communications/marketing
    - Property-cash-equity-bonds returns are unrealistic, thus education is required
    - Active & passive investment philosophies are seen as equally attractive
    - Crowd funding platforms & ISAs are all seen as popular investment options for much needed growth to meet lifestyle goals.
2. **Childcare/Education fees**
    - Childcare 17K Education 94K, so realistic expectations on costs
    - Specialist products would help i.e. invest for long term but allow access for life coals
    - Goal based – auto investing can aid better chance for disciplined goal based savings/investing
3. **Parental Care & Long Term Care (LTC) planning**
    - Ave care home costs £570pw, there is a realistic view on need to plan
    - Key challenges: LTC-health-dependency on income-live family home
    - Products favourite for LTC planning: ISA, % withdrawal from Pension-Equity release-Pension Tax Free Cash
    - Specialised product favourited
        - Flexible withdrawal, Tax relief within, Tax relief on withdrawal, Tax relief on investment are all seen as opportunities
4. **Product features and benefits**
    - Product flexibility and discipline required i.e. 100% invested for long term with Small withdrawal desired
    - Framing product benefits: Tax free v tax relief, Tax free was understood
    - Pension ISA could be an option with TEE – 36%, EET – 30%
    - Flexible, Fungible and Free features are desired
    - Technical problems can be solved through clarification via adaptive challenges and solutions

Technical problem	Adaptive challenge	Solutions
Lack of UK savings	Move from debt culture	Automated investments, flexible product features, counselling/coaching services
Ability to pay off loans	Remove guilt/inertia/fear	Use 3rd party professional e.g. financial adviser
Price anchoring, product framing features & benefits	Identify and remove mental biases	Regulation: Change choice environment, transparency & control information

Copying others behaviours	Ignore industry 'noise'	Stay in seat when markets fall, automated rebalancing

5. **Technology as an incentive**
    - Human engagement is still desired. Yet our on-going research shows higher percentage go online first for advice.
    - Human intervention is valued at transactional events e.g. specific life events such as Marriage, House Purchase, Education, LTC
    - Cash flow modelling & Auto investing technologies are seen as powerful tools and incentives to save for the future
    - Auto investment and option to speak to an adviser (phone a friend) is seen as the model that will offer most value
    - Auto investments will aid rational investment decisions
    - 57% will trust Auto investment technology with some of their money
    - Auto investment is seen as a tool to lower costs
    - Gaming technology APPs are scene as a pre-requisite to engaging with a wealth management firm e.g. Instant Saver, PING IT, 7Imagine

The Robots and the Financial Advice Market Review (FAMR)

With the advent of the FAMR and it's requirement to address the mass-market advice gap, an unintended consequence of the RD, we have an opportunity to review our research and see how the results in relation to the understanding of and appetite for automated investment strategies along with 'cyber-advice' and full blown human intervention can facilitate good outcomes and higher engagement for the lower affluent to mass affluent market in their savings and investment needs.

Table 7 showcases the barriers to entry as detailed in this paper and we include current and potential solutions that can provide answers.

Table7: FAMR - Barriers to entry and potential solutions

Barrier	Issue	Solutions
Price	Hard to judge the value	Automated investment strategies are now offered at low cost or for free. Simplified/focused advice can offer low costs and incentives to save (e.g. Nutmeg)
Lack of trust	Financial crises, poor conduct	Auto advice can aid rational choices and ease of access can facilitate engagement and trust. Advisers are still a trusted source, so 'Cyber-advice' can raise education and trust and bridge auto savings/invest with holistic planning
Knowledge	Low confidence in self efficacy	APP access to clear and simple features and benefits, align this with engagement solutions below
Engagement	Inertia and disinterest	Information, nudge and gamification features e.g. 7Imagine and WestPac Bank-True Potential Impulse save APPs. Martin Lewis Money Show-Money Savings Expert website and Personal Finance Education Group Pfeg school curriculum work TISA Savings and Investments Policy Project

Overconfidence	Know best	Outsource to a 3rd party professional – Advisers/Pension Wise/MAS
Access to face-to-face advice	Geographically challenged	Call centres and Guidance (e.g. PensionWise/Money Advice Service) Simplified/focused advice incorporating VOIP/phone a friend (e.g. Wealth Wizards) Adviser firm online Client Portal consolidates savings and investments
Internet and data sharing	Poor access and sensitive on data share	Call centre driven-online banking/client portals with Standard framework/Cyber data protection
Advice not applicable	Simple needs and low risks or effort for seeking advice disproportionate to the benefits	Online self invest/savings options/online banking/National Savings

Dear FAMR Secretariat,

I am writing to you to provide a summary of the discussions by the Expert Advisory Panel (the Panel), which was established as part of the Financial Advice Market Review (FAMR).

You asked me to Chair the Panel, which consisted of a broad array of representatives from both consumer and industry bodies. It is important to note that the representatives were present at the Panel in a personal capacity and were not representing the views of their firms. The individuals involved were:

- Alex Neill (Which?)
- Andy Briggs (Aviva)
- Ashok Vaswani (Barclays)
- Chris Rhodes (Nationwide)
- Gill Cardy (Defaqto)
- Gillian Guy (Citizens Advice Bureau)
- Ian Gorham (HL)
- Jackie Noakes (L&G)
- Nick Hungerford (Nutmeg)
- Nicky McCabe (Fidelity)
- Richard Freeman (Intrinsic)
- Richard Rowney (LV=)
- Dr. Robin Keyte (FCA Small Practitioner Panel)
- Sue Lewis (Financial Services Consumer Panel)
- Tom Wright (AgeUK)

I would like to take this opportunity to thank each of the Panel members for their time and valuable insights throughout this process. I would also like to thank Oliver Wyman for their generous support in facilitating the work of the Panel.

The Panel met for five two-hour sessions, during which a wide range of issues and potential solutions were discussed. The Panel members also had at least one individual discussion with the Project Team and Oliver Wyman to either stimulate discussions in advance of a Panel session or clarify any topics discussed during the previous Panel meeting. Notably the Panel did not set out to explicitly answer all the questions outlined in the FAMR Call for input, but the structure of our sessions ensured we discussed all the material issues you identified.

The following summary represents my view of the areas of agreement and, at times, disagreement in the Expert Advisory Panel discussions.

Kindest regards,

Nick Prettejohn (Chair of the Expert Advisory Panel)

FAMR Expert Advisory Panel: Summary of perspectives from Nick Prettejohn (Chair of the Panel)

Role of FAMR Expert Advisory Panel

1. The Financial Advice Market Review (FAMR) was set up by the FCA and HMT in order to assess how financial advice could work better for consumers. The review has a wide scope and aims to look across the financial services market to improve the availability of advice to consumers, particularly those who do not have significant wealth or income.

2. A joint Call for input was issued for widespread response from individual market participants, industry and consumer bodies. In addition, an Expert Advisory Panel (the Panel) was constituted as a means to identify potential collective opinions. The Panel is composed of both market practitioners and representatives from consumer bodies, and was established by the FCA and HMT to provide collective perspectives on the reasons for the emergence of an advice gap, and suggestions for potential solutions to expand the provision of advice.

3. To fulfil this role, the Panel aimed to identify areas of agreement and disagreement on the two critical questions from the FAMR Call for input (Call for input):
   – What are the demand and supply inhibitors to financial advice (i.e. drivers of the advice gap)?
   – What demand and supply side solutions might help close the advice gap?

4. This document is a summary of the Panel's discussions – providing perspectives on the reasons for an advice gap and potential solutions to expand the provision of advice. The term advice is used throughout in its broadest possible form (i.e. help / guidance / advice) unless otherwise stated (e.g. regulated advice). This document begins by discussing the Panel's scope and areas of focus, then moves onto consider demand and supply inhibitors, finally considering solutions.

Scope and areas of focus – Broadly covering Chapters 1, 2 and 3 from the Call for input

5. The Call for input indicates that the FCA / HMT intend to initially focus on advice in its broadest possible form (i.e. help / guidance / advice), in relation to investing, saving into a pension and taking an income in retirement. This is with a specific focus on the advice gap for those people who want to work hard, do the right thing and get on in life but do not have significant wealth.

6. Recognising the fact the Panel's scope needed to be limited, the Panel considered whether they should primarily focus on the same areas outlined in the Call for input, or whether there were additional areas which should be considered.

7. There was broad consensus that, historically, reviews of advice provision had too often adopted a regulatory or provider lens. The Panel felt that looking through the consumer lens was more appropriate, and that looking at life stages and events is particularly useful. From a consumer perspective, the Panel emphasised that many forms of advice are relevant across various life stages. As a result, advice should be taken in its broadest possible form and not just limited to regulated advice for a standalone transaction. The

Panel was also keen to ensure various life journeys were considered when discussing the advice gap, including potential “shocks” (e.g. divorce, unemployment, family bereavement), and that various institutions were considered, including the workplace.

8. There was broad consensus on the types of solutions that should be considered in scope. The Panel concluded that the core scope should involve making advice easy to find and access once a consumer is actively seeking it, and making such advice effective, transparent and competitive. Helping consumers become financially resilient (e.g. through auto-enrolment, incentivised savings, improving financial literacy) was not considered a core area of focus, but was not considered to be totally out of scope – though it should be noted that the Panel were supportive of all these measures. It is noted that there are significant ongoing efforts in this respect taking place outside this review, including the ongoing Financial Capability Strategy.

9. On the product side, the Panel broadly agreed with the Call for input’s suggested initial focus areas of investing, saving into a pension and taking an income in retirement. However, there was consensus across all Panel members that a significant advice gap also exists within equity release and Life Insurance / Income Protection, warranting their inclusion. It was important for these financial needs to be considered separately from mortgages and insurance in general, where the Panel felt significant advice gaps do not exist (perhaps due to the outcome of previous reviews, such as MMR, or via the emergence of price comparison websites), and thus were not be a major focus area for the Panel.

Demand inhibitors – Chapter 2 from the Call for input

10. The Panel discussed and agreed inhibitors to the demand for advice. Nine key inhibitors were identified:

   A. Consumers lacking knowledge of their future financial needs

   B. The benefits of receiving regulated advice being unclear / difficult to assess

   C. A lack of transparency in the costs of regulated advice

   D. Too much hassle being involved in obtaining financial advice

   E. An ongoing expectation that regulated advice should be free

   F. Upfront charges potentially putting off a large number of lower income consumers

   G. Overcomplexity in products and advisory processes

   H. A lack of trust in advice providers and products

   I. A common feeling that financial advice is “not for me”

11. *Consumers lacking knowledge of their future financial needs*: There are concerns that a large number of consumers fail to seek advice because they lack understanding of their true future financial needs. A number of drivers were suggested, including a failure to target financial outcomes (and hence failing to understand the actions that need to be taken today to achieve the desired results), a false sense-of-security potentially compounded by auto-enrolment and political ambiguity surrounding state pensions, and a lack of understanding about long term financial needs e.g. the possible high costs of retirement / care. The Panel also noted that some consumer misapprehension may be

driven by a sense of overconfidence about their financial capabilities and ability to make suitable financial decisions.

12. *The benefits of receiving regulated advice being unclear / difficult to assess*: the Panel felt that consumers struggle to judge the benefits of regulated advice due to the long time frames involved, and the inherent difficulty in comparing outcomes from having received good financial advice vs. having not received good financial advice. As a result, there is no benchmark for consumers to assess the potential benefits from receiving good regulated advice.

13. *A lack of transparency in the costs of regulated advice*: The Panel also noted the lack of transparency about the costs of regulated advice. For example, a recent Which? study showed that 349 out of 500 financial advisers did not publish their fees and charges online. This lack of transparency increases the challenges consumers face when trying to assess the benefit of receiving regulated advice.

14. *Too much hassle being involved in obtaining financial advice*: The Panel members agreed that the hassle involved in receiving end-to-end financial advice and purchasing suitable financial products can be a significant inhibitor to the demand for advice. In particular, the Panel highlighted the fragmented nature of the consumer journey when trying to obtain advice about financial matters, given the lack of one provider who can meet all their financial needs. It was also noted that, after the majority of banks stopped providing financial advice, it was not clear to consumers where they should go to receive financial advice. The lack of big brands in the IFA space, and absence of well-developed consumer-friendly tools such as IFA aggregator websites, may compound this issue.

15. *An ongoing expectation that regulated advice should be free*: The Panel noted that consumers' unwillingness to pay for advice might be driven by the fact that advice is often free in other industries. For instance, medical advice, from a doctor, nurse or pharmacist is free at the point of use in the UK (though in some industries, paying for advice is more common, e.g. from lawyers or accountants). In addition, the Panel highlighted that the advice gap is not as significant for financial products where there is not a requirement to make an upfront payment, such as mortgages where the cost of advice can remain embedded.

16. *Upfront charges potentially putting off a large number of lower income consumers*: In addition to the expectation that advice should be free, consumers are now required to pay for their advice upfront. The Panel noted the issues this has caused, particularly for consumers on lower incomes where the upfront charges may be acting as a significant barrier to receiving financial advice.

17. *Overcomplexity in products and advisory processes*: The Panel felt that one driver of the advice gap was unnecessary complexity. This includes the large number of products, with difficult to understand terms and conditions, unnecessarily inefficient financial advice processes, including challenging fact-finding and disclosure procedures, and complex regulatory definitions of advice, which are not phrased from a consumer perspective. They noted that the resulting complexity has created an environment which is not designed around the consumer – subsequently making it difficult for consumers to understand and engage with products and advisory processes.

18. *A lack of trust in advice providers and products*: The Panel felt that there is considerable distrust of both advice providers and products among certain segments of the population. However, they recognised that this distrust is hardly unfounded, particularly given the significant reputational damage the industry received as a result of mis-selling and the financial crisis.

19. *A common feeling that financial advice is "not for me"*: The Panel agreed that a large number of mass market consumers feel advice is not for them. It was noted that this is different from too much hassle or an expectation that advice should be free. Instead it is the belief that advice is not something that would apply for the customer e.g. it is for "for rich people only" or "given by old white males to old white males" or simply that "I'm not entitled to advice".

Supply Inhibitors – Chapter 3 from the Call for input

20. The Panel identified five key inhibitors to the supply of financial advice:

    A. The economics of regulated advice drives providers away from mass market provision

    B. Perceived limited scope for providing simpler / cheaper forms of advice due to the regulated advice boundary

    C. Fear of the consequences of "retrospection"

    D. A perceived lack of clarity and consistency from regulators / other bodies

    E. Role of digital yet to be fully explored

21. *The economics of regulated advice drives providers away from mass market provision*: The Panel discussions highlighted many factors which contribute to the challenging economics of providing regulated advice. Regulatory costs are extremely high, with the Call for input noting that the costs of regulation can amount to ~12% of revenue for small firms. In addition to regulatory costs, the costs of training (e.g. to earn QCF Level 4), FSCS costs and the unknown liabilities associated with providing financial advice are extremely high. Furthermore, the QCF level 4 qualification, which is expensive and time consuming to obtain, is not specific for the mass market but is instead designed to enable individuals to better serve the complex needs of HNW consumers. The Panel also noted that one of the consequences of the recent cross-subsidisation ban means the industry cannot recoup the cost of providing financial advice in other parts of the value chain, ultimately meaning financial advice can only be provided to those who are happy to pay the high fees.

22. *Perceived limited scope for providing simpler / cheaper forms of advice due to the regulated advice boundary*: The issue surrounding the current regulatory boundary can be summarised through the following two components:

    i. Customers often ask providers for "help" in a very broad sense. However, there is a very limited amount which can be achieved in these conversations before reaching the regulated advice boundary. This proves frustrating for both consumers and providers – since it restricts them from answering potentially useful and helpful questions to guide consumers to make better informed decisions

    ii. Regulated advice is often extremely expensive to provide, meaning that it is only commercially worthwhile to serve wealthier customers

23. There was broad consensus amongst the Panel that the location of the boundary is one of the most significant inhibitors to providing sensible financial advice to consumers. They noted that many firms would like to provide more "help" to consumers in the form of guidance, but the scope of what can be provided through guidance is too narrow. Instead, as soon as a consumer wants a personalised answer, even to seemingly simple questions such as "Is it sensible to invest £50 a month into my ISA?", the full suitability requirements associated with regulated advice apply. The Panel highlighted that "gold-plating" of EU legislation (the UK Regulated Activities Order definition of regulated advice is broader than the MiFID definition) is perceived as a key driver behind this inhibitor. The Panel also noted that the current regulatory framework does not allow for what may be considered "universal truths" to be discussed (e.g. advice around tax and debt management), or for helpful examples such as "people like you", except under the banner of fully regulated advice. Critically, regulated advice is often unaffordable for customers with small savings pots, as it is a detailed, expensive process. As a result, many consumers who want to receive this level of "help" are either left without it, or are required to pay disproportionate fees for full regulated advice. The Panel felt that this lack of a middle ground is detrimental to consumers, and is the result of the current regulatory framework. There was broad consensus that this is one of the most significant drivers of the current advice gap.

24. *Fear of the consequences of retrospection*: The Panel fully accepted the need for liability of providers; they believe providers must be responsible for any "help" and advice that is given to consumers. However, the Panel agreed that there is a perception of the FCA and FOS judging advice retrospectively, rather than considering cases based upon the information that was available at the time. This is compounded by the fact that there is inherent uncertainty when providing financial advice, making it difficult to know what will be good advice in 20, 30 or 40 years' time. This is particularly problematic given that providers of financial advice have unlimited, potentially personal, liability with no "long-stop". Furthermore, these liabilities can be significant, and can arise without intentional malpractice (e.g. £100,000 for a small oversight in setting up an insurance policy). Given such high, personal (for an IFA), liabilities, perceived to be judged with retrospection, it is understandable why a firm may choose to deploy financial or human capital somewhere other than the advice space.

25. *A perceived lack of clarity and consistency from regulators / other bodies*: In addition to the lack of a middle ground, many Panel members felt that the current regulatory framework lacks clarity, and as a result is deterring many firms in the industry from investing in developing processes to provide advice. The Panel noted three key drivers behind this lack of clarity. First, the FCA is perceived by many, rightly or wrongly, to be unwilling to clarify statues or rules that are open to interpretation. Moreover, where there have been attempts to clarify and codify types of guidance, they have collectively failed to provide the practical clarity and confidence needed for both suppliers and consumers. Second, the FCA often provides guidance to firms privately, which can cause a lack of transparency across the industry on what is and is not best practice (leading to the solution in paragraph 41). Third, (again, rightly or wrongly) there are perceived inconsistencies between the FCA and FOS. This lack of clarity adds to both costs and uncertainty across the industry, making the provision of financial advice potentially less attractive for providers.

26. *Role of digital yet to be fully explored*: The Panel noted that the advice gap could be addressed, in part, by the emergence of new technological innovations. However, there has been limited time since recent regulatory changes for these innovations to be developed, for the regulatory consequences to be considered, and for them to be accepted in the wider marketplace. As time goes on, the Panel expected this inhibitor to be alleviated. Having said this, the Panel recognised the FCA's current efforts in this area – Project Innovate and the Regulatory Sandbox – and noted that some of the Panel's proposals and new guidance models could be put through the Sandbox.

