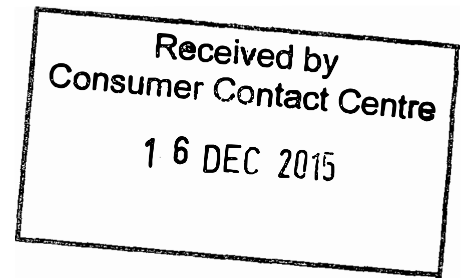


Pickeridge Farmhouse

Corfe

Taunton

Somerset

TA3 7BX

14th December 2015

Dear Sirs,

Financial Advice Market Review

I attach my submissions which focus on fund management.

Yours faithfully,

Peter Nellist

FAMR Secretariat

Financial Conduct Authority

25, The North Colonnade

Canary Wharf

London

E14 5HS

Financial Advice Market Review

A basic problem is the conflict between the commercial interests of advisers and those of investors, which can be hidden by the lack of clarity in the charges imposed. It is not sufficient to have a transparent charging system. Investors should be able to appreciate easily the cumulative effect of those charges.

This is illustrated by -

- The popular business model for advisers of targeting funds under management (FUM), particularly
- Discretionary management with no disclosure of the profit made on dealing. The difference between wholesale and retail dealing rates can be about 1%.
- The payment to third parties advisers of ½% pa of funds introduced by those third parties to build up FUM – de facto trail commission.
- Earlier this year I was given a quote of 0.7% pa for fund management. When I mentioned that some of my funds were in an undrawn SIPP with fixed protection, I was then told that "compliance" was likely to insist on the use of the manager's independent arm, at a further cost of 0.5% pa.
- Many fund/wealth managers are restricted advisers, facilitating the introduction of in house open ended investment funds into discretionary managed portfolios. The cost to the investor of these funds is not clear.
- The difficulty in obtaining one off advice – unlike what is available from solicitors and accountants.

What is at stake

Recent legislative changes will encourage more retired investors to keep pension funds invested. The cost of fund management can take up all of the natural income from a portfolio. Thus the investor's return is dependent on capital gain. In the years when a capital loss arises there will be a greater depletion of the portfolio. If there was a recurrence of the stock market fall in 1973/4 the effect would be disastrous for many investors.

To improve the situation

- Encourage a differentiation between those advisers/managers who make a transparent profit and those who do not, with a particular focus on revealing dealing profit.
- Encourage investors with smaller amounts to appreciate the long term advantages of equity exposure. Bonds/cash deposits for retirees is considered low risk, yet there is a strong argument it is the opposite.
- *Investment trusts (ITs) are an ideal vehicle for many long term investors.* The general risk warning and the warning on the perils of gearing are great deterrents to an average potential investor. An agreement with the AIC to give ITs a special category if gearing is kept to (say) below 5% of net assets could be worthwhile.

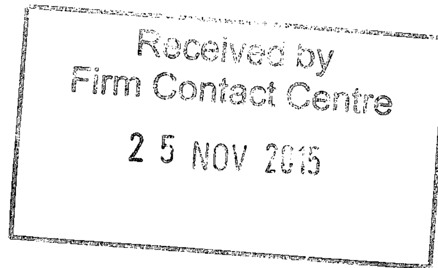
- Make the independent/restricted categories more meaningful. This could be achieved by relaxing the definition of independent and requiring that the advertisements of and communications from all financial advisers noticeably state the appropriate status.
- The industry needs more competition, which probably points to less regulation.
- About 10 years ago at a FSCS meeting at the FSA's Canary Wharf office I asked if a particular miscreant had been made bankrupt. I was told that was not cost effective. A published policy of pursuing miscreants to personal bankruptcy would increase deterrence and public confidence.

Two other matters

It is imperative to avoid a Talk Talk incident – or worse. There must be a publicised focus on cyber security and the commercial insurance back up available from financial advisers. There is a huge difference between having £x million of insurance cover per incident and per investor affected: few investors will appreciate that difference.

A state/industry protection limit of £50,000 for an investor's loss is inadequate. The limit should be increased to £500,000. This is particularly important for retirees who are often encouraged to use one platform to hold all investments.

Portal Financial
CLEAR CONVENIENT ADVICE



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

24 November 2015

Copy also sent by email on 24 November 2015

Yours Faithfully,

Bob Stark

Head of Marketing

Response to consultation document:

"Financial Advice Market Review – Call for input"

Please find below Portal Financial Services LLP's response to the questions detailed in the consultation document.

Portal Financial are one of the UK's largest independent pension advice firms. We have been operating since 2009 and hold over £240 million of funds under management for clients. We are currently on-boarding around 1,000 new clients with pensions every month and are regularly approached by the national press for expert commentary and figures on pension matters.

Portal Financial Services is authorised and regulated by the Financial Conduct Authority, company number 501272.

Submission Details

Name:	Bob Stark
Position:	Head of Marketing
Company:	Portal Financial Services LLP
Address:	Affinity House, Beaufort Court, Medway City Estate, Rochester, Kent
Post Code:	ME2 4FD

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?

No response

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

Keep it simple. Inventing more names for variants on the same idea will just confuse people even more.

If it is regulated financial advice then call it "financial advice". If it is anything else (eg. so called "guidance") then make sure it is made very clear that "this is not financial advice" at the point it is given.

Just be very clear on what the benefits of "financial advice" are to the consumer – ie. the adviser is duty bound to act in your best interests, you are protected, recourse to FOS etc.

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

There is a lack of understanding of the benefits of financial advice and hence many consumers see financial advice as a necessary evil required to access certain products (eg. pensions) but don't naturally trust it or value it. Demand would be much greater if the benefits and value added were understood by more people – education and awareness is the key here.

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

Many people are suspicious of professional advisers, based on past experience with others (pre-RDR) and the assumption is the experience will be expensive (reinforced by advisers specifying minimum investment values). If they can get "advice" elsewhere without it costing them anything then they will – friends, strangers on internet forums, TPAS "guidance"...

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

We advise on pensions hence these are the products we know. Many of our customers have a non-retirement need that they would like to be advised on – for example to use tax free pension money at 55 to pay off debts such as their mortgage, credit card or a loan. There is normally a primary and secondary use – for example, helping their offspring with a house deposit and paying off credit debts at the same time.

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

No – it is a massive oversimplification of people's circumstances, needs and financial awareness. Even within the fairly narrow demographic offered by the majority of our business (55-60 year olds who want to access their pension tax free cash early) we find a huge range of differing needs, financial understanding, assets and personal circumstances. Trying to pigeon-hole people goes against the whole ethos of personalised advice.

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

No.

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

Our average client's pension size is £53k. 25% have £15k or below and more than 80% have less than £100k. The size of their pension at this level is rarely a good indicator of the complexity of their needs or the importance of that money to them, and hence their *need* for advice. *Demand*-wise, the majority of our customers would not have come to us (or any other IFA) if we had not specifically highlighted our proposition, track record or relevance to their situation of our service to them.

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

Firstly, there is a lack of engagement with pensions in general. People don't think of their pensions every day, don't understand them, don't understand their relative merits and don't know the different ways they could use them. Add to that the lack of understanding of the benefits of financial advice, the distrust of financial services and the assumed expense mentioned above and it is not a great surprise to see why people don't seek advice. We have to be very good at marketing to attract our customers despite having an excellent net promoter score for new business of 47% and overwhelmingly positive customer feedback from those who have experienced our service.

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

We are wholly phone and correspondence based and have been very successful in providing focussed financial advice for specific needs. With this model we have grown from 3 people in a room in 2009 to 130 staff in 2015 and have over £240 million under management. We expect to receive letters of authority from around 10,000 new customers this year, going on to advise about 5,000 of them.

As digital technology improves we will make best use of it to improve the customer experience.

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?

Whilst the removal of commission payments and increase in transparency is clearly a good thing, it has resulted in advice looking expensive to clients as the focus has become totally about cost and not about benefits. This is particularly true for those who don't regularly make investments and who are used to paying for everyday goods and services that have an immediate benefit for them; with pensions and investments the benefit can be way off in the future and clouded in lots of if's, but's and maybe's and hence all you see is an immediate cost.

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

There are two distinct aspects – the interaction with the client and the decision making on the advice itself.

The latter (advice) is already at the stage where it can be incorporated into back office systems to make the advice decisions on the majority of focussed pension advice cases, and we are in the process of developing just such a system ourselves.

The former (customer interface) technology is not sufficiently advanced yet to provide an adequately engaging experience for the majority of customers. It is inevitable that artificial intelligence interfaces will continue to develop, though, and at some point this may become the norm. There are no immediate signs of when this will be ready though, either here or elsewhere.

Regardless of the above, you will still need to attract customers and they must be able to trust in your brand and advice. That is more expensive and difficult to do than many realise.

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

For the business we do the majority of the time (bearing in mind the relatively low pension pot sizes we deal with) our fees are typically 5% of the pension transfer value, then 1% for ongoing management. Ongoing management covers annual reviews, on-demand advice, ad-hoc transfers and drawdown etc.

Our costs break down roughly as:

- 35% marketing
- 30% staff (excluding compliance)
- 10% regulatory (directly related to)
- 5% technology
- 10% operational (eg. building, telephone)
- Leaving around 10% as pre-tax profits

Please bear in mind that we are focussed on managing cases as efficiently as possible, using streamlined admin processes and technology to reduce the IFA time needed per case and, as a result, overall costs. We also benefit from economies of scale.

If we can reduce our fees to our customers whilst remaining profitable then it is in both our interests and our clients' to do so. For this to happen with our business model the options are to improve conversion rates (which is of course an ongoing aim) or to look at ways to reduce the above costs.

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 breakdown for our particular model is detailed above. We offer advice with no obligation and hence bear all the risk of a client not wanting to follow our advice if they feel it is no value. This is offset by the confidence that we can usually help a large percentage of people who are not otherwise being serviced.

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

We know that people with existing pensions are economic to serve as this is our model, and they do not have to be six figure pensions or anywhere close provided you are efficient at what you do. Currently we make a loss on customers who come to us with a pension pot below £30k.

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

Yes, several:

- *The time it takes to get accurate information from ceding schemes.* Clients cannot understand why it isn't at the touch of a button and often blame us for the delays. It simply isn't acceptable that it takes *months* to be in a position to tell a client what they already have, and then *months again* to be able to action the clients' wishes having advised them.

- *Confusion around financial services in general.* We do all we can to be as clear and friendly as possible when helping clients and they tell us how much they appreciate it. The regulator requires you to be clear and not misleading in your communications (we couldn't agree more) and then obliges you to include all sorts of jargon-laden stipulated content that generally serves to confuse the client.

- *An assumption that advice is expensive with no guarantee it will be of any use.* We remove that barrier with our no obligation review. The problem we have is that people are being warned that anyone offering a free pension review should be treated with deep suspicion as they are likely to be a scam. Why not simply tell people that they should check that a company is regulated and make that really easy to do? (it isn't currently...)

- *Lack of engagement with pensions in general.* From a marketing cost point of view this is probably the biggest. People don't think of their pensions every day, don't understand them, don't understand their relative merits and don't know the different ways they could use them. Hence the majority of pensions marketing is speculative, and often contains a mix of disturbance and education.

- *Lack of understanding of the benefits of financial advice*. The bottom line is that many consumers see financial advice as a necessary evil required to access certain products (eg. pensions) but don't naturally trust it or value it. There was no wider public awareness campaign or education on the benefits of RDR, that there are no longer hidden incentives such as commissions, or that advisers can't transact business unless in the best interests of the client. Redress via the FOS should it be needed is another key benefit that isn't sold as such. This isn't the most positive message on its own but it is a benefit nonetheless, especially when compared to DIY or trusting random internet forums to make decisions.

- *The number of scam companies and how they are handled.* One of the things that would benefit the industry as a whole would be if the relationship between regulator and regulated companies was seen as more constructive in the public's eyes. Being regulated should be a badge of honour that guarantees certain standards and protection for the public. If being regulated is a requirement for certain products then it follows that the regulator should have responsibility and powers to stop companies who aren't regulated from doing regulated-only business. This obviously isn't the case but it is hard for the public (and us) to understand why. Being able to identify and shut down companies who are trying to defraud the public should be a priority. If there was a strong IFA trade body to allow disparate advisers to speak with one voice then that would also help. This is something we would support.

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

The "advice gap" should, we believe, be defined as either where consumers cannot receive proper regulated financial advice without it costing more than the value of the benefit of taking the advice, or where the advice simply isn't available to that consumer.

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

This should be worded the other way around: *"To what extent does the advice gap reflect a lack of demand for advice?"* It is directly related. If consumers were desperately trying to find advice at any cost then there would suddenly be no shortage of companies looking to provide it. The economics of both providing the advice (resource, risks, regulation etc.) and in generating demand from an unengaged audience (marketing) mean that most companies are only interested in those with larger amounts to invest. Our efficiency means we can deal with lower investment amounts profitably but there are still limits.

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

In pensions there are firstly financially driven gaps:

- It is hard to get independent advice for lower value pension pots, regardless of the age of the customer. The majority of IFAs only get interested at over £100k. We go down to as low as £15k but lose money at this level so do not actively seek this business. The nature of pension saving also means that it is naturally less likely for younger people (say, below 35) to have enough saved to be financially viable to advise independently.

...and there are engagement / confidence gaps:

- A lot of people simply lack the confidence to even start a conversation with a financial adviser. TPAS have confirmed that people find the thought of financial advice around pensions to be intimidating and this puts people off. We focus very hard on making the experience as friendly and easy as possible for the client. We still find that we attract fewer female clients, though, and those we do attract are less likely to complete the journey, despite the majority of our staff being female. This may be related to a lack of confidence around financial basics.

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

Our own data and experience.

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

Both the above are very important, and both could be helped with better general education and awareness of pensions and financial matters, and the benefits of receiving professional advice.

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

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)?

Yes – and probably lower than that, say less than £50,000 investible assets or incomes under £40,000

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?

Yes. The direct costs alone of regulation are significant. Our internal compliance team costs about the same to run as the cost of our FCA fees plus our PI fees. On top of that we employ a 3rd party compliance consultancy and the inevitable legal team specialising in FCA matters.

Marketing and client communications are heavily compromised by stipulated content that often serves only to confuse the client, without benefiting or protecting them.

Ceding schemes hide behind regulation to slow down and sometimes totally obstruct the advice process as it is not in their interests for the client to receive advice.

Providers feel obliged by their compliance teams to produce illustrative literature that is hard for clients to understand and that focuses on the overall costs of advice without mentioning any of the benefits. This doesn't exactly encourage the client to value or trust the motives behind the advice being given.

A lot of the rules around marketing promotions for pensions could be simplified right down to "must be clear, fair and not misleading". If there are a few specific "you must not state this" then fine, but it shouldn't have to be greatly more complicated than that.

There should be a greater focus on the benefit of the advice to the client and less focus on looking solely at the cost of the advice when considering suitability. The FSA's pension-switching advice suitability assessment template is an example of the latter...

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 response.

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

The need to emphasise the benefits of the new improvements rather than highlighting poor outcomes from the past if you want consumers to see pensions and regulated financial advice as positive things. If you talk more about the positive side then this is what people will see. If all you talk about are the horror stories (which make up a very small percentage of regulated business) then all consumers will see is more reason to distrust both the products and the industry.

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

Reduced regulatory oversight for higher qualified individuals and firms, combined with greater competence amongst the case reviewers. An example of how this works is in the medical world, where a specialist can make (in many cases life or death) decisions within their field of expertise autonomously, whilst a more generalist doctor would make a recommendation, which would then be checked by someone *more* competent than them (typically, at the specialist level).

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

We already run successfully without "face to face" advice, as we do all of our customer interaction remotely, via telephone and correspondence. This still relies upon human interpretation of the client's behaviour, and we don't believe the technology exists yet to fully entrust this interpretation to software. For example we have dealt with clients who, having come to us, were clearly acting under duress, and we have taken the decision to involve the police as we believed they were being coerced. How would current software and interface technology handle this?

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?

This is an interesting idea which, provided it was clearly defined, consistent, and available to all firms (ie. a level playing field) would reduce risk to the business and hence reduce a proportion of the costs. More importantly, if a company found it viable to generate business under this method, the safeguards would encourage a faster growth of business than would otherwise be the case. Any safeguards would need to encompass FOS rulings and would have to have a cast iron guarantee that they could not be retrospectively be overturned.

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

No response

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

There needs to be adequate consumer protection as without it the risk is yet another industry scandal should a mass unintended consequence occur at some point. Perhaps a govt. backed centralised PI scheme could be introduced.

Q32: Do you have evidence that absence of a longstop is leading to an advice gap?

Not an advice gap per se but advisers do consider this as an added risk on certain types of business, such as defined benefit transfers.

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, liabilities will always form part of an exit for an advisory firm.

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

This should be a key selling point currently but it isn't well understood by consumers and isn't used as such (as an individual company it's not the most positive message to open with "if it all goes wrong, then...").

Putting a greater focus on the client's understanding of the advice at the point of sale would reduce the claims culture – the client should be required to take some responsibility when the advice has been explained clearly.

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

The regulator could spend more time actually speaking to clients and asking them what they really want from advice and from their pensions and investments, rather than making their own assumptions as to what is best for them.

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?

Specifically relating to pensions: Actually providing the advice is just one aspect of running an advice firm, and it is just a proportion of the costs. Automating the advice will reduce (but not remove) the cost of this aspect, providing you are of a sufficient scale, but it won't significantly impact the overall cost. We are in the process of instigating this aspect simply as another effort to increase efficiency.

The software interfaces currently available for automated customer interaction are simply not that engaging, intuitive or intelligent yet. Until they improve it is difficult to see conversion rates being at the levels they are for human interacted business, which effectively ramps the cost back up.

Automation won't automatically reduce the cost of attracting new clients, which is the biggest single cost in our business model. The assumption amongst clients may also be that, as it is automated, the cost should be very low. This won't reflect the financial risk of the company providing the advice, nor the associated running costs, and will put greater pressure on the business model's viability.

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

More specific and concise rules that are less open to interpretation. As mentioned earlier, a lot of the rules could be simplified right down to "must be clear, fair and not misleading". If there are a few specific "you must not state this" then fine, but it shouldn't have to be greatly more complicated than that.

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

The adequacy of the consumer interface: in terms of clarity, engagement, ability to interpret and explore the client's true needs, answer the client's ad-hoc questions etc.

The adequacy of the decision making: It is fairly straightforward, with accurate data inputs, to make a decision on focussed pension advice for clients whose needs very obviously fit into a neatly predefined box. And to identify those that don't. If they don't then at the moment you will still need a human IFA to handle the less straightforward cases.

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

Realistically, for companies to fill the gaps it needs to be made less expensive for them to do business with these clients.

We are already pretty efficient due to our processes and use of technology so, for us, the key costs to look at are:

- *Regulatory*: The safe harbour concept to reduce liability risk is interesting. Simplifying the detail of the regulations would reduce marketing and compliance costs. Relaxing the comms legislation and encouraging illustrations that are designed to be simple and clear to the client rather than a compliance-led necessity would increase client understanding and conversion rates (and hence make business more viable for lower value clients). Having a better public relationship between regulator and advisers would also help – being regulated should be used as a badge of honour and a clear sign to consumers that they are protected.