Solutions – Chapter 4 from the Call for input

27. The Panel agreed that solutions to the advice gap broadly fall into five broad categories:

A. Increase consumer awareness / engagement *[demand focused]*

B. Extend guidance / create a triaged regulatory system *[supply focused]*

C. Reduce cost and risk (liability) of providing regulated advice *[supply focused]*

D. Automate approached to regulated advice *[supply focused]*

E. Not-for-profit provision where market fails *[supply focused]*

Demand Solutions – Chapter 4 from the Call for input

A. Increase consumer awareness / engagement

28. The Panel agreed that multiple solutions would be required to help close the advice gap. Three key solutions were identified on the demand side:

    i. Promote guidance / advice to consumers at key life events

    ii. Introduce a "financial statement / dashboard" / "financial resilience score"

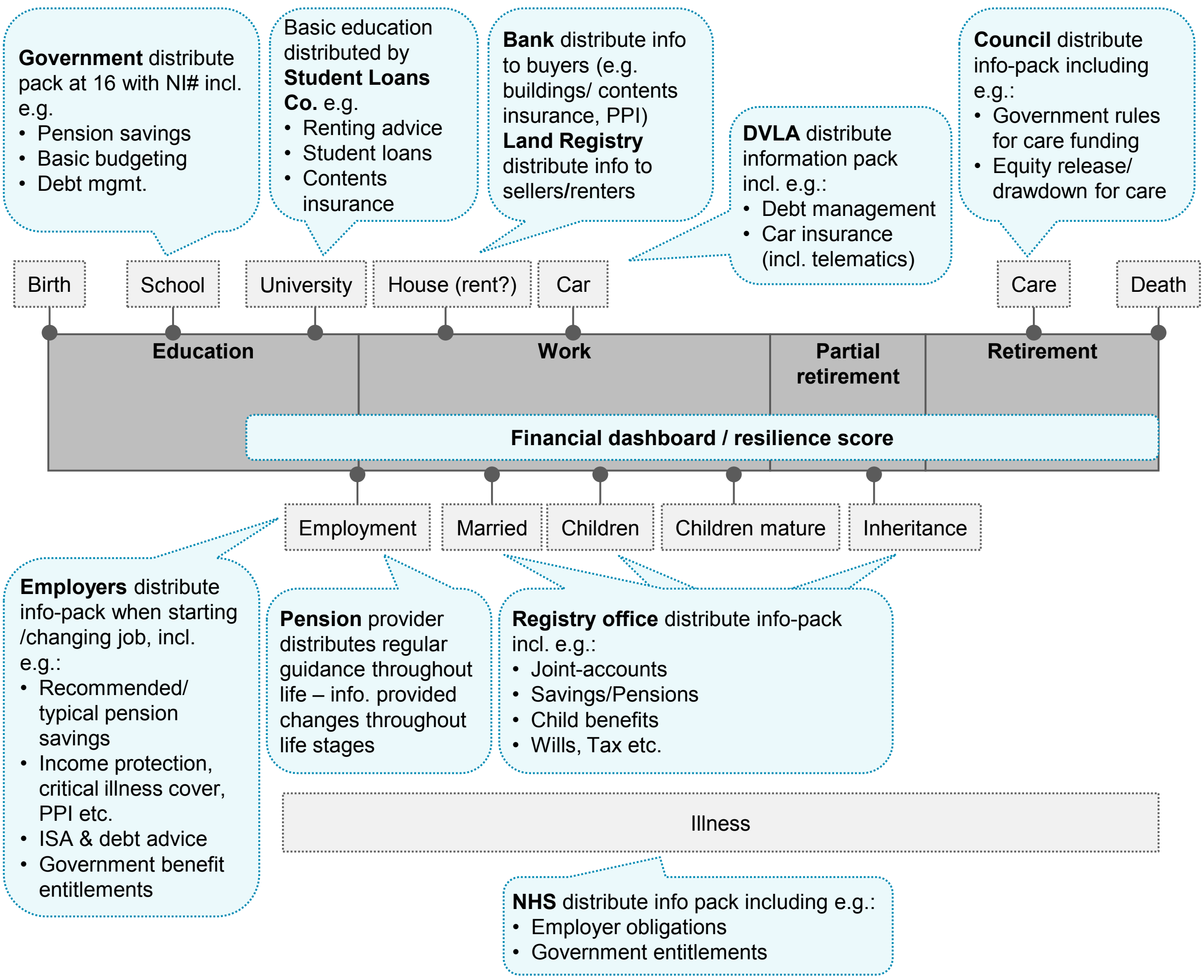
    iii. Implement a range of solutions to simplify the consumer journey

29. *Promote guidance / advice to consumers at key life events:* The Panel members broadly agreed that help and guidance should be provided to consumers at key life events (e.g. having children or changing job), as not only do these events provide useful points of contact between consumers and public / private institutions, but they are also often times when consumers are most in need of financial help. The Panel noted that a wide range of public and private institutions working together could be used to nudge or "push" this advice to consumers, with these nudges used as part of a broader strategy which continuously reinforces the same messages whilst also encouraging consumer awareness and engagement with financial services. The Panel did not aim to define the specifics of which institutions should be involved, or how the messages should be delivered, but Figure 1 provides an example of the types of public and private institutions (including the employer) which could be involved and how they could engage with consumers throughout their lives. Note, this Figure predominantly focuses on life points where the government could, or already does, provide help and advice. There is clearly a role for financial services providers, third sector and other bodies to perform a similar function (separate from sales and marketing efforts), working together with the government to provide a

coherent, mutually reinforcing message. The Panel recognised the government's recent auto-enrolment initiative provides a new opportunity, and challenge, for providing financial advice through the workplace.

30. In addition to this "promotion" of advice and guidance to consumers, some Panel members also suggested an "advice pot" could be established alongside a standard DC pension pot – such that consumers would be able to afford financial advice at specific life points if they wished to receive it. The full details of how this solution may work were not discussed, but it was envisaged that an advice pot could build up alongside a pension pot such that consumers could draw on it to pay for advice at one or two points in their life. This potential solution may help many consumers overcome the significant inhibitor which arises due to the costs of financial advice. Having said this, it was noted that the use of an "advice pot" should be optional, so consumers can fold their advice pot back into their pension pot at retirement if they wish to do so (or if any funds remain after having used it to fund advice).

Figure 1: Example of institutional "push" guidance / advice to consumers



31. *Introduce a "financial statement / dashboard" / "financial resilience score":* The Panel suggested introducing a financial statement / dashboard and, subsequently, a financial resilience score. The financial statement / dashboard could automatically integrate consumers' financial information across a wide array of products and providers (e.g. pensions, savings and investment, current account, credit card, mortgage etc.). This statement / dashboard could build on the governments previously proposed pensions dashboard – something the Panel generally advocated as a good thing to implement. The statement / dashboard could significantly improve consumers' awareness of their financial situations, providing a powerful nudge towards saving more in retirement, and helping consumers plan for their future financial needs. A private sector solution would require collaboration across providers to ensure the proposed solution is both standardised and portable (e.g. if you changed provider). Once such a statement / dashboard is in place, the Panel noted that further improvements to consumers' financial resilience could be achieved through "gamification" (the concept of turning a consumers' financial resilience into a score, with consumers able to improve their score through e.g. paying off debts). Having said this, the Panel highlighted the fact many details would have to be considered before designing and implementing such a solution (e.g. how to support consumers who receive poor scores).

32. *Implement a range of solutions to simplify the consumer journey*: The Panel recognised the current advice market is overly complex and not designed from a consumers' perspective. As a result, the Panel suggested four broad measures to help simplify the consumer journey. First, public guidance services are difficult to find and are fragmented. It is necessary to improve referral mechanisms within these services and to make it easier to find public guidance services by creating a more obvious entry point. Second, enabling affiliate relationships (e.g. allowing an IFA to refer someone to an execution only or simplified advice service) might not only improve the consumer journey, but also reduce the costs of customer acquisition and subsequently the costs incurred by consumers – though it was noted that this might have negative implications for consumer protection. Third, the Panel emphasised the importance of an industry-led initiative to simplify the terminology used across the industry. The current terminology used is too confusing for most consumers, as regulatory terms have not been designed from a consumer perspective. Fourth, notwithstanding past failures of simple products, the Panel noted that both simple products and sensible default options may play an attractive role in easing the consumer process in the future. The Panel also noted scope for further simplification / automation of application processes such that e.g. receiving advice on and purchasing of a stocks and shares ISA could become as simple as applying for a credit card. However, the Panel members were clear that simple products are not, of themselves, the solution.

Supply Solutions – Chapter 4 from the Call for input

33. On the supply-side, the Panel discussed solutions around the following categories:

   B. Extend guidance / create a triaged regulatory system

   C. Reduce cost and risk (liability) of providing regulated advice

   D. Automated approaches to regulated advice

   E. Not-for-profit provision where market fails

B. Extend guidance / create a triaged regulatory system

34. The Panel reviewed the definitions of the various types of guidance and regulated advice. There was consensus that these definitions are not widely understood in industry, let alone by consumers. For instance, there is some degree of proportionality within fully regulated advice – simplified advice has lower requirements than full advice. However, most firms are so unclear about the definition and treatment of simplified advice that they prefer to “play it safe” and provide only full advice. The Panel highlighted that the number of documents issued to attempt to clarify the definitions of these categories of advice is evidence of a problem, not an indicator of an already existing solution. The Panel also noted that the advice / guidance boundary is extremely important, yet lacks clarity. As such many providers are afraid to go close to advice / guidance boundary – significantly limiting the amount of free guidance that can be provided to consumers. Any solution would have to resolve this issue.

35. As such, the Panel felt that a two-tiered regulatory framework is preferable to a three or more tiered system, since each boundary introduces more uncertainty and complexity – and the guidance / regulated advice boundary proves problematic enough with very few providers prepared to go to the edge of the boundary. Indeed, a number of the Panel noted that the current position of the boundary, meaning the definitions of what constitutes guidance vs. regulated advice, results in sub-optimal financial help for consumers.

36. The Panel identified two major problems with the current boundary (i.e. what you can do under guidance). First, the Panel emphasised the lack of clarity provided by the regulator around what is and is not guidance vs. regulated advice. This lack of clarity has created a lot of confusion within the industry and ultimately has resulted in the provision of relatively basic guidance services. Second, the Panel highlighted the fact the FCA has gold-plated the existing MiFID definition which has ultimately resulted in a more onerous regime, meaning less can be done through a guidance service.

37. There was broad consensus, from both consumer and industry representatives on the Panel, that altering the UK definition of regulated advice to match the MiFID definition (i.e. a personal recommendation) would help ensure consumers receive more help when making financial decisions. The Panel suggested firms would have confidence and willingness to provide more information and guidance services under this regime, to ultimately ensure more consumers can make better informed decisions. In addition, the Panel suggested that the pros and cons of new terminology should be explored (including ensuring the levels of consumer protection are clear) – with many Panel members suggesting the regulatory terms could be adjusted under this definition to “guidance” and “personal recommendation” (opposed to advice). These Panel members felt these terms were clearly distinguishable from both an industry and consumer perspective.

38. The Panel also agreed that the current sub-tiers within regulated advice (e.g. simplified, focused and full advice) are confusing and even detrimental. The Panel noted some of the confusion is due to these terms being defined only in FCA guidance, not in COBS, and some of this confusion is merely due to the number of categories, each with unclear boundaries.

39. As a result, the Panel proposed that there should be no subcategories within personal recommendation. Instead, there should be a principles-based proportionate regime – meaning the fact-finding, products under consideration and potentially suitability requirements and adviser qualifications should be scaled depending on a client's needs and the detail of regulated advice they wish to receive. For instance, a consumer trying to make a simple investment decision may only require some relatively basic fact-finding around e.g. whether they are enrolled in their occupational pension scheme, and are fully utilising their ISA allowance. In this instance the advice could be provided by an advisor below QCF level 4. In contrast, when a consumer is trying to make a highly complex financial decision, a more detailed fact-find conducted by a QCF level 4 financial adviser would be required, and particularly complex areas may require an even higher level adviser. The Panel noted that under this regime it would be critically important to ensure the consumer knows the type of advice they are receiving, and the associated protections.

40. In order to practically implement a principles-based and proportionate regime, the Panel agreed it would have to be built off segmented / differentiated processes. These processes would have to incorporate "trap doors" to ensure consumers with complex needs are redirected to an appropriately qualified advisor who would then take all the detailed information required to provide suitable financial advice.

41. In such a regime, the requirement would be on the provider to build the process and justify it to the regulator. However, the Panel highlighted the importance of receiving best practice guidance from the regulator – in particular the Panel felt the FCA should publish anonymised versions of all advice given directly to providers. As a result, this would create a body of best practice available to all providers operating within the advice space, whilst also creating a level playing field to help promote competition.

42. Having said this, some members of the Panel raised some concerns with this proposal. They noted that for any framework to be effective, it must be clear, and there is still more work required to fully flesh-out and clarify this proposed framework. Furthermore, the regime must be clear to consumers, and there must always be redress available to consumers for unsuitable advice.

C. Reduce cost and risk (liability) of providing regulated advice

43. The Panel highlighted five solutions related to reducing the cost and risk (liability) of providing regulated advice. However there was some disagreement about the relative importance of a number of these solutions:

    i. Reduce FSCS costs to providers of advice
    ii. Broaden the FCA's interpretation of their consumer protection mandate
    iii. Address inconsistencies between the FCA and FOS
    iv. Ensure the FCA / FOS only judge based upon the interpretation of regulations and information available at the time
    v. Encourage the provision of simple products

44. *Reduce FSCS costs to providers of advice:* Financial advisers make large contributions to the FSCS for the mistakes of others – in one example, these contributions were 10 times the payout for the firm's own. The Panel highlighted that one of the core reasons for these high contributions is due to regulated advisers selling large numbers of unregulated products, and then failing. As a result, it has been suggested that IFAs could be banned from selling unregulated financial products (though this should not include all non-UCITS products). An alternative suggestion is to introduce a product levy associated with the sale of unregulated financial products – meaning a firm which sells unregulated products would end up contributing more to the FSCS.

45. *Broaden the FCA's interpretation of their consumer protection mandate*: The Panel discussed the FCA's interpretation of their consumer protection mandate, and highlighted the fact the current regime appears to be set up to achieve "zero failures" rather than the best outcomes for consumers. There was broad consensus that the interpretation of the consumer protection should be reconsidered – in particular considering what is meant by "protection" (i.e. the avoidance of specific mis-selling vs. achieving an overall positive consumer outcome).

46. *Address inconsistencies between the FCA and FOS*: The Panel recognised that the FOS is an ombudsman, not a regulator, and as such plays an important and distinct role from the FCA. As such, there was some disagreement about the importance of harmonising the FCA and FOS. Nonetheless, many Panel members felt further harmonisation efforts would be valuable. One example suggested was for the FCA to provide further guidance and clarification on a wide range of issues, and for that guidance to be explicitly considered by FOS. However, some panel members noted that while these inconsistencies are a large source of uncertainty, for many businesses, FSCS costs are a bigger issue.

47. *Ensure the FCA / FOS only judge based upon the interpretation of regulations and information available at the time:* Many Panel members noted that it is critical to address providers' fears that advice they provide today will be judged retrospectively, based on standards and information available at the time of judgement. This is compounded by the fact that it is very difficult to know and understand financial conditions 10 or 20 years ago. The Panel suggested two possible remedies to this issue. First, the FCA could create a record of current best practice (through e.g. acknowledgement in guidance documents issued, though this could prove costly). Advice could then easily be judged against that standard. Second, advice could come with a statement of current and past financial conditions to justify the advice provided (e.g. equities have historically offered good returns to long-term investors, though have proven volatile, and thus may be unsuitable for those with short investment horizons).

48. *Encourage the provision of simple products*: The Panel agreed that whilst simple products may form part of the solution, in itself the introduction of more simple products would not solve the advice gap. The Panel felt more could be done to encourage the provision of simple products (which should involve an assessment of past failures) but it should not be a core recommendation of this review.

49. The Panel also discussed the option of introducing a "long-stop" / safeharbour for the provision of some advice. Whilst a number of Panel members initially felt this would be a helpful solution, the views of some of these members changed throughout the process. These Panel members now feel a "long-stop" / safeharbour would not be required so long as the regulations are made sufficiently clear. Having said this, the views of the Panel members still remain divided on this issue, with some Panel members strongly advocating the introduction of a "long-stop" / safeharbour.

D. Automated approaches to regulated advice

50. The Panel discussed two suggestions as to how to facilitate the provision of automated advice

    i. Introduce a standardised, portable fact-find, in collaboration with the industry
    ii. Provide “long-stop” / safeharbour for automated advice

51. *Introduce a standardised, portable fact-find, in collaboration with the industry:* The Panel noted that a standardised fact-find (or a standardised core fact-find) could have two advantages over the current system. First, it would clarify some aspects of the fact-finding process – specifying, at the very least, a minimum fact-find that needs to be performed for all individuals. Second, it could be reused by the consumer, or potentially passed between providers, significantly simplifying the customer journey. However, the Panel pointed out that any pre-specified fact-finding process would not include all the information necessary for an adviser to assess all aspects of suitability, and that as such, there would remain a need to do additional fact-finding, probably adapted to that individual’s circumstances. Furthermore, there would be significant data protection issues that would need to be solved before such a system could be implemented.

52. *Provide “long-stop” / safeharbour for automated advice:* The Panel discussed the possibility of providing a “long-stop” / safeharbour specifically for automated advice. While it was noted that this might be a fair quid pro quo for expanding access to regulated advice, concerns were raised that consumers receiving automated advice should not receive a lower level of protection than those receiving regulated face-to-face advice.

53. Importantly, the majority of the Panel agreed that one potential solution, having the FCA approve automated advice solutions before launch, is not desirable, and might in fact be detrimental. These Panel members noted three factors which support this conclusion. First, there were concerns that an approval process might actually stifle innovation, because new entrants might simply try to copy an automated advice service that has already been approved. Second, providers should be targeting good consumer outcomes, not regulatory approval. Furthermore, they should be willing to stand behind their advice, provided it is judged using only the information and technology available at the time. Third, the Panel pointed out that there may be practical issues in approving all the automated advice solutions that may arise in the future. However, there was not overall consensus on this point, with some Panel members noting that FCA approval of automated solutions would reduce regulatory uncertainty, and thus increase the development of automated solutions.

E. Not-for-profit provision where market fails

54. The Panel did not spend a significant amount of time discussing not-for-profit provision given the limited time available, and the parallel Public Financial Guidance consultation. However, the Panel all agreed that not-for-profit provision is a critical part of the solution, especially given the potential for market failure is likely to always exist: clients with very low levels of savings, but complex needs are always likely to be uneconomic to serve (though, the Panel noted that not-for-profit provision should not be exclusively used where the market fails). The Panel therefore noted the potential for encouraging pro-bono or subsidised provision from for-profit institutions (which should be clearly separate from sales and marketing efforts), as well as the need for not-for-profit organisations to play a role. The Panel also highlighted the parallel “Public Financial Guidance” consultation being conducted by HMT, and the importance of ensuring the recommendations from these consultations are considered in aggregate before implementing any changes.

Financial Conduct Authority

Financial Advice Market Review (FAMR)

A response to the Call for Input from Ferret Information Systems Ltd.

December 2015

Contents

Introduction

Ferret Information Systems has been Europe's leading specialist in the application of technology to advice in welfare benefits and similar subjects for over 30 years. As well as producing advice systems for use by specialists, intermediaries and the public, Ferret also applies its expertise in other ways. These include consultancy, high level case work, training, e-learning and modelling.

Ferret's advice systems and modelling are widely used by advisers on welfare benefits and in the financial services industry, especially by financial services advisers and providers in the pensions and Equity Release areas.

Modelling the future impact of the benefits system is carried out by Ferret's Future benefits Model (FFBM), a micro-simulation system which produces a five year rolling horizon across a comprehensive tax / benefits picture and by other specialist models which examine more discrete issues.

The examples in the comments at the end of this response are produced by pensionForward, a generalist pension / tax / benefits advice system.

We have provided brief responses to some of the questions within the review and then added some further thoughts after those.

Q2: Do you have any thoughts on how different forms of financial advice could be categorised and described?

Advice is a term which should not be solely considered for its meaning within the financial services industry. Within legal, welfare, medical and other domains the word carries different connotations and different 'weight'. Subdividing advice into further areas will not assist consumers in understanding the fine differences that the professional may see.

A simpler hierarchy, or at least division, of what a consumer will receive might, for example, be

- Advice – personalised recommendation for action
- Guidance – personalised consideration of options available but without recommendation
- Information – a non-personalised explanation of the factors involved in an area of interest
- Signposting – identification of specialists who may offer a more appropriate service

Advice, and the other services, may be provided in different ways, from traditional human face-to-face sessions to fully automated processes using rule-based systems or, in due course, artificial intelligence.

Q3: What comments do you have on consumer demand for professional financial advice?

For many people in the UK, financial advice needs have little to do with financial products. Their pension savings are not, in practice, discretionary because the state pension or auto-enrolment may be all that they see as open to them. Financial advice is more focused around debt, budgeting and day-to-day needs. Professional financial advice, as understood today, is a service for a more prosperous minority.

Q5: Do you have any comments or evidence on the types of financial needs for which consumers may seek advice?

Saving, spending and surviving.

We see the segmentation of advice needs somewhat more simply. Saving, for the longer term, is very different to saving for help with immediate short-term problems. Longer term saving for such things as retirement, ill-health or aspirations should certainly be looking to financial advisers. Those advisers however do need to recognise very different potential outcomes for wealthy people with large amounts of savings and for poorer people, where very small amounts of expected savings may not directly benefit them, in the long run, where the output of the product may be competing with means tested state support.

Advice on spending is taken by us to include decumulation as well as issues around affordability and priorities.

For many people, at some point in their lives, there will be an advice need associated with a crisis in day-to-day living. This is a danger point, not just because of the financial pressures, but because this is when it becomes tempting to make rapid, but often unwise, use of any savings that exist.

This pattern of advice needs does not match the current pattern of financial advice availability.

Q7: Do you have any observations on the segments and whether any should be the subject of particular focus in the Review?

The ‘Hard pressed’ group are likeliest to both need immediate and longer term advice and to have the least resources to be able to access it commercially. We are concerned that, in comparative terms, their small amounts of savings may be seen as having a disproportionately large impact on their immediate financial situation. The absence of advice makes it extremely likely that they will make decisions which are not properly informed, or that they can be taken advantage of through superficially attractive offers.

Q12: Do you have any comments or evidence about the role of new and emerging technology in delivering advice?

We would disagree strongly with the placing of tools to help financial decision-making below generic advice in your spectrum of advice services

Self-use calculation systems, or adviser used tools, can be extremely accurate and map onto the client's detailed personal circumstances. In many cases the results can be so clear that advice on the options identified may seem to be unnecessary. In other cases, the results of using such systems should be fed into a more traditional advice process.