- *Digital interaction between schemes and advisers*: The largest chunk of time per case is down to the working methods of the 3rd party pension ceding scheme providers, who can take months to provide information and then months again to facilitate transfers. This is reflected in the number of staff required to chase and manage this aspect, as well as to act as a go-between with clients. This also has a significant effect on cashflow. Facilitating and enforcing fast digital communication between providers and advisers would hugely benefit clients and reduce costs, the benefits of which can be passed on to clients.

- *Engaging Clients*: The advice industry is highly fragmented and lacks a national voice. The lack of engagement and understanding of pensions among the general public is reflected in the high cost of marketing pension advice services to them. The more the public is educated to both the benefits of pensions and of regulated financial advice the more they will seek it out, reducing the cost of marketing these services. The industry itself is not in a position to do this as things stand, but the regulator / govt. may be.

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?

Any regulatory changes must be clearly defined and publicised, and available to all companies at the same time. There must be a level playing field.

There must be a greater public focus and emphasis on the benefits of advice. Ultimately, our biggest competitor is consumer apathy, and the best consumer outcome is often to do *something* with a competent adviser rather than simply doing nothing. If consumers aren't educated as to the benefits of advice then they won't understand what they would be getting for their money.

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

- Insist on higher qualifications – level 6 is a good level currently (we are level 7).
- Give specialist titles to firms writing a certain level of specific types of business. These should be based around the product descriptions that consumers already understand (eg. Pension, Investment etc.)
- There should be more understanding from the regulator as to what the client really wants, and what a good outcome actually looks like for them.

The FCA Practitioner Panel

and

The FCA Smaller Business Practitioner Panel

Response to the Financial Advice Market Review Call for Input

22nd December 2015

This is a joint response from the FCA Practitioner (PP) and FCA Smaller Business Practitioner (SBPP) Panels to the Call for Input on the Financial Advice Market Review (FAMR)[1]. The Panels are statutory bodies which provide input to the FCA from the industry in order to help it in meeting its statutory and operational objectives in an effective manner. The two Panels operate separately but on this subject they have many common views and have therefore chosen to submit a joint response.

Many of the Panel members have provided input via their own firms, either directly or via trade associations, and two Panel members, Andy Briggs (from the Practitioner Panel) and Robin Keyte (from the Smaller Business Practitioner Panel) are members of the FAMR Expert Panel. This response reflects joint discussion by the Panels and not the individual views of any one particular firm.

General points

The Panels' general view is that although some sectors of the advice market are functioning and sustainable, there is a sector in the middle ground which is not being addressed, and unless changes are made to the regulatory environment, this situation is likely to get worse rather than better. Our main point is that there is a lack of clarity and consistency in regulation in the middle market for advice, which is leading to a restriction in supply. A good outcome of the Review would be that it is clear to the industry how far it can go with advice without overstepping the regulatory boundaries. This applies not only to the FCA but also to the rest of the regulatory family.

It is important to recognise that the regulatory actions taken in respect of mis-selling/similar conduct issues were generally valid and we support the FCA's work here, but this has left firms concluding that the risk/reward trade-off for personal financial planning/advice is unattractive. As a result, inadvertently, regulatory pressure (including fear of sanctions) has driven most potential providers of advice away.

Looking at the future of advice the specific barriers to entry which we focus on in this response are:

- The economics of providing advice
- The issue of liability and whether there should be a longstop
- The balance of consumer versus provider responsibility

[1] https://www.fca.org.uk/your-fca/documents/famr-cfi

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?

It is important to note that neither financial capability nor vulnerability are necessarily related to income or net worth, and that vulnerability is a situation in which consumers may find themselves temporarily or over an extended period of time. Customer needs are as much about live events as they are about income segmentation, and it is important to look at individuals' circumstances, which will be subject to change.

One particular set of vulnerable customers, although not included in the provisions of the Equalities Act, is those who already have problem debts. These are often customers who are seen by the Credit Union sector. The experience of this sector is that such customers often tend to avoid dealing with their debts, making the situation worse, which provides a particular set of challenges for advisers. It is likely that if they do seek advice, it will be from providers such as Citizens Advice.

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

There is a need for a common language around advice. To a certain extent, both the industry and the regulator spend their time trying to squeeze consumers into boxes and label the boxes. A good outcome would be for all organisations to be able to describe their services in a fair and not misleading way and charge as appropriate. The Smaller Business Practitioner Panel has made recommendations for disclosure of advice services, which were referred to in the FCA's Smarter Consumer Communications work[2], in which providers would provide a brief standardised proforma description of their advice services.

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

A significant proportion of consumers continue to want and receive professional advice. However, the economics of providing full advice has resulted in an increasing focus by advisers on higher net worth customers. This focus, largely as a result of advisers up-skilling and professionalising their consumer offerings, may have driven consumer perceptions that advice is costly. There may also be less consumer demand for advice due to a lack of clarity about the benefits of receiving advice, which is in part connected to the lack of a common language about the difference between 'advice' and 'guidance' and the restrictions placed on firms that are not providing full advice.

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

We have anecdotal evidence that customers are experiencing poor advice from insolvency practitioners and that this can be exacerbating their financial difficulties at a time of stress.

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

No comment

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

[2] Discussion Paper 15/5 Smarter Consumer Communications

Although the Consumer Spotlight segmentation has some practical value, we consider it does not fully capture the dynamics of customers' lifestyles, and the fact that they will move from one segment to another over time. We are also aware that the Money Advice Service is carrying out a segmentation exercise, and it would be helpful if the two bodies were to coordinate in this area to ensure consistency of approach.

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

No comment

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

In general, the economics of providing advice are driving firms towards the high net worth market therefore this sector is likely to be better served. The general focus of the advice gap work would be more effectively targeted by concentrating on the mass affluent and lower income sectors.

However, as noted in the response to question 1, capability and vulnerability are not necessarily related to wealth and income. Within the high net worth sector there are consumers - for example those who suddenly have to deal with new financial decisions following bereavement, illness or redundancy - who may be temporarily considered as high net worth customers whereas they would not normally fall into this category. Such customers would need appropriate advice, and it is important that they are able to obtain it.

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

At a base level there is a range of behavioural reasons why consumers don't seek advice, such as inertia around making financial provision or a failure to recognise the importance of financial provision. However for consumers that do want to seek advice it is our belief that consumers may not seek advice due to its cost and possibly a lack of trust in the financial services industry in general.

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

The Panels welcomed the aim of the RDR to improve the professionalism of the advice sector and the fact that this has been achieved. There is, however, a gap in the smaller premium, simpler product market, for a simpler advice qualification than QCF Level 4. In an environment where firms may be operating on tight margins providing low premium products, it can be difficult to incentivise advisers to remain with the firm once fully qualified, when attractive alternatives exist elsewhere. This is a further driver pushing the supply of advice towards the high net worth market. We believe there is scope for investigating a middle ground of lower qualifications for simpler products.

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?

No comment

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

No comment

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

There are several inter-related factors which affect the supply of financial advice. The length of the overall review process for providing full advice is such that there is a substantial cost involved, which drives such advice up the value chain. The regulator needs to understand more clearly the high cost of operating in the low-income, low premium market, and that the structure of the industry post-RDR does not lend itself to operating in this market. This is a key driver of the advice gap. There is a demand for simple financial products, but it is not economic to provide them to the mass market post-RDR.

Additionally, the financial capability of low income customers can be low (although, importantly, this is not always the case) and their financial issues complex. This can result in a need for lengthy face to face advice and subsequent follow up, which is correspondingly expensive to provide. It is difficult to extend guidance to such customers because of a lack of clarity in the boundaries of regulated 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?

The current high cost of providing advice may increase the potential risk of misconduct in the future, as firms recommend higher cost products/services, and cross-sell as they endeavour to ensure cost (plus) recovery in the medium term. The Retail Distribution Review (RDR) partly mitigates risks here for activity in scope for RDR purposes, as the RDR aims to eliminate incentives for bias; this may change if firms attempt to address demand in lower value segments.

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

Given the fixed costs of complying with regulation, such as meeting qualification standards or carrying out factfinds, it is difficult to provide a sustainable service to the lower premium end of the market, particularly in the case of products where premiums are collected frequently. In order to maintain a sustainable business model, many firms are being driven towards the larger premium high net worth sector. The industry is developing in such a way that relatively few firms can generate sufficient economies of scale to serve the mass affluent or low premium market in the longer term.

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

There is a general lack of clarity of the boundaries of guidance versus advice, and this is not helped by a lack of a common language to talk about the advice/guidance process, combined with perceived limited scope for restricted advice.

For example, many customers will approach the provider looking for 'a bit of help' and may ask 'what would you do?'. A logical and helpful response would be to be able to say 'people in your situation often do…', but currently this type of scenario risks crossing the boundary into regulated advice, with the costs and barriers this entails. The costs apply not only to the providers, but also to the customer, who may not be willing or able to provide the time or information for a full factfind.

A further barrier to providing advice is a fear amongst providers of retrospective action from the regulator. In future, we believe the FCA's House Views could provide a useful tool to indicate what its thinking was at a given time, in order to give context to any future regulatory decisions. We continue to encourage the FCA to publish its House

Views as we consider they could provide useful planning tools for the industry and a means of working with the regulator.

As it currently stands, the Financial Services Compensation Scheme (FSCS) levy is a barrier to the provision of advice. For smaller firms in particular the cost of the levy, and the substantial recent increases, have a significant impact on the profit margins of their business and make the provision of advice increasingly uneconomic. The structure of the levy is not currently fit for purpose; it is in effect an insurance policy priced without reference to the underlying risk, in that firms must pay for compensation related to products which they would never have recommended to a customer. We have encouraged the FCA to consider this as part of its forthcoming review of the funding of the FSCS.

The lack of clarity and consistency about liability extends beyond the FSCS. There is also an issue with consistency between the Financial Ombudsman Service (FOS) decisions and the views of the FCA. This is compounded by differences in approach from professional indemnity insurers, contributing to an overall lack of clarity for firms about liability in general and liability for advice in particular. (See also response to question 32 on longstop).

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

and

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

and

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

We consider there is a gap in advice between the basic provision of guidance and the full advice sector. The economics of providing full advice are such that advisers are being pushed upmarket in order to be able to meet the regulatory requirements and therefore full advice is becoming the preserve of the higher net worth customer. We do not consider there is a gap in the high net worth market, but for the mass retail market it is increasingly uneconomical to provide advice under the present regime. We do not consider there is an advice gap in the mortgage market, which is mostly intermediated and in which building societies tend to use intermediaries where this is more cost effective.

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?

and

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?

and

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)?

As discussed in the answers to questions 1 and 19, it is important to focus on the circumstances of the individual, not necessarily on their income or assets. Although the

higher net worth market will tend to be better served, there are those who may find themselves in that sector, either permanently or temporarily, who may be considered vulnerable and who will have specific and different advice needs that are not being currently addressed, either through lack of awareness or financial capability.

There are currently particular issues relating to pensions and the recent regulatory changes and therefore we agree that resource should be spent on specifically addressing the at-retirement market. With the sweeping and regular shifts in government policy towards pensions, and consequent unpredictability for long term financial planning, the underlying need for financial planning advice and education seems higher than ever. Unfortunately the pensions uncertainty does not seem to lend itself to being easily handled by simple/generic advice, as it raises quite complex issues, for example, for financial modelling.

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?

An outcomes-based regulator needs to look at its remit through both a consumer lens and a supplier lens. We have a concern that the current objectives of the FCA appear to be 'protecting the consumer from advice'. Although somewhat outwith the scope of this consultation, an additional objective for the regulator of promoting good financial advice and guidance would provide a better framework for a sustainable regulatory environment.

The advice gap is a problem for the whole regulatory family. An important aspect of the current regulatory framework is the FCA's relationship with other members of the family, including the FOS and FSCS. Lack of coordination with between these bodies is a driver of uncertainty which makes it more difficult to operate in the advice market – an example is the need for harmonisation of assumptions about cash-equivalent transfer values between the FCA and the FOS.

The FCA could be more explicit about how accountable if feels it is for ensuring that gaps in the provision of advice are closed. More specifically, does the objective of avoiding potential industry mis-conduct in respect of financial advice trump an objective of creating the environment through which adequate advice might be more readily forthcoming? Previously the FSA regularly emphasised that it did not believe it should seek a 'zero failure regime[3]'; it is not obvious that FCA now comments in such terms.

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 comment

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

No comment

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

No comment

[3] FSA Annual Report 2002/3 page 96

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

No comment

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?

We consider that safe harbours are not necessarily the answer to addressing the advice gap. If the regulatory environment is clear, and firms are aware of what they must do to comply with it at the time, they can and do operate within the boundaries. If they fail to comply with regulations which are clearly articulated, they should be liable for their behaviour. The difficulty arises when there is perceived retrospection, when firms are held liable for behaviours or activity which they believed at the time to be within the rules. Therefore a better solution is not safe harbours, but better clarification of the existing regulations. Any safe harbours would need to consider FOS adjudications that appear to contradict or change the anticipated safe harbours.

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

No comment

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

No comment

Q32: Do you have evidence that absence of a longstop is leading to an advice gap?

and

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?

Unlimited liability is one of the drivers of the gap in supply of advice. It is difficult to make a profit in the mass market when liability for providers of advice is unlimited. The advice market has become liability driven with market participants unwilling to engage in riskier areas of business and looking to assess consumers on their economic worth and likelihood of complaints. Given the relatively low rewards of working with the mass affluent together with the asymmetry of risk and associated costs where advice is found to be wrong, the advice market has sought to focus on higher income/wealthier clients. In addition, in recent years the balance of responsibility has shifted significantly away from the consumer towards the provider of advice, and in the current environment there appears to be no duty of care on customers themselves. There is a cost to this – it will eventually become detrimental to consumers as it is both a barrier to entry and a driver to exit amongst firms and a constraint on the supply of advice in the longer term.

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

No comment

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

No comment

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?

There is room in the market for developing an online advice solution to address the advice gap but to cover all circumstances is prohibitively complex and it does not replace full advice. Simple or restricted advice can be delivered in an automated way, but there is a need for regulatory clarity as it needs to operate in the middle ground where the overlap between advice and guidance occurs. Automated investment processes are more common in continental Europe and these generally operate successfully and give rise to fewer consumer complaints.

Currently much of the IT spend in financial services firms, large as well as small, is focused on regulatory requirements, such as implementing the changes required by MiFID II and Solvency II. This leaves little in the way of resource for innovation – regulatory stability would help firms to develop more innovative solutions. For smaller firms in particular, this is a competition issue in that automated advice solutions have high start-up costs therefore there are barriers to entry for individual small providers who wish to develop them.

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

No comment

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

No comment

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

The landscape which needs to be addressed is around the broader issue of guidance, not just regulated advice. Consumers themselves do not generally differentiate between regulated advice and guidance, and tend to use the terms interchangeably. There is currently a clear divide between the full advice process on the one hand and simple guidance on the other. The key issue is that the rules in the area in between, where customers need some personalised direction but not a full factfind, are not clear. Firms are wary of operating in that space, which is where the majority of potential customers are found.

We suggest that the way to address this is to adjust the rules to allow advisers more scope to provide personalised or semi-personalised advice without entering the fully regulated space. Currently, we believe the threshold of full advice is set too low – advisers who are asked for 'a bit of help' cannot give it, beyond the most basic information, without crossing the boundary for full advice.

We suggest that the remedy is to extend the scope of what information can be given to customers in the non-advised space – a form of 'generic plus' advice, such as being able to give examples of what people in a given situation often do, which might include product advice or recommendations of specific actions. The boundaries of this should be clearly articulated, and the rules of the regulatory family, including the FCA, FOS, FSCS

and PII insurers, should be clearly aligned. This would give firms more confidence to operate in a market which they are currently wary of serving and give customers the service they need and want.

We suggest there is scope for investigating the level of qualifications required to provide such information, in order to provide a more accessible entry point for such advisers and a more cost-effective service whilst ensuring that customers are adequately served by appropriately qualified people.

Within this construct guidance can include scenarios and "people like you" type discussions; but advice must be post-status disclosure and personalised, albeit offered at 2 levels:

1) a "foundation" version for simple products able to be provided by level 3 qualified advisers;
2) as now – level 4 qualified, full process for more complex scenarios.

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?

Our view is that competition only appears an issue in the respect that there is lack of appetite for firms to participate in the advice markets, as noted above.

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

Why the "Non-advised" protection process should be renamed "Guidance", and the "Advice Gap" should be renamed "Demand Gap"

A response to the FAMR and EDM (Non-Advice) Reviews by Luke Ashworth, CEO of Protected.co.uk

The barrier is demand, not supply

93% of families don't feel like they have adequate financial protection. Yet 61% of UK families have no basic life insurance and 89% of people have no form of employer or personally-funded Income Protection[1]. This is despite the fact that over 24,000 children are bereaved of a parent each year[5], and close to a million workers per year find themselves unable to work due to a serious illness or injury[4].

More than 3 million people claim non means tested disability benefit via either Personal Independence Payment (PIP) or Disability Living Allowance (DLA). Over the course of the next few decades the liability for financial welfare must shift from the state to private sector, as quite simply the country will not be able to afford it.

At the same time demand for long-term financial welfare products continues to stagnate or even decrease. The state can't afford it, yet the percentage of the population thinking about long-term financial welfare has never been lower.

Generational aversion to financial planning

The key barrier to demand for long-term financial welfare products is not the access to advice, as a simple search in Google will reveal a number of local IFA's to access advice. Protection advice, funded through products, is free to the customer whether they buy or not so there is no barrier.

The key barrier to protection demand is that current generations do not plan ahead financially unless prompted. We have seen the inverse of the issue with customer detriment in the payday loan sector; consumer demand for thinking "short-term" allowed a section of the industry to explode uncontrollably. In an era of instant gratification, a Sky Box or a night out on the town is a much more likely purchase than a product to protect a family in the event of illness, injury or loss of life.

Generational aversion to the financial services industry and professional advice

To compound matters the same short-term generation has mistrust in the financial services industry and an aversion to seek out professional financial advice; someone is now more likely to get information from the internet, friends or family than a Bank or Financial Advisor.[2]

Even Martin Lewis from Moneysavingexpert.com has suggested to his readers that the word "advisor" is the equivalent of "salesman". Professional advice has been deemed as untrustworthy by the very same generation who no longer think ahead.

The private sector must create the demand

It is the perfect storm. The state can't afford it, so we must look to the private sector. The private sector played a large part in creating the short-term generation. So it must also take responsibility for shifting the mind-set back to taking personal responsibility for long-term financial welfare; the private sector must *create* the demand.

"Non-advised" should be renamed "guidance"

At Protected.co.uk, we use a "non-advised" model of providing protection products from a panel of Insurers to over 40,000 customers per year. We use large scale advertising campaigns to reach many families new to the market; more than 50% of our customers have never bought a protection product before.

We have over 140 staff working both online and by phone to enable potential customers to search for protection products. While most of our customers begin their journey online, all are subsequently spoken to by telephone. We rigidly control our process through the use of sign-posted scripts to ensure every customer gets the guidance they need to make an informed choice.

The guidance provided on the telephone leads to a much more educated decision-making process and better outcomes for sometimes previously ill-informed customers. No personal recommendations are made by our staff. However, all customers receive information on our products and in fact a wider education on long-term protection as a whole - to enable them to make an informed decision as to whether products meet their own needs.

To call this process "non-advised" is confusing; both to those within the industry and to potential customers. Saying what something is not does not help someone understand easily what it is.

"Non-advised" is both a compliance-led and negative phrase. Renaming "non-advised" to "guidance" would remove confusion, while also creating trust and positivity within customers to educate them on the benefits of long-term financial welfare products. The word "guidance" would be a much more clear description – leaving the options of guidance, advice and execution-only.

Creating demand requires large scale advertising, and "guidance" is more scalable

According to the Money Advice Service, customers don't take out protection for a number of reasons including thinking that; Insurance companies don't pay out, the state will take care of me, I can't afford it and I'll never need it. The only way to change this mind-set in the short term generation is through advertising. We need to use our own large scale advertising campaigns to challenge the lack of demand and misconceptions about our market.

The "guidance" method of protection provision is much more scalable than the single-IFA model. This is because every single step of the customer journey – whether scripting or otherwise – is rigidly controlled. This makes scaling of the staffing requirements much easier, while ensuring rigid control over customer outcomes.

The economy of scale can better fund the creation of much greater demand than a single-IFA model because of the large-scale advertising campaigns that create mass-market demand; campaigns which educate potential customers on the benefits of long-term financial protection products. This is highlighted by the large volumes for which we already account; we estimate that companies following the suggested "guidance" process account for more than 10%[3] of the basic life insurance only products provided annually in the UK today.

Receiving "guidance" now rebuilds trust in advice later

The "guidance" process educates customers who would otherwise not have taken out a protection product – or perhaps purchased the wrong product online - to become much more aware of the nature and availability of long-term protection products and to embed it in their consciousness.

It helps to rebuild trust between the financial services industry and customers who otherwise would not have taken out a product at all (and possibly in future relied on the state).

As these customers become used to paying for basic protection products every month they are more likely to seek out advice for more complicated financial planning products in the future. We are helping to shift the generational "aversion" to long-term financial planning and advice through the educational style of the "guidance" process at the right point in people's lives. When someone *needs* to be aware there is more chance of them being prompted to take financial responsibility for their own long-term financial welfare.

Steps based upon customer experience

We believe that the more experience a customer has of long-term financial planning, the more likely they are to take advice. That is the key to understanding how to change the mind-set of the short term generation and enable them to recognise the need to take advice:

Step 1: Guidance – Customer has not purchased products before, and long-term financial planning is not in their consciousness. Mistrust of financial services and professional advice. To shift their mind-set into taking responsibility requires building trust and the best way to build this trust is not to tell the customer what to do but in fact allow them to make their own informed decisions.

Step 2: Advice – Customer is already used to buying basic long-term financial planning products. Now trusts financial services more and so decides to actively look for more complicated products to be interwoven with the basic products such as Income Protection and Pensions. This is where a fuller advice model typically by an IFA steps in.

Step 3: Execution-Only – Customer knows exactly what they want. Typically has already purchased many products in the past.

(As a note typically the industry has lumped "execution only" and "non-advice" together as a similar journeys to similar customer types, whereas in fact they should be viewed at either end of the customer experience spectrum)

Rather than "Advice Gap", think "Demand Gap"

The way to move liability to the private sector is for more individuals or companies to be purchasing long-term protection products. As opposed to thinking simply of an "Advice Gap" it would be better therefore to think more of a "Demand Gap" – that is the best way of ensuring enough individuals and companies purchase long-term financial products to reduce the liability on the state.

Reducing the "Demand Gap" doesn't require creating more types of products – whether simple or not – there are already plenty of products on the market. It requires simply supporting and encouraging other private companies to move into existing distribution methods to fill the gaps that already exist.

The combined efforts of the industry and the regulator must result in the best way possible of ensuring the protection "Demand Gap" is filled – whether this be through guidance, advice or execution-only.

Summary

A well-positioned "guidance" model could attract companies with large brands, who don't currently operate in the market to help drive awareness even more. By encouraging organisations with the scale to deliver we will finally see a growing, vibrant and open market – as opposed to the one of cannibalisation we have seen in recent years.

The three strands of guidance, advice and execution-only must work in unison to shift the responsibility for long-term financial welfare liability in the direction the treasury and our country needs.

Signatories

Luke Ashworth – Founder and CEO of Protected.co.uk

Jo and David Brewer – Founders of Protectline.co.uk

Paul Foody – MD of BetterProtect.co.uk

About Luke Ashworth

Luke Ashworth is the founder and CEO of Protected.co.uk, one of the UK's largest life insurance comparison websites. Bringing a fresh approach to life insurance, Luke is driven to make it easier and faster than ever before to get customers the protection they need for their loved ones and helping to change the face of protection from a "might-have" to a "must-have". Trading since 2003, Luke now oversees over 140 people providing more than £3 billion in cover to more than 40,000 customers each year.

https://uk.linkedin.com/in/lukeashworth

Sources

[1] Aviva Family Finances Report 2011
[2] Term & Health Watch, Swiss Re 2013
[3] Swiss Re Protection Statistics for Total New Individual Term Sales 2010 – 2014 by volume
[4] https://www.moneyadviceservice.org.uk/en/articles/do-you-need-income-protection-insurance [5] http://www.winstonswish.org.uk/about-us/facts-and-figures/

Financial Advice Market Review – Call for Input

Financial advice provides valuable and often vital support to many savers and we support the Government's goal of increasing access. While some customers know what they want, and non-advised sales play a vital role in making it easy for them to act on this, it remains the case that many customers would benefit from more help.

Prudential has a long history of working with the advice community and is continually impressed by the professionalism and high standards of advisers and the benefit they bring to our customers. However, while the quality of advice to be considered in this review is often excellent, it is now a premium service.

Efforts to ensure advice is of the highest possible standard have had the unintended effect of making it more expensive and risky to provide. This has led to a situation where often only the relatively well-off access advice even though many others could potentially benefit from it. We welcome the Treasury and FCA's recognition of this situation, and we would urge them to do further work to identify which segments of the market are under-provisioned. Free guidance, while an important step forward, will not provide the level of direction and assistance that most customers want and, arguably, need.

We define the 'Advice gap' as any area where supply or demand is lower than you would find in an optimal market. We see four key areas for policy makers to focus on to address this:

- That consumers may find it difficult to find appropriate advice or have to choose between two almost polarised processes – either a non-advised sale or regulated advice. Their real need and demand might be for something in between the two;
- That many who would benefit from the advice currently available choose not to seek that advice and instead favour inaction;
- That due to cost of complying with regulation the cost of advice is, in many instances, disproportionately high relative to the risks of the product purchase. More people would pay for advice if the price was lower (i.e. if advisers, regulators or policymakers could remove cost); and
- That the perceived complexity of financial products relative to average consumer financial literacy fuels distrust and apprehension towards seeking advice.

We believe that effective reform of the advice market can be delivered by addressing all of these issues.

Restricted

Ensuring the Right Supply

The Government should continue to work with organisations like the Chartered Insurance Institute to encourage talented individuals to consider advice as a career. This will include ensuring school leavers have sufficient literacy, numeracy and financial capability – and that career paths are clear and promoted.

However, even with a significant increase in the number of advisers, full advice may be too expensive for some customers who would benefit from more help.

Currently customers have a choice between two routes:

i) non-advised, which allows them to make swift decisions at a low cost, but where they will receive limited support beyond guidance and are likely to be solely responsible for their decision; and
ii) regulated advice, where the advisor provides a personal recommendation based on a detailed fact find and therefore the advisor is responsible for the outcome of the recommendation.

We believe help should be available which is proportionate to the risk of the associated product purchase. This could be through a third or middle option, which does not fall into the current regulatory definitions of either guidance or advice, where responsibility for the decision is shared. We have suggested this might be called a 'recommended sale'.

In a recommended sale, the provider or distributor would help the individual, through direct support or online tools, to purchase a recommended product. The aim would be to help the customer achieve a good, rather than the best, outcome and take positive steps that would improve their long-term finances. To work effectively regulations would need to be changed to reflect the fact that a recommended sale would not result in a 'suitable' product as currently defined and would not carry the same regulatory risk for the seller (though it would point towards an 'appropriate' product). This would put more responsibility onto the customer and reduce, though not eliminate, the liability to the seller. A recommended sale may result in some suboptimal outcomes for some customers, but would significantly reduce cost and boost availability meaning a much larger number could achieve good outcomes. We believe this is an acceptable balance to help a larger number of customers make better decisions.

The distributor and regulator would be responsible for ensuring the tools and support are accurate and not misleading, that the products included are broadly appropriate and understandable for their target market and that the recommendation is appropriate. This may include specific regulation of the process or products. The customer would be responsible for accurately providing their information and then making a final decision based on the recommendation provided. The process could cover a limited or broad range of products depending on the channel and products available and may use clear rules of thumb agreed with the Government and regulator – for example paying off high-interest debts as a priority, or saving in a workplace pension.

If providers or distributors went ahead and offered this type of support under the current regulatory framework it would most likely be defined as advice and would therefore either be too expensive for those who would benefit from it or would be uneconomical to provide.

Restricted

Demand Stimulation

We believe many savers continue to undervalue advice. The Government can help by ensuring Government guidance services and communication plans promote the value of advice and make clear that advice remains the best option for customers with more complex needs or who feel they would benefit from more tailored help.

The Government should also more explicitly promote sensible behaviour regarding saving, withdrawing and protecting your family and loved ones. They should highlight the material benefit of getting advice in these areas, and exploit digital channels to get this message across to a wide range of customers early in their lives.

We also believe the Government should also consider how it can encourage and incentivise employers to provide financial advice as an employee benefit. This should include considering changes to the benefit in kind rules.

The Government could incentivise consumers via taxation or new savings vehicles, for example the "Help to Buy ISA". A simple, straightforward product aimed at the correct demographic of young people incentivising them to save for a clear, tangible goal.

Efforts to boost demand and explain the value of advice will be a critical element of reducing the advice gap. This is not only important at retirement, but also through working life. Government, industry, employers and guidance services should work together to identify how this message can be delivered in a way that is simple and compelling. A significant part of the cost of advice arises from the need to identify those customers who would potentially benefit from advice but would not traditionally seek it out.

Cost Reduction

As mentioned above a significant part of the cost of advice arises from the need to identify potential customers and help them to understand their needs and how advice can help to meet those needs. Efforts to boost demand amongst this group by explaining the value of advice can help to reduce inherent cost.

Technology has a clear role to play in the provision of advice through both automation (so-called 'robo-advice') and increased accessibility (through Skype or other channels). Technological innovation, supported by developments such as the FCA's regulatory sandbox, is already happening and will continue. However, much of it would be better suited to a middle option such as a simpler recommended sale, which more naturally fits with online or more automated provision. We believe that the creation of a middle option would drive innovation, boost competition and increase customer choice.

It's important to note that it does not have to be an "either / or" choice between traditional advice and automated advice. There is also an opportunity for automation to help in the traditional process to reduce cost (e.g. fact finds and recommendation). The savings made could drive down charges for advice and increase access for clients, particularly younger people or others who are more confident using online technology.

Improving access to customers data via a pensions dashboard could also make parts of the advice process cheaper, but only if it is comprehensive and includes their occupational and state pensions, as well as those provided by insurers.

Finally, we do feel automated advice is unlikely to fully replace face to face interaction. Some consumers will always be more comfortable discussing their financial matters in person, especially if they have complex needs.

Allowing customers who have been through guidance to use the information they have received to opt-out of parts of the advice process could also help, but only if advisers have absolute faith in the quality of the process and are not liable for errors made at the guidance stage.

Other, more traditional forms of cost-reduction are possible: for example, if a large employer was to provide advice via a central site (see above on Government encouraging employers to do so) this could significantly reduce marketing and travel costs to the advisor, resulting in a lower price.

The Government is right to look at long-stops and safe harbours for advisers as a way of reducing cost. However, we feel the introduction of our suggested "recommended sale" would be preferable to the introduction of safe harbours.

However, feedback from advisers is unequivocal that the absence of a longstop, and therefore the potential liability to future claims, is a barrier to providing advice, particularly in areas such as defined benefit pension transfers or equity release. In our opinion there is a case for a six year longstop drawing on the existing Limitations Act 1980 for England & Wales. A six year limitation applies to claims relating to contracts.

We do not believe an industry levy to create a subsidy for advice is the right answer. This will most likely push up the cost of advice and create the wrong incentives.

We believe that with a few carefully chosen steps, it is possible to create a virtuous circle, in which demand is stimulated, and then industry players innovate to reduce cost, but it will require initial action from Government and regulators to start the circle.

Question	Response
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?	We are aware of specific needs for consumers in some of the groups listed in relation to braille, sign language or translators, the cost of which may be prohibitive to some firms being able to provide advice. Furthermore, consumers who may be in receipt of benefits as a result of one of the characteristics, i.e. disability, may be in greater need of access to financial advice as direct result of needing to make limited resources go further. We are also aware of charitable organisations that provide support to consumers in the groups listed signposting other organisations to provide financial advice. It is also worth noting that we would generally expect vulnerable clients to be accompanied when discussing their financial needs but some are unwilling or unable to find anyone to do so.
Q2: Do you have any thoughts on how different forms of financial advice could be categorised and described?	Our observation is that the various descriptions of the types of financial advice have been coined to match the regulation that drove them rather than the consumer need to understand them. How the advice is classified is of secondary concern to consumers in comparison to them receiving the type of advice they actually want. For example, consumers expect advisers to act in their best interest and the advice they receive to be non-biased. We believe there is currently a gap in meeting the consumer need for a level of advice where suggestions and pointers are made without a commitment or the need for full professional advice. We also believe that the level of protections afforded should be proportionate to the advice being given or products being purchased.
Q3: What comments do you have on consumer demand for professional financial advice?	The demand for professional advice has increased following the introduction of pensions freedoms. However, in some cases requests are being made from consumers, and are being declined by advisers, for engagement from a professional adviser purely for the purpose of being able to set up their chosen products, i.e. the requirement is being driven by a provider or regulation, not a need from the customer themselves. This specifically relates to the requirement to seek advice where a transfer involves safeguarded benefits of £30,000 or more.

Restricted

Q4: Do you have any comments or evidence on the level of demand for advice from sources other than professional financial advisers?	We have seen an increase in demand for non-advised products following the introduction of pensions freedoms.
Q5: Do you have any comments or evidence on the types of financial needs for which consumers may seek advice?	We agree in principle with the types of financial needs and their complexity However, we would comment that we also need to consider specific triggers or life events that regularly lead to consumers seeking out financial advice, e.g. ill health, receiving an inheritance or seeking to reinvest redundancy payments to boost pension savings.
Q6: Is the FCA Consumer Spotlight segmentation model useful for exploring consumers' advice needs?	The FCA's consumer segments are useful as a starting point to consider the various categories but we'd like to see them expanded to include the likelihood of each segment to seek out financial advice. A comparison of this against the financial issues set out on page 10 could help form a view of those who perhaps need advice but weren't seeking it out, i.e. a gap. We would also support including more information relating to consumer behaviour. Prudential has conducted its own research into the 'mass affluent population aged 50 plus' which considered aspects such as consumers' aspirations, frustrations and needs, including their propensity to use professional advice. We would be happy to share this research.
Q7: Do you have any observations on the segments and whether any should be the subject of particular focus in the Review?	It has been stated that the review intends to focus on "advice in relation to investing, saving into a pension and taking an income in retirement". We would recommend also focusing on those who are yet to accumulate the funds for these types of scenarios. Engaging with these customers now could ensure that future generations will have built up more experience of receiving financial advice and its benefits by the time they reach the point where they are investing, saving for a pension, or taking an income in retirement.
Q8: Do you have any comments or evidence on the impact that consumer wealth and income has on demand for advice?	Consumer wealth, level of income and therefore funds available for investment are undoubtedly significant factors on a demand for advice. Advice on a fixed cost basis is a more significant portion the smaller the investment.
Q9: Do you have any comments or evidence on why consumers do not seek advice?	We agree with the list of barriers and have had feedback that the price of advice in the post RDR era is being increasingly challenged by consumers. A significant factor here is the lack of a link in the minds of consumers between

	the price being paid for advice given today and its value which may not be seen for many years. Consumers also have limited ability to spread the cost of advice. The issue is exacerbated by the requirement to pay up front fees in respect of single premium investments in a single instalment.
Q10: Do you have any information about the supply of financial advice that we should take into account in our review?	The review should consider how the industry attracts the advisers of the future who will be required to deliver the increased demand should the review be successful in its aims. The Government should continue to work with organisations like CII to encourage talented individuals to consider advice as a career. This will include ensuring school leavers have sufficient literacy, numeracy and financial capability – and that career paths are clear and promoted.
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?	There has been an undoubted increase in engagement from consumers post pension freedoms, which has in turn seen an increase in non-advised solutions. However, it has not been at the cost of professional advice. The feedback we have received is that professional advisers have had no issues in attracting business post pension freedoms. The reasons for consumers choosing one or the other are predominately those highlighted in the paper, e.g. cost of advice, size of funds etc. The Government should aim to protect non-advised sales which allow customers to make swift decisions at a low cost.
Q12: Do you have any comments or evidence about the role of new and emerging technology in delivering advice?	Technology has a clear role to play in the provision of advice – both through automation (so-called 'robo-advice') and increased access (through Skype or other channels). Technological innovation is already happening and will continue. However, much of it would be better suited to a simpler recommended sale, which naturally fits with online provision. It's important to note that it does not have to be an "either / or" choice between traditional advice and automated advice. There is a place for automation to help in the traditional process e.g. fact finds and recommendation. If an adviser does not have to spend time collating these documents it is time he does not have to charge the client for. The savings

Restricted

	made could drive down charges for advice and increase access for clients, particularly younger people who are more confident and trusting of on line technology. Improving access to customers data via a pensions dashboard could make parts of the advice process cheaper (e.g. fact find), but only if it is comprehensive and includes their occupational and state pensions as well as those provided by insurers. Allowing customers who have been through guidance to use the information they have received to opt-out of parts of the advice process could also help, but only if advisers have faith in the quality of the process and are not liable for errors made at that stage. Other, more traditional, forms of cost-reduction are possible: for example, if a large employer were to provide advice via a central site (see above on Government encouraging employers to do so) this could significantly reduce marketing and travel costs incurred by the advisor – resulting in a lower price. We would also reiterate our reply to question 2, i.e. we believe there is currently a gap in meeting the need from consumers for a level of advice where suggestions and pointers are made without a commitment or need for full professional advice. Finally, we do feel automated advice is unlikely to fully replace the face to face interaction that some consumers will always be more comfortable with and should receive, for example for complex advice or in a full financial review of their circumstances.
Q13: Do you have any comments on how we look at the economics of supplying advice?	The approach, while likely to be appropriate for smaller firms, may not accurately reflect the models for larger insurers' direct sales forces. Being vertically integrated plays a role in the ability to provide advice to a wider range of clients as do other less tangible factors such as the impact of the brand.
Q14: Do you have any comments on the different ways that firms do or could	We expect consumers to continue to cover the cost of advice in broadly the