As we comment later, there are areas of such complexity, for example pensions, tax and benefits, that it is not possible for any adviser, however expert, to adequately advise without making use of such calculation or assessment tools.

The design of such tools must take account of both the needs and the type of users. We differentiate systems into three categories:

- expert
- generalist
- self-use

Experts will require tools which they control. They will understand the areas of relevance and the data which is needed. Their priority is accuracy and speed. They will take responsibility for the advice coverage.

Generalist advisers need systems which will guide them through a process, ensuring that they do not omit to collect data which might be relevant, even if unlikely. The systems should be intelligent enough to suppress questions which cannot be relevant, because of previously entered information, but to collect that information if the case is amended later so that the data becomes relevant. Typically the systems should have large amounts of supporting help and information to ensure that data is entered correctly. Generalist advisers should have a basic knowledge within the area concerned but need not be experts.

Self-use systems cannot assume any level of knowledge of the user. They should also move slowly through the process, providing interim conclusions where possible, and incorporating consistency checks. They are likely to be used once only and speed is not a major issue.

Giving an expert system to a client for self-use would be remarkably dangerous whilst giving a slow, painstaking and consistency checking self-use system to an expert would drive them to distraction in a very short time.

Q13, Q14 & Q15

Q13: Do you have any comments on how we look at the economics of supplying advice?

Q14: Do you have any comments on the different ways that firms do or could cover the cost of giving advice (through revenue generation or other means)? Do you have any evidence on the nature and levels of costs and revenues associated with different advice models?

Q15: Which consumer segments are economic to serve given the cost of supplying advice?

We would make a comment, which is applicable to each of the three questions above, that is, perhaps, not usually considered.

At what point does information, knowledge or awareness become advice?

The assumption throughout this review is that advice stands alone as a product or service. In reality, of course, this is not the case. In order to provide even a competent level of service, any adviser will need to know a great deal about their client's situation. That will include an understanding of the consequences of many decisions or options.

This means that what an adviser may present as advice is equally an essential part of their own understanding of the client's position. We would consider that this means that this type of understanding becomes a cost of business which must be undertaken, whether or not it is also presented to the client as advice.

Q17: What do you understand to be an advice gap?

In order for clients to make an informed choice, about any financial decision, they must be in possession of accurate and comprehensive information giving them the overall, holistic, picture of the consequences of their choices. They need also a broad understanding of their options across the range of their financial activity.

For many people, with lower financial resources, that means that the starting point should be a 'traditional' (in generalist advice services terms) process of income maximisation as the starting point for any further work.

For older people, for example, about 40% of those entitled to receive Pension Credit don't claim it. For those people making a financial decision about the use of their savings product, in ignorance of often substantial sums of income available to them upon application, would be misleading to say the least.

Only after an understanding of the correct starting point can informed choices begin to be made. After that can the consequences of the different pension options, or other decumulation, be properly assessed.

On that basis there is an advice gap for those with smaller resources but there is also an advice gap In terms of an absence of any widely available service which can encompass the whole of this area. See our later comments

Q36: Do you have any comments on the extent to which firms are able to provide consistent automated advice at low cost? Are you aware of any examples of this, either in the UK or other jurisdictions?

Although this is dependent upon the definition of advice, there are a number of quite clear factors which must apply.

Consistent advice can only be a product of a tightly defined rule set. That in turn implies that the domain must itself be regulatory and possess a bounded set of rules. Once discretion or judgement become a part of the process then automated advice becomes extremely difficult, if not dangerous.

Although it is possible to derive heuristic rules which can be implemented within a rules engine, it is very, very hard to capture the fine gradations that human judgement is capable of operating with.

Within ruled based domains, there are many examples of successful advice and information products. Ferret have been producing such tools, in areas of benefits assessment and advice for over 30 years. Such systems can be designed for use by advisers or clients and although the interfaces and presentation may be different, they will operate on a common set of rules.

Q37: What steps could we take to address any barriers to digital innovation and aid the development of automated advice models?

Provider produced advice tools, whether called robo-advice or something else, have a number of characteristics when viewed objectively. Many of the current offerings promise much more than they deliver. Their presentation suggests technological sophistication, advanced applications of artificial intelligence or unique powers of analysis. When the functionality is actually examined many offer very little more than a teaser designed to attract clients and to capture contact details.

To provide consistent and valuable automated advice will require common tools and capabilities. These may be incorporated within more proprietary and richer systems but where rule-based regulatory systems are considered there should be no difference between systems operating within the same domain.

Crucially, a common data structure is needed to ensure both comparability of outputs and interchange of data between advisers and providers.

The FCA could lead by specifying, or procuring, an industry standard basis for the data structure needed for a common automated advice system, perhaps differentiated by sector. Ferret, and others, would be very willing to help in this and, as much of the capability is already in use, the process need not be lengthy or expensive.

Q38: What do you consider to be the main consumer considerations relating to automated advice?

Where options or information are concerned, then such systems should offer objective and thus identical, information to the client. This has the advantage of making this element of any automated process much less expensive for providers. Additional information about products or services which will be unique to the providers can be built on the basis of the initial fact-finding and income maximisation process.

The consumer would be reassured by understanding that each advisor or provider is starting from an industry standard process which is focused on the consumer's needs and situation. This reassurance will help to create the trust that is vital for consumer acceptance of automated advice.

The focus for providing automated advice should be on how "at risk" clients are enabled to plan on the basis of a holistic approach. The most "at risk" clients are those for whom poor outcomes have the greatest effect on well-being.

Automated advice has a number of other benefits, subject to implementation in some cases. The advice is time and geographically unlimited. Multiple languages and special communications requirements can be implemented within systems. Scarce specialist expertise can be made widely available.

There is a balance, or limit, that must be found for what most clients will tolerate in the time and detail required from them to input into such systems.

Ferret comments on advice needs

Summary

We have chosen the pensions advice area as an example to illustrate the complexity of advice needs and the current lack of appropriate advice resources.

At the present time, people, whether with limited resources or not, cannot access the necessary information – advice or guidance – that they need from any single source. Getting the information from a range of sources, in a joined-up way is almost as difficult.

Any assessment of the options for pension savings usage should take account of existing income and capital, overall tax liability and benefits entitlement in order to provide a 'bottom-line' figure of the effects of choices on overall income.

In the absence of such information, it is easy to make decisions which will prove costly or unwise.

It is vital that people considering how to make best use of their money purchase pensions savings understand the effect of the options they have on their overall net income.

Only by looking at the overall effects on final income, over a range of pension income and / or capital, can the best options be identified. For many cases, no gain, or even a loss, will follow a substantial increase in capital or income taken from pension savings.

Pensions Guidance needs

The basic need of any enquirer considering the options for use of their money purchase savings is straightforward. How much will I get? This is also the question which today's guidance and advisory systems are unable to answer.

There are a number of separate elements which have to be brought together to provide this information.

- The amount of pension savings
- The best annuity which could be purchased from the pot
- The tax impact of taking capital or income
- The effect of the additional capital or income on overall tax
- The effect of the additional capital or income on means tested benefits
- The cumulative effect of all these assessments

Current advice and guidance services are not are not able, with very few exceptions, or structured to offer this holistic picture.

Financial advisers have little knowledge or experience about means-tested benefits. An individual with no special needs, with an average pension pot and a full state pension, will be entitled to over £140 a month in means-tested Guarantee Pension Credit. Making choices about their savings without understanding the impact on means-tested benefits may lead to people gaining little, or nothing, from those savings if the choices made reduce existing benefits entitlement.

Welfare rights and generalist advice services are not expert in tax or pensions.

Pension Wise is not offering any detailed personal assessments of the financial consequences of available options.

No services have the current capability to examine an individual's situation over a wide range of income or capital. The combination of tax and benefits rules can mean that it is easy for there to be no real increase in income when taking money from a pension pot. Often the penny for penny deduction rules in benefits can wipe out any income taken whilst extra capital can stop entitlement to benefits completely. Looking at the results over a range of income levels or capital amounts can illustrate the effects and allow the adviser and client to avoid any danger areas and recognise their best options.

Without a comprehensive assessment encompassing these elements, it is not possible to make properly informed decisions.

The effects of different options on different circumstances

Only offering information about the options of product types which are available to an enquirer is of very limited use. The consequences of those choices need to be understood in order to make an informed decision.

People need to be aware that the amount they take from their pension savings will be different from the amount that arrives in their pocket. They need to know the way that tax is applied to both capital and income. They need to understand the effects of the post-tax amounts on any benefits entitlement. Only with that information can they see the net benefit, or penalty, of taking savings in a particular way.

Take-up estimates show that over a third of people entitled to Pension Credit don't claim it (over 50% of home-owners) and around 45% don't claim Council Tax Reduction. Take-up of benefits for working age claimants is also poor.

Assessing the financial effects of the use of pension savings should be preceded by a check of the current tax and benefits position of the enquirer, in order to ensure that there is a sound basis for considering the choices available. Where an entitlement to benefits, previously untaken, is identified, this, of itself, may affect the choices made by the enquirer.

Example Situations

The very different effects of those options on the final situation will be dependent on each individual's circumstances and cannot be generalised. The following examples demonstrate this.
Example 1 – A single woman aged 64 with a full state pension of £115.95 a week, paying £100 a week rent and £25 a week Council Tax.

Annuity Income

Figure 1 shows that in this, very common, type of situation, there is little or no gain from an annuity, paid net, because of the consequent deductions from means-tested benefits.

The state pension, red in the chart, is unaffected by the annuity, green in the chart, but all other benefits are affected.

Initially there is no gain in net income at all. The first £140 a month of income from the annuity simply reduces the Pension Credit, penny for penny. The subsequent increase in overall income is severely affected by the reduction in Housing Benefit and Council Tax Reduction once their passporting by Pension Credit ceases. An annuity of £500 a month produces a net increase in income of £52.15.

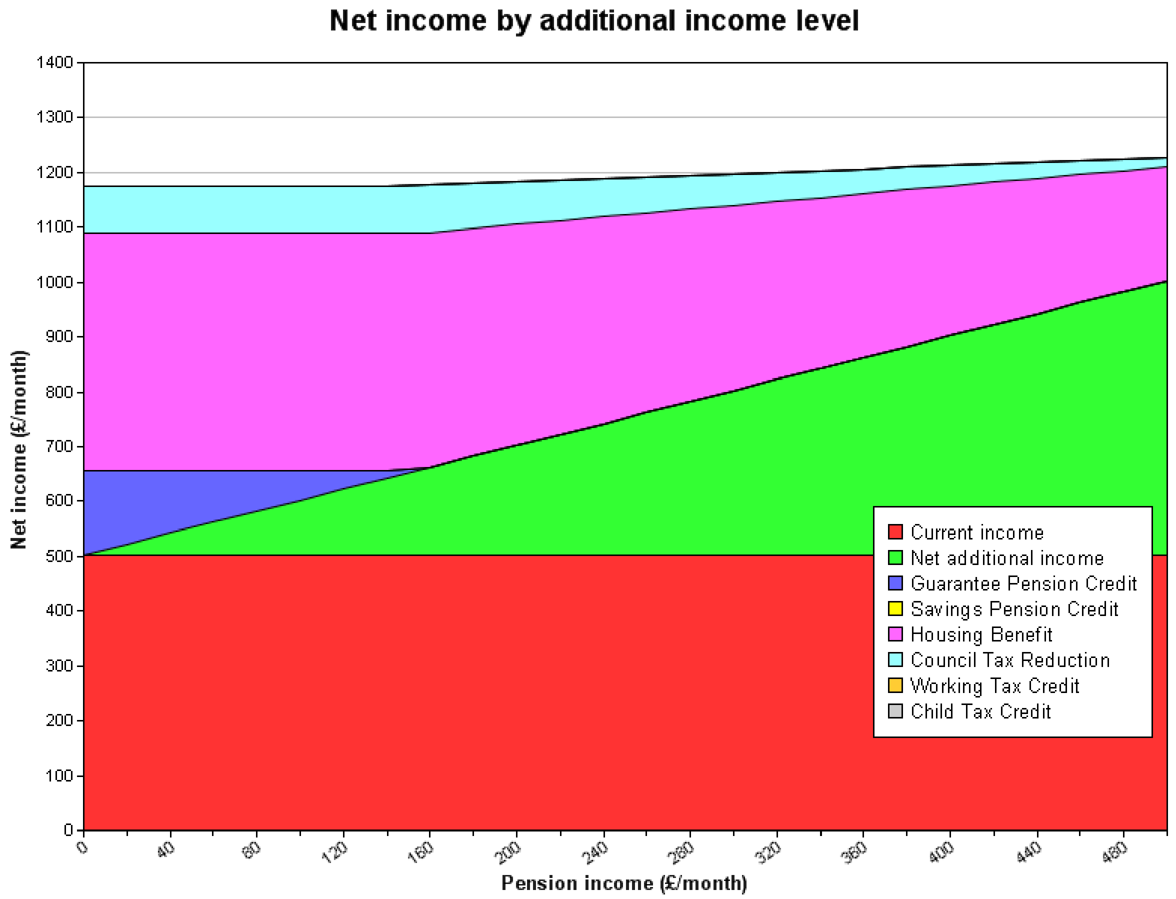


Figure 1

Capital as a lump sum

Figure 2 shows the same person and their position if they were to take the whole of their savings as a lump sum, with a 25% tax free element. The cliff-edge income drop, caused by the immediate withdrawal of Housing Benefit and Council Tax Reduction under the capital rules, when Pension Credit stops, demonstrates the importance of the range view of the situation. The cut-off occurs when the amount of capital withdrawn reaches £31,500 which produces, as shown in the detailed table from which the chart is generated, a net amount of £27,690.

Without knowing the point at which these substantial changes occur, it is all too easy to make extremely costly mistakes.

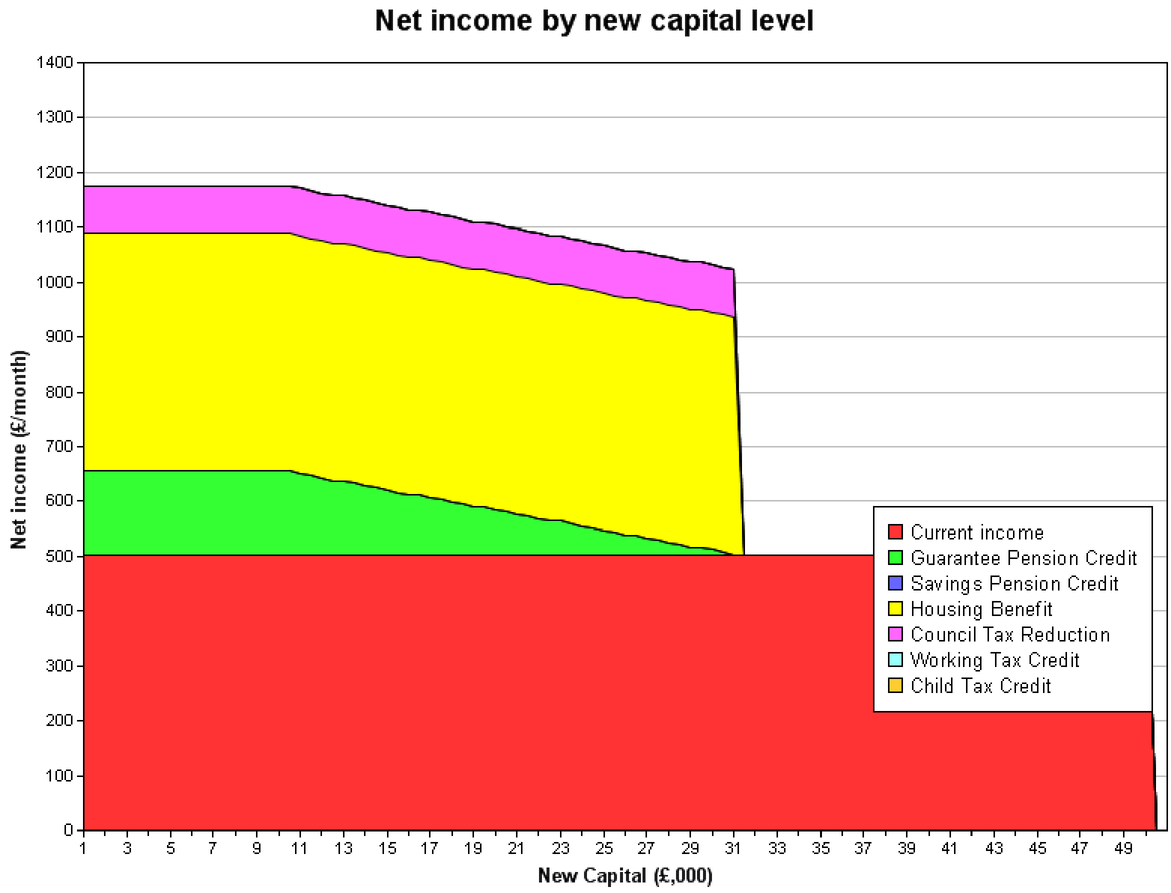


Figure 2

Example 2 – Working age pension withdrawal. A single man aged 58 claiming Jobseeker's Allowance of £73.10 a week, paying £100 a week rent and £25 a week Council Tax.

This situation, where there may be a temptation to make early use of pension savings, shows, in figure 3, an even clearer absence of net gain from taking income from the savings. Up to almost £300 a month of income will produce no increase at all in real income. £500 a month of income will produce a real increase of £27.53 a month.

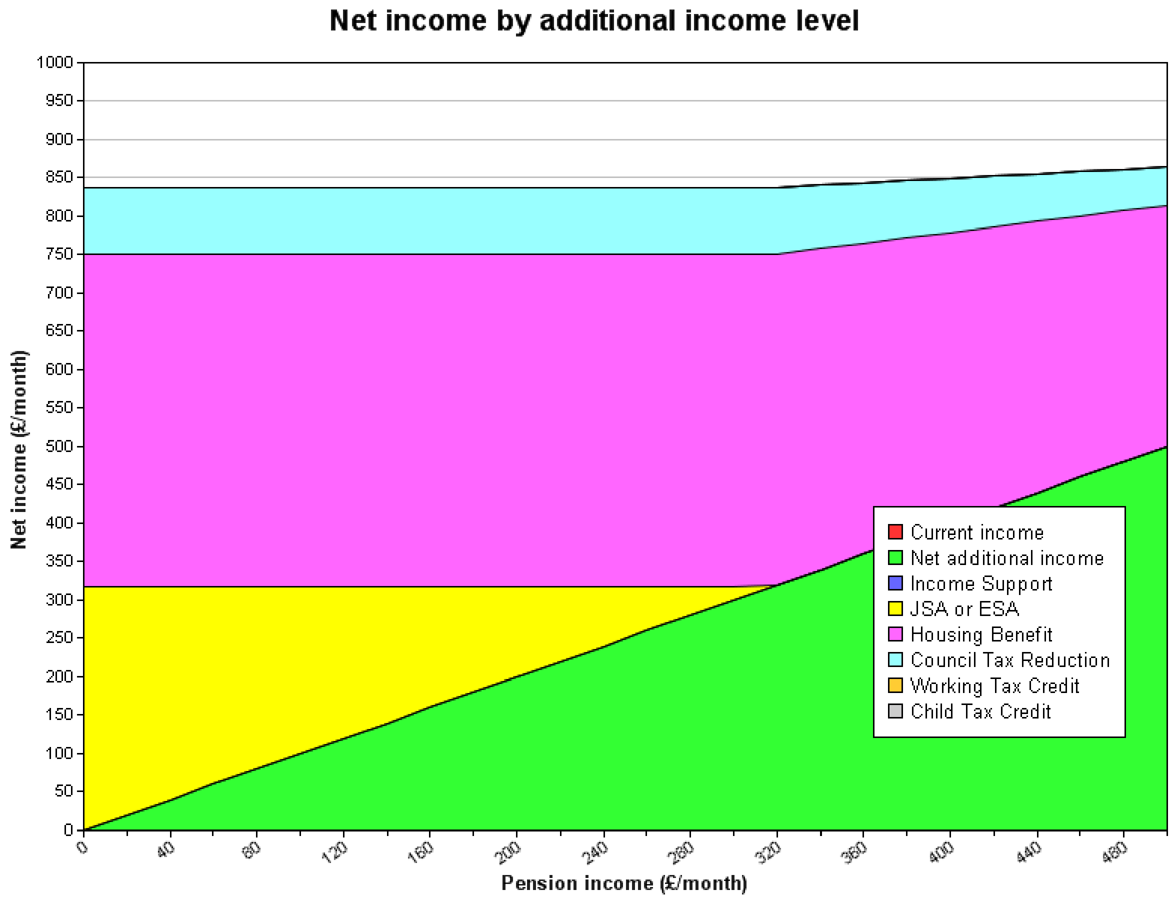


Figure 3

Capital as a lump sum

The effect of capital on those receiving working age benefits is more severe because of the cut-off rules. Capital of over £6,000 has a higher notional income while £16,000 held will stop all entitlement. In this example, after the tax free element, tax is being applied at £16,500 of capital withdrawn but at a level which means the net still passes the cut-off amount.

A mistake in the amount of capital taken, by a few pence, could lead to the loss of over £800 a month in income.