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?	same way.
Q15: Which consumer segments are economic to serve given the cost of supplying advice?	The answer will depend on consumers' wealth but also on the kind of advice being sought and given. For example straight forward advice on investment in low risk products such as deposit accounts or ISAs could be just as economic to provide to a consumer in "striving and supporting" as a full financial review with advice on complex products to a consumer in "mature and savvy"
Q16: Do you have any comments on the barriers faced by firms providing advice?	As commented earlier the current feedback we receive is that finding consumers is not an issue in the post pension freedoms market with advisers reporting high levels of interest and business in this area. We would agree that the perception is that the regulatory costs and risks associated with larger investments are the same as those presented by smaller ones. This encourages advisers to shy away from the smaller investments and concentrate on wealthier clients.
Q17: What do you understand to be an advice gap?	Efforts to ensure advice is of the highest possible standard have had the unintended effect of making it more expensive and risky for providers, and have therefore led to a situation where usually only the relatively well-off access advice – even though many others could potentially benefit from it. We welcome the Treasury and FCA's recognition of this situation, and we would urge both to do further work to identify which segments of the market are under-served. Free guidance, while an important step forward, will not provide the level of direction that most customers want and need. We define the 'Advice gap' as any area where supply or demand is lower than an optimal market. We see four key areas for policy makers to focus on to address this: • That consumers may find it difficult to find appropriate advice or have to choose between only two very different sales processes – either a non-advised sale or regulated advice. Their real need and demand might be for something in between the two; • That many who would benefit from the advice currently available choose not to do not seek advice in favour of inaction; • That the cost of advice in many instances is disproportionately high

	relative to the risks of the product purchase due to cost of regulation and more people would pay for advice if the price was lower (i.e. if providers, regulators or policymakers can remove cost); • That the perceived complexity of financial products relative to average consumer financial literacy fuels distrust and apprehension in seeking advice. We believe that effective reform of the advice market be delivered by addressing all of these issues.
Q18: To what extent does a lack of demand for advice reflect an advice gap?	The lack of demand for advice does not in itself represent an advice gap. It could be the case that the products consumers really want aren't available. Pensions, for example, have suffered from a low level of consumer confidence, so, if consumers do not have an alternative that they do trust, the likelihood of them seeking advice on how to support themselves in retirement will remain low. We believe there is place for both advised and non-advised business in the current market. Consumers who are deciding to proceed on a non-advised basis may do so for reasons other than not being prepared to pay a price for advice. Furthermore we believe many savers continue to undervalue advice. The Government can help by ensuring Government guidance services and communication plans promote the value of advice – making clear that it remains the best option for customers with more complex needs or who feel they would benefit from more tailored help, especially those retiring. The Government should also more explicitly promote sensible behaviour regarding saving, withdrawing and protecting your family and loved ones – highlighting the material benefit of getting advice in these areas, and exploiting digital channels to get this message across to a wide range of customers early in their lives. We also believe the Government should consider how it can encourage and incentivise employers to provide financial advice as an employee benefit – including considering changes to the benefit in kind rules.

Q19: Where do you consider there to be advice gaps?	As stated above we believe the gap exists in four areas: • That consumers may find it difficult to find appropriate advice or have to choose between two almost polarised processes – either a non-advised sale or regulated advice. Their real need and demand might be for something in between the two; • That many who would benefit from the advice currently available choose not to seek that advice and instead favour inaction; • That due to cost of complying with regulation the cost of advice is, in many instances, disproportionately high relative to the risks of the product purchase. More people would pay for advice if the price was lower (i.e. if advisers, regulators or policymakers could remove cost); • That the perceived complexity of financial products relative to average consumer financial literacy fuels distrust and apprehension towards seeking advice. We believe that effective reform of the advice market can be delivered by addressing all of these issues.
Q20: Do you have any evidence to support the existence of these gaps?	Significant evidence exists for all four gaps, however we do not have any unique evidence to present.
Q21: Which advice gaps are most important for the Review to address?	All four gaps should be addressed, but the lack of a 'middle option' is the most important.
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?	We would agree with the initial focus areas of the review, particularly the decumulation aspect of smaller pension funds with the new options available to consumers in this area. However, we would also reiterate our response to question 7 that the review should have an aim to address the needs of those who are yet to accumulate the funds for those types of scenarios. The initial focus of the review would again look to result in the sale of financial products.
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?	As per question 22 there is a need today, as a result of pensions freedoms, for those with smaller pension pots to receive advice, in our experience this applies to those with circa £50,000 to £60,000. However, longer term, the review should also focus on those who have yet to accumulate wealth – there

	should be no minimum level, otherwise this runs a real risk of alienating those who need financial advice most.
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?	We believe a third option is needed, which does not fall into the current regulatory definitions of either guidance or advice, where responsibility for the decision is shared. We have suggested this might be called a 'recommended sale'. In a recommended sale, the provider or distributor would help the individual, through direct support or online tools, to purchase a recommended product . The aim would be to help the customer achieve a good, rather than the best, outcome and take positive steps that will improve their long-term finances. To work effectively regulations would need to be changed to reflect the fact that a recommended sale would not result in a 'suitable' product and would not carry the same regulatory risk for the seller (though it would point towards an 'appropriate' product). This would put more responsibility onto the customer and reduce the liability to the seller. A recommended sale may result in some suboptimal outcomes for some customers, but would significantly reduce cost and boost availability meaning a much larger number would achieve good outcomes. We believe this is an appropriate balance to help a larger number of customers make better decisions. The provider or distributor and regulator would be responsible for ensuring the tools and support are accurate and not misleading – and the products included are broadly appropriate and understandable. The customer would be responsible for accurately providing their information and then making a final decision based on the information provided. The process could cover a limited or broad range of products depending on the channel and products available and may use clear rules of thumb – for example paying off high-interest debts as a priority. If providers or distributors went ahead and offered this type of support under the current regulatory framework, it would most likely be defined as advice, and would therefore either be too expensive for those who would benefit from it or would be uneconomical to provide.

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?	Please see our response above in relation to a "recommended sale".
Q26: What can be learned from previous initiatives to improve consumer engagement with financial services?	Previous initiatives, such as stakeholder products focused on the price and charges of the products themselves. As a consequence there was insufficient attention paid to how the consumer engaged in the advice process itself.
Q27: Are there any approaches to the regulation of advice in other jurisdictions from which we could learn?	In the example given of Australia, we would support the outcome achieved from a client having to actively renew fee agreements, i.e. to ensure they continue to receive a service they are paying for. At Prudential our direct sales force will switch off fees being deducted for clients we are unable to contact and are therefore paying for an ongoing service they are not receiving.
Q28: What steps can be taken to address behavioural biases that limit consumer engagement without face-to-face advice?	The Government should also more explicitly promote sensible behaviour regarding saving, withdrawing and protecting your family and loved ones. They should highlight the material benefit of getting advice in these areas, and exploit digital channels to get this message across to a wide range of customers early in their lives. We also believe the Government should also consider how it can encourage and incentivise employers to provide financial advice as an employee benefit. This should include considering changes to the benefit in kind rules. The Government could incentivise consumers via taxation or new savings vehicles, for example the "Help to Buy ISA". A simple, straightforward product aimed at the correct demographic of young people incentivising them to save for a clear, tangible goal.
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 Government is right to look at long-stops and safe harbours for advisers as a way of reducing cost. However, we feel the introduction of our suggested "recommended sale" would be preferable to the introduction of safe harbours.
Q30: Which areas of the regulatory regime would benefit most from a safe harbour, and what liabilities should a safe harbour address?	See response to Q29
Q31: What steps could be taken to ensure that a safe harbour includes an appropriate level of consumer protection?	See response to Q29
Q32: Do you have evidence that absence of a longstop is leading to an advice	Feedback from advisers is unequivocal that the absence of a longstop, and

gap?	therefore potential liability to future claims is a barrier to providing advice, particularly in areas such as defined benefit pension transfers or equity release. There is an increase in the "compensation culture" driven by increased focus in pensions and investments by claims management companies who can thrive on the fact there is no charge or cost, other than time spent, to raise a complaint with the Financial Ombudsman (FOS). The onus is on the adviser themselves to disprove complaints. Furthermore, the lack of a longstop has an impact on professional indemnity insurance premiums. Premiums are increased which in turn pushes the cost of advice up, making it less accessible and viable. In our opinion there is a case for a six year longstop drawing on the existing Limitations Act 1980 for England & Wales. A six year limitation applies to claims relating to contracts.
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?	See response to Q32
Q34: Do you have any comments about the benefits to consumers of the availability of redress for long-term advice?	See response to Q32
Q35: Do you have any comments or suggestions for an alternative approach in order to achieve an appropriate level of protection for consumers?	See response to Q32
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?	A middle option between non-advised and regulated advice would help create the regulatory certainty needed to boost the provision of low cost technological solutions.
Q37: What steps could we take to address any barriers to digital innovation and aid the development of automated advice models?	We believe a middle option between non-advised and regulated advice is needed to drive innovation.
Q38: What do you consider to be the main consumer considerations relating to automated advice?	We consider an individual's desire and confidence to interact with a systematic process to be key.
Q39: What are the main options to address the advice gaps you have identified?	We'd reiterate our response to Q24, i.e. our suggested "recommended sale" approach.
Q40: What steps should we take to ensure that competition in the advice	Boosting demand and customer awareness is the best way to ensure a

Restricted

markets and related financial services markets is not distorted and works to deliver good consumer outcomes as a result of any proposed changes?	competitive market.
Q41: What steps should we take to ensure that the quality and standard of advice is appropriate as a result of any proposed changes?	It is appropriate for the FCA and HMT to continue to monitor the advice market. However, this should consider the problem of those not accessing advice or other services who could benefit, as well as the quality of service received by those using it.

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

Our Ref: TH/FAMR

22 December 2015

By email and post

Dear Sirs,

Regulatory Legal Solicitors' response to the 'Financial Advice Market Review: Call for Input'

1. This response considers the current lacuna whereby principals (firms directly authorised by the FCA (and formerly the FSA)) attempt to evade liability to consumers for the impropriety of their appointed representatives or agents. This causes significant consumer detriment and encourages bad practices within the financial services regulated sector.

2. This response considers the above issue within the context of complaints to the Financial Ombudsman Service ('FOS') - specifically surrounding the FOS' jurisdiction; this issue does, however, have wider ramifications and may be considered a more general legal issue. This is an issue which requires clarity and/or intervention in any event to ensure that both consumers and firms have certainty and know where they stand on this issue. Accordingly, it is suggested that new rules, guidance or legislation is required to achieve this.

3. References will be made to an appendix attached to this response ('Appendix') which shall be paginated for ease of reference. References to page numbers are references to the Appendix. This response shall make direct reference to cases which our firm has been involved in on behalf of our clients, which have been, or are being, considered by the FOS. These documents have been anonymised (for example where a party has been fully-named in the original document, he may be referred to as "Mr X" in this response and also the document will be redacted/amended accordingly; similarly, individual cases will be identified as "Case One", "Case Two" and so on, as opposed to naming the parties).

About Regulatory Legal Solicitors

4. We are a firm of solicitors who specialise predominantly in the field of financial services law. Our workload includes financial services litigation and acting on behalf of consumers raising complaints to various alternative dispute resolution schemes including the FOS, the Financial Services Compensations Scheme and the Pensions Ombudsman Service.

5. We have a wide client base and have acted for a broad range of clients including, but not limited to, consumers, advisory firms, introducers, networks, appointed representatives, wealth management companies, fund managers, product providers and pension providers. We therefore believe that we are suitably experienced and qualified to comment on matters such as these, both objectively and fairly.

6. We note, however, the apparent and significant bias in favour of financial institutions (as opposed to consumers) in respect of these particular matters, and our input is intended to highlight this fact and our concerns in this regard.

The law

7. Principals are liable to consumers for the impropriety of appointed representatives by virtue of **section 39(3) Financial Services and Markets Act 2000 ('FSMA')** which states:

"The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility".

8. The Court of Appeal case of ***R* v *LAUTRO Ex p. Ross* [1993] 1 All E.R. 545** made clear, in respect of the predecessor legislation prior to **section 39(3) FSMA**, that:

   *"**the effect of the section is to make the principal responsible to investors** for the business carried on by the appointed representative"* (our emphasis).

9. This was to ensure that investors had another route to obtain redress and were afforded proper protection where it may not otherwise be available against the appointed representative itself, which is not an authorised person and does not have the same obligations as an authorised person (inter alia in respect professional indemnity insurance). The public policy and legal policy reasons for this are explored in further detail at paragraphs 44 to 47 below.

10. The position at paragraph 9 above was further clarified in ***Page* v *Champion Financial Management Limited* [2014] EWHC 1778 (QB)**, the most recent case which considered **section 39(3) FSMA** itself. The High Court stated in ***Page*** that:

    "Responsibility under Section 39(3), which covers both civil and criminal liability, means that a claimant has the ability to pursue both the authorised representative and the principal – in this case, both the First Defendant and the Fifth Defendant. As Mr Burroughs neatly put it, Section 39(3) prevents an authorised representative from 'falling through the net', so that there is no regulation of his activities by the FCA, achieving this by making the principal responsible for the authorised representative's actions and enabling the principal to be sanctioned if its authorised representative fails to meet the requirements only indirectly imposed on the authorised representative".

11. Interestingly (and certainly noteworthy), the ***Page*** decision refers only to *"enabling the principal to be sanctioned if its authorised representative fails to meet the requirements only indirectly imposed on the authorised representative"* as opposed to making the principal liable only for those requirements directly imposed on the principal (i.e. in respect of only those activities which the principal was permitted to undertake).

12. Whilst **section 39 FSMA** applies only to appointed representatives, similarly, principals are also responsible for their agents (including appointed representatives) under the common law.

<u>The issue</u>

13. It has recently been inferred, particularly by the FOS and some firms, that a principal is able to evade liability to a consumer by virtue of the private contractual arrangements between the principal and their appointed representative/agent, despite the fact that consumers are unlikely to be aware of the existence or content of such contractual arrangements. In essence, the argument made is that the principal did not authorise specific conduct and therefore cannot be held liable as the agent was acting outside of the authority given to it by the principal. We have encountered the following two types of "authority argument":
    i. Where a contract between the principal and appointed representative/agent is silent (i.e. it does not expressly give the appointed representative/agent authority to do something specifically); and
    ii. Where a contract between the principal and appointed representative/agent expressly forbids certain activities.

14. The FOS appears to accept the argument made by some firms, as discussed at paragraph 13 above, as able to preclude jurisdiction; indeed, the FOS appears to adopt this position as

its general policy within the FOS' annual review of 2014/2015 (Appendix, page 1) where it is stated that:

> *"we continue to receive a significant number of complaints about UCIS and other complex investments. In some of these investment cases, we found that the business's appointed representatives had acted outside their authority. As a result, investors were left unprotected – and in some cases, lost all their money".*

15. The FOS' annual review of 2014/2015 also goes on to say:

> *"the complex relationships between business and their representatives can raise difficult jurisdictional questions for us. In some situations only after substantial and lengthy investigations does it emerge that the nature of the particular arrangement means we're ultimately unable to help".*

16. It appears to us that this approach cannot be correct, and ultimately is not, and could not be, what the law intended. One key factor which goes against the position mentioned at paragraphs 13 to 15 above (particularly in the context of appointed representatives) is the wording within **section 39(3) FSMA** which states that *"the principal of an appointed representative, is responsible to the same extent,* ***as if he had permitted it himself****"* (our emphasis); evidently this phrase itself considers a situation where the principal has not himself permitted the appointed representative's conduct, indeed he may have expressly excluded such conduct. Further, **section 39(3) FSMA** goes on to make clear that the principal shall be responsible for *"**anything** done or omitted"* (our emphasis).

17. Some firms and the FOS contend that our firm's interpretation as indicated at paragraph 16 above is incorrect because of the latter wording of **section 39(3) FSMA**, which states that the principal is only liable for the actions or omissions of the appointed representative *"in carrying on the business for which he has accepted responsibility".* The argument they make

is that the scenarios of paragraphs 13(i) and 13(ii) above are instances where the principal has not accepted responsibility and thus falls outside the scope of **section 39(3) FSMA**.

18. We disagree with the analysis of the FOS and firms mentioned at paragraph 17 above; such an interpretation is an unnatural reading of **section 39(3) FSMA** as it conflicts directly with the aforementioned wording at paragraph 16 above; such a reading would essentially undermine the entire purpose and protections that **section 39(3) FSMA** seeks to achieve – to afford investors protection against a regulated firm in addition to the liability of the appointed representative.

19. It is our position that the *"business for which he has accepted responsibility"* is simply a reference to the general financial services business which would be undertaken by the appointed representative, this is to limit the application of **section 39(3) FSMA** so that it does not cover (and make the principal liable for) wholly unconnected business outside of financial services. This position is supported by the predecessor to **section 39(3) FSMA** – **section 44 Financial Services Act 1986 ('FSA')** which referred simply to *"investment business carried on by an appointed representative"*. We consider that FSMA therefore extended the range of activities for which the principal is responsible beyond the narrow range under the **FSA** which was limited simply to "*investment business"*. We consider the interpretation of the phrase the *"business for which he has accepted responsibility"* in more detail at paragraph 52 below.

20. In any event, clarity is required as to what the *"the business for which he has accepted responsibility"* is ultimately referring to, so that both consumers and firms can have certainty.

Regulated activities

21. The FOS' jurisdiction is explained under "**Dispute Resolution: Complaints**" of the **FCA Handbook** ('**DISP**'). Under **DISP 2.3** (formerly **DISP 2.6**) the FOS can consider:

“a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:

(1) regulated activities…

or any ancillary activities, including advice, carried on by the firm in connection with them”.

22. Generally, the type of work our firm is involved in relates to the promotion or recommendation of complex and unregulated investments or financial advice given in respect of entering into such investments. Such activity undoubtedly falls within the scope of the following two regulated activities:
    i. Advising on investments (**Article 53 FSMA (Regulated Activies) Order 2001** (‘**RAO**’)); and
    ii. Dealing in investments (**Article 25 RAO**).

23. Such activities would also, in any event, nevertheless fall within the catch-all category of *“any ancillary activities, including advice, carried on by the firm in connection with them”* under **DISP 2.3**.

24. We have seen instances however where the FOS and firms have contended that an activity is not a regulated activity due simply to the fact that the principal has not permitted the activity. For case examples, see Appendix, page 2 (‘Case One’) and Appendix, page 5 (‘Case Two’). This stance is nonsensical; deciding whether or not an activity is regulated is decided entirely by consideration of the regulatory regime and the relevant law alone, not by reason of a private contractual arrangement between a principal and their appointed representative/agent.