Figure 4

Underlying the assessment of the overall income effect of the ways in which pension pots can be used are some complex assessments of tax and net income. There are a wide variety of ways in which savings may be withdrawn. Each of these will produce a different net income which will have a different effect on any benefit entitlement.

Additionally, the timing of any use of the pension pot can affect the resultant financial position of the saver. Capital taken in one tax year may well be taxed at a higher rate than taking it over a number of tax years. The amount of capital taken may leave the enquirer with a higher income when the withdrawals are such that the capital held never exceeds the amount which generates a notional income.

The need for detail

The calculations of income, capital, tax and benefits will be different for each enquirer and may seem to be complex. They are complex and, as new benefits are introduced with local and devolved administration differences growing, will become more so. However the assessments can be carried out simply, quickly and accurately using an appropriate tool. They are also necessary. Without the level of detail and understanding that the holistic view provides, it is all too easy to make choices which are extremely costly for the enquirer.

Conclusion

Current advice and guidance services do not offer the holistic picture which shows the saver what the final effect of a choice will be. Because of this, people will make decisions which they would not make if better informed.

Pension Wise in particular has been limited in the service it can offer by the service specifications which it works to.

Two models are possible for improving the service available to pension savers.

A duty on those offering advice to provide a comprehensive assessment of the tax and benefits effects of pension choices thus providing the detail needed for informed decisions.

A referral process that ensures that the separate services, offering only a part of the total picture needed, can pass enquirers on to others who can provide the other parts of the information needed.

The latter option will see the usual issues of referral processes. These include problems of access, information accuracy, cost and failure to take-up the referral.

A better option would be to provide a self-service assessment tool for the calculations, with advisers or guidance services helping to interpret and explain the consequences of the assessments to the available options.

Gareth Morgan

December 2015

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The Financial Inclusion Centre

Financial markets that work for society

FCA FINANCIAL ADVICE MARKET REVIEW-CALL FOR INPUT SUBMISSION BY THE FINANCIAL INCLUSION CENTRE

We are pleased to submit a response to the FCA's Call for Input on the Financial Advice Market Review (FAMR).

Our submission is in two parts. Part 1 is a supporting paper explaining in more detail our views on the real causes of the 'advice gap'. Part 2 contains our response to the specific questions.

For further information, please do not hesitate to contact:

Mick Mc Ateer
Co-Director, Financial Inclusion Centre

December 2015

PART 1: SUPPORTING PAPER

Summary

We welcome the launch of the FAMR call for input into the so-called 'financial advice gap' in the UK – concerns that large numbers of consumers are unable (or unwilling) to access good quality, appropriate financial advice. It is very important that some of the misconceptions about the 'advice gap' are dealt with.

Good advice is critical for promoting financial inclusion, financial resilience and security amongst households – particularly lower-medium income households which are the focus of our work at the Financial Inclusion Centre. So, we welcome the FAMR. But, it is important that we understand the real causes of the advice gap. Claims that the advice gap is caused by or has *emerged* because of over-regulation are wrong - or disingenuous and used to try to reduce much needed consumer protection. Remedies based on false analysis would exacerbate rather than improve the situation.

A more accurate assessment is that robust, better regulation has *exposed* a long established advice gap. Of course, many lower-medium income consumers were 'advised' on and sold insurance, investment and personal pension products in the past. But, as we now know from the litany of misselling scandals, these products were all too often unsuitable and represented poor value for consumers due to high charges and commission payments to advisers/ intermediaries. In effect, consumers were cross-subsidising the sale and distribution of these poor value products.

Therefore, when thinking about the concept of an advice gap, it is important not just to think of access to advice *per se* but whether it produces the right outcomes for consumers. It would be easy to close the advice gap if we just allowed the industry to go back to advising on and selling poor value, unsuitable products. But, of course, that would be unacceptable.

The real reasons for the advice gap in our view are:

- growing numbers of consumers simply cannot afford to save and invest, or pay for for-profit advice; and
- large numbers of consumers are 'underserved' by the financial services industry because the industry is still too inefficient to meet their needs.

In other words, it's all about the economics of access and distribution.

Reducing consumer protection to encourage the industry to serve more consumers is not the way forward. Instead the industry would continue to serve medium-higher income consumers but with weaker constraints on its behaviours. The overall effect would be to just transfer the risk of misselling to consumers thereby undermining confidence and trust in financial services. Closing the advice gap, therefore, means focusing on making the financial services industry more efficient so it can extend its reach to more consumers and providing alternative provision for consumers who are not commercially viable for the for-profit advice sector.

Which consumers are affected by the advice gap?

It is important not to oversimplify but we consider there are two groups of consumers who don't have access to appropriate financial advice:

- consumers who are permanently financially excluded and who will never be commercially viable for the for-profit financial services industry - this group needs alternative solutions provided by the state and/ or non-profit agencies; and
- consumers who could benefit from access to good financial advice and guidance but are prevented from doing so by a range of barriers (economic, structural and supply side, and

demand side barriers, see below) - this group is 'underserved' rather than excluded in the conventional sense but if the market was working better could be better served.

Barriers to financial advice

There are a number of barriers that prevent excluded/ underserved consumers from accessing financial advice. We group these into the following categories:

- **External economic factors:** growing numbers of households simply do not have enough spare income to save or invest for the future, or cannot afford to pay for regulated financial advice. In other words, they are not economically viable for commercial, for-profit financial services providers.
- **Structural and supply side barriers:** due to supply side inefficiencies, the financial services industry is limited in the numbers of households (particularly those on lower-medium incomes) it can serve on terms that make sense for those households[1]. These barriers include: oversupply of providers and products, poor product design, weak competition and innovation (from consumer perspective), inefficient business models and supply chains, and conflicts of interest caused by remuneration policies. Some people assert that the current regulatory system acts as a supply side barrier. We think these claims are much overstated – see below.
- **Demand side barriers:** this can include low levels of financial capability, confidence and trust. Or consumers may just not recognise the need to take advice, plan for the future, or just do not value paid-for financial advice.

Overcoming the barriers to advice

The FAMR is very important and timely. Identifying genuine barriers to advice and ways of overcoming those barriers is critical.

The external economic barriers are to a large degree outside of the control of the FAMR. Many households simply do not have enough income to save or pay for advice. But, it is worth noting that if the financial services industry becomes more efficient and innovative this will reduce the unit costs of selling and advising on financial products. This should then allow the industry to extend its reach further to larger numbers of previously commercially unviable consumers.

It may be possible to overcome the demand side barriers to some degree. Sustained public awareness campaigns and efforts to improve levels of professionalism in the industry could increase consumer confidence in the sector. This in turn might encourage more consumers to proactively seek advice – which again would reduce unit costs of distribution as firms would need to spend less on 'prospecting' for and acquiring new business (see below). But it is worth noting that financial capability interventions have not been effective at actually changing the long term behaviours of consumers.

But, we think that the most productive approach is to look at the structural and supply side barriers to see where efficiency gains might be made. We must also deconstruct the supply chain and understand the basic economics of distribution to identify whether regulation per se represents a real barriers to advice.

[1] This is an important distinction. The financial services industry could profitably serve lower-medium income households if it sold them poor value, high cost products and services. But this would not make sense for consumers. This was a feature of old style personal pensions and insurance based investment products that used to be sold in the UK and the 'man from the Pru'.

There is no guarantee that reducing consumer protection would encourage for-profit firms to reach out to underserved households. These consumers would still be less profitable than medium-higher income consumers. What is more likely is that those consumers who are targeted by the financial services industry would end up having reduced regulatory protection. In other words, there would be a transfer of risk from the industry to consumers which could undermine long term confidence in financial services.

The economics of financial advice and distribution

Much of the debate around the advice gap is based on the assertion that regulation pushes up the costs of distributing and advising on products and/or inhibits the ability of the financial services industry to develop innovative, efficient ways of providing advice to consumers.

To examine whether this is the case, we need to break down the end-to-end process of manufacturing, distributing, and advising on financial products into its component stages.

The main stages are as follows.

Pre-sale

- Product design and manufacturing
- General marketing and promotion
- 'Prospecting' for and acquiring new customers
- The 'know-your-customer process - information gathering, fact finding, assessing attitude to risks and so on
- Advice and recommendation – the stage at which the adviser/ intermediary makes a recommendation to the consumer
- Executing the recommendation – the administration process to set up new product etc

Post-sale

Once the advice has been given and sale been made, there are a number of post-sale stages and costs.

- Ongoing relationship management, administration, regular communications
- Redress – firms and advisers/ intermediaries may be liable to paying redress if consumers have been badly advised/ missold.

There are, of course, direct regulatory costs such as the levy firms are required to pay to fund the regulators and compensation scheme. But, we are concerned here with the manufacturing, distribution and advice costs.

Each of these stages have associated costs of doing business. Firms spend large sums of money on: product design and development; marketing, advertising and promotion; prospecting for new business; gathering information and getting to know their potential customers; training staff so they can provide good quality advice; and research and analysis on products available on the market (for advisers/ intermediaries/ distributors).

Post sale firms also spend large sums on administering accounts and regular communications with consumers.

There are also regulatory requirements associated with each of these stages – for example, specific rules relating to product governance, marketing or the 'know your customer' process. And, of course, if firms, advisers, or intermediaries have breached regulatory standards, they may be liable for redress costs - which as we know from experience can be huge.

Does regulation push up the cost of distribution, and cause the advice gap?

The claims we want to examine are: the fear of potential future redress costs makes firms reluctant to advise and sell products to certain groups of consumers; and regulation has pushed up the costs of advising and selling at each of the stages outlined above.

But do these claims stand up when looked at objectively? There are two points we have to remember.

Firstly, it is important to remember that even if regulation didn't exist, firms and advisers would still be subject to duties of care in law. The fundamental reason for financial regulation is that society does not trust the financial services industry to abide by these general legal principles and that expecting consumers to challenge firms (and therefore constrain their behaviours) through the courts is not effective, nor acceptable. Therefore, regulation can be thought of as codifying legal principles which can then be supervised and enforced against and provide the basis for redress through the Financial Ombudsman Scheme rather than the more costly, less accessible court system.

Secondly, we need to ask: are the behavioural standards required by regulators during the advice and selling process are any more onerous than would be expected of a firm that already had the interests of its customers at heart? To put it another way: does regulation imposes ***unnecessary*** constraints or costs on firms at each of those stages outlined above?

If it is truly the case that regulators demand higher standards than would be expected from a well-run business, then the FAMR could safely reduce or clarify regulatory requirements for the industry which could then:

- lower the total end-to-end costs of advising on and selling products to consumers; and/or
- reduce the inhibitions firms have about selling products to underserved consumers due to the fear of unknown future redress costs.

Objective examination would suggest this is not the case.

We have been through each of the pre-sale stages of the process and considered the relevant regulatory requirements associated with each of those stages. But, we cannot identify any significant regulatory requirements which demand standards of behaviour over and above those that would be expected of a well-run firm that sought to understand the needs of its prospective customers, communicate fairly and openly, and provide a professional, quality service.

Regulators provide a degree of flexibility for firms and advisers as to how they interpret and apply the regulations. It seems to us that any 'belt and braces' approach to regulation may be more down to firms not trusting their own compliance and risk management safeguards rather than zealous regulators.

There are claims that regulation inhibits the ability of firms to use innovative technology to improve the efficiency of the advice process – particularly at the 'know-your-customer' stage. But, we cannot identify any particular regulatory requirement which prevents firms and advisers from using technology to improve the efficiency of the process as long as the firm still complies with the general principles relating to know-your-customer. Again, regulations allow a significant amount of discretion as to the steps the firm/ adviser should take to satisfy itself before providing regulated advice.

One solution proposed is to allow a suite of simple financial products to be distributed using a reduced or more restricted advice process. The theory here is that these simple products would be 'safer' to sell so consumers do not require the same level of protection provided by 'full' advice. Again, looking at the existing regulations, it is difficult to see what prevents firms and advisers from using a streamlined advice process to distribute simpler products *on their own initiative.*

Therefore, we would conclude that the existing regulations do not:

- require standards of behaviour higher than would be expected from a well-run business;
- overly restrict flexibility in the advice process;
- prevent firms and advisers from using innovative technology to improve the efficiency of the advice process nor advising on simpler financial products using a streamlined process if they choose to do so.

Indeed there would seem to be much scope for the industry to improve the efficiency of the advice process and cut distribution costs – but this could be done within the existing regulations. The critical point from the consumer perspective is that the firm/ adviser should retain responsibility for the recommendation/ advice.

But, the problem seems to be more to do with the lack of confidence certain firms and advisers have in their own business processes and the reluctance to advise on products without first following a 'belts and braces' approach to complying with regulatory standards.

Another concern raised by the industry is that it faces the risk of unknown and unquantifiable future redress costs. In particular, claims have been made that the regulatory system imposes fault and redress retrospectively – that is, that firms and advisers may behave honourably at the time of a product being bought but the regulators then reinterpret the standards at some future stage. But, we are not aware of any cases where regulators have reinterpreted and applied regulations retrospectively. Regulators have made it clear on a number of occasions that firms and advisers are judged by the standards of the time.

There is a trade-off between the quality of the sales and advice process and the likelihood of firms and advisers being exposed to future redress costs and damaging the reputation of the industry. Well-governed firms, with well-trained staff and robust 'quality control' procedures are less likely to develop poor quality, toxic products or mistreat their customers. Therefore, they are less likely to fall foul of the regulators and end up having to pay redress to consumers.

Arguments put forward by certain financial services industry representatives seem to be somewhat disingenuous. Calls for 'safe harbours' for firms and advisers seem to be intended more to protect firms and advisers from misselling claims rather than genuine attempts to close the advice gap.

Cutting corners and protecting firms and advisers from potential redress claims simply transfers the risks of and liability for misselling to consumers – an illusory efficiency gain and, ultimately, a false economy.

So what could be done?

There are a number of interventions which could improve access to advice without compromising much needed consumer protection.

There is scope for regulators to clarify that:

- firms have discretion to interpret and apply standards to suit their own business models;
- regulation does not prevent firms and advisers from using technology to improve the efficiency of the information gathering and know your customer process – as long as the technology solutions are suitable; and
- regulation does not prevent firms and advisers from using a streamlined process to advise on and sell simple, safer products – as long as the firms and advisers are confident that the products have been subject to robust product governance procedures and a streamlined process does not result in consumers being sold unsuitable products.

These clarifications should at least remove any excuse that regulation is inhibiting genuine innovation and efficiency gains.

There is also significant scope for technology to improve the efficiency of the supply chain at several of the stages outlined above.

For example, one innovation which we think could have potential is 'portable fact finds'. There is a cost involved in collecting basic financial information on a prospective consumer's financial circumstances. If a consumer moves to a new adviser (or from a non-profit adviser to a regulated adviser) there is no point duplicating the collection of that information if his/ her financial circumstances haven't changed much. So we can see merit in allowing consumers to take the 'fact-find' with them to a new adviser. This new adviser should be allowed to rely on that fact-find to provide advice – providing, of course, that the information is relatively current and the consumer has confirmed that there have been no changes in basic financial circumstances.

Moreover, technology has potential for helping advisers (and consumers) better understand attitudes to risk, expose biases and preferences and so on.

But the important thing to note is that we do not need to reduce regulations to encourage greater use of these innovations.

Ultimately, as we have explained, the main barriers to good quality, objective advice are economic not regulatory – consumers can't afford to save, can't afford to pay for advice, and the industry is just not efficient enough to extend access to under-served consumers.

Financial policymakers and regulators cannot do much about the fact that many households are on low incomes and cannot afford to save. But, they can tackle supply side inefficiencies and reduce the unit costs of distribution. This would reduce the price consumers pay for products and make products more affordable for hitherto under-served consumers.

One of the major barriers to market efficiency - and therefore access to advice - is the unnecessary proliferation of providers and products on the market.

Therefore, we urge the FCA to concentrate on improving the efficiency of the financial services supply chain – building on the success of the Retail Distribution Review – and become more proactive in using its product governance powers to drive out poor value providers and products.

There are other supply side interventions which could improve market efficiency. The FCA could make the investment market more efficient, for example, by requiring fund managers to bear all the transaction costs involved in managing portfolios and charge a clean, single fee. This would align the interests of fund manager and clients and reduce product manufacturing and distribution unit costs. Furthermore, we argue for a new form of RU64 which would require advisers and intermediaries to justify clearly to consumers why the adviser/ intermediary is recommending a more expensive investment fund rather than a cheaper passive fund.

Moreover, it is important to remove any confusion around the definition of advice and advisers. There is no need for spurious distinctions such as simplified advice, basic advice, focused advice or generic advice.

Either advice is given or it isn't. Anything involving a recommendation on a course of action (whether it involves an investment strategy or recommendation on specific product) provided by an adviser or algorithm ('robo advice') is advice. Anything else is execution only and should carry prominent warnings regarding the risks of losing valuable consumer protection measures.

Similarly, it should be made clearer that only advisers who comply with strict definitions of independence – fee based, duty of care to client, no ties to any product manufacturer – are allowed to use the term independent financial adviser. All other types of adviser should be called sales agents.

But, even with major efficiency gains, large numbers of consumers will always be commercially unviable for for-profit financial services firms. Alternative solutions are needed for this group. We support the creation of a National Financial Advice Network to provide advice, guidance, and information to consumers who are not commercially viable for the for-profit financial services industry[2]. This must involve some form of cross-subsidy either from the public purse or from the industry.

Conclusion

If the advice gap is to be tackled, alternative solutions such as the creation of a National Financial Advice Network will be necessary. But, it is important not to exacerbate an already serious problem by trying to 'flex' the regulatory system to incentivise commercial providers to meet the needs of excluded/ underserved consumers. This will not work – and indeed will be counterproductive.

[2] This idea was originally proposed by Which? in 2002 http://www.staticwhich.co.uk/documents/pdf/a-national-financial-advice-network-which-response-181710.pdf

It is important to challenge the false arguments about the so called 'advice gap' and understand the real reasons why lower-medium income consumers cannot get access to good quality, objective financial advice.

The barriers to advice are primarily economic, not regulatory. We must take great care not to reduce regulatory protection in a misguided attempt to encourage the provision of advice to consumers who are currently not commercially viable for or under-served by the financial services industry.

In our view, the industry would still not be interested in serving lower-medium income consumers. Instead, the industry would continue to serve medium-higher income consumers but with weaker constraints on its behaviours. The overall effect would be to just transfer the risk of misselling to consumers which will undermine confidence and trust in financial services. This would produce illusory efficiency gains, be counterproductive as it would affect confidence and trust in financial services and the advice process and, ultimately, be a false economy.

PART 2: RESPONSE TO SPECIFIC QUESTIONS

Q1: Do people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, have particular needs for financial advice or difficulty finding and obtaining that advice?

As a general point, many vulnerable consumers face the same problems and other consumers in that the main barriers to effective advice are the inefficiencies of the commercial financial sector and the lack of a comprehensive, national non-profit, free advice agency.

But, certain groups such as those with protected characteristics do have specific needs which cannot be met by the commercial sector. This requires specialist, non-profit advice.

Q2: Do you have any thoughts on how different forms of financial advice could be categorised and described?

There is no need for complex categorisations. Either advice is given or it isn't. Anything involving a recommendation on a course of action (whether it involves a financial strategy or recommendation on specific product) provided by an adviser or algorithm ('robo advice') is advice. Anything else is execution only and should carry prominent warnings regarding the risks of losing valuable consumer protection measures.

Similarly, it should be made clearer that only advisers who comply with strict definitions of independence – fee based, duty of care to client, no ties to any product manufacturer – are allowed to use the term independent financial adviser. All other types of adviser should be called sales agents.

Q3: What comments do you have on consumer demand for professional financial advice?
It may be possible to overcome the demand side barriers to some degree. Sustained public awareness campaigns and efforts to improve levels of professionalism in the industry could increase consumer confidence in the sector. This in turn might encourage more consumers to proactively seek advice – which again would reduce unit costs of distribution as firms would need to spend less on 'prospecting' for and acquiring new business. But it is worth noting that financial capability interventions have not been effective at actually changing the long term behaviours of consumers.

The most productive approach is to look at the structural and supply side barriers to see where efficiency gains might be made.

Q4: Do you have any comments or evidence on the demand for advice from sources other than professional financial advisers?
No comment except to say that generally demand has to be created.

Q5: Do you have any comments or evidence on the financial needs for which consumers may seek advice?
No comment. The description set out by the FCA on page 10 of the call for input describes those needs very well.

Q6: Is the FCA Consumer Spotlight segmentation model useful for exploring consumers' advice needs?

It could be helpful for understanding consumer behaviours and biases. Therefore, it could be helpful to the FCA in understanding how and where to target interventions to prevent firms exploiting those biases.

Q7: Do you have any observations on the segments and whether any should be the subject of particular focus in the Review?

It is important not to overcomplicate the subject. The important thing is to identify which part of the consumer population the market can serve, intervene to make the market more efficient for those consumers and develop alternative solutions for those consumers the market cannot serve.