25. By way of contrast, it would be glaringly unacceptable, indeed unconscionable, to suggest that a criminal offence was not a criminal offence simply by construction of a private

contractual arrangement alone with a total disregard of the law; similarly, what a regulated activity is cannot be construed in such a manner - regulated activities are created by law, not by private contracts. In the context of appointed representatives specifically, the **FCA Handbook** does provide some further guidance which is discussed further below at paragraph 26. The position set out in the **FCA Handbook** (as per paragraph 26 below), must undoubtedly also extend similarly to agents as the nature and context is practically the same, and coincides the common law position which is discussed further at paragraphs 42 to 51 below.

<u>The relevant Supervision ('SUP') provisions of the FCA handbook</u>

26. The **SUP** provisions give helpful guidance in interpreting the relevant law in this area. **"*SUP 12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?"*** is the most relevant section. Perhaps most crucially, **SUP 12.4.1AG** states:

    "The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the Act is that the regulated activities covered by an appointed representative's appointment need to:

    > *(1) fall within the scope of the principal's permission; or*
    >
    > *(2) be excluded from being regulated activities when carried on by the principal, for example because they fall within article 28 of the Regulated Activities Order (Arranging transactions to which the arranger is a party)".*

27. **SUP 12.4.1AG** is particularly relevant as this provision clearly considers the possibility of an appointed representative acting outside of the regulated permission given to the principal. It is most telling that **SUP 12.4.1AG** refers to liability under **section 20 FSMA** which deals with *"authorised persons"* acting without permission (being anyone falling outside of the two requirements identified within **SUP 12.4.1AG**). An appointed representative, however, is not an *"authorised person"*, but an *"exempt"* one (see **section 19 FSMA** and **section 39 FSMA**

which makes this clear); thus, undoubtedly this **SUP** provision cannot possibly be considering the liability of the appointed representative.

28. If **SUP 12.4.1AG** were considering the liability of appointed representatives, then **section 19 FSMA**, **section 21 FSMA** and **section 23 FSMA** are the relevant provisions, and thus would have been referred to. Instead, **SUP 12.4.1AG** is clearly considering the liability of the principal (the *"authorised person"*) as a result of the appointed representative's conduct in undertaking activities outside of the principal's permissions. This is clearly an indication within the regulatory framework itself that principals are indeed to be held liable for the actions and/or omissions of their appointed representatives who are acting outside of their scope of authority and permissions.

29. The position at paragraphs 26 to 28 reflects the explicit requirement set out by **SUP 12.6.6R** that:

> *"A firm must take reasonable steps to ensure that each of its appointed representatives:*
>
> > *(1) does not carry on regulated activities in breach of the general prohibition in section 19 of the Act…; and*
> >
> > *(2) carries on the regulated activities for which the firm has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the appointed representative's other business:*
> >
> > *(a) which is performed as an appointed representative of another firm or in accordance with a limited permission; or*
> >
> > *(b) which:*
> >
> > *(i) is, or is held out as being, primarily for the purposes of investment or obtaining credit, or obtaining insurance cover; and*
> >
> > *(ii) is not a regulated activity".*

30. It is particularly noteworthy that **SUP 12.6.6R** states that *"**a firm** must take reasonable steps…"* (our emphasis), which makes explicitly clear that principals are to be held liable in all instances of impropriety by an appointed representative or agent, even where authority has been exceeded.

31. **SUP 12.6.6R** effectively achieves an eradication of the mischief which is currently prevailing at the FOS. Any person acting outside the scope of the principal's permissions or acting in ways prohibited by the principal, will still fall within **section 39(3) FSMA**. **SUP 12.6.6R(2)** makes it particularly clear that any business undertaken by an appointed representative, which is not business for which the principal has taken responsibility, must be made explicitly clear and in an obvious and non-misleading way to consumers. It must therefore be made clear to the consumer that the principal does not take responsibility for that part of the appointed representative's business, in order to be in accordance with the "**Treating Customers Fairly**" ('**TCF**') principles contained within the **FCA Handbook**. For these reasons, private contractual arrangements between the principal and its appointed representative do not fall within the requirement under **SUP 12.6.6R(2)** unless properly communicated to the consumer at the time of dealing/advice – the existence of such arrangements alone (when uncommunicated) does not satisfy the requirement under **SUP 12.6.6R(2)**.

32. This position also eradicates the mischief, for example, of any appointed representative misleading consumers by using the email address connected to a regulated entity for unregulated or other business or for personal use, by continuing to hold the principal responsible.

33. Paragraphs 26 to 32 above also fit squarely with **section 20(2) FSMA** which states that any contravention of **section 20 FSMA** does not *"(b) make any transaction void*

or unenforceable". This means that a consumer is still entitled to redress through the principal, even where the appointed representative has undertaken a regulated activity outside of the principal's permissions. This was clearly Parliament's intention and the reason that this provision exists.

34. All of the responsibilities and requirements identified at paragraphs 26 to 33 stem from the core responsibilities of the principal for its appointed representatives' behaviour under **section 39 FSMA**. In addition, **SUP 12.6.7G** makes clear:

    "The senior management of a firm should be aware that the activities of appointed representatives are an integral part of the business that they manage. The responsibility for the control and monitoring of the activities of appointed representatives rests with the senior management of the firm".

35. Additionally the FCA website (Appendix, page 7), in addressing potential principals, states:

    "You will be responsible for ensuring any appointed representatives meet our requirements. We will not have any direct relationship with the appointed representative.

    You will also take full responsibility for ensuring your appointed representatives comply with our rules".

36. The FCA website goes on to say:

    "Once you agree to be a principal, you are accountable for a range of activities that your appointed representatives carry out, including:

    - *the products they sell and arrange*
    - *any advice they give to customers, and*

- *ensuring they deliver the six 'treating customers fairly' outcomes in the same way a directly authorised firm would".*

37. It is particularly noteworthy that paragraphs 34 to 36 above talk only of the general activities of appointed representatives and their overall effect on the principal - rather than limiting the effect to only activity permitted or authorised by the Principal. This only further reinforces our firm's position that **section 39(3) FSMA** applies generally to financial services business.

38. Finally, the FCA made an important point in respect of **TCF** culture in the **FCA Final Notice 2013: Sesame Limited** (Appendix, page 11), where it stated:

    "The language used internally at Sesame supported an incorrect view that AR's are Sesame's customers rather than the end retail customers".

39. The FCA quote at paragraph 38 above is particularly important and identifies the flaw in the recent FOS decisions we have seen - the consumer is the ultimate customer of the principal – arguments around the relationship between appointed representative and principal are a red herring. The FOS must not be side-tracked into considering private contractual disputes between appointed representatives and principals, which are outside both the jurisdiction and remit of the FOS. Such points are nothing more than a smokescreen to the live issues which are, as has been demonstrated above (and further, below), within the FOS' jurisdiction.

40. We have, however, still seen instances where, despite all of the above, the FOS has agreed with firms and principals have escaped liability even where email sign-offs, business cards and letterheads produced by the appointed representative have led consumers to believe that they were always dealing with a regulated entity. For

actual case examples please note Case One and Case Two (and indeed the general position of the FOS in its annual review of 2014/2015).

41. In such cases the FOS has held that the principal had not authorised such activity by virtue of the private contract between the principal and its appointed representative/agent, and thus the FOS did not have jurisdiction as there was no regulated activity. This stance also fails to entirely take into consideration the fact that in any event, such activities would always be classed as *"any ancillary activities, including advice, carried on by the firm in connection with them"* under **DISP 2.3**. This is supported by the conclusions made by the High Court in ***Martin*** **v** ***Britannia Life*** **[1999] All ER (D) 1495** (discussed further at paragraph 42 below).

<u>The law of agency</u>

42. The position in agency law is somewhat simpler. The High Court confirmed in ***Martin*** **v** ***Britannia Life*** **[1999] All ER (D) 1495** (at part 5 of the judgment) that the normal law of agency also applies to appointed representatives as **section 39 FSMA** is considered a statutory form of agency. The principles considered hereafter therefore apply to both relationships involving agents and also appointed representatives.

43. It is well established in agency law that a principal cannot simply "contract-out" of his liability to third parties.

44. In ***Barwick*** **v** ***English Joint Stock Bank*** **(1866-67) L.R. 2 Ex. 259**, the leading case on this point, it was held:

> *"In all these cases it may be said, as it was said here, that the master has not authorized the act. It is true, he has not authorized the particular act, but he has put the agent in his place to do that class of acts, and he must be*

answerable for the manner in which the agent has-conducted himself in doing the business which it was the act of his master to place him in".

45. Equally, in ***Hamlyn* v *John Houston & Co.* [1903] 1 K.B. 81**, the Court of Appeal held:

    "The grounds upon which it seems to rest, as explained in cases such as Barwick v. English Joint Stock Bank, appear to be that the principal is the person who has selected the agent, and must therefore be taken to have had better means of knowing what sort of a person he was than those with whom the agent deals on behalf of his principal; and that, the principal having delegated the performance of a certain class of acts to the agent, it is not unjust that he, being the person who has appointed the agent, and who will have the benefit of his efforts if successful, should bear the risk of his exceeding his authority in matters incidental to the doing of the acts the performance of which has been delegated to him".

46. Finally the Court of Appeal has recently further explored the underlying legal policy in ***Hamlyn***. In ***Northampton Regional Livestock Centre Company Limited* v *Richard Andrew Cowling* [2015] EWCA Civ 651** (quoting the case of ***Dubai Aluminium Co Limited* v *Salaam & Ors* [2003] 2 A.C. 366**) it was said:

    "The underlying legal policy is based on the recognition that carrying on a business enterprise necessarily involves risks to others. It involves the risk that others will be harmed by wrongful acts committed by the agents through whom the business is carried on. When those risks ripen into loss, it is just that the business should be responsible for compensating the person who has been wronged.

    22. This policy reason dictates that liability for agents should not be strictly confined to acts done with the employer's authority. Negligence can be

expected to occur from time to time. Everyone makes mistakes at times. Additionally, it is a fact of life, and therefore to be expected by those who carry on businesses, that sometimes their agents may exceed the bounds of their authority or even defy express instructions. It is fair to allocate risk of losses thus arising to the businesses rather than leave those wronged with the sole remedy, of doubtful value, against the individual employee who committed the wrong".

47. Whilst it is accepted that the ***Northampton*** case discusses vicarious liability, these principles clearly transpose to agency law and the present matters because "*the underlying legal policy is based on the recognition that carrying on a business enterprise necessarily involves risks to others*" which is undoubtedly applicable to the present matters; further the terms of the **Partnership Act 1890** relied on in ***Northampton*** are very similar to the provisions of **section 39(3) FSMA**.

48. The ***Northampton*** case also clearly expands upon the important legal policy identified in ***Hamlyn***, making clear that there are public policy and legal policy reasons that the principal should be forced to pursue their agent through an indemnity action (after compensating the consumer) and themselves bear the risk of loss as opposed to leaving the consumer who has been *"wronged with the sole remedy, of doubtful value, against the individual… who committed the wrong"*.

<u>Ostensible authority</u>

49. For absolute clarity, ***Martin*** also confirmed that even where an agent lacked *actual authority*, the principal can still be bound under *ostensible authority* principles. The following extract of the ***Martin*** judgment is both clear and self-explanatory:

    "5.3.2 "Ostensible or apparent authority is the authority of the agent as it appears to others": see Hely-Hutchinson v. Brayhead [1968] 1 QB 549 at 583

per Lord Denning. The relevant principle is stated as Article 74 in Bowstead and Reynolds on Agency 16th edition, at page 366, in the following terms:

"Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such actual authority".

See also the well-known passage from the judgment of Diplock LJ in Freeman & Lockyer v. Buckhurst Park Properties [1964] 2 QB 480 at 503".

50. The judgment goes further to conclude:

*"5.3.4 In my judgment the business card which Mr Sherman proffered at the outset of the meeting on 9 May 1991 was the clearest representation that he was authorised by LAS to give such financial advice. It may well be the case that, as Mr Burrell submitted, the unqualified use of the expression "Financial Adviser" on the business card would not have led a reasonable person to believe that Mr Sherman was authorised to give financial advice on matters wholly unconnected with the sale of insurance, but that is nothing to the point. It plainly did represent, in my judgment, that Mr Sherman was authorised to give advice in relation to the sale of insurance, including advice concerning associated or ancillary transactions: in other words, to give "investment advice" in the sense in which that term is used in the 1986 Act (see paragraph 5.2.5 above). In particular, it represented that Mr *36 Sherman was authorised by LAS to advise on the package of transactions which, in the event, he recommended".*

51. Applying ***Martin*** - simply, where a principal permits its name to be represented by an agent in procuring business (or indeed fails to prevent his agent from doing so), then this shall be enough to warrant liability being imposed on the principal. The ***Hamlyn*** case also reinforces this position. Similarly, consumers who have previously been clients engaged in regulated business with the principal and the appointed representative, are entitled to continue to assume that this continues to be the case unless the principal/agent takes proper steps to inform the consumer to the contrary (this position is further reinforced by **SUP 12.6.6R**).

Considering "the business for which he has accepted responsibility"

52. **Section 39(3) FSMA** is the successor to **section 44(6) FSA**, the meaning of which was considered in detail in the High Court case of ***Martin***. Accordingly, ***Martin*** is also the leading case in respect of interpretation of **Section 39(3) FSMA**.

53. Many recent adjudications at FOS, and indeed some final decisions made by Ombudsmen, have considered whether an appointed representative acting in a way prohibited by a principal is outside the scope of **section 39(3) FSMA**; such examples include whether appointed representatives selling products that they were explicitly prohibited from selling, or undertaking a regulated activity outside of the Principal's permissions, fall outside of **section 39(3) FSMA**. This point was, however, directly dealt with in ***Martin*** as the Judge considered:

    "The issue which arises is as to the extent to which such authority extended beyond the giving of advice in relation to LAS products, and in particular whether it extended to the giving of advice in relation to the Bank of Scotland mortgage (a proposition which is denied in paragraph 18(i) of the Defence)".

54. This consideration was made as it was contended in the ***Martin*** case that LAS (the principal) only permitted advice in relation to LAS products and because advice was

given by the appointed representative in respect of a Bank of Scotland mortgage, this was not business for which LAS had accepted responsibility.

55. The Judge found as follows:

> *"5.2.5 In my judgment, advice as to the "merits" of buying or surrendering an "investment" cannot be sensibly be treated as confined to a consideration of the advantages or disadvantages of a particular "investment" as a product, without reference to the wider financial context in which the advice is tendered. As the wide terms of the Fact Find form illustrate, and as one would expect, any advice as to the merits of purchasing or surrendering an "investment" is designed to be based on as full an examination of the client's personal circumstances as the client is prepared to allow… In my judgment it is neither appropriate in the context of the 1986 Act, nor for that matter would it be realistic, to seek to limit the concept of "investment advice" by reference to the extent to which the advice relates to the "merits" (i.e. to the advantages or disadvantages) of a particular "investment" as defined; and if that be accepted, it seems to me that it must follow that the concept of "investment advice" will comprehend all financial advice given to a prospective client with a view to or in connection with the purchase, sale or surrender of an "investment", including advice as to any associated or ancillary transaction notwithstanding that such transaction may not fall within the definition of "investment business" for the purposes of the 1986 Act".*

56. The Judge concluded:

> *"5.2.12 In my judgment, just as "investment advice" extends beyond advice as to the merits or otherwise of a particular "investment" as a product (see paragraph 5.2.5 above), Mr Sherman's authorised activities under the 1990*

Agreement (which, as I pointed out earlier, mirror the provisions section 44(3) of the 1986 Act) similarly so extended".

57. The implication of the findings at paragraphs 55 and 56 above is that the Judge found that even where an appointed representative acts in a manner prohibited or not permitted by the principal, the principal will still be liable (this position is also reinforced by the ***Hamlyn*** and ***Northampton*** cases). The key point to be drawn from ***Martin***, and in particular from those quotes at paragraphs 55 and 56 above - is that the regulated activity is simply advising on investments (i.e. advising on investments generally). The regulated activity therefore cannot be restricted solely to a specific investment or product, and similarly, the appointed representative's authority cannot be restricted to a specific investment or product. Simply, there is either regulated activity, or there is not. This position is reflected within the regulatory framework. Permission is granted to the principal as a whole (i.e. it is given for advising on investments generally and cannot be restricted the principal to only specific investments and products etc.). This position also fits squarely with the position in agency law as per ***Barwick***, ***Hamlyn*** and ***Northampton***.

58. Finally the "**Perimeter Guidance Manual**" of the **FCA Handbook** ('**PERG**') and the **FSMA (Appointed Representatives) Regulations 2001** ('**FSMAR**') appear to define the meaning of the term "*the business for which he has accepted responsibility*".

59. Firstly, **PERG 5.13.3G** states:

    "an appointed representative can carry on only those regulated activities which are specified in the Appointed Representatives Regulations".

60. **PERG 5.13.3G** seems to be a clear indication that the meaning of *"business for which he has accepted responsibility"* has the same meaning as being general

financial services business under the various regulated activities as identified within **FSMAR**.

61. **PERG 5.13.5G** is far more specific and goes on to state:

> *"[the appointed representative] must be appointed under a written contract by an authorised person, who has permission to carry on those regulated activities and who accepts responsibility for the appointed representative's actions when acting for him"*.

62. **PERG 5.13.5G** directly indicates that the principal *"accepts responsibility for the appointed representative's actions when acting for him"*. The term *"when acting for him"* suggests that the term *"business for which he has accepted responsibility"* shall be satisfied when the appointed representative acts in the principal's name in carrying out any activity (which mirrors ***Hamlyn*** and ***Martin***).

63. In accordance with **PERG 5.13.5G**, where an appointed representative carries on a regulated activity outside of the principal's permissions, the principal is still liable under **section 20 FSMA** (as discussed at paragraph 26 above and in accordance with the **SUP** provisions).

64. **Paragraph 2 FSMAR** defines the *"business"* for which appointed representatives are exempt. This confirms that the *"business"* undertaken by appointed representatives is simply those regulated activities identified within the **Paragraph 2 FSMAR** (and accordingly, the **RAO**). **Paragraph 2 FSMAR** therefore (like **PERG 5.13.3G)** indicates that the *"business for which he has accepted responsibility"* is simply those specified regulated activities under **Paragraph 2 FSMAR** and thus the **RAO** (i.e. general financial services business).

65. It is also noteworthy that **Article 25 RAO** and **Article 53 RAO** are specifically *"prescribed"* (and therefore imposed) under **Paragraph 2 FSMAR** for the purposes of any contract under **section 39(1)(a)(i) FSMA** and therefore appear to be implied in any event as being *"business for which [the principal] has accepted responsibility".*

<u>Previous FOS decisions in line with the above position</u>

66. Surprisingly, the recent position of the FOS has not been applied consistently, and is only an argument of which we have been aware of for the last 2 to 3 years. Prior to this, the FOS' general approach tended to be in favour of consumers, and confirmed that private contractual agreements could not preclude jurisdiction (in accordance with ***Hamlyn***, ***Martin*** and ***Northampton***). There are a number of FOS final decisions (made by Ombudsmen) which confirm and agree with our firm's position.

67. The most important previous FOS decision in respect of these matters is directly on point and found within the Appendix at page 13 ('Case Three'). In Case Three the Ombudsman made a *jurisdiction* decision in line with our firm's position and properly concluded that:

> *"I am mindful that the Appointed Representative Agreement was essentially a private matter between the firm and its representative, and not something to which [Mr R] was a party. I therefore do not consider any breach of the Agreement can be used as justification for this service not considering the complaint brought by [Mr R's] representatives".*

68. The *jurisdiction* decision also went on to make absolutely clear:

> *"If [the Firm] believes that its position has been adversely affected if the adviser acted outside the terms of the Appointed Representative Agreement, I consider this is an issue that [the Firm] should address directly with the*

appointed representative. I do not consider this prevents this service from proceeding to investigate the merits of the complaint".

69. The final decision on the *merits* of Case Three (Appendix, page 16) saw the Ombudsman again reach the same conclusion, highlighting that:

    "I explained in my Provisional Decision that I did not agree that certain provisions in the AR Agreement in relation to not holding clients' money and not acting under a power of attorney removed [the Firm]'s liability for the actions of its AR when conducting investment business. The points made by [the Firm]'s representative have not altered my opinion".

70. It is also noteworthy that Case Three also appears to agree with our position at paragraph 19 as the decision refers simply to *"investment business"*.

71. Case Three also plainly embodies those principles found within ***Hamlyn*** and ***Northampton***.

72. Another relevant case is the FOS' final decision found within the Appendix at page 22 ('Case Four'). Case Four involved the issue of an appointed representative acting in ways explicitly prohibited by the Principal; specifically in Case Four:

    "investment contracts with institutions with which [the Firm] had no established agency were expressly prohibited, as was making an application for an investment other than through [the Firm]".

73. Despite the fact that there was an express prohibition, the principal was still found to be liable. Importantly the Ombudsman in Case Four stated:

    "but while what [C] did might amount to a breach of its agreement with [the Firm], I do not think that alters the conclusions I have reached above".

74. This is important as the Ombudsman clarified further that she noticed the importance of the term under **section 39(3) FSMA** that the principal was responsible for *"anything done"* (reinforcing and confirming our position at paragraph 16 above), which would cover all aspects of advice (and also all aspects of dealing in investments under **Article 25 RAO**). Case Four reinforces the approach of Case Three. Importantly, Case Four also confirmed the application of ***Martin*** to FOS complaints.

75. A very important consideration was also made in the FOS' final decision found within the Appendix at page 27 ('Case Five'). This decision considered the scenario of an individual who may use a regulated entity's email address for legitimacy, whilst in actuality, attempting to engage in unregulated/unauthorised activities to take the consumer outside of the scope of regulation.

76. In Case Five, the Ombudsman found that:

> *"It may be that [Mr K] also used his [SF] email address for personal communications. But there is nothing to suggest that the emails referred to above were sent other than by [Mr K] as [Mr T's] [SF] adviser. If, as [the Firm] has suggested, [Mr K] was acting for another entity and that had made that clear to [Mr T] then I would have expected [Mr K] to have reminded [Mr T] of that and that he was using the email address for convenience only".*

77. Case Five evidently sits well with (and reinforces) the position under the **SUP** provisions, as highlighted at paragraph 29 above.

78. Finally, a very recent adjudication has been published which can be found within the Appendix at page 34 ('Case Six') which, in our opinion, is the correct, and indeed

simplest, approach to dealing with these sorts of matters (again in line with Case Three and Case Four, the aforementioned legislation and case law).

79. In Case Six, the principal had a compliance manual/agreement which *"sets out business for which the AR is not licensed"*. In breach of that agreement, the appointed representative in Case Six sold a product which it was not licensed to sell.

80. Significantly, the principal *"held no record of a recommendation given by a registered individual of [the Firm] to invest in Harlequin"*. Essentially, the entire transaction had taken place outside of the principal's knowledge and express authority. Despite this, the simple and ultimate conclusion of the adjudicator was that *"as [Mr N] was an AR of [the Firm] at the time of advice, I consider [the Firm] to have been responsible for the advice"*.

81. This is precisely the stance we would suggest is the most appropriate in matters such as these and the stance that the FOS should be taking. If, as already stated, there is any breach of an agreement between the principal and the appointed representative/agent where the appointed representative/agent has acted outside the principal's permissions/authority, then this is a private matter to be dealt with between the appointed representative/agent and principal through the Court system. Consumers should not be penalised or take the risk of pursuing action against the agent. This is particularly important in light of the cases of ***Hamlyn*** and ***Northampton**.* Case Three in particular also supports this position.

<u>The FOS, the Rule of Law and the need for consistency</u>

82. Like any other body, the FOS is subject to the Rule of Law and most importantly, the need for Legal Certainty – which encompasses the need for consistency in decision making.

83. In ***R* v *Misra* [2005] 1 Cr App R 328** Judge LJ referred to the principle of legal certainty and continued:-

> *"The principle enables each community to regulate itself: "with reference to the norms prevailing in the society in which they live. That generally entails that the law must be adequately accessible – an individual must have an indication of the legal rules applicable in a given case – and he must be able to foresee the consequences of his actions ...." (SW v United Kingdom, CR v United Kingdom (1995) 21 EHRR 363)"*.

84. These same principles translate across to the FOS, as was held in ***Financial Ombudsman Service* v *Heather Moor & Edgecomb Limited* [2008] EWCA Civ 642** where it was stated:

> *"the common law requires consistency: that like cases are treated alike. Arbitrariness on the part of the ombudsman, including an unreasoned and unjustified failure to treat like cases alike, would be a ground for judicial review".*

85. Given the significant and well-analysed (and in our opinion correct) decisions in Case Three, Case Four, Case Five and Case Six - the FOS should be maintaining a consistent approach in respect of jurisdiction in line with those cases. Case Three, Case Four, Case Five and Case Six should be considered guideline cases which give a general direction as to the FOS' approach in these types of matters. This approach would ensure that the FOS is consistent in its approach as required by the ***Heather Moor*** case.

86. There should be no cases which reach those conclusions seen in the FOS' annual review of 2014/2015, Case One and Case Two; such a stance undoubtedly falls foul of the ***Heather Moor*** case as it evidently conflicts with the cases of Case Three,

Case Four, Case Five and Case Six; such a stance would therefore be susceptible to judicial review. In any event, cases such as Case One and Case Two are not in line with the position clearly set out in law. The FOS contended in Case One that it was able to reach a conclusion different to cases such as Case Three, Case Four, Case Five and Case Six, however this is not correct when considered in line with the ***Heather Moor*** case and when considering how the FOS' jurisdiction is properly applied (which is discussed in further detail at paragraph 87 below).

The FOS' jurisdiction

87. Despite the fact that these matters have become unnecessarily over-complex, the FOS' jurisdiction is in actuality quite simple. The FOS may only consider complaints where it has the power to do so by virtue of DISP, FSMA, and any other relevant law and/or legislation (i.e. where dealing with a regulated or ancillary activity under **DISP 2.3**). We have seen instances where the FOS has suggested that its *jurisdiction* is subject to the FOS' "fair and reasonable" analysis in accordance with **section 228(2) FSMA** which would otherwise allow the FOS to depart from the law; this approach is, in any event, incorrect.

88. The "fair and reasonable" assessment under **section 228(2) FSMA** applies only to FOS *merits* decisions and not questions on *jurisdiction*. The question of *jurisdiction* is subject simply to the DISP rules and the relevant law – otherwise referred to as a *"hard-edge finding of fact"*. Indeed, the High Court has confirmed this position in the recent case of ***R (on the application of Chancery (UK) LLP)* v *Financial Ombudsman Service Ltd* [2015] All ER (D) 245**, stating that *"the issue of jurisdiction is not one for the fair and reasonable assessment of the FOS: the FOS is right or wrong"*.

89. Accordingly, by virtue of the position advanced by our firm throughout this response, the law and relevant rules and guidance is overwhelmingly in line with our firm's position, as are the FOS' own previous cases. The arguments put forward by some firms, and indeed accepted by the FOS, are wholly in conflict with the law and previous FOS cases in this regard. It is extremely questionable how the FOS have reached conclusions such as those evidenced in the FOS' annual review of 2014/2015, Case One and/or Case Two, which make no sense when considering the overarching legal position and prior FOS cases which have concluded in line with our firm's position.

<u>Consumer detriment</u>

90. The authority arguments being raised by firms, and allowed by the FOS, undoubtedly cause consumer detriment. The FOS itself openly acknowledges this fact in its annual review of 2014/2015 where it states:

    "In some of these investment cases, we found that the business's appointed representatives had acted outside their authority. ***As a result, investors were left unprotected – and in some cases, lost all their money****"* (our emphasis).

91. The FOS makes clear that this consumer detriment is solely attributable to questionable arrangements which serve no purpose other than to exploit holes in the regulatory framework. Indeed the FOS annual review explicitly states:

    *"****the complex relationships between business and their representatives can raise difficult jurisdictional questions*** *for us. In some situations only after substantial and lengthy investigations does it emerge that* ***the nature of the particular arrangement means we're ultimately unable to help****"* (our emphasis).

92. It would be unfair to deny consumers protection by reason of private contractual arrangements which would be outside of their knowledge. The regulatory regime is in place to protect consumers, and not allow them to be exploited and denied protection.

93. Where a final decision is reached by the FOS similar to the position evidenced in the FOS' annual review of 2014/2015, Case One and/or Case Two, the only option available to consumers is judicial review, which is an option that practically none of our clients (and we imagine most consumers) can afford. This is solely an issue of consumers not having the means to bring a judicial review as opposed to there being no merit in pursuing judicial review. Our firm instigated judicial review action by way of a letter of claim in respect of Case One and the FOS agreed to reconsider the matter (Appendix, page 39) – hence there is indeed merit in these arguments and the FOS accept that.

94. Our clients were fortunate in Case One as our firm agreed to bear the cost for Counsel to review the matters and to draft the letter of claim etc. This is not something our firm could, with the best will in the world, afford to do for all of our clients involved in matters such as these. Quite simply, our clients cannot afford to begin or maintain judicial review action without our support. Our clients are mostly people who have invested the entirety of their pensions and life-savings, putting their faith in their trusted advisers. They are being denied access to redress at no fault of their own, and they cannot afford costly Court actions or judicial review. This is wholly unsatisfactory and our clients are subsequently losing their livelihoods, investments and pensions.

95. Finally, appointed representatives and agents are not required to carry insurance for their activities, a burden which is otherwise taken on by the principal. Should a principal not be liable to the consumer, our experience is that most firms do not have any assets to meet any claims against them and therefore the "man of straw" principle applies. For this reason, the reasoning given in ***Barwick***, ***Hamlyn*** and ***Northampton*** becomes significantly more important.

Conclusion and suggestions

96. For all of the reasons above, we maintain that our approach is correct, and the law, in any event, is in support of our firm's position.

97. We suggest that the simplest way to approach these matters is that where an appointed representative/agent holds themselves out as being part of the regulated firm/principal (even where they do not have actual authority) then the principal shall still be liable.

98. Similarly, where a consumer has had a prior relationship with the appointed representative/agent/principal - the principal should still be liable for any other advice given by the appointed representative/agent subsequently unless the consumer has been told clearly (and in a non-misleading way) that they are no longer dealing with the principal. The evidential burden should be on the principal to show that the consumer has been properly informed of the scope of the business conducted by the agent.

99. As in Case Three:

> *"If [the Firm] believes that its position has been adversely affected if the adviser acted outside the terms of the Appointed Representative*

Agreement,… this is an issue that [the Firm] should address directly with the appointed representative".

100. Such an approach advances the position as per ***Barwick***, ***Hamlyn***, ***Northampton*** and ***Martin*** and is the most satisfactory and fair as it provides an adequate outcome for both the consumer and the principal (which is why the recent position of some firms and the FOS is not correct within the regulatory framework). This approach is the correct approach as properly applied in Case Three, Case Four, Case Five and Case Six.

101. Our proposed approach ensures that consumers are able to obtain redress from the principal, and the principal can then seek to recover their losses from the appointed representative/agent by way of indemnity/breach of contract action (the ***Hamlyn, Martin*** and ***Northampton*** cases highlight the obvious and inherent benefits of this approach). The approach of the firms and the FOS recently however, seeks only to benefit the principals and the appointed representatives/agents, whilst denying consumers a remedy. Considering that the FOS, and indeed the regulatory regime, was created specifically to protect consumers, the recent stance is therefore somewhat concerning.

102. The FCA seems to have moved towards our suggested approach also, as on 30 November 2015 the FCA published on their website the notice "**Improper delegation of authorised activities - a notice for financial adviser firms and their advisers**" (Appendix, page 40). The notice specifically stated that *"delegating regulated advice to an unauthorised party will not mean that the firm can avoid liability or regulatory action for unsuitable advice"*. We believe that this supports our position, but more needs to be done. The only way that this can be achieved is some sort of implementation of new rules, guidance or legislation which confirms that

section 39 FSMA applies in the circumstances which we have highlighted throughout, and indeed as seen in Case Three, Case Four, Case Five and Case Six.

103. Case One is a worrying example of arbitrary decision-making at the FOS contrary to the principles of the ***Heather Moor*** case; indeed, the decision itself demonstrates a blatant disregard for the need for consistency and shows a careless and negative attitude towards these types of matters - a stance we have seen in many other cases at adjudication level.

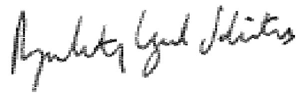
104. Case One is compelling evidence that intervention is necessary to protect consumers, who are otherwise going to be exploited by firms by an unfair loophole in the regulatory regime, which was actually intended solely to protect them. More worryingly – some firms and their agents may seize upon this opportunity to take advantage of such private contractual arrangements and thus protect themselves and instead cause direct consumer detriment.

105. Ultimately, the authority arguments raised by firms and supported by the FOS reflect badly upon the financial services industry, and predominantly, the financial advice sector. Most importantly, such a stance will undoubtedly cause faith in financial advice to diminish where it will be apparent to consumers that firms are utilising loopholes and denying investors the protection that they deserve.

106. Where consumers can see that there is potential for exploitation or abuse, they will choose to avoid seeking financial advice entirely for fear that they have no protection. For consumers who have already lost such cases at the FOS, their faith in the financial advice sector will already have been shattered, and they no longer feel confident in, or able to utilise, financial advice services where the regulatory system has already failed them, causing them direct and significant detriment – to the extent that they have lost everything.

107. Should you require any further assistance or clarification in respect of these matters, please do not hesitate to contact the author of this document, Mr Tobias Haynes, by email at or by direct dial on. Unmodified versions of the FOS decisions referred to in this response are available for inspection and/or disclosure if required.

Yours faithfully



Regulatory Legal Solicitors

To: FAMR Secretariat
Financial Conduct Authority
By email: FAMRSecretariat@fca.org.uk

This is a response to the Financial Advice Market Review – Call For Input.

Who we are and who we represent?

We are a law firm. Amongst other things, we represent financial services firms and their insurers in relation to liability exposures. We have advised on many of the larger exposures to hit the financial adviser industry over the last six or seven years, including (by way of example) structured products, GTEPS, Arch Cru, Keydata, tax mitigation schemes, SIPP disputes, UCIS (including past business reviews) and ETV thematic reviews (and skilled person reports arising).

This response is provided on behalf of a working group of the International Underwriting Association Professional Indemnity Forum Committee ("IUA PIF Committee"). The IUA PIF Committee represents the interests of the member professional indemnity insurance market. In order to respond effectively to the FAMR – Call For Input, the IUA PIF Committee has created a working group comprising of representatives from eight insurance companies that write financial adviser business (the "Working Group").

Opening Remarks

We are pleased to have the opportunity to contribute to the Call for Input. We welcome the involvement of the Treasury, which we believe will bring a different dynamic to the debate.

It is not our intention to respond to each question in the Call for Input paper. Instead, we have focused on those questions most relevant to professional indemnity insurers of financial advisers. These broadly relate to barriers to entry (question 16), safe harbours (questions 29 to 31) and long stop (questions 34 and 35).

Our headline points can be summarised as follows:

- The financial adviser industry is underinsured.
- The current level of liabilities in the industry are unnecessary, unsustainable and ultimately paid for by consumers through fees (which means that too often those consumers who take responsibility for their own affairs are indirectly subsidising those that do not).
- There needs to be increased consumer responsibility for investment decisions. This is the biggest single issue impacting on liabilities.
- FOS is working well but we have concerns over complaint splitting.
- The biggest threat of liabilities to financial advisers comes from the FCA (as a result of its approach to thematic reviews, past business reviews and skilled person reports).
- Safe harbours are unlikely to work.
- A 15 year long stop would be welcomed.
- The FCA must focus on preventing owners of failed firms from dumping liabilities and setting up new businesses. This is key to protecting the reputation of the industry, to reducing the size of the FSCS levy and to creating the right environment for firms and advisers to purchase run off cover.
- The Working Group would welcome the opportunity to meet regularly with the FCA to discuss issues impacting on the industry.

QUESTION 16 – Do you have any comments on the barriers faced by firms providing advice?

The current level of liabilities is unsustainable for firms. The financial adviser market is currently underinsured and at risk of being uninsurable.

We attach at appendix one the FCA's data on complaint redress. The data is split between the following headings:

- Banking and credit cards
- Decumulation, life and pensions
- General insurance and pure protection
- Home finance
- Investments

It is not easy to identify how much of the redress paid as against each of the above types of products relates to financial adviser firms. It would be useful if the FCA could carry out this calculation.

The Working Group estimate that the total premium for the PI financial adviser market is circa £50 million. The Call for Input paper recognises the economics of supplying advice (pages 16 and 17) and that "*revenues need to be sufficient to meet the cost of supplying advice*". At its highest level, the same can be said of professional indemnity insurance for financial advisers. The premiums received need to be sufficient to meet the cost of providing the insurance. The hope for PI insurers is that whilst a number of firms may experience losses, as an industry, the global exposure is less than the global premium on an annual basis.

It is clear from the FCA's own redress figures that financial adviser firms are paying out far more than £50 million in liabilities every year. In respect of "investments" alone, the total redress paid by regulated firms amounted to between £93 million and £185 million in each of the last four full calendar years. For 2015, the first half year figure stood at more than £62 million. That means the industry's redress liabilities over the last 4.5 years are averaging at £117 million per year, almost three times the size of the premiums available.

In reality, the true cost to firms is higher than just the redress figures as they will incur management time and expert costs to assist them in resolving liabilities. Some of these costs might be passed onto PI insurers, increasing the overall cost beyond the redress figures reported by the FCA.

As a consequence, a number of PI insurers have exited the financial adviser market over the last five years. Some of those had written financial adviser risks for a number of years and had been committed to the market. There have been very few (if any) new entrants. Those PI insurers who remain have had to offer increasingly restricted cover, with blanket exclusions for known product failures. Blanket exclusions are also now being added to policies for activities such as claims arising from insistent clients/pension transfers. The exclusions recognise that it is not possible to obtain sufficient premiums to cover industry losses on an annual basis.

In conclusion, whilst the financial services industry is not uninsurable, it is underinsured. This should sound an alarm bell for the FCA. Too often, in deciding how losses should be shared between clients and firms (ie where the balance should lie for the purposes of assessing fairness) it seems the FCA and FOS view firms and their PI insurers as 'deep pockets'. This is simply not the case.