Q8: Do you have any comments or evidence on the impact that consumer wealth and income has on demand for advice?
N/A

Q9: Do you have any comments or evidence on why consumers do not seek advice?

The main barriers to advice would appear to be: low levels of confidence and trust in the industry, low levels of financial capability, lack of understanding of the potential benefits of advice, not seeing the relevance of advice (for example because of not having sufficient assets/ income to warrant advice), the unnecessary complexity of the financial services market and unnecessary proliferation of providers and products. But demand side barriers are not the important issue here. The critical thing is improving the efficiency of the supply side.

Q10: Do you have any information about the supply of financial advice that we should take into account in our review?

This is the critical issue. The main cause of the 'advice gap' is inefficiencies in the supply chain. This is explained in our supporting paper.

Q11: Do you have any comments or evidence about the recent shift away from sales based on professional advice, and the reasons for this shift?

This is very positive. It has exposed the advice gap which has always existed and made the market work better. But more needs to be done to further improve the efficiency of the industry.

Q12: Do you have any comments or evidence about the role of new and emerging technology in delivering advice?

As we explain in the supporting paper, technology has the potential for helping advisers (and consumers) better understand attitudes to risk, expose biases and preferences and so on. But it is important to note that reductions in consumer protection are not needed to encourage wider use of these innovations.

But the important thing to note is that we do not need to reduce regulations to encourage greater use of these innovations.

Q13: Do you have any comments on how we look at the economics of supplying advice? The economics of distribution should be the focus of the FAMR. As we explain in the supporting paper, the main barriers to advice are the inefficiencies in the supply chain. We have set out in the supporting paper how the FCA can approach analysis of the economics of distribution.

Q14: Do you have any comments on the different ways that firms do or could cover the cost of giving advice (through revenue generation or other means)? Do you have any evidence on the nature and levels of costs and revenues associated with different advice models?
N/A

Q15: Which consumer segments are economic to serve given the cost of supplying advice?

It is difficult to specify precisely which segments are economic. And indeed it may not be very productive to approach the subject in this way. The crucial point is to identify the real causes of the advice gap (the economics of distribution) and avoid blaming the wrong causes (so called 'red tape' and regulation).

The solution in our view is for: i. the FCA to be proactive in making markets more efficient so that the market can find its level and serve more consumers; and ii. government, with the aid of the FCA, to create a viable, non-profit alternative advice agency to meet the needs of those who are not commercially viable for commercial providers and to provide some competition for the commercial sector.

Q16: Do you have any comments on the barriers faced by firms providing advice?

See supporting paper. The main barriers are economic inefficiencies not regulation.

Q17: What do you understand to be an advice gap?

We define the advice gap as large numbers of consumers unable (or unwilling) to access good quality, appropriate financial advice. Good advice is critical for promoting financial inclusion, financial resilience and security amongst households – particularly lower-medium income households which are the focus of our work at the Financial Inclusion Centre.

But, it is very important that some of the misconceptions about the 'advice gap' are dealt with. Claims that the advice gap is caused by or has *emerged* because of over-regulation are wrong - or disingenuous and used to try to reduce much needed consumer protection. Remedies based on false analysis would exacerbate rather than improve the situation.

A more accurate assessment is that robust, better regulation has *exposed* a long established advice gap. Of course, many lower-medium income consumers were 'advised' on and sold insurance, investment and personal pension products in the past. But, as we now know from the litany of misselling scandals, these products were all too often unsuitable and represented poor value for consumers due to high charges and commission payments to advisers/ intermediaries. In effect, consumers were cross-subsidising the sale and distribution of these poor value products.

Therefore, when thinking about the concept of an advice gap, it is important not just to think of access to advice *per se* but whether it produces the right outcomes for consumers. It would be easy to close the advice gap if we just allowed the industry to go back to advising on and selling poor value, unsuitable products. But, of course, that would be unacceptable.

Q18: To what extent does a lack of demand for advice reflect an advice gap?

Demand side barriers are a factor – see above. But the main barriers are supply side. Moreover, given the limited effectiveness of demand side interventions (such as financial education), it is also more effective use of regulatory resources to act on the supply side barriers.

Q19: Where do you consider there to be advice gaps?

Q20: Do you have any evidence to support the existence of these gaps?

Q21: Which advice gaps are most important for the Review to address?

As with Q15 above, it may not be the most productive use of resources to try to focus on specific segments or gaps. There is a large segment of the consumer population who are not being served by the commercial advice sector. These are primarily low-medium incomes/ asset households. Rather than try to engineer specific solutions for specific segments/ gaps, the FCA should concentrate on forcing through improvements in the economics of distribution.

Q22: Do you agree we should focus our initial work on advice in relation to investing, saving into a pension and taking an income in retirement?

No. This risks recreating a silo approach to regulation.

Q23: Do you agree we should focus our initial work on consumers with some money but without significant wealth (those with less than £100,000 investible assets or incomes under £50,000)?

No. The FCA should focus on making the market more efficient so it can extend its reach to underserved consumers and help the government create a non-profit alternative to meet the needs of lower income households who are not commercially viable for commercial providers and provide competition for commercial providers.

Q24: Are there aspects of the current regulatory framework that could be simplified so that it is better understood and achieves its objectives in a more proportionate manner?

As we explain in the supporting paper, existing regulations do not:

- require standards of behaviour higher than would be expected from a well-run business;
- overly restrict flexibility in the advice process;
- prevent firms and advisers from using innovative technology to improve the efficiency of the advice process nor advising on simpler financial products using a streamlined process if they choose to do so.

Indeed there would seem to be much scope for the industry to improve the efficiency of the advice process and cut distribution costs – but this could be done within the existing regulations.

Of course, the FCA should issue further clarifications about what is possible under the existing regulatory system if only to deal with head on the myths of overregulation.

Q25: Are there aspects of EU legislation and its implementation in the UK that could potentially be revised to enable the UK advice market to work better?

No. But the FCA could make the investment market more efficient, for example, by requiring fund managers to bear all the transaction costs involved in managing portfolios and charge a clean, single fee. This would align the interests of fund manager and clients and reduce product manufacturing and distribution unit costs.

Q26: What can be learned from previous initiatives to improve consumer engagement with financial services?

Demand side interventions such as financial education have very limited impact on consumer behaviour and, therefore, supply side behaviour. Moreover, artificial distinctions such as basic advice have not been successful as they failed to address the fundamental issue regarding the economics of distribution.

Supply side interventions have worked – for example, price caps, the RDR, and introduction of NEST.

Q27: Are there any approaches to the regulation of advice in other jurisdictions from which we could learn?

We would support the FCA adopting the more proactive, interventionist approach followed by the Netherlands regulator with regards to product governance. But, introducing a 'safe harbour' would be too great a risk for the UK financial services market.

Q28: What steps can be taken to address behavioural biases that limit consumer engagement without face-to-face advice?

As we explain above, technology may be beneficial in helping providers address consumer behavioural biases. But it is very important to note that demand side interventions – including those derived from behavioural economics – have limited effect in complex markets such as financial services. The sequence should be to clean up the market first and then try to improve consumer behaviour.

Moreover, using behavioural economics to improve firm behaviours is more productive. In simple terms, if a large firm has, say, 1 million customers intervening to improve the behaviour of that firm helps a large number of customers simultaneously with a single intervention. This is more efficient than trying to improve the behaviour of large numbers of individual consumers – and then hope that this indirectly improves the behaviour of a firm.

Q29: To what extent might the different types of safe harbour described above help address the advice gap through the increased incentive to supply advice

Arguments put forward by certain financial services industry representatives seem to be somewhat disingenuous. Calls for 'safe harbours' for firms and advisers seem to be intended more to protect firms and advisers from misselling claims rather than genuine attempts to close the advice gap. Cutting corners and protecting firms and advisers from potential redress claims simply transfers the risks of and liability for misselling to consumers – an illusory efficiency gain and, ultimately, a false economy. It is too risky to attempt to use 'safe harbours' in the UK financial services market.

Q30: Which areas of the regulatory regime would benefit most from a safe harbour, and what liabilities should a safe harbour address?

None. Firms do not require a safe harbour to do a good job for consumers. As we explain in the supporting paper, we cannot find areas of regulation which have a significant impact in preventing firms improving distribution or extending access to advice to consumers who are commercially viable.

Q31: What steps could be taken to ensure that a safe harbour includes an appropriate level of consumer protection?

See above. It is not an appropriate measure for tackling the advice gap and indeed we fear it would actually be counterproductive.

Q32: Do you have evidence that absence of a longstop is leading to an advice gap?
The effect of the longstop, as with regulation generally, has been seriously overstated. Only a very small number of claims would be affected by a longstop.

Q33: Do you have evidence that the absence of a longstop has led to a competition problem in the advice market e.g. is this leading to barriers to entry and exit for advisory firms?

No. The number of providers in this market is not a problem.

Q34: Do you have any comments about the benefits to consumers of the availability of redress for long-term advice?

Access to redress is critical to promote confidence and trust in the financial system.

Q35: Do you have any comments or suggestions for an alternative approach in order to achieve an appropriate level of protection for consumers?

Ultimately, as we have explained, the main barriers to good quality, objective advice are economic not regulatory – consumers can't afford to save, can't afford to pay for advice, and the industry is just not efficient enough to extend access to under-served consumers.

Financial policymakers and regulators cannot do much about the fact that many households are on low incomes and cannot afford to save. But, they can tackle supply side inefficiencies and reduce the unit costs of distribution. This would reduce the price consumers pay for products and make products more affordable for hitherto under-served consumers.

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Therefore, we urge the FCA to concentrate on improving the efficiency of the financial services supply chain – building on the success of the Retail Distribution Review – and become more proactive in using its product governance powers to drive out poor value providers and products.

There are other supply side interventions which could improve market efficiency. The FCA could make the investment market more efficient, for example, by requiring fund managers to bear all the transaction costs involved in managing portfolios and charge a clean, single fee. This would align the interests of fund manager and clients and reduce product manufacturing and distribution unit costs. Furthermore, we argue for a new form of RU64 which would require advisers and intermediaries to justify clearly to consumers why the adviser/ intermediary is recommending a more expensive investment fund rather than a cheaper passive fund.

Moreover, it is important to remove any confusion around the definition of advice and advisers. There is no need for spurious distinctions such as simplified advice, basic advice, focused advice or generic advice.

Either advice is given or it isn't. Anything involving a recommendation on a course of action (whether it involves an investment strategy or recommendation on specific product) provided by an adviser or algorithm ('robo advice') is advice. Anything else is execution only and should carry prominent warnings regarding the risks of losing valuable consumer protection measures.

Similarly, it should be made clearer that only advisers who comply with strict definitions of independence – fee based, duty of care to client, no ties to any product manufacturer – are allowed to use the term independent financial adviser. All other types of adviser should be called sales agents.

But, even with major efficiency gains, large numbers of consumers will always be commercially unviable for for-profit financial services firms. Alternative solutions are needed for this group. We support the creation of a National Financial Advice Network to provide advice, guidance, and information to consumers who are not commercially viable for the for-profit financial services industry[3]. This must involve some form of cross-subsidy either from the public purse or from the industry.

Q36: Do you have any comments on the extent to which firms are able to provide consistent automated advice at low cost? Are you aware of any examples of this, either in the UK or other jurisdictions?

We do not have evidence yet. But, we do believe that there is scope for technology to improve the efficiency of distribution. However, the critical point is that the liability for wrong advice should not be transferred to the consumer.

Q37: What steps could we take to address any barriers to digital innovation and aid the development of automated advice models?

We do not see any barriers in the current regulatory system that prevents the development of innovative solutions. However, the FCA's Project Innovate has been a very welcome development. The FCA should encourage greater use of Project Innovate for new advice models.

Q38: What do you consider to be the main consumer considerations relating to automated advice?

The key issue is establishing clear lines of responsibility for advice.

[3] This idea was originally proposed by Which? in 2002 http://www.staticwhich.co.uk/documents/pdf/a-national-financial-advice-network-which-response-181710.pdf

Q39: What are the main options to address the advice gaps you have identified?

See our response to Q35, above. Moreover, as we explain in the supporting paper, the main barriers to good advice are on the supply side. Interventions are needed to improve the efficiency of distribution and develop an alternative non-profit advice network.

Q40: What steps should we take to ensure that competition in the advice markets and related financial services markets is not distorted and works to deliver good consumer outcomes as a result of any proposed changes?

It is not clear how the changes would affect competition. However, the proposals we set out in Q35 would improve competition in the interests of consumers. The critical point is that interventions must be targeted on the supply side and driving down distribution costs.

Q41: What steps should we take to ensure that the quality and standard of advice is appropriate as a result of any proposed changes?

Unfortunately, we do not see how the quality and standard of advice could be maintained if consumer protection is reduced – for example, through the introduction of 'safe harbours'.
The most effective way to improve the quality and standard of advice would be to use the product governance powers and other interventions outlined above to make competition work in the interests of consumers.

This marks the end of The Financial Inclusion Centre's submission

FAMR Secretariat
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

24 December 2015

Dear Sir, Madam,

Financial Advice Market Review Call for Input

This is the response of the Financial Services Consumer Panel (the Panel) to the joint FCA and HM Treasury Financial Advice Market Review Call for Input.

The call for input defines the advice gap as *"any situation where consumers cannot get the form of advice that they want on a need they have, at a price they are prepared to pay... the advice gap may also include areas where consumer demand is low because the long-term benefits of advice may not be fully appreciated"*

We have not seen any evidence to show the existence of a gap in the supply of professional advice, apart from in the provision of compulsory pension advice, e.g. on defined benefit to defined contribution transfers.

Consumers do not always seek professional advice, even when they could benefit from it: some are not aware of what is available; they do not want to pay for advice because they do not understand the price or value of it; they cannot afford it; or they prefer to take decisions themselves. The industry needs to be more transparent. People want to know exactly what they are paying for and what they are getting for it.

We are dubious about the argument that the cost of obtaining regulated advice is high because firms are concerned about potential future liabilities or because they are unclear on where the regulatory boundaries lie. The Panel has not seen any evidence that long-term liability has caused widespread issues for firms, although we understand how it could be a problem for sole trader or micro firms looking to exit the market. We think the solution here is to look at the costs of professional indemnity insurance and consider how this market could be improved.

The Panel agrees that there is a gap in overall consumer engagement. There is an ample supply of 'generic' financial advice, e.g. through the Money Advice Service and Pension Wise, that is underused. We have covered this in our response to the Public Financial Guidance Consultation.

We consider that more work is needed on the existence and nature of the advice gap in each segment of the market, as it will be highly connected to people's individual circumstances and attitudes.

Sue Lewis
Chair
Financial Services Consumer Panel

Consultation Questions

The Panel has only answered questions where it has substantive comments.

Q1 Do people with protected characteristics under the Equalities Act 2010 or any consumers in vulnerable circumstances have particular needs for financial advice or difficulty finding and obtaining that advice?

The Panel has no evidence about people with protected characteristics, but we would note that everyone is potentially vulnerable at some point in their lives, through a change of circumstances such as losing a job or partner. Equally, a sudden cash 'windfall' can make people vulnerable. It is not sufficient just to be able to find advice: people need to be able to trust that whoever is advising them is professional and acting in their best interests. While the Retail Distribution Review (RDR) has demonstrably improved the regulated advice market for consumers[1], a recent FCA thematic review found severe and persistent problems in the wealth management and private banking industry[2].

Pension reforms have highlighted the potential vulnerability of consumers who suddenly acquire cash. These consumers are not only vulnerable to scams and fraud, but have problems getting the right kind of advice. One example is individuals who have high levels of debt and need to determine whether they should use their pension assets to pay it off. Debt advisers cannot help, as they cannot provide advice in relation to investments[3]. On the other hand, regulated advisers are not debt specialists and their charges could be prohibitive for someone heavily indebted.

In addition, advisers are reluctant to give advice to consumers with guaranteed annuity rates or those with defined benefit schemes who want to transfer to a defined contribution scheme, because this increases the cost of their professional indemnity insurance cover. This will also be an issue for the planned secondary annuities market.

Q2 Do you have any thoughts on how different forms of financial advice could be categorised and described?

The government is consulting separately on Public Financial Guidance, but the Panel considers the 'help' provided by industry, third sector and government-funded bodies should be considered together, as consumers will not necessarily understand the differences.

Advice is either regulated (the adviser recommends a course of action), or it isn't. Consumers do not need to understand the difference, but they do need to know the extent to which they are protected, and whether the adviser is impartial or trying to sell them something.

<u>Independence of advice/help from a product sale</u>

The Thoresen Review[4] made clear that there was a gap in the provision of impartial information and guidance. People want help that is impartial and on their side. They have an interest in knowing whether their adviser is trying to sell them a product – and will benefit financially from doing so, directly or indirectly - or whether the adviser is looking impartially at their overall financial position and helping them meet their financial

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[1] Post Implementation Review of the Retail Distribution Review 2014: https://www.fca.org.uk/news/post-implementation-review-of-the-rdr
[2] TR15/12: Wealth management firms and private banks: suitability of investment portfolios, December 2015
[3] Qualified includes being authorised to carry out the relevant regulated activities by the FCA.
[4] Thoresen Review on Generic Financial Advice: Final Report: http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/media/8/3/thoresenreview_final.pdf

goals.

Investment advice labels

Advice labels like basic, focused, simplified and independent are not useful to consumers, and make it hard for them to make sense of the market.

Consumers need to understand what range of products and providers a financial adviser can choose from when making a recommendation, but having different types of advisers - independent financial advisers and two status levels of restricted financial advisers – is also confusing. The panel believes the MiFID II definition of independence will help. This will allow 'whole of market' restricted advisers to be classified as independent, making the distinction between independent (whole of market) and restricted (by provider) advisers clearer.

Consumers should not have to determine what type of advice is right for them and why. Firms need to be clear about the service they are offering and take responsibility for ensuring consumers aren't misled into thinking they are getting a certain type of advice when they aren't.

Protection

Consumers need to know whether the advice they get will give them access to redress through the Financial Ombudsman Service (FOS) or Financial Services Compensation Scheme (FSCS) if they need it. We think that the FCA should require firms that sell regulated products without regulated advice to provide much clearer and prominent warnings about the lack of protection. For example, firms should warn consumers that they won't necessarily have access to the FOS/FSCS[5] if a product bought 'execution only' should prove inappropriate for their needs.

Firms should also help consumers understand that with regulated financial advice they will receive a written report confirming why the course of action recommended to them is suitable. If they don't get this, they are taking responsibility for their own decision.

'Non-advised' sales

The Panel also believes that commission should be banned for 'non-advised' sales of regulated products. The RDR showed that payment of commission led to consumer detriment in the advised sector, so it is difficult to justify retaining it for 'non-advised' sales. Instead firms should charge clients a fee to carry out the transaction and make this clear to consumers upfront.

In addition, the Panel believes the FCA should introduce a code of conduct for firms selling regulated products without advice. We would like to see the FCA put together a working group consisting of industry and consumer representatives to draw up this code.

Q3 What comments do you have on consumer demand for professional financial advice?

The Panel's research on annuities[6] found that there were several reasons why consumers did not use financial advisers in this particular context. The main factors were:

- Lack of awareness of, and trust in, the benefits of advice;

[5] MiFID introduced an appropriateness test for certain non-advised sales from November 2007 (e.g. complex products such as some structured products)
[6] https://www.fs-cp.org.uk/sites/default/files/optimisa_annuities_final_20130708.pdf

- Lack of familiarity: consumers felt apprehensive about speaking to someone who they imagined would have financial knowledge far greater than their own, and that therefore they might not understand what the adviser was saying, or would be made to feel stupid;

- Concern over costs and benefits. People did not know what the cost of advice might be, or how to evaluate the potential value of advice. For some, this was a consequence of inexperience in using advisers. Others were unconvinced of how much value an adviser could add over and above their own efforts;

- Disappointment with previous advice experience in relation to other products.

Those who felt confident to shop around often used informal sources of advice. These included 'savvy' (relatively engaged with financial services) friends and family who had experience of buying an annuity and other information sources such as websites and newspaper articles. Several people had attended pension seminars arranged through their employers or their spouse's employers.

While these experiences relate to a particular market, it seems likely the conclusions can be applied to other markets or to professional advice in general.

Different consumer segments have different needs for advice. Sometimes people know what their advice needs are (e.g. they want help in a particular area but do not know where to go or believe they cannot afford to get the help they need); or they are unaware that advice could be available to them and what the benefits may be.

What is clear is that the industry has done a poor job in marketing the costs and benefits of professional advice. For example, research from Which? in 2014[7] found that financial advisers were reluctant to reveal how much they would charge until they had met a client in person and 70% of the firms sampled did not list their prices online. The industry has also done little to dispel the myth that, prior to the RDR, investment advice was free. It is perhaps not surprising, then, that consumers are reluctant to pay for something that they believe used to be free.

We would emphasise that financial advice is the same as many other professional services. People pay for professional services in other areas, such as for accountancy advice. Some people can afford this, others can't. Yet the government does not generate a debate about whether there is, for example, an accountancy 'advice gap' that must somehow be filled. Services are accessible to those who need them at the market price.