This current underinsurance in the industry will also be a factor behind firm failures.

Significantly, the attached redress figures do not tell the whole story. Financial adviser firms also have to contribute towards the FSCS levy.

Again, it is not easy to identify from the information in the public domain how much of the FSCS levy is paid by financial adviser firms. However, the levy for investment intermediation and life and pensions intermediation alone for 2015/16 totals some £216 million. £192 million of that relates to compensation costs (ie industry liabilities as opposed to FSCS management expenses)[1].

This might not impact directly on PI insurers, but it does beg the question whether the industry as a whole is sustainable with its current exposure to liabilities (directly or via the FSCS). And even if it is, ultimately it is the consumers through fees who will pay the cost of these liabilities. Maintaining unnecessarily high liabilities for the industry is therefore a false economy for consumers.

Liabilities – fairness and greater consumer responsibility

At its highest level, the issue is straightforward. The cost of liabilities is too high and arguably unsustainable for the industry. The reasons for this and what can be done about it are complex. We attempt below to pick our way through some potential solutions but the reality is that there is no one easy quick fix. If a client suffers a loss, it will fall to the client, the firm or both. Like adjusting the slider controls on an old hi fi system, with consumer responsibility at the top and firm responsibility at the bottom, any “solution” invariably involves give and take, adjusting the burden of where any loss should fall between client and firm.

One of the recurring themes of this response is that as a profession, financial advisers are often judged by different standards from other professionals for the purposes of establishing liabilities. The consequence of this is that the burden of where losses fall as between the client and the firm is often decided by principles of “fairness”[2] as opposed to by reference to the standards expected of a reasonably competent financial adviser.

It is significant that the FCA and the Treasury have identified the risk of liabilities as a potential barrier to the availability of financial advice. To date, principles of "fairness" have been limited to what is perceived to be fair between the consumer and the firm. There has to date been no regard for what is fair for those members of the public who are denied the opportunity to obtain advice because of the indirect barrier the current approach to "fairness" creates.

In other words, when considering whether there needs to be a rebalancing of the "fairness" hi fi slider, between firms and consumers, the FCA and the Treasury should have regard not just to the interests of the firm and consumers but also to the population that is denied the opportunity to obtain advice by reason of the barriers created by the current approach (the "wannabe consumers").

[1] http://www.fscs.org.uk/globalassets/levy-information/fscs_levy_rec3-excom-280715.pdf

[2] DISP 1 contains rules and guidance on how respondents should deal with complaints promptly and fairly, including complaints that could be referred to the FOS. DISP3.6.1 provides that the Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all of the circumstances of the case.

In terms of how this might be achieved, rebalancing expectations as regards "fairness" is, at its core, a question of increasing consumer responsibility. Otherwise financial adviser firms too often end up underwriting market losses. This can ultimately be achieved by guidance from the FCA which firms, the FCA and FOS apply when considering complaints/issues of consumer detriment. At the moment, those consumers that take responsibility for their investment decisions are subsiding losses suffered by those that do not and suffer losses as a result. That is not fair either. We would be willing to contribute to a discussion about what any guidance should look like.

Martin Wheatley acknowledged the need to look at consumer responsibility when he said in his March 2015 speech to the NAPF Investment Conference about pension reforms:

"*One of the most significant features of the new policy landscape is that it is effectively a self-selection model, which means it is underpinned by an equation of responsibility that, frankly, we've never seen before.*

Political responsibility certainly, as well as industry and policy making. But also, crucially, consumer responsibility.

…

And it is perfectly reasonable I think for firms to question: where accountability eventually lies if you end up in a situation, say, where X or Y percentage of consumers refuse to listen to any guidance or risk warnings given?

Who, ultimately, is to blame if – ten to 15 years on from now – those people regret whatever choice they've made, or complain they weren't properly guided?

And actually at that point, it becomes difficult to sensibly argue that individual consumers shouldn't accept responsibility. Nor, I think, would wider society expect otherwise."

We have been arguing for the need for greater consumer responsibility well before the pension reforms were announced. We do not think that consumer responsibility is limited to the pensions agenda. It is the closest, however, the FCA has got to recognising that there may be a need to rebalance the question of fairness and the role consumer responsibility plays in that.

<u>The burden of losses under the current position</u>

There will be numerous reasons for why liabilities are so high. Some of the reasons are hard to support with direct evidence. We try to set out a non exhaustive list below.

- One main reason is the fact that the liabilities of financial advisers are not assessed by reference to the standard of care and skill expected of a reasonably competent financial adviser; instead, complaints are resolved under the treating complainants fairly rules at DISP 1 and if necessary, as against what FOS considers to be "fair and reasonable". We comment below on the role of FOS.

- There is now an established claims management industry for bringing complaints about financial products. This industry is much more prepared to reach out to identify potential complainants than has been the case in the past.

- Increasingly, liabilities tend to be product wide (leading to comparisons of PI insurance policies for financial advisers with product guarantee products). Examples of this includes Keydata, Arch Cru and EEA. The biggest concern for PI insurers now is not claims and/or complaints by consumers but industry wide thematic reviews being used as a pre curser to firm past business reviews/skilled person reports. This is a serious concern and one we return to in more detail below.

- Absence of any long stop. This is significant because it means liabilities are open ended. Introducing a long stop would make it easier for PI insurers to price run off cover (because it is easier to rate). However, we are unsure the introduction of a long stop alone will reduce the cost of PI insurance (as reported in the press) or be enough in itself to make run off cover affordable enough for advisers/firms to purchase. To create an affordable market place for run off cover, there needs to be a long stop (in order to have certainty for the purposes of rating the cover) and a shift in the burden of bearing losses between consumers and firms. Without the latter, PI insurers will be able to offer run off but the reality is the cost will be too expensive.

We deal with each of the above bullet points in turn:

FOS

Whilst other professions now have their own Ombudsman, FOS is probably one of the most advanced. FOS is intended to provide a quick, informal and cost effective forum for resolving complaints[3]. The FOS is not obliged to apply the law. These inherent features of FOS can produce frustrations when PI insurers compare dealing with a complaint against a financial adviser against a claim or complaint against other professionals. That said, it has its advantages. Most notably, firms are not exposed to the risk of the complainant's legal fees.

PI insurers have broadly embraced FOS and most insurance policies provide specific cover for FOS awards. We have noticed a recent improvement in the quality of FOS decisions (particularly with the reasoning provided at adjudicator level) and this should be recognised. In conclusion, FOS is broadly working well.

The Working Group's main concern with FOS is an emerging trend to unilaterally split one complaint into multiple complaints attracting multiple FOS limits. It would be useful to obtain data from FOS as to the number of times it has split one complaint into more than one complaint at its own instigation. As a law firm, we are aware of double digit examples. In one instance, we went from one complaint by a husband and wife to 16 separate complaints at the instigation of FOS, meaning a cap on the exposure of £2.4 million – all decided on the basis of what FOS considers to be fair and reasonable.

Often the rationale is that the complaint relates to multiple products and/or advice provided at different times. It is not clear to us where FOS gets its powers to unilaterally split one complaint into multiple complaints. It appears to us that a complaint, like a claim before the courts, can cover more than one product or piece of advice.

At its heart, FOS offers a form of consumer protection. Parliament intended that consumer protection to apply up to a set limit. That limit is currently £150,000 (already much higher than the limits for other Ombudsman schemes for other professions. The limit for the solicitors Ombudsman for example is £50,000). Complaint splitting opens up the quick,

[3] S225(1) FSMA 2000 provides "This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person".

informal and cost effective dispute resolution jurisdiction of FOS beyond that £150,000 cap. The £150,000 cap is intended to provide firms with comfort that they will not be constrained by the imperfect justice of FOS in circumstances where the cost to the firm is more than £150,000. To do so denies the firm and their PI insurers the opportunity to cross examine the complainant, to go through disclosure, to produce expert evidence, to have the matter resolved by a judge deciding the case on the basis of the law as opposed to what is in his view fair and reasonable in the circumstances and to appeal.

In terms of fairness, these complainants are complaining to FOS in the anticipation that one £150,000 limit applies. It is only when FOS unilaterally splits the complaint that they expect multiple limits to apply.

Significantly for PI insurers, despite the improvement, FOS decisions can be inconsistent and unpredictable. PI insurers can cope with that whilst the downsides are capped at £150,000. However, the risk of a £2.4 million exposure being determined at FOS is a real concern and a concerning trend.

Ultimately, the splitting of complaints by the FOS in the way it has done and continues to do so, demonstrates that the FOS is handling large and complex complaints. This was not what was intended by Parliament.

We are also aware of an open consultation relating to increasing the FOS limit to more than £150,000 for SMEs. This is unlikely to impact on financial advisers as they are unlikely to have SME customers. It is worth mentioning for completeness though that the Working Group would be concerned if the FOS limit was increased for complainants who were natural persons.

We would like to see clarity from FOS that it will not unilaterally split or encourage the splitting of complaints.

<u>Claims Management Companies</u>

Increasingly firms are receiving complaints from claims management companies. We note from FOS's Annual Report that for 2014/15, 17% of non PPI complaints were brought by claims management companies (the figure was 79% for PPI complaints). These companies often operate a very simple model. They identify topical products to complain about. They then advertise their wares to recruit potential complainants. Sometimes they will charge the complainant a fixed fee just for looking at their file.

The claims management company then commonly makes a data protection access request of the firm for documents. Once they receive the documents following their data access request, the claims management company sends in a letter of complaint. Often this is a template letter with the complainants' details added. There is no meaningful analysis of the complaint. Instead, the claims management company can rely on the firm's own regulatory requirements to investigate the complaint and respond[4].

The significance of this is that the process of making complaints has very little barrier to entry for claims management companies. It is therefore prone to be abused. And if the complaint is not upheld, the claims management company will submit its complaint to FOS – for free.

In our view, the regulatory rules putting the onus on firms to investigate complaints is there to protect consumers. This is entirely understandable and should not change. The absence

[4] DISP1.4.1.

of any barrier to complaint for claims management companies though has created a cottage industry. This industry is likely to increasingly focus on financial products as the PPI complaints come to an end. We therefore think it is reasonable to assume that the claims management industry for complaints against financial advisers will grow.

We would like to see the FOS introduce small case fees for complaints (possibly £50). This would introduce a small barrier to the claims management companies' current business model. This would encourage claims management companies to vet claims rather than operate a system where there is no deterrent to finding as many investors as possible, complaining on behalf of all and seeing which complaints stick. The fee could be refunded by the firm in the event FOS upholds the complaint (meaning successful complainants are not out of pocket).

FCA

The FAMR paper states: "*If firms follow FCA rules and guidance when giving advice and are not negligent then they will not incur liability and will not need to pay compensation to consumers for advice given*."

We have recognised a growing trend of thematic reviews followed by pressure from the FCA to carry out past business reviews or use of s166 skilled persons (the most recent example being the ETV thematic review and subsequent skilled person involvement which is spiraling out of control both in terms of costs and reasonableness). This gives rise to a number of concerns.

Broadly, the FCA is quick to reach its own conclusions on the standard expected of regulated firms and when redress is payable. Battles often involve debate around whether the FCA (and possibly the skilled person's) assessment of suitability is right (ie has the firm been negligent or breached FCA rules as they were at the time of the alleged breach); causation and loss.

The Working Group are not only concerned about the degree of subjectivity involved in judging whether firms have complied with the FCA rules and retrospective standards being applied (as set out on page 27 of the paper). In addition, they are concerned that too often the FCA's starting point appears to be that the firms have been up to no good and cannot be trusted. The prevailing culture appears to be that the FCA has "got" the firm and the firm then needs to do as the FCA say, notwithstanding how unreasonable.

This approach inevitably drives up costs for firms in the form of management time and/or skilled person reports. Skilled person reports can run to many thousands of pounds and exceed original estimated budgets.

Sticking with the ETV thematic reviews and subsequent skilled person involvement, the ETV cases often involve insistent clients. Seeing how the FCA react and behave as regards insistent client issues in relation to the ETV thematic review and skilled person involvement directly contributes towards some PI insurers' decision to put blanket exclusions on policies for insistent client work. This then creates barriers for firms in relation to pension freedoms.

Comments such as life settlement funds being "toxic" are also unhelpful and likely contribute towards losses (by creating a run on the product). The fact the FCA consider certain products to be toxic does not mean the product is/was toxic. Nor does it mean an adviser who recommended the product to anyone lower than a high risk or speculative investor was negligent. **If the FCA is going to make public comments about the risk profile of specific products or types of products then it should be by reference to an independent expert report which should be made available on request**. It at least then

provides firms with the chance to counter the reasons the FCA conclude a product has a particular risk profile.

PI insurers would like to see clarity brought to the rules relating to redress schemes to make it clear that firms should only be liable to consumers where consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings. A similar test is included at s404 of FSMA in respect of consumer redress schemes and would help overcome the current challenges with the FCA (particularly around causation and loss).

One possible solution to the product wide exposures firms and PI insurers currently experience is for there to be some kite marking of certain products. This could be done by the FCA or via a third party expert (with the third party expert responsible for due diligence and playing a role akin to credit rating agencies). The latter is arguably the free market's response to RDR but it remains early on since the introduction of RDR. It might therefore be that the FCA could kite mark products to start. This would remove the burden of due diligence from smaller firms in particular when assessing product risk profiles and offer greater protection to the consumer.

On the theme of RDR, the Working Group support the FCA's efforts to improve adviser standards across the industry. The solution for better consumer outcomes is to identify weaker or rogue advisers (and take action) whilst simultaneously driving improvement in quality across the industry. This is no easy task. The Working Group recognise that recruiting better people and training the industry to a higher standard costs money (and therefore arguably fuels the advice gap). Longer term, however, it will surely pay for itself through avoided liabilities. The Working Group therefore welcomes the FCA's efforts to maintain the importance it attaches to improving adviser standards and would not like to see that watered down in response to the advice gap. For its part, the Working Group through their network of service providers will continue to reach out to firms to offer valuable training on risk management issues where they can.

The Working Group have been and remain keen to open a regular dialogue with the FCA. On the face of it, PI insurers and the FCA's objectives are aligned. Insurers would like to see fewer examples of bad practice and liabilities and the FCA would like to see more good consumer outcomes . Despite several conversations with various people at the FCA it has not been possible to sort a regular meeting with the FCA. This is something that happens with many other regulators of professions and it has proved to work well with a rolling agenda.

The Working Group would welcome the opportunity to set up a regular meeting with the FCA.

Long stop – Questions 34 and 35

As we mention above, longstop is viewed as a good thing. No other profession suffers from there not being a long stop. Introducing a long stop provision before FOS is unlikely to impact on many complaints. The significance of a long stop is that it creates certainty – a cut off for when liabilities might arise. This in turn would make it easier for PI insurers to rate run off products.

As we mention above, long stop on its own is unlikely to be enough to make run off affordable for many retiring advisers. It makes it possible though. Creating a market for run off policies should, in our view, be a priority for the FCA because it would reduce the burden on the FSCS and make sure that the right firms are paying for the liabilities they create. One

possibility is that as part of capital adequacy requirements, an amount of money needs to be ring fenced to purchase run off cover in the event the firm fails or the adviser retires.

Run off policies are also fairer for consumers as a whole. PI insurers estimate the number of complaints that would be caught by long stop is quite small (as a percentage of total complaints). This is consistent with the views and FOS data expressed in the paper. The argument against long stop is it might create consumer detriment for those small number of complainants – particularly where they are complaining about pensions or mortgages where they might not realise there is an issue until more than 15 years have passed since the advice.

But this ignores the detriment for firms when it comes to handling complaints that relate to activities more than 15 years ago and perhaps more importantly, for the complainants who currently have to claim from the FSCS and who have their compensation capped at £48,000 because the firm they are complaining about did not have run off cover.

Also relevant to the debate is the failure by the FCA to prevent individuals in failed firms dumping liabilities and setting up new firms. These individuals represent the greatest risk to consumers and the reputation of the financial adviser market as a whole. PI insurers would like to see much more done to identify and prevent individuals known to dump liabilities be prevented from returning to the industry (directly or indirectly).

The Working Group consider that a combination of a 15 year long stop and a concerted effort to prevent failed firms from dumping liabilities will help create the right conditions for both the supply and demand of run off cover.

One measure that could complement the introduction of long stop is a requirement for firms to set out on annual statements how long the consumer has to complain about its pension or mortgage. Or to set out the date the product was taken out and to warn that the consumer only has 15 years within which to bring a complaint. Whilst we recognise that the FCA currently has concerns about whether consumers will read these statements and warnings, it is an example of where we consider consumer responsibility should be increased.

The case for long stop is often said to lie with longer term products such as mortgages and pensions. In reality though, very few house buyers stay with the same mortgage company for more than 15 years. Likewise, very few people will not have their pension fund reviewed for 15 years or more. We therefore consider the consumer detriment at the hands of long stop is likely to be small.

It is even possible to argue that long stop risks encouraging poor behaviours by consumers. Having a long stop and telling consumers there is a long stop might encourage consumers to review their financial affairs more often (which is a good thing so long as there are affordable solutions).

For completeness, a compensation fund for complaints about sales more than 15 years ago might work but only if the current FSCS levy is substantially reduced (which our points above address). At the moment, the FSCS does apply long stop and so the introduction of a specific compensation fund for long stop claims would likely increase the overall liabilities of the industry. This is counter to the objectives of paper.

Safe harbour (Questions 29 – 31)

PI insurers are struggling to see the benefits of safe harbours. The solution sounds complicated and potentially confusing. Experience suggests that where the FCA consider consumers have suffered detriment, firms will pay one way or another. There is no

confidence that safe harbours will provide adequate protection for firms and/or their insurers. In our view, the FCA and Treasury are better grappling with the issue of consumer responsibility. This is the heart of the problem. Safe harbours risk being gimmicky and a trap for firms.

Closing Remarks

We recognise that in terms of fixing the advice gap, liabilities only play a small (albeit important) part. There will be much discussion and contribution from others about the front end solutions. We have done our best to avoid this paper reading like a moan. We have focused here on where the Working Group has an interest and a meaningful contribution to make: namely on barriers to entry, long stop and safe harbours. We recognise that there is no easy solution – issues are often interlinked. We hope, however, that this paper provides the FCA and the Treasury with some meaningful and constructive food for thought in respect of the questions in the Call for Input it seeks to address.
By way of recap, our headline comments are:

- The financial adviser industry is underinsured.
- The current level of liabilities in the industry are unnecessary, unsustainable and ultimately paid for by consumers through fees (which means that too often those consumers who take responsibility for their own affairs are indirectly subsidising those that do not).
- There needs to be increased consumer responsibility for investment decisions. This is the biggest single issue impacting on liabilities.
- FOS is working well but we have concerns over complaint splitting.
- The biggest threat of liabilities to financial advisers comes from the FCA (as a result of its approach to thematic reviews, past business reviews and skilled person reports).
- Safe harbours are unlikely to work.
- A 15 year long stop would be welcomed.
- The FCA must focus on preventing owners of failed firms from dumping liabilities and setting up new businesses. This is key to protecting the reputation of the industry, to reducing the size of the FSCS levy and to creating the right environment for firms and advisers to purchase run off cover.
- The Working Group would welcome the opportunity to meet regularly with the FCA to discuss issues impacting on the industry.