Q5 Do you have any comments or evidence on the types of financial needs for which consumers seek advice?

The Panel's recent research[8] found that consumers use a number of different decision-making processes when buying a product, with variations in the time spent, extent to which they shopped around, and whether or not they sought advice. Some of these behavioural differences were based on the product type being acquired, and some were related to the particular characteristics of individual consumers, including their age, socio-economic status and confidence in financial matters.

Advice does not of course need to be related to buying a product. People may also want help with, for example, understanding complex terms and conditions ('jargon busting'), interpreting financial statements, budgeting and financial planning.

The main point is that different consumers have different needs, and we think further

[7] http://www.which.co.uk/news/2014/01/many-financial-advisers-tight-lipped-over-fees-351668/
[8] https://www.fs-cp.org.uk/sites/default/files/consumers-coregulators-research-2015.pdf

research on the needs of different segments is required.

Q6 Is the FCA Consumer Spotlight segmentation model useful for exploring consumers' advice needs?

The FCA's model would be improved by including intergenerational and attitudinal issues, for example, looking at a young person starting out in the context of their wider circumstances, such as whether their parents are able to support them. We think the Money Advice Service segmentation model would probably work better for looking at advice needs.

Q8: Do you have any comments or evidence on the impact that consumer wealth and income has on demand for advice?

We take this question to refer to regulated advice only.

Most advisers charge a percentage of the amount to be invested, which also varies according to the size of the investment. Advisers usually allow customers the choice of paying for the fee up front or having it deducted from the amount to be invested, so, with lump sum investments at least, the costs can be spread.

Most consumers should be able to access regulated advice if they need it. Whether they want to pay for it (or understand the value of paying for it) or not is another matter.

Q9: Do you have any comments or evidence on why consumers do not seek advice?

As above, it appears this question is about regulated advice. Our response to question 3 also applies here.

Q10: Do you have any information about the supply of financial advice that we should take into account in our review?

As above, it appears this question is also about regulated advice.

The FCA's post-RDR research considered whether the RDR led to an advice gap.[9] It concluded there was *"little evidence that the availability of advice has reduced significantly as a result of the RDR, with the majority of advisers still willing and able to take on more clients. However by revealing the true cost of advice, the RDR has led some consumers to consider the extent to which the advice they receive represents value for money, and in some cases conclude it does not. This group includes consumers who would be likely to pay for a cheaper form of advice, for example that which may be provided by a simplified advice model".*

There is some evidence to suggest that, post-RDR; advisers are increasing the minimum portfolio size they will provide advice for. According to research published by Rplan in November 2014[10], 25% of advisers required clients to have over £30,000 of investable assets and 16% of advisers required a minimum amount of over £50,000. The number of advisers now imposing a minimum threshold of £50,000 is probably much higher.

Q11: Do you have any comments or evidence about the recent shift away from sales based on professional advice and the reasons for this shift?

The Panel's annuities research[11] showed an increase in non-advised sales of annuities

[9] https://www.fca.org.uk/static/documents/post-implementation-review-rdr-phase-1.pdf
[10] http://www.ftadviser.com/2014/11/24/ifa-industry/advisers-increasing-minimum-portfolio-sizes-since-rdr-w0eivD2zv0wvV4cdELHIiN/article.html
[11] https://www.fs-cp.org.uk/sites/default/files/optimisa_annuities_final_20130708.pdf

and now there is evidence of consumers moving to non-advised sales of income drawdown products. The call for input itself cites FCA data showing that the proportion of retail investment products sold without advice has increased from around 40% of the total in 2011/12 to around 66% in 2014/15.

Firms have turned to sales without advice because (a) they can still be paid commission so their customers think the service is free (b) there is no liability for the sale – all liability is on the customer so it is a very cheap model.

Q12: Do you have any comments or evidence about the role of new and emerging technology in delivering advice?

There are firms in the regulated market that are trying out new and innovative business models, including some regulated advice through a mixture of telephone, email and 'Skype'. Two market leading providers have developed fully automated, but fully regulated, advice models – LV= and Just Retirement.

The FCA has clarified the guidelines firms must follow when delivering automated or focused advice. As this technology develops further, the FCA needs to be satisfied that online advice firms are using appropriate risk profiling tools.

We feel the market is beginning to move and these new and innovative models should not be undermined by the panic to fill an 'advice gap' that has not been proven to exist.

Q16: Do you have any comments on the barriers faced by firms providing advice?

The barriers cited in the call for input apply to most start-ups in any sector. It could also be argued that some of these suggested barriers, such as liability, act to reinforce good behaviour by firms, and hence increase trust in the market.

Looking at each of the suggested barriers:

Establishing reputation and trust: Any new business faces this problem. Until a firm builds a reputation customers are bound to be wary. Lack of trust is heightened in the financial services industry because of the catalogue of poor behaviour spanning back over decades. Ironically most of this bad behaviour didn't occur through advice firms, but through banks and insurance companies – yet it is the advice firms that are paying the price.

That said, whilst past performance does make it harder to establish trust, firms can do this by having transparent charging and by providing quality advice so they get referrals. Financial advice is a personal service and should be viewed in that context.

Finding consumers: This is difficult to do, especially for small firms. This is where good guidance can help by providing 'leads' to regulated advice firms via impartial sources such as the Money Advice Service directory. There is a link with the financial capability agenda here: if people understand in general terms the benefits of professional advice, they are more likely to seek it out.

Regulation clarity: The financial services industry has been regulated since 1988 and there have been millions of successful transactions through thousands of advisers. The FCA has also produced guidance to clarify regulations[12]. We are therefore unclear why firms are still calling for clarity. If they don't understand the rules, this calls into question whether they should be selling products and services to consumers.

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[12] FG15/1 – Retail investment advice: Clarifying the boundaries and exploring the barriers to market development: https://www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-01

Business costs: All new businesses have to deal with costs; again we are unclear why financial advice firms should be treated differently.

Regulatory cost: There may be elements of regulatory cost that merit further consideration, and we support the work on the share of the FSCS levy borne by advisers.

We also think the regulator should look at the cost of, and restrictions imposed by, Professional Indemnity Insurance (PII). We understand that PI insurers are dictating what advice firms can and can't provide, and the cost of being able to provide advice across the board is becoming prohibitive for some firms. The excesses are now so large for certain types of advice that many small firms have to withdraw from providing that type of advice. That reduces consumer access and choice.

The Panel is a strong advocate of PII and would not like to see the protection it offers weakened, but we do believe a review of the market is long overdue. If there is the possibility that PI insurers are effectively stifling competition, perhaps this is something the FCA's competition team might look at.

Lack of profitability: Again, we fail to see why government feels it is appropriate for it to interfere in one particular market. Businesses are either profitable or they are not. There are plenty of firms offering financial advice under the current regulatory regime that are profitable.

Liability: If an individual can't, or doesn't want to, make a decision themselves, they pay for the services of a professional to recommend a course of action for them. Financial advice is no different in this respect from any other professional service, all of which take responsibility for their recommendations.

Q17: What do you understand to be an advice gap?

We do not agree that the advice gap is: *any situation where consumers cannot get the form of advice that they want on a need they have, at a price they are prepared to pay*. If the advice gap is measured by '*the price consumers are prepared to pay'* then it would indeed be large, at least until consumers can understand the costs and benefits of professional advice.

There is no evidence of a supply-side gap for professional advice, except in the few circumstances we outline above. We consider, therefore, that any gap should be thought of in terms of consumers understanding what advice is available to them, where this advice is available and how receiving advice could add value to their financial transactions.

Q18: To what extent does a lack of demand for advice reflect an advice gap?

As set out in responses to previous questions, we agree that lack of understanding of the long-term benefits of advice may be one reason demand for advice is low. We also agree in principle that lack of demand does not lead to an advice gap where consumers have no real need for advice, but we are not sure this is helpful from a policy perspective. The call for input defines "no real need for advice" as when a consumer has the appropriate knowledge to take decisions without assistance, or when the decisions they need to take are not complex. However, it is important to note that consumers frequently overestimate their own financial capability. They don't know what they don't know, and this can have disastrous consequences. .

Q19 Where do you consider there to be advice gaps?

There appear to be some problems accessing advice for consumers who are resentful of paying for it and yet could benefit from advice. Knowing the true costs of advice for various transactions would be helpful in establishing whether there are groups of consumers that genuinely cannot afford the cost of advice, even after shopping around. We hope that as part of this review there is research being undertaken to publish some examples of costs.

Few consumers would have the expertise to take ‘at retirement’ decisions independently. Pension Wise should help people decide on their broad options; though it is unlikely those with small pots would be able subsequently to get regulated advice. This is probably the right outcome: investing a small pot to generate an income is likely to be a bad deal given how much would be eaten up in costs and charges, but it could nevertheless be regarded as a gap.

There is a gap for those wishing to transfer a pension with safeguarded benefits, and for those who want advice as to whether they should use their pension assets to repay debt.

Please also see our answers to questions 1 and 39.

Other areas where individuals need access to both regulated financial advice and help and guidance are:

- Saving into a pension (living for now; hard pressed; striving; stretched);
- Saving for short term needs (living for now; hard pressed; striving/supporting; stretched/resourceful);
- Taking out credit and managing debt (starting out; living for now; hard pressed);
- Getting retail general insurance (retired on a budget, retired with resources);
- Getting life insurance (starting out; living for now; hard pressed; striving; stretched; retired on a budget);
- Long-term care and housing; and
- Generic help not related to buying a product.

Q21 Which advice gaps are most important for the Review to address?

In the Panel’s view the priority areas should be determined by a deeper analysis of the advice gap for different segments.

In general terms, the Panel believes that some advice gaps can be addressed by extending the scope of ‘guidance’. Provided the guidance is provided by independent sources (not product providers) under a supervised regime, consumers could be provided with guidance about which products will help them meet their financial goals and where to purchase them safely.

It is important to note that not all need for advice is linked to a product, but there could still be an advice gap e.g. holistic long-term financial planning, including tax arrangements.

Q22 Do you agree we should focus our initial work on advice in relation to investing, saving into a pension and taking an income in retirement?

Pension freedoms have generated an urgent need both for regulated advice and help, and sorting this should be a priority. There are other areas where increasing numbers of consumers need help and protection outside of retirement, such as consumers in debt.

Q24 Are there aspects of the current regulatory framework that could be simplified so that it is better understood and achieves its objectives in a more proportionate manner?

The Panel is aware that some financial firms believe the current regulatory framework is too complex and difficult to adhere to, despite the FCA's attempts to clarify its rules through updating its regulations and issuing guidance for firms.

The Panel considers the FCA's finalised guidance on retail investment advice[13] laid out in considerable detail the rules as they relate to advice and what constitutes advice and what does not. It also compared the FCA rules with those of the EU - in particular MiFID II.

If the regulatory framework needs to be simplified further, the first challenge is to identify which of the FCA's specific rules are causing confusion or applying a different standard to MiFID II. There then needs to be an assessment of whether removing or adapting any "gold-plated" rules would weaken consumer protection. In conducting this exercise, it should also be borne in mind that mis-selling and poor practice in the advice market was what led to the considerable restructuring of the market through the RDR. Therefore, if simplifying the rules means weakening these rules, consumer protection will be compromised.

Q25: Are there aspects of EU legislation and its implementation in the UK that could potentially be revised to enable the UK advice market to work better.

Where EU legislation intended to protect consumers does not apply to certain groups of UK financial services consumers, we believe these rules should 'read across' so that no groups of UK consumers are disadvantaged. Two such examples of EU legislation are MiFID II and PRIIPs, which we believe should apply to pensions. Where UK legislation is already stronger than proposed EU legislation we believe the higher level of regulation should prevail (where legally possible) unless there is demonstrably no weakening of consumer protection from 'paring back' to EU rules.

Consumer protection in the financial services industry has been hard fought and should not be weakened by a perception of an advice gap that may not exist.

Q26 What can be learned from previous initiatives to improve consumer engagement with financial services?

It depends what is meant by 'engage'. Assuming it means 'buy more products', then we would observe that people engage very well when they want to borrow money, or they need a product, such as car insurance. They don't when it comes to saving and investing for a host of reasons from low interest rates to lack of transparency to a justifiable lack of trust in the industry. Looking at some of the previous initiatives, we observe:

[13] http://www.fca.org.uk/static/documents/finalised-guidance/fg15-01.pdf

- If there is not enough profit in it for product providers, it will fail;
- Government designing products is a bad idea, as are price caps (in general);
- Consumers liked 'CAT' marked products as they gave clear messages. However, in themselves they did not encourage consumers to buy more. Kite (or CAT) marks only help a buying decision once the consumer is already motivated;
- Stakeholder products were equally clear but not that profitable, so industry shunned them, refusing even to market the products. The exception was stakeholder pensions, largely due to the regulatory intervention of 'RU64'. This FSA rule meant that advisers could only sell a personal pension more complicated and costly than a stakeholder if they could explain how the additional costs were justified by the added benefits; and
- Simple products are destined for the same fate as stakeholder products, unless the FCA makes wider use of 'RU64'-style regulatory interventions.

The Panel's 'consumers as co-regulators' position paper[14] and research[15] showed that providing more information to consumers is not the answer. People are easily overwhelmed by 'too much' information and it is therefore important to consider how best to package data so that it can be accessed and used easily by consumers.

Q29 To what extent might the different types of safe harbour described above help address the advice gap through the increased incentive to supply advice.

The Panel disagrees strongly that any further reduction of liability on firms is necessary or desirable. Liability for regulated financial advice has been the subject of scrutiny for many years and has only recently again been addressed in the RDR.

Safe harbours of any kind involve the reduction of liability on firms thereby increasing the risk to consumers and weakening consumer protection.

Q30: Which areas of the regulatory regime would benefit most from a safe harbour, and what liabilities should a safe harbour address?

The Panel does not believe safe harbours are in consumers' best interests for the reasons given above.

Financial advisers are paid to take responsibility for the advice they give – in the same way that lawyers and accountants and other professionals are paid for their advice. There is no reason for the liability of an adviser to vary simply because the channel the advice is going to be delivered through is different.

Q31: What steps could be taken to ensure that a safe harbour includes an appropriate level of consumer protection?

A safe harbour reduces the adviser's liability and therefore increases the risk to the consumer. There are no steps that can be taken to ensure that a safe harbour includes consumer protection. You either reduce an adviser's liability or you do not. Consumers should have access to the FOS/FSCS if the adviser fails to follow FCA rules.

Given past precedent, where the government has used taxpayer's funds to eliminate risks to consumers (e.g. by using taxpayer's funds to purchase share capital in Royal Bank of Scotland and Lloyds Banking Group), would the government be expected to step in if there were a scandal relating to safe harbours?

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[14] https://www.fs-cp.org.uk/sites/default/files/consumers_as_co-regulators_final.pdf
[15] https://www.fs-cp.org.uk/sites/default/files/consumers-coregulators-research-2015.pdf

Q32: Do you have evidence that absence of a longstop is leading to an advice gap?

No. We have had many discussions with representatives of the advice market concerning the longstop for many years and we have never been provided with any evidence that the lack of a longstop is responsible for an ‘advice gap’.

Q33: Do you have evidence that the absence of a longstop has led to a competition problem in the advice market e.g. is this leading to barriers to entry and exit for advisory firms?

The Panel believes that it is not a long stop that should be seen as a potential barrier to entry and exit for firms. Instead we believe there should be a review of the professional indemnity market. The way this market is working appears to cause difficulty for many advice firms – particularly the smaller ones. If professional indemnity insurers are stifling competition in the advice market this should be addressed.

Please also see our response to question 32.

Q34: Do you have any comments about the benefits to consumers of the availability of redress for long-term advice?

Yes. All of the mis-selling scandals that have occurred since regulation came into force have related to long-term products which could be held for much longer than 15 years, namely: pensions, precipice bonds, split capital investment trusts, endowments, equity release (home income plans), payment protection insurance, whole of life plans and structured products.

Q36: Do you have any comments on the extent to which firms are able to provide consistent automated advice at low cost? Are you aware of any examples of this, either in the UK or other jurisdictions?

Two well-known examples are those developed by LV= and Just Retirement; others are emerging. These firms provide low cost regulated advice. They give a personal recommendation signed off by Level 4 qualified advisers and accept full liability for the advice. Consumers are covered by the FOS and FSCS.

Q37: What steps could we take to address any barriers to digital innovation and aid the development of automated advice models?

This question assumes that there are barriers to digital innovation, when this may not necessarily be the case. In question 36 above, we give two examples of automated regulated advice.

Commercial viability is likely to be the primary issue for incumbents, rather than regulatory barriers. Where the status quo is profitable, and there is limited threat from new entrants, there is little incentive for firms to innovate. Incumbent firms may nevertheless argue particular rules they don’t like are stifling innovation. The FCA needs to test these claims vigorously.[16]

Q38: What do you consider to be the main consumer considerations relating to automated advice?

The FCA’s research on the motivations, needs and drivers of non-advised investors has highlighted[17] the importance of straightforward, easy to understand, information:

[16] https://www.fs-cp.org.uk/sites/default/files/fscp_response_project_innovate_call_for_input.pdf
[17] http://www.fca.org.uk/static/documents/research/non-advised-investors-research-paper.pdf

- Simple, bite sized chunks of information, in plain English, covering the "must know" basics ("the five key questions you must know the answer to before you proceed");
- A clear and consistent format for this "must know" product information to help with identification of key features and comparability across providers;
- Charging structures set out in a clearer and more comparable format;
- Inclusion of telephone support and easily found phone numbers; and
- Clear and bold information at point of purchase on complaints and redress.

We believe that the government or the FCA should conduct research to check consumer understanding of online models and, in particular, whether they understand the difference between protected and unprotected advice.

Q39: What are the main options to address the advice gaps you have identified?

The Panel believes 'advice gaps' can in general be filled by extending the boundary of guidance (under supervision from the FCA)

On the demand-side, consumers need better information on the value of regulated financial advice and clarity on costs and charges.

A review of the Professional indemnity insurance market could help to encourage firms to come back into the market where known gaps exist.

We would also refer you to the Panel's response to the Public Financial Guidance Consultation.

Q40: What steps should we take to ensure that competition in the advice markets and related financial services markets is not distorted and works to deliver good consumer outcomes as a result of any proposed changes?

Please see our answers to questions 38 and 29.

The Panel's response to the FCA's Asset Management Market Study[18] highlights the need for both the Financial Advice Market Review and the FCA's market study to examine how competition works for consumers when they purchase an investment product through an intermediary, in particular how this might lead to better informed choices.

The Panel's previous discussion paper[19] and research on investment costs[20] published in November 2014, highlighted the fact that the full costs incurred by consumers when making long-term investments are not consistently and comprehensively defined, nor understood. Consumers need to be aware of these charges in order to be able to compare and assess value for money across providers.

Q41: What steps should we take to ensure that the quality and standard of advice is appropriate as a result of any proposed changes?

Please see our answer to question 39.

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[18] https://fs-cp.org.uk/sites/default/files/fscp_response_-_fca_asset_management_market_study_tor.pdf
[19] https://www.fs-cp.org.uk/sites/default/files/investment_discussion_paper_investment_cost_and_charges.pdf
[20] http://bit.ly/1k6i1ul

The introduction of a code of conduct for non-advised sales, robustly supervised by the FCA, would highlight the differences between protected and non-protected services and provide consumers with the information they need in order to make an informed choice.

GH FINANCIAL CONSULTANCY Ltd

Ref:GH
14th December 2015

FAMR Secretariat
FCA
25 North Colanade
London
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Dear Sirs

Financial Services & Markets Review

As part of the consultation I put forward the following views/comments and suggestions. These are based on our own views, a just and fair environment for delivering advice, regulatory accountability, consumer feedback and what we consider to be a very important factor that is often ignored or left out

of FCA policy..... and that is consumer responsibility. I also enclose a copy of my response to the RDR – which previously covered many of the points being considered in this current review.

The Advice Gap & Simple Advice Products

It should not be forgotten that consumers do have a degree of responsibility to themselves. If this is not the case then any gas or electric company should have to write to a consumer and advise them that they can get their gas or electric cheaper by moving to xyz company!! It is a sad fact of life, but true, that many consumers get too caught up spending their money instead of taking more of an active interest into how they are spending it and whether they are getting value for money and what the future may hold.

No one else can be held responsible for their own laziness (and no this is completely separate from naivety).

Also no matter what you do, many consumers simply will not pay a fee (but are prepared to take advice if it is perceived to be costing them nothing up front) hence the past success of the likes of the man from the Pru back in the 60s and 70s, easily accessible with low savings limits. Yes not the cheapest of charges, but ordinary everyday people (the type which the FCA currently consider are facing barriers or are not able to get advice and are being left out in the cold) were saving.

I was a great advocate of allowing simple commission based products to continue to be available for this type of consumer, but with more stringently capped and controlled charges.

One of the big issues for many consumers and why they are not prepared to get advice or save is the over complexity, itself caused by the increasing regulation apparently designed to protect them but, ironically, appears to be increasingly acting as a barrier to them actually taking advice or indeed saving.

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If you want this to change we need to get back to offering one or two of the better very simple, minimum fuss, non regulated products of the past – many of which started to disappear in the late 80s and early 90s – as more and more regulation started to escalate, making it unviable to offer many of these type of products due to the increasing regulatory costs.

Two very simple National Savings or Post Office style products would be a cash based tax free savings account allowing instant access, allowing you to save between £10 and a maximum of £100 per month and a maximum balance of £5,000, with a similar risk based product linked to the performance of the FTSE-350 or All share index. Again similar criteria to the above but with a maximum permitted balance of £10,000, at which point any further contributions are automatically forbidden.

Both products could be FCA approved or kite marked in terms of charges and risk with no redress available. A simple statement and declaration in the application form to clearly state the consumer has read the bullet point key facts, has been made aware of the capital risk and understands that in investing in this risk based product they are aware that the value of their capital can rise as well as fall.........etc.

Financial Services Compensation Scheme

Yes it should not be forgotten that consumers have a responsibility. If they do not want that, or the FCA think (which it seems to be is the case) that they should have no responsibility or accountability for their own actions, then they should pay a fee to provide them with the protection and peace of mind they want (just as they have to with car insurance or many do with their mobile phones).

It should not be that expensive. For example if they were charged a 1% levy on an investment of £10,000 and let us assume that investment or policy was in place for at least 10 years, this would work out £100, or 0.1% per annum, the equivalent of £10 per year. Many consumers pay 3 or 4 times this amount to protect their mobile phone – which is worth no more than £200 to £500 and hardly damaging to their long term financial well being, if it breaks or is lost!!!!!

It appears to me that a lot of the things that cause financial hardship for investors are where they themselves have been greedy – chasing the too good to be true investment – invested in wonderful overseas investments promising the earth.

What percentage of claims arise from non-regulated exotic products, with links to or registered in overseas tax havens such as the Channel Islands/ Isle of Man / Bahamas and others? Has the FSCS or FCA collated such information? My recollection of things that have gone bump and landed me with a big compensation bill appear to have had links with these types of investment and also where there are associated and inter linked companies with common directors, getting paid whopping fees/salaries from each of the interlinked companies.

The FCA should create a spreadsheet/directory of those companies/directors/registered company offices that have been associated with things that have gone bump. Our experience suggests there is a clear indication that some form of track record/causal link exits.

We think the FCA should have a panel of investments that are effectively approved as being considered suitable for private retail investors and those that are not. Those that appear on the 'FCA not suitable register' should carry an appropriate and **exceptionally clear warning** that no redress of any kind would be available in the event of failure.

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Any individual who thinks they should have redress when they invest into an investment with a registered head office in Fiji, offering a palm plantation investment with an annual return of 12%, should be made to think again, very, very, carefully. We cannot continue to bail out 'the greedy' investors (granted one or two may be naïve) who invest in these types of investments, then claim they did not understand when it all goes wrong.

This is typical consumer behavioural science. When was the last time a client invested in one of these and complained to the FCA/FSCS that they were mis-sold an investment and did not understand the risks when they got their money back and it provided a return. In 98% of those cases they all clearly understood the investment they were putting their money into. So what is the difference when it goes wrong apart from their greed has got the better of them.

The FCA and FSA have frequently argued against cross-subsidies. Well the reality is that good honest consumers/clients are subsidising the greedy reckless consumers through adviser fees being higher than they may otherwise need to be, to help fund the FSCS levy.

We also think that one way of improving consumer confidence is to increase the penalties and fines that are imposed on individuals that are clearly calculated and intelligent and know full well they are acting deceitfully/committing fraudulent acts and scamming investors - quite often this is their sole intention from the outset and not an unfortunate consequence of their actions. We think much harsher custodial penalties need to be applied to these parties.

Documentation & The Irony

The FCA (& FSA before) have advised that advisers should keep their documentation and literature down to a minimum as consumers get too much paperwork. The irony is that every FCA (and previously the FSA) directive usually gives rise to us having to provide consumers with yet more paperwork/documents.

Our feedback from consumers is often - "why do I need all this paperwork?" Despite our instructions and best efforts to get them to do so, client's often say they never read it - they merely get over burdened and flustered by it all.

We have written before that a clear A4, or double sided A4 sheet, containing all the major salient risks and points (in a bullet point format), is the best way to advise/communicate the main points to the consumer, with a further document that then contains all the smaller finer detail print/information that the FCA require providers/advisers to provide to consumers. This should be mandatory for all providers and that way the main points are clearly identifiable for the consumer which they can read through in a few minutes.

The bullet points could be broken down into various sections/headings:-

Aims & Objectives of this Investment:-

This investment will be considered suitable for you if you are seeking ....etc. and you are not prepared/prepared to have your capital exposed to the risks associated with the stockmarket

Risk :- this is a risk based investment linked to the ongoing performance of the stockmarket.
The value can go down and up on a daily basis and could from time to time be worth less etc.

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Whilst you are free to cash the investment in at any time (subject to stockmarket conditions), you should consider this to be a medium to long term investment and be prepared to invest the money for a minimum investment term of at least 5 – 10 years.

Charges:- these will be deducted from your investment, from any cash held within your investment plan/account or by selling investment units in your plan/account. The main charges applicable to your plan are

- An annual administration fee of £40 .
- An ongoing annual adviser charge of 0.5%, or £50 based on an investment of £10,000.
- The fund managers annual management charge, which can range from 0.15% – 1.25% depending on the fund(s) in which your money is from time to time invested. These are deducted daily and reflected in the quoted unit price.

This would help standardise the format in which investors receive the basic information about an investment and also help them to be able to quickly and simply make comparisons.

Pension Illustrations & Pensions Wise.

I have long held the belief that annuity illustrations are crazy and have written in about this before, as well as having discussed this with Rory Percival and one or two other FSA leading lights in the past. Irrespective of whether your investment grows at 1% per annum (cash based/lower risk based) 3%, (mixed or managed investment) or 5% (equity based investment), the annuity you get at retirement will be based on the same annuity rate.

Illustrations should reflect this hard fact. The argument that if you have enjoyed 8% per annum growth means you are likely to get a higher annuity rate too is rather old hat and certainly does not reflect the financial markets we find ourselves in today. Even in the older days, if you invested cautiously you would earn a much lower rate irrespective of how well the economy was growing or how high interest rates were.

This we feel would allow investors to get a more realistic idea of the pension income they can expect to secure. If I secure a pension fund double the size of the cautious investor because I have enjoyed better growth from being invested in equities, I can only expect a pension per annum of double, not 3 or 4 times – as is often indicated by the assumed overinflated annuity rate. This we feel would give consumers more realistic expectations and hence plan accordingly. When we explain this reality to clients they cannot understand why the illustration indicates otherwise (it is just daft). We have to say because the regulator says so!!

We think the annuity rate used to convert the fund into pension, should be based on the latest GAD rate across all growth rates used.

Pensions Wise looks another expensive and costly quango, similar to the MAS. After consumers have had their Pensions Wise session they still have to get formal advice should they want or need it.

It will be interesting to see what the expense ratio per person is in terms of numbers using the system vs. total costs fees for running the scheme. Are up to date figures available in terms of this measure, i.e. cost per person??. If it is costing £500 per person to provide these sessions that is exceptionally poor value for money. If it costing £40 or less then that could be considered reasonable value for money.

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We still think a better system would have been a voucher system which could then be exchanged for an hour or two hours advice (capping the maximum permissible hourly charge) with a properly qualified adviser, during which a consumer could at the same time receive formal advice, thus removing a 'double handling' element for the consumer.

The consumer could then start paying themselves (after shopping around) with regards to implementing any advice they wish to consider taking. Part of the process would have already been covered and leave the client paying less to follow through on implementing any advice.

One or two consumers we have spoken to have complained that after the pension guidance session, whilst they were better aware of the options and issues, they were still non the wiser as to which option was ultimately the best route for them to take personally, contrary to their expectations.

Simplified Advice & Low Cost Products

This problem has been around for a long time. The industry and the regulator have been decades trying to find a solution to this revolving door, that comes around every couple of years. Stakeholder products failed miserably.

NEST is living proof that both the government's and FCA's Eutopia on charges is not achievable.

NEST is the latest organisation to prove that due to the regulation it is almost impossible to make a profit to cover costs unless you are turning over billions, when working on very slim margins. NEST also has the luxury of cheap financing to assist them develop, without having to pay the proper market rate. Yet alas, it is clear that they have only achieved under 2.5% of the funds needed to enable them to meet their expenses. Another expensive white elephant in the making then!

This in itself makes providing simplified advice, by the host of qualified advisers, on an expensive one to one basis, nigh on impossible. It becomes even less possible if liability for that advice lives on, with the associated costs this itself brings.

Long Stop

Solicitors have this available, despite the fact that advice they give is (in our experience) rarely reviewed or followed up when legislation changes (how many consumers have Wills that create unnecessary Will Trusts or gifts of property following the changes to legislation over the last 5 or 6 years). Yet the advice they have received may not be actioned until 20/30/40 years down the line.

Again, advice given by the legal profession, under the rules/law/legislation at that time, is never the subject of 'hindsight reviews', unlike those we get in the financial services sector. Yet, the financial implications of any past legal advice a consumer has received could be immense. Nevertheless, the legal profession enjoy the protection and benefit of having a long stop in place.

I trust some of my comments, from the 'shop floor' so to speak, find merit with the committee.

Yours faithfully

G Heppleston

Gary Heppleston
Director
cc George Osborne, Treasury Select Committee

RESPONSE TO FSA ON RDR

Below I have pleasure in submitting my response to the RDR. Having initially read the RDR I identified what I considered to be the main points the FSA were seeking to address with their proposals and suggestions to what they considered to be wrong. I then looked at the main points and noted down my own immediate thoughts as to why the points the FSA had identified 'for suggesting the distribution model was so badly broken' were occurring.

I have then witnessed several forums on the RDR and also read at length the many articles in the industry press on people's perceptions and views. One thing I have found disappointing is that the majority of what I have read and heard has all been about the proposed changes to the distribution model and professionalism, which I agree have a degree of importance, rather than focusing on the more fundamental and basic consumer psyche based root causes as to why people are not saving. I think the **politicians, the FSA and the industry** need to focus more on the **root causes of 'why people do not, or are not, saving'**, rather than implementing suggestions for wholesale changes to the distribution model at his time. Indeed **continual changes** are one of the main reasons many people no longer save.

My views have been based on talking with existing clients, friends (who are not clients) and new acquaintances (who are from all walks of life and social/class groups), over the last decade and also more recent times, including a meeting with 20 or so complete strangers (on holiday over Christmas), enquiring why they don't save, by simply saying during general conversation "I was reading an article the other day about the level of personal debt in the UK and it was also saying that 29% of people in the UK have no savings". Then I shut up, sit back and listen (no one had any idea I was an IFA).

Main objectives and concern of Discussion Paper – MY IMMEDIATE THOUGHTS AND CONCERNS

- Consumers' lack of saving – MONEY, CHANGES IN SOCIETY AND ATTITUDES, TRUST, CONSTANT CHANGE OF RULES & PRODUCTS
- Consumers not seeking/unable to get good advice – POOR FIRST EXPERIENCE, FSA DATABASE OF ADVISERS ON THEIR WEBSITE, TV ADVERTISING
- Education – FAMILY, SCHOOLS
- Lack of professionalism – EXAMS DO NOT EQUAL PROFFESSIONALISM
- Costs of advice and complexity of charges – COMMISSION BIAS DOES EXIST – USE PRICE CAPPING, FEES VS. COMMISSION

A further heading I would include is keeping things simple - **SIMPLICITY**

I then looked at, and thought a bit more carefully, as to how the FSA thought some of their proposals would suddenly address and miraculously help create greater saving from consumers. I would suggest the FSA and their masters, need to look at the more deeply rooted social and political reasons for the lack of saving as, from where I am sitting, the distribution model can claim very little importance or blame for the current general lack of, and fall in overall levels of saving.

Stakeholder pensions and depolarisation were both partly trumpeted as policies that would dramatically encourage and improve the overall level of saving. The introduction of both **have proved abject failures** in achieving their objectives and indeed since their introduction the level of saving has fallen yet further.

So, a supposedly low cost, low commission product (Stakeholder) has failed – clear proof that charges and costs are not everything. And despite being told that depolarisation and the introduction of key facts would help consumers more clearly understand the different types of advice available and enable them to get better advice with more choice, it would appear it has only served to further confuse consumers, who now have probably less understanding of the type of advice they are receiving than they did before. Consumers **easily understood the difference between independent and tied advice**, anything else it appears only serves to confuse!!

Now let's take a look at each of the main issues I set out above, in turn, and explore some of the main possible underlying reasons for these.

CONSUMERS' LACK OF SAVING

Money

Mr & Mrs Average earning gross salaries of £22,000 in 1996. Bought 3 bedroom semi for £55,000 (with 10% deposit), 25 year capital repayment, interest rate 6.00%. Monthly mortgage payment £325 per month. Council Tax £600 per annum, gas and electric £40 per month – **no children yet!.**

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Mr & Mrs Average 2007 earning gross salaries of £33,000. Bought 3 bedroom semi for £165,000 (with 10% deposit), 25 year capital repayment, interest rate 6.00%. Monthly mortgage payment £975 per month. Council Tax £1200 per annum, gas and electric £90 per month, **no children yet!.**

Further, many young people these days come out of education with large student loans, then they need to get on the property ladder and then think about children, the latter of which is costing more than ever.

I would suggest that for the 29% of people identified as not saving anything at all, it is not necessarily because they cannot get advice, it is more likely advice (as far as they see it) is a complete waste of time, as they have nothing to save after paying all the bills and then managing to have a little bit of a life, possibly one holiday a year needing to change the car. **One must remember** with a mortgage and family, the 29% referred to above are primarily at the lower end of the income scale who have no surplus income available after paying all their regular outgoings and buying the odd treat for the children.

Changes in society and attitudes

Apart from finding they are unable to save due to lack of money, changes in society and attitudes have also played a huge part.

- Holidays are a must
- More and more friends and family dying younger with various cancer related illnesses. I personally know of very few people who do not know of someone who has suffered such an illness. This raises the perception of 'live for today and forget about tomorrow, I may not be here'.
- Everything has to be replaced quickly as fashion changes – even up until the 80s people made do and mended a little, decorating and refurnishing on a 10-20 year view, rather than making changes on what is now more likely to be every 3 –5 years.
- Pressure to have a new car much greater and must be changed every two years. Pressure to have all the up to date electrical gizmos and gadgets. A TV or Video Recorder (now DVD player) used to last until it broke, now it is automatically changed for all the latest gadgetry every two or three years.

And all of the above are instantly available on credit, which have to be paid for!!!!!!!!!!!!!!!!!!!!!

On leaving school, college, university, people joined a company, then they were mostly automatically enrolled into the company pension scheme (in the majority of cases it was a condition of employment). Many companies now do not offer a pension schemes of any quality and employees do not see themselves as being with the same employer for any length of time and do not see it worth saving for a pension with the company for one or two years and ending up with lots of little bits. The majority of consumers do not recognise and are unable to assess the long term benefit of a 3% employer contribution into a money purchase or group personal pension scheme over their lifetime. They are unable to assess that an employer contribution of 3%, over say two years, based on a salary of £25,000 is £1,500 (which may grow to £25,000 by the time they retire).

Of more importance to many consumers is that they have to match the contribution and this means their take home pay would be down by £45 per month - the thought process then kicks in - " I could get the latest TV on credit or go on holiday for that"!!!!!!!!!!

*****ALSO SEE UNDER EDUCATION BELOW AS THIS IS IN SOME RESPECTS INTERLINKED WITH THE ABOVE ISSUE*****

Trust

Lack of trust in financial services – Pensions review in mid 90s, final salary schemes going bust (FSA's own website suggesting these pensions are guaranteed – many bought back into schemes as part of pensions review – these then went to the wall - pensioners then being told no compensation), Equitable Life scandal, again government refusing to offer compensation (Equitable Life "we pay no commission"), endowment review - many with profits policies are now back on track to meet target (despite FSA's efforts forcing With Profit Funds to sell equities at the bottom of the market and switch into gilt & fixed interest investments) and the piéce-de-la-resistance Northern Rock (now known as 'The Northern Pebble'). All headline national news items and weaken peoples trust in pension and savings and breed the 'why bother' mentality, particularly in the less well educated.

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Constant changes of rules/products

We used to have simple products people understood. Pay into company pension scheme based on final salary. Now people recognise they are worse off as many companies pay less into company pension scheme than they did before, the company scheme has changed 3 times in last 5 -10 years, was a defined benefit, then defined contribution, GPP, now stakeholder, each time the potential benefits at retirement are being watered down. Employees are always suspicious of change and many, therefore, no longer trust pensions anymore – particularly when combined with the headline pensions scandals on national TV and the government refusing to provide compensation.

In addition, we had the Chancellor's Pensions Credit raid on pension schemes – on top of changes to occupational rules, thus increasing costs to employers who subsequently started closing final salary schemes. Then the pension scheme deficits on the back of falling stockmarkets in 2000-2003 – all headline news items again adding to consumer suspicion!

Meanwhile, Mr Smith diagnosed with cancer receives £100,000 payout and returns to full time employment 18 months later, following an operation, chemo and radiotherapy. Five years ago he was advised on/sold the policy by his adviser, who was paid by commission by the life company (which was disclosed to Mr Smith) and did not cost Mr Smith anything in an up front payment - **This never receives any headline news as far as the consumer is concerned.**

With regards to savings products, there used to be tax free SAYE, then TESSAs which people understood, simple cash based & tax free, from saving a £1 upwards. Then things became more confusing with the introduction of ISAs (cash and stocks and shares now associated with the same investment), loss of SAYE accounts. Stealth taxes (loss of tax credit on dividends). Constant changes of rules and the increasing amount of paperwork people have to have before receiving advice – consumers do not read paperwork – they do not have the time with their busy lives. My existing clients and new ones are constantly 'taking the michael' at the amount of paperwork they receive and frequently say - "more for the recycling bin".

The one thing I have found even with my educated and higher net worth clients is that they do not/will not read reams and reams/pages and pages of bumph.

In dealing with clients and consumers one thing that comes across quite clearly is that they detest the increasingly complex system of receiving advice, brought about by the continual increase in additional paperwork, regulation and bureaucracy. But the most important issue probably for the majority of clients (both existing and new clients) is not being able to make any long term planning decisions with any certainty, due to the constantly changing rules and products (often for no apparent real purpose or benefit to them).

CONSUMERS NOT SEEKING/UNABLE TO GET GOOD ADVICE

Interesting one this!! One of the main reasons consumers fail to seek advice is often based on their first experience with financial advice - if this is a good one they will be more likely to take advice again in the future.

However, many people's first experience of financial advice is the "current primary/basic advice" (The FSA are now seeking to profligate with even less control and regulation) that many clients receive from estate agents, banks and building societies in connection with their real first form of saving, which is buying a home. So with many people receiving what they feel and consider is poor advice at this first entry level, they never consider taking advice again due to their first poor experience. Please raise the bar in respect of any level of advice received, do not look to further dilute the quality.

Consumers first important financial commitment is one of the biggest financial decisions they make, yet it is less regulated in terms of estate agent, legal advice and financial advice than trying to save an extra £20 per month into an ISA or a pension. If the level of available advice was better at this first entry level then consumers may have more cash available at an earlier time in the future, and having perceived they have experienced good advice, would also be more likely to seek out and take advice again in the future.

The real crazy thing though is that it is so much easier for consumers to take on £10,000 of debt, through a loan or credit card, with minimal regulation and hassle (and also without the rigorous testing of a consumers real ability to pay) than for me to set up a £20 increment to a personal pension following a consumer receiving a pay rise. Until it becomes harder and more bureaucratic for a client to take on debt and easier and less bureaucratic for a client to save, then policymakers will always be fighting a losing battle. Again go back to the 60s to 80s (before big bang) it was so much harder to get a loan than to save (in both terms of time, paperwork and hassle). Now the reverse is true!!!

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EDUCATION

In days gone by if you wanted something then consumers had to save for things and then go and buy them. They were forced to save up for items as credit was less plentiful and harder to get hold of. People, therefore, automatically had the saving habit. Their parents taught them to save and financial discipline and prudence was ingrained from an early age (probably in most people currently aged 45-50 and over, who saw their parents having to be very careful). The man from the Co-op or the Pru also used to call round each week, when regulation and saving was a simple exercise and far less burdensome. "If you save 50p per week", this should grow to £2,000 by the time you are 60 or 65, based on an average investment return of 8%. Please sign here. However, it encouraged the savings habit and people trusted the system.

Younger people have been educated and brought up in an environment where credit is plentiful and you no longer have to save up to buy something, you just go and use the plastic, take out a new credit card, personal loan or finance agreement and go and buy what you want. Many do not even consider the APR, they look at the monthly payment, "yes I can afford that". Consumers today probably get exposure to 5 offers of simple quick and easy borrowing, to one of complicated 10/20 page bumph to save, either through the post or via the media.

The old family prudence was the best form of education and preparation for consumers to save as it automatically fostered the saving habit. Naturally, this could be addressed via the education system, possibly via the General Studies or Social Studies curriculum. **Please get the education minister's department talking to the treasury minister's department and bang some heads together.**

LACK OF PROFESSIONALISM

I agree standards and education of many advisers needs to be improved. I am frequently horrified at some of the things I come across and also questions I sometimes hear at seminars, which to be honest, a good practicing IFA should know automatically.

Nevertheless, academics litter actuarial departments, our universities, Whitehall and (THE FSA), but look at the problems they have caused and also the poor policies and decision making that goes on. Exams do not necessarily equate to:-

- quality advice being given
- good decision making
- interpersonal skills
- nor an adviser fully understanding a clients needs and providing suitable solutions to their needs

which the RDR seems to imply exams will do!!.

I would welcome the opportunity of grandfathering as has been the case with all other major professions over the last 3 or 4 decades, Big Bang, Stockbroking, Accountancy in the 70's etc.

However, in considering grandfathering, this should not be without advisers being required to become a member of a single professional body, agreeing to a code of ethics, code of discipline and also some form of ongoing annual testing as part of the membership of the governing body.

Each year, an adviser (with the exam linked to the advice he gives e.g. a mortgage adviser just on mortgages and protection say - an independent financial adviser on pensions, current tax rates, investments and mortgages) would be required to sit an hour/two hour exam at a local venue, as part of his/her membership, to ensure he is up to date with changes in the financial markets, products and regulatory requirements etc. during the last twelve months. The adviser would then need to attain a required pass rate or face a re-sit.

This should not be too difficult with modern interactive technology. It also means that someone who passed their exams 20 years ago would be able to demonstrate their competency in the current world and climate, and to a certain degree would emphasise the importance of ongoing CPD across the industry.

If grandfathering was not permitted, it would be the only profession that has never permitted this to happen.

COSTS OF ADVICE AND COMPLEXITY OF CHARGES

There has been plenty of anecdotal evidence from recent surveys that consumers in many cases prefer the simplicity of being able to pay by commission and do not necessarily associate an adviser being paid by commission with not being able to offer them independent advice.

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I would also suggest that if you asked consumers in the lower B and below consumer groups if they would take advice if they had to pay a fee in order to get independent or whole of market advice, rather than just paying for the product with the adviser receiving the commission, many would advise they would not take independent advice, particularly those consumers with children where financial advice for the protection of the family is even more important. In order for the FSA to **'treat consumers fairly'** they should continue to allow consumers to receive independent advice on a commission only basis, not dictate they should pay a fee for receiving independent advice. As people get older i.e. 45/50 plus and become more financially secure through the natural financial progression of the life cycle, with income increasing as a greater percentage of outgoings and children becoming less of a drain on spare income, people then become more amenable to paying a fee to receive advice and as you get older you naturally become more discerning. However, by this time, it is too late for many to be able to subsequently enjoy a comfortable retirement.

Hence the "free" commission based advice model is an essential part of getting people to save from an earlier age as if they had to pay up front fees (even though they may effectively be buying cheaper costed products) it would probably reduce, yet further, the numbers of people saving.

COMMISSION TAINTS ADVICE

I agree commission tainting advice can happen and is a problem. But many of the solutions I have seen put forward on this issue are unworkable and would only serve to further confuse and baffle consumers, as well as again increasing the levels of required paperwork a consumer would need to receive, and have to read. Overall, many of the proposals would ultimately not really be any different for the consumer than what happens now, where commission is included in the product price and disclosed both pre and post sale.

Two areas we often come across. One is the anomaly between the commission available on bonds and that on OEICS/Unit Trusts. This needs squaring with regulation in the form of price capping. Both have their respective place in financial planning, but the amount of work involved in recommending an investment bond is no different (sometimes slightly less) than recommending a portfolio of unit trusts. So why does the FSA allow this anomaly to persist in the environment of the target driven sales arena?

The product providers seem very unwilling to voluntarily level the playing field, so force their hand. So often we come across clients who have been sold a bond as opposed to a portfolio of unit trusts/OEICS which would be more suited to the client's objectives – particularly where the client's previous adviser was the bank or building society - effectively the type of **Primary Adviser** the FSA are seeking to purport under their proposals, where performance targets for the sales people are some of the most aggressive!!! and yet would be even more lightly regulated?

SIMPLICITY

One of the things I would recommend is that the FSA takes a look at making the whole savings process simpler. People spend because it is simple. Consumers also, to a certain degree, view saving as a form of spending, like the direct debit for the mortgage or the gas bill. Therefore, we as an industry, need to make saving (spending on saving) as easy a shopping experience as setting up a credit card or direct debit.

Key Features for products need to be simplified with a page of key bullet points. Particularly with the charges and commission, the overall level of risk, the effective rate of return you will get after charges assuming the underlying investments grow at 6% per annum and the basic investment aims and objectives for each product e.g. capital growth over the medium to long term (i.e. 10 years or longer) with no income, or, mainly to provide a growing income with limited scope for capital growth over the medium term (i.e. 5 to 10 years), or, mainly to provide income with no scope for the income to grow or for any capital growth in the medium term.

Many Key Features documents are still too complicated and written in non-friendly language for the majority of consumers.

One of the main reasons people do not change their electric and gas providers is because the system of comparing bills and the different charging structures are so complicated. It took me 30 minutes of comparison and complicated calculations to work out whether N Power were indeed offering me cheaper gas and electric than my current provider. As it turns out, the N Powers sales person was making false claims and I proved it to him, where upon he left shame faced. This is a clear example of due to the complexity and lack of simplicity in dealing with the matter, consumer apathy kicks in and good intentions quickly give way to consumer apathy in the form of **'I can't be bothered'**, now what did I do with that holiday brochure?

GibbsDenley
Insurance • Financial Services

Mrs J Churchill MP
House of Commons
London
SW1A 0AA

15th December 2015

Dear Jo

Thank you for meeting us yesterday and listening to our concerns.

We welcome the government's recognition of the need to broaden access to advice in the Financial Advice Market Review. We believe that part of the solution will be improving the regulatory framework, reducing the cost of regulation and the cost of advice to consumers.

In particular, we have concerns about the size and scale of the FSCS levies. We do not believe it is right that consumers are compensated for non-regulated (high risk) products because the advice is regulated. The scope of compensation should be limited to regulated products, through the creation of a 'whitelist' of products approved by FCA which are compensable. We don't believe there should be compensation for people taking extreme risks. It encourages imprudent investment decisions. They should be made aware of the lack of protection and only those with enough wealth to bear the loss and experience in investing should be allowed to proceed under strict criteria. The product should be banned from promotion or sale to retail consumers. This would have the consequence of improving consumer protection, lowering the overall costs of adviser firms and so the cost of advice to consumers, increasing accessibility of financial advice to a wider market.

We also discussed the need for a time limit by which a complaint can be brought to the Financial Ombudsman Service (FOS). The cost of advice is driven by the need to manage future liabilities and having an open-ended liability significantly increases the uncertainty and ability of firms to model and manage that risk. There has to be a balance between consumer protection and unlimited liabilities for firms. The uncertainty around liability not only increases the cost of advice for consumers, but also inhibits the development of simplified advice models and encourages the growth of non-advised models which offer less consumer protection. Firms are unwilling to take on smaller clients, as the potential risks outweigh the benefits, making it uneconomic to service such clients. Without investment and innovation in the advice market, a large number of consumers will remain unable to access affordable advice. The Limitation Act 1980 provides every UK citizen with an end date after which no legal action can be brought in negligence. Parliament decided that 15 years was the right balance between consumer protection and the duties of firms. We believe this should also apply to the FOS.

We appreciate your agreeing to raise these points on our behalf.

Yours sincerely

Mark Denley, Director, GibbsDenley
Ian White, Managing Director, Beckett Financial Services Ltd
Paul Beasley, Managing Director, Richmond House Group
Chris Hannant, Director, Association of Professional Financial Advisers

From:
Sent: 23 December 2015 10:41
To: FAMRSecretariat
Subject: Gillian Rice

Dear team

Please see the email below in respect of transparency in financial advice and charges.

Kind regards

Nicci Grady

Associate | Customer Contact Centre

This email is classified as FCA Restricted, unless marked otherwise

--------------- Original Message ---------------

Subject: Suggestion for more transparent financial service companies

Dear Sirs,
For the last few years I have used the assistance of a financial advisor, who is a partner in a financial advice company.
Whilst I am happy with the advice I have received, I find it very frustrating that most companies do not supply their clients with an annual statement of costs to their account. Although it is possible to get a copy of terms, conditions and charges, these are often so complicated that I am sure the majority of clients have no idea of the charges they pay annually.
Whilst the Government has changed some regulations in the financial advice field recently, surely it would be a huge step forward, and far more transparent, if clients were able to compare charges of different advisors. I cannot think of any other form of service which does not supply a full breakdown of charges to a customer in the form of an invoice or annual statement.

Yours thoughts would be appreciated.

Kind regards and seasons greetings

Gillian Rice.

Gresham financial planning

Financial Advice Market Review

Submitted 17th December 2015

Submission from David Turner, Chartered Financial Planner on behalf of Gresham Financial Planning LLP

- I am a Partner at Gresham Financial Planning LLP
- I am a Chartered Financial Planner
- I have almost 30 years' of experience in providing financial advice to clients in the UK on all aspects of financial planning including pension, investments and taxation

This evidence is submitted to assist the Financial Advice Market Review in its investigation of the guidance and advice available in the UK.

Key Points

1. Providers could, once again, be involved in the provision of mass market advice, especially if there was a lower qualification level required.
2. Digital (or robo-) advice may well have a role to play, subject to the regulatory ground rules being clear at the outset and not altered retrospectively
3. A small product levy applied to every financial product, (the insurance principle) would provide funds to compensate those badly advised or mis-sold, avoiding ever increasing levies being imposed on an ever smaller number of financial advisers – the wrong doers, on whom the levy should fall, are always long gone.
4. High street banks remain under a cloud because of past practises and have not yet convinced the public that they have their customer's interest at heart.
5. In all areas the UK financial services industry is over regulated, so increasing costs and reducing the access of the public to the advice they require.
6. The level and complexity of regulation is stifling innovation in product development and in developing new ways of giving financial advice.

Review of the Issues

1. There is no doubt that the financial advice profession has a poor reputation, especially among those who have never had to engage with it. This is exacerbated by press comments which are almost universally negative in their tone and by comments by Parliamentarians seeking publicity.
2. Complex rules which change frequently and are poorly understood, even by commentators, contribute to the public's confusion and wariness
3. Frequency of change in pension rules adds to the confusion and therefore lack of trust
4. The industry is attractive to fraudsters and those with questionable motives as pension investments can be encashed relatively easily
5. The UK population has not adjusted from the time when pensions were provided in the work place (final salary schemes) and did not require any great input on their behalf.

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6. Increasing professionalisation of those offering pension advice is, on balance, to be welcomed, but comes at a cost as advisers have had to invest considerable amounts of time in securing the qualifications and the profession is more highly regulated than ever. Many advisers are now as well qualified as accountants and solicitors.
7. Along with the increasing professionalisation of advisers has come considerably increased regulation particularly following the Retail Distribution Review – financial advisers are subject to far greater regulation and scrutiny than solicitors and accountants – this has a cost which can only be passed on to consumers. There are now numerous bodies involved, all of which require funding – FCA, FOS, FSCS, MAS, Pensions Wise.
8. Regulatory and similar costs within financial advice businesses are now commonly 10-20% of profits, leading to less profit being distributed and therefore a lower income tax take than would otherwise by the case.
9. The levies imposed by these bodies, or mandated by Parliament, are a direct cost on financial advisory businesses and have to be passed onto the consumer.
10. Levies imposed with little notice (such as the additional £100m FSCS levy in 2015) have a disproportionately disruptive effect on the finances of small firms of advisers.
11. Furthermore fines imposed on "wrong-doers" are no longer retained by regulatory bodies to offset levies, leading to ever increasing levies on those firms remaining in business. These costs have led to some firms closing as the bad drive out the good.
12. Recent news that AXA are considering withdrawing from some parts of their UK business because the cost of regulation prevents them making sufficient profit should be a warning bell to regulators; if a European insurer regards the level of UK regulation as too onerous when Europe as a whole is generally the more regulated area, there have to be questions about whether UK regulation has gone too far.
13. Lower investment returns in personal pensions are more a reflection of the markets generally (and in particular lower interest rates) than of high charges, particularly in recent years where regulation, transparency and competition has driven down provider costs. This applies to annuity rates also – comparing annuity rates now with those of 10 or 15 years ago when interest rates were far higher is not comparing like with like.
14. The principal reason for lower annuity rates has been increased longevity and over the term of an annuity, the total amount paid out, other things being equal, will be broadly the same for an annuity purchased now as a few years ago.
15. Charges on new pension products are generally far more competitive than in the mid 1990's and previously. They are also far clearer.
16. Professional Indemnity underwriters are always adjusting their parameters with a view to avoiding liabilities which in turn come to rest with advisory firms, so pushing up the costs of doing business. Similarly claim limits have been raised so high that in reality only rarely can any successful claim be lodged – PI cover therefore is simply a regulatory inspired cost.
17. Professional Indemnity is not performing its function and consequently advisers are becoming more risk averse to protect their businesses. In turn advisers are reluctant to advise in areas where the possibility of hindsight regulation appears to be high and especially where the remunerations levels are low.
18. High street banks' pursuit of profits at any cost in the years before 2008 has cost them dearly, both in direct fines and in a loss of confidence by the general public in the advice which was, and is, perceived as self-serving.

Suggestions for a Better Advice Regime

1. Many firms of advisers (not all) are willing to engage with clients who have smaller funds (or even no funds) so long as the risk premium for doing so is not excessive, but need to be convinced that they will be able to do so profitably.
2. Regulatory bodies should retain fines levied on wrong doers to offset other costs.
3. To further protect consumers there should be a small product levy applied to each and every financial product which can fund, in part if not wholly, the various regulatory bodies. This will avoid the need for unexpected levies which play havoc with the finances and cash flow of small IFA businesses.
4. A small product levy creating a fund for the payment of compensation, where warranted, might also lead to a more equitable professional indemnity environment with underwriters more willing to accept occasional claims instead of continually seeking to avoid any successful claims.
5. Parliament cannot expect financial advisers to support its agenda if those same advisers are constantly accused of poor standards and high charges. These comments do not reflect the current realities. All advisers are now well qualified and charges are, in part, a reflection of the cost (regulatory especially) of doing business.
6. Fear of advice being judged retrospectively by regulators is real among many advisers. This means many advisers avoid giving advice in areas which might be regarded as complex, but this can be to the detriment of the public. Many advisers will, for example, refuse to advise on total encashment of a pension fund, even though this may be in the member's interests and is permitted by legislation. A stable regulatory regime which does not use hindsight judgement is necessary.
7. Where pension holders choose a course of action which they are advised against by their adviser, but nevertheless pursue, and engage the adviser to facilitate that course of action (because the providers will not deal directly with the member) the regulators should not be able to blame the adviser and order that the member be compensated for their own recklessness.
8. The costs of the MAS should not fall on the advisory community as there is no evidence that anyone who consults the MAS then takes advice from an IFA. In general, those using the MAS will be better served by taking advice from a mass market provider of basic financial advice. Those already taking advice from an IFA will in general have affairs which are too complex to be dealt with by the MAS.
9. Digital (or robo-) advice also potentially has a place to play in allowing access to financial advice. Providing such a service however may be expensive and time consuming.
10. If IFAs commit funds and time to providing such a service, they must be certain of the regulatory framework within which they are operating and in particular that future regulators will not judge digital advice offered today by future considerations.
11. Provider firms could provide a route to mass market financial advice at a lower cost than possible through fully qualified IFAs. For many people the knowledge and financial planning skills of a fully qualified financial adviser are unnecessary.

12. A lower tier of financial qualification for advisers, perhaps allied to providers, with a remuneration package not related to any particular outcome could provide the majority of the UK population with good basic financial advice. One hour of basic financial advice for say £250 (which could be paid from accumulated pension funds) would be sufficient for the majority of the population. These advisers should be sufficiently knowledgeable to direct those requiring more detailed and skilled financial advice to an IFA.
13. High street banks remain under suspicion by the general public and qualified advisers – if they are to be involved in the provision of mass market advice, they need to prove that they have customers interests at heart.

Submission Ends.

HA7 Consulting
New perspectives ● Clarification ● Enhancement

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05 November 2015

Dear Sirs,

Financial Advice Market Review

I am sending this submission as a private individual but, I was an Independent Financial Adviser running my own sole trader practice that was directly authorised for 25 years up until February of this year.

I have looked at the Treasury document, all 43 pages of it, and would make the following comments. I start by quoting an ex Regulator, David Severn, who was reported as saying "Some would like a return to the Wild West when firms sold shed loads of unsuitable products to benefit themselves". This is precisely what concerns me as it seems that the Review's main impetus is to somehow dilute the regulatory imperatives.

Perhaps one of the biggest worries with this Review is that the perceived slackening of regulation may well mean the rise in rogue advisers. We already have enough of these with pension scams and other nefarious activities and the concern is that reduced regulation will open this door yet further.

<u>Adviser Costs</u>

Certainly, some consideration should be taken to reduce the ever-increasing financial burden on the advice community, not only with the FCA fees, but also the Financial Services Compensation Scheme levies as well.

I find it rather disappointing that the various supernumerary bodies that you have to advise on topics such as this fail to come up with satisfactory suggestions, or indeed any suggestions at all. Logic seems to dictate that as your fees increase, so the fees of advisers increase, as obviously the end user, the client, will always be the one that pays. Surely it is logical therefore to at least consider some sort of levy on products. After all the Treasury seems sanguine about Insurance Premium Tax and has increased Travel Insurance Tax to 20%. We also have the Stamp Duty levy on share dealing – so why the reluctance on a levy for retail financial products?

The 'Advice Gap'

The Treasury document then makes much of what is perceived as an advice gap. This is something that appears to be somewhat of a non-sequitur. Those that are alleged to be part the advice gap are those in the lower income segments. In my own personal experience these people don't consider themselves in a gap, as they don't want advice as they don't have the wherewithal to implement any advice. In most cases their greatest need is for appropriate advice on how to reduce debt. After which the most applicable course would be to build up some sort of cash savings. At all events, this is not the province of the adviser community. Much of the 'noise' concerning this gap seems to come from the product providers who are anxious to shift as much 'product' as possible. Historically they have used financial advisers as gullible drones. When things went (go) wrong the providers are happy to stand back and let the advisers 'carry the can'. The larger retailers no doubt also would wish to access this segment and to force feed products whose retention rates will (as always) be rather poor.

However, the adviser community is no doubt worried that with the dilution of regulation the door is open once again to the bank assurers whose record has not been an enviable one. In view of the fact that they are in business to make money, one wouldn't hold out any great hopes that the general public would derive any great benefit from their re-entry into this arena.

Compliance

As far as hurdles to entry are concerned, these mainly revolve around the costs, not only of those already mentioned, but professional indemnity insurance and the cost of complying with much regulation that is rather self-defeating and merely generates cost and paper that no-one reads.

'Robo' Advice

It appears that you put great faith in robo advice. Does this mean that you are promoting the sale of life assurance and investment products through supermarkets and the like on the basis that some access, no matter how poor is better than none at all? The perseverance rates of some of these products that are sold in this way are not exactly exemplars of good practice.

As far as better off people are concerned, although I will concede that some may well wish to go down the DIY route, it is generally accepted that those with reasonable assets are not the type of people to do their own painting or decorating and are equally as happy to employ professional financial advice and pay for it.

Trust

The consensus view in loftier circles seems to be that the majority of people don't trust financial advisers, but this in my view is the result of poor research. If you walk out into any street and ask the first person that comes along what they think of a financial adviser, you will get a pretty negative response. On the other hand, if you ask somebody who is already using a financial adviser you will get a completely different response. Indeed current research has shown that those who do use a financial adviser are quite happy with the service and it has also been shown that advisers significantly add value. So again, I think that issue of trust is perhaps something that may occupy your deliberations, but again is incongruous in this context.

RDR

There seems to be some reservations regarding the RDR. It certainly isn't a perfect proposition, but is definitely a move in the right direction. It might be argued that it hasn't been properly implemented. Why for example do you permit commission for non-advice, or for the sale of annuities and life assurance? If you are going to ban commission, ban it across the board. The idea for paying commission for non-advice is bizarre. The idea of paying commission is for a service rendered and if there is no advice then there isn't any service so why should they get paid at all? One would be justified in assuming that we now have higher qualified advisers, some even to Level 6 and that regulation is there to assure a high level of integrity. In which case I find it hard to understand why you need so many quango's, at very considerable cost and whose effectiveness is very much in question, much of which is paid by the adviser community. Perhaps a viable and more cost effective alternative might be to issue prepaid coupons for a visit to an Independent Financial Adviser. You could, if you were so inclined, restrict this to Level 6 advisers. I would have thought that the cost benefit analysis of doing it this way would be a lot more cost effective than what is currently in place.

I hope you find this of use.

Harry Katz
CFP Chartered MCSI