Further Input

The Working Group remain committed to the financial adviser industry notwithstanding the challenges identified in this paper. We hope the fact that the Working Group have taken the time and effort to feedback its thoughts is evidence of that. The Working Group are keen for PI insurers to be part of a solution and to play an active part in supporting firms deliver good outcomes for what they hope is a growing client base.

The FCA and Treasury will no doubt have numerous responses to consider. The Working Group would, however, be very happy to continue the discussion in relation to any points of interest in this paper should the FCA and/or Treasury feel that would be worthwhile.

Simon Laird
Partner
RPC LLP

APPENDIX 1

COMPLAINTS – REDRESS

Amount of redress paid by firm
and product type
(from 1 August 2009)

All redress data has been updated from the previous publication due to firm resubmissions.

Reporting periods:
H1 means first half of the year (1 January to 30 June), H2 means second half of the year (1 July to 31 December).

Redress paid by type of product (note 1)	**2010-H1** **Total £**	**2010-H2** **Total £**	**2011-H1** **Total £**	**2011-H2** **Total £**	**2012-H1** **Total £**	**2012-H2** **Total £**	**2013-H1** **Total £**	**2013-H2** **Total £**	**2014-H1** **Total £**	**2014-H2** **Total £**	**2015-H1** **Total £**
Banking and credit cards	51,204,084	58,584,038	59,216,195	62,306,732	75,686,751	62,621,002	52,880,761	58,251,236	88,199,237	144,783,496	212,385,691
Decumulation, life and pensions	42,907,857	34,316,009	39,634,862	39,055,071	40,750,396	41,914,253	48,407,209	45,487,157	49,332,360	49,211,468	40,173,045
General insurance and pure protection	294,245,048	351,530,358	273,375,496	2,157,052,585	3,004,184,925	2,786,317,592	2,392,038,762	2,492,058,660	2,076,285,898	2,152,968,570	1,645,368,012
Home finance	7,471,532	7,810,963	9,068,298	11,526,633	11,714,211	8,061,630	8,477,969	11,995,338	17,576,191	16,809,703	16,029,861
Investments	42,378,307	51,215,534	49,386,844	47,725,338	50,028,323	60,331,216	53,888,802	45,726,385	111,235,429	73,858,502	62,644,772
Total	**438,206,828**	**503,456,902**	**430,681,695**	**2,317,666,359**	**3,182,364,606**	**2,959,245,693**	**2,555,693,503**	**2,653,518,776**	**2,342,629,115**	**2,437,631,739**	**1,976,601,381**

From:
Sent: 21 December 2015 01:26
To: FAMRSecretariat
Subject: Roger Morton

As the response facility on your web-site is not working I am using this medium for a brief reply on certain aspects of this review, which I am listing by question number.

Q03
Problems not sufficiently recognised Include:

(i) The difficulty of finding out information about the quality of firms' services from public sources like their web-sites. (Likewise about the cost of using them.)
(ii) The difficulty of making comparisons between them and a properly informed choice.
(iii) Systemic inadequacies in advice, e.g. about risk, which is too often presented as a single fungible phenomenon rather than accumulation of many phenomena which can conflict with each other. Risk evaluations can be presented in a way which seems more intended to create an impression merely that the IFA has it under control and the customer has nothing to worry about.
(iv) The ease with which an IFA operating through a company which becomes insolvent because of claims for redress by customers can continue in business by setting up another company. This can mean that unreliable IFAs are not removed from circulation, increasing the pool of people who bring IFAs generally into disrepute. It would be better if such an insolvency any successful claim to the FSCS arising from it and perhaps a certain level of claims upheld by the FOS should automatically trigger review of an individual IFA's registration with the FCA.

Building customers' trust of IFAs in general needs to be a long-term project with continuing pressure for rising stndards.

Q16
I think that obstacles include IFAs' own perception of what level or earnings they should get from financial advice. The influence of the pre-RDR and even pre-Financial Services Act culture of high rewards for perfunctory and limited service to customers still lingers. The appearance on advisers' letter headings of medallions indicating membership of the Million Dollar Round Table as though it was an indication of professional training or skills rather than success in extracting remuneration from clients is an illustration of this.

Q17
I like the structure of your suggestion, but would modify it in two ways: (i) by bringing in information as part of the need alongside advice (I believe there are a significant number of people who are capable of working out for themselves what they should do if they can find the right mixture of facts and analysis) and (ii) adding towards the end of your wording "…….that they want *or need in order to make a soundly-based decision* on a need they have……"

Q31 and Q34
I would only comment that any period of time that is specified should run from the time when the person with grounds for complaint actually became aware that advice was deficient, without any test of reasonableness. I base this view on the recent experience of administering the estate of a person I had known, most of whose money had been placed in exotic investments whereas he was a very unsophisticated person, with a need to draw an income from them. During the eight years up to his death there was no sign that he had developed any inkling how grotesquely unsuitable they were and, had he not died, he could have drifted on until all the money was gone and beyond without realising that the investments had been mis-sold and he had a right to claim redress.

Roger Morton
11 Cromford Road
Wirksworth

Matlock
DE4 4FH

Tel. 01629 822388

Personal note: My professional career was mainly in the institutional part of the financial services industry, from which I had retired by 2005. Experience of the private client part has only become at all intense since then, but I have been alarmed at the variable and too often low quality of the service it provides.

About Saga Investment Services:

Saga Investment Services has been developed to open up the world of investing and financial planning to the UK's over 50s in the run up to and throughout retirement, and to make the process as simple and stress-free as possible. It launched on 9 November 2015, and is a joint venture between Saga, the leading provider of services to the nation's over 50s, and Tilney Bestinvest, the expert investment and financial planning group. Customers have access to investment advice and financial planning services, as well as telephone and web-based guidance. Saga Investment Services champions a straight forward and transparent approach to investing, and is a proud member of the Plain English Campaign.

Overview:

Saga Investment Services welcomes the opportunity to respond to the Financial Advice Market Review, and believes that it represents a great opportunity to bring much-needed financial advice to the masses. At the moment, there are many barriers to consumers taking advice – from a wide gulf between the perceived and actual cost of services; a lack of transparency of pricing; the perception of not having enough to qualify for advice; and a lack of trust. In response, we therefore recommend a number of actions to tackle the advice gap.

1. Work with advisory firms, the industry and consumers to develop definitive explanations of what is – and isn't – advice, and find ways to communicate the benefit and value of regulated advice.

2. Make the cost of advice more transparent and help consumers shop around by mandating that a fee schedule is published by every advice provider.

3. Encourage the development to digital financial aggregation tools – a Digital Passport - that allows every consumer to see their financial situation in one place..

4. Strengthen links between public guidance bodies and advisory services, introducing a referral mechanism to ensure that consumers in need of professional advice have a smooth journey to it from these guidance services.

5. Continue with its commitments to give firms more clarity to develop affordable advice models and incentivise new entrants to the market. But in doing so, consumer trust, confidence and protection should remain the Review's top priority, and caution should be taken on measures that seek to remove, reduce, limit or shift liability onto consumers in actions to broaden the availability of advice.

6. Introduce further measures to tackle financial jargon by rolling out a sector-wide approach to plain English.

What do consumers want and need from financial advice?

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

Existing research and regulatory guidance on the different forms of advice that are currently available, and the attempts to categorise them, have been helpful. But the call for input is correct in identifying that the current categorisation of advice does not reflect what consumers perceive as advice.

Consumers don't see professional financial advisers as the sole source of obtaining 'advice'. Almost 40%[1] of over 50s cite the internet as one of the resources they currently use for financial advice, along with colleagues (5%), media (22%), family (22%) and friends (21%).

We believe that the primary aim of any recategorisation should be start with the consumer, and seek to make clear what a consumer can expect from advice, how they know they are receiving advice, what protection they get by taking advice – and what they don't get from non-regulated advice (guidance/information).

Recategorisation of advice should be tested with different groups of consumers – from age, to financial capability to level of wealth – to ensure that new categories are understandable, put through a plain English test to ensure that they're jargon-free, and consumers are clear what they are and aren't receiving.

For reference, Saga Investment Services offers four channels of could be termed as 'advice', but the delineation between regulated advice and information is based on payment for service. Information and Guidance, delivered through tools, downloadable guides, articles, telephone calls, emails and webchats are free; Focused investment advice and Full financial planning services are paid-for.

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

We agree with the call for input's assertion that consumers tend to seek professional financial advice when they have a complex need, with pensions and retirement acting as the trigger. This need has been amplified since the announcement and subsequent introduction of 'Freedom and Choice in Pensions.' In order to participate in this new reform, advice has been mandatory for many consumers – such as those with safeguarded benefits or defined benefit pensions.

However, our research suggests that very few of the 'at-retirement' cohort are currently seeking financial advice. Our research suggests that 6%[1] of over 50s have taken financial advice since the pension reforms were introduced. Of those, 38% took it on an ad-hoc basis, while a small number take advice on a frequent (between six and 12 months) per year.

Despite these low numbers, our research also shows that this cohort is in desperate need of advice. Just 12%[2] say that they have financial plan in place to ensure that they enjoy

---

[1] Populus, on behalf of Saga, based on a representative sample of 1,931 over 50s carried out between 7 and 11 October 2015.

retirement. Tellingly, a third (33%) say that they do see any benefit in taking advice, while over 50s cite the biggest reason for not taking advice is that they do not think they have enough to qualify for it. Other barriers include lack of trust and perceived high cost.

Clearly, more needs to be done to engage consumers and drive demand for professional financial advice, and to drive down the high barriers to entry, in terms of assets needed to qualify. Our research suggests that a large proportion of over 50s would struggle to get advice based on their perception of how much is needed to qualify – almost 40% believe that up to £10,000 is enough; 9% believe that between £10,000 and £25,000 is enough; a further 5% believe between £25,000 and £50,000 is likely to be sufficient. That is not reflective of the current market for professional financial advice as it stands.

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

Saga Investment Services does not have specific recommendations on this question, but believes that there are lessons to be learned from other, less complex areas of financial advice where demand and use of advisory channels is high. Price comparison websites, notwithstanding some issues on transparency of business models, have engendered a great empowerment of consumers in terms of finding the right financial deals to suit their needs. Some are now using individuals' financial data to better optimise and personalise results (such as the Midata initiative for current accounts).

The regulator and Government should build on its work and commitments to reduce the barriers to allow for more sophisticated aggregation of financial products. We therefore back the development of a Digital Passport for financial services, currently being created by The Savings and Investment Policy project (TSIP)[3]. This would allow consumers to see their full financial profile in one place, along with the ability to share their profile with relevant companies, providers and advisers. As TSIP suggests, this could be key to greater engagement, using innovative digital tools to help consumers understand their full financial picture and identify where they need help and advice, as well as potentially streamlining the advice process and reducing costs. It's vital that the Government participates in this work stream, in order to ensure consumers can see their state entitlements as well as their private financial picture.

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

The list of needs identified in the call for input is comprehensive but misses other triggers for financial advice. For example, dealing with the financial implications of a death, divorce, funding care (either for an individual or for a family member), receiving an inheritance or estate-planning are all issues that affect the mass-market, and while not as common as the needs identified, must be addressed.

Particular focus should also be placed upon retirement income planning, and the implications of freedom and choice on low-wealth consumers; what could happen to state

---

[2] Populus, on behalf of Saga, based on a representative sample of 2,999 people carried out between 16 and 22 October 2015.

[3] P14, http://www.tisa.uk.com/downloads/TSIP%20Policy%20Proposal%20Report%202015.PDF

entitlements upon full encashment of a DC pension, for example. This cohort of consumers is currently underserved by advice options available.

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

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

Broadly, the segments look like a helpful route through to the different types of consumer, their needs and their propensity for financial advice. Particular focus should be provided to older segments planning their retirement, which have a greater need for the pension and investment advice that is currently out of their reach.

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

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

Saga Investment Services launched in November 2015 recognising that there are significant barriers that stop the over 50s from both seeking advice and finding professional advice even when they do seek it. Our survey found that, overall, almost 40%[1] of over 50s believe they do not have enough to make a visit to a financial adviser worthwhile. However, this figure fell to 16% for those with a combined household income of £55,000 or more, and increased to almost 50% for those with annual incomes of up to £14,000, suggesting a correlation between level of wealth and demand for advice. A fifth said that they didn't think they needed a financial adviser and 16% stating that they prefer to manage their finances themselves. Trust (6%) and price (8%) were also cited as reasons not to seek advice.

While the price of advice ranked relatively low as a reason not seek advice, we believe that pricing plays an important factor. Some 86% of our survey respondents stated that they were unwilling to pay for financial advice. Of those that would, less than half (44%) were willing to pay more than £100 per year. This suggests a distorted view of the actual market for financial advice. Consumer group Which?[4] placed the cost of advice on the investment of a £60,000 inheritance at an average of £1,452; financial adviser directory Unbiased[5] placed the cost of creating an investment strategy for £50,000 inheritance at £1,500. Meanwhile, Citizens Advice Bureau[6] found that the average cost of advice on a £61,000 pension was likely to be £1,490.

This lack of understanding about the cost of advice has in part been created by a lack of transparency in the advice industry itself. The Which? and Citizens Advice research highlighted the difficulty consumers have in finding out the price of advisory services before they committed to an initial meeting. Which? found that almost two thirds of advisers fail to publish even an indication of service charges on their websites, while Citizens Advice were not given quotes in 42% of the calls it made in a mystery shopping exercise. Furthermore,

---

[4] http://press.which.co.uk/whichstatements/which-calls-for-greater-ifa-fee-transparency/
[5] https://www.unbiased.co.uk/cost-of-financial-advice
[6] www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/AffordableAdviceGap%20(5).pdf

the FCA's own thematic review of adviser charging and disclosure[7], published in December 2014, found numerous failings in the disclosure of charges to customers. Given that willingness to pay for advice and pricing itself creates barriers to seeking advice, consumers have difficulty finding out how much advice costs even if there is demand. The higher levels of engagement in other areas of financial services, such as use of price comparison websites for credit cards, insurance and savings, suggest that effective mechanisms to compare on price could be one factor in stimulating demand.

Saga Investment Services recommends a strengthening of disclosure rules in order to create more transparent environment for consumers to shop around for advisory services. The Financial Conduct Authority should make it mandatory for advisory firms to publish charges in an easily-accessible and standardised format than enables consumers to simply compare the cost of different advisory services. This change could motivate advisory firms to find innovative ways of demonstrating the value of their services, and enhance existing comparison services (directories such as those offered by the Money Advice Service, VouchedFor and Unbiased).

The FCA should additionally carry out further work to help advisory firms show the value of their services, utilising its wide pool of consumer research, behavioural studies and work on smarter communication to share best practice with firms. Statutory financial guidance bodies, such as Pension Wise, the Money Advice Service and The Pensions Advisory Service, also have a role to play in promoting the value of regulated advice. We believe that an open and transparent environment within which consumers understand the benefit of spending their money on advice and have the ability to easily shop around for services can engender trust and thus stimulate demand.

For reference, Saga Investment Services publishes a menu of its charges online[8], with a directly accessible link to this menu on its homepage. The website also contains a calculator that enables customers to input the amount they want to invest and find out how much the online services cost in pounds and pence.

We agree with the call for input's suggestion that lack of knowledge also plays a role in why consumers do not seek advice. Saga's 'Savings and the over 50s'[9] report found that individuals in the over 50s age group are most comfortable, in terms of understanding, with products such as current and savings accounts. Premium Bonds and Cash Isas are understood by a relatively high share of the demographic, with 86% and 79% of respondents feeling they have at least a little understanding of these assets. In contrast, understanding of long-term investments was significantly lower - some 61% stated that they had little to no understanding of investment funds, with understanding even lower for more complex investment products.

---

[7] http://www.fca.org.uk/static/documents/thematic-reviews/tr14-21.pdf
[8] https://www.sagainvestments.co.uk/pricing/fees-and-charges
[9] Attached alongside the submission of this report.

Where are the advice gaps?

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

Technology is pivotal to the service provided by Saga Investment Services (backed by our joint venture partner Tilney Bestinvest), both in terms of the online functionality for the end customer and in ensuring an efficient advisory process. An in-house proprietary analytical system for constructing portfolios, a CRM system that enables us to quickly locate and alert customers to relevant changes, auto-generation of suitability letter templates, and a sophisticated email generation system have enabled us to significantly speed up the advice process.

Proprietary research carried out by Saga has found that consumers in the over 50s segment are likely to want to use technology in combination with telephone services – and that for complex financial decisions, such as retirement planning, the use of technology or digital in isolation is unlikely to be attractive or reassuring enough for them to engage.

As evidenced by the use of technology within Saga's business, technology can play a useful role in providing efficiency and consistency in the delivery of financial advices to consumers, even if the advice is still ultimately given in person. This could mean using technology to streamline in-house services offered by advisory firms, but also third-party technology that act as a tool for engagement for consumers on the path to seeking advice.

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

Looking specifically at Saga Investment Services' current models of advice, face-to-face financial planning only becomes economic for customers with around £100,000 in investable assets – be that from existing pensions or other savings. Our focused investment advisory services allow for a lower-entry point, with a 1% fee at a minimum of £500. Typically, customers with £50,000 or more would get the best value for money from this kind of service.

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

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

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?

We see two primary gaps that need to be addressed by this Review - the first being a concrete definition of advice and the communication of its benefits, with the second addressing affordability.

The FCA must take steps to clearly define the difference between guidance and advice, and work with firms to help them communicate the benefits and value of taking financial advice through the channels available to consumers. As stated in questions 2 and 9, we believe that

this is a vital first step to stimulate demand for advice and drive greater engagement with financial advice.

Without this, any further work to create an environment for affordable advisory services would be undermined – an unstimulated audience that remains confused about what advice can offer to them could retain an unwillingness to pay for services, even if more affordable models emerge.

The Citizens Advice Bureau[10] has carried out some excellent work in uncovering the gaps in advice. Its research uncovered four potential gaps: Access to affordable advice, free advice gap, awareness and referral gap and the preventative advice gap.

We believe that the Review should focus on affordability and awareness and referral by boosting access and signposting to free guidance and strengthening the links between public guidance bodies and professional advisory services. We want to see a more robust referral mechanism through which users of Pension Wise, The Pensions Advisory Service and the Money Advice Service and other bodies are referred to professional advice services. This should be complemented by the setting of key performance targets for these statutory bodies and regular reporting and review of the referral mechanism, enabling the Government, regulators and guidance bodies to continuously learn and react to drive further engagement.

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?

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)?

Yes, we agree that those with low wealth and long-term accumulation and decumulation needs are the correct groups upon which to focus.

[10] https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/debt-and-money-policy-research/the-four-advice-gaps/

What options are there to close the advice gap?

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

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

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

Saga Investment Services welcomes the FCA's commitment to provide more clarity to how different advice models interact and comply with regulations. In particular, the launch of Project Innovate and the regulatory 'sandbox' are forward-thinking initiatives that will help the UK and British consumers benefit from technological innovation, ensure that their rights are protected, and that regulation evolves with new technology, rather than catches up with it. We therefore believe that the FCA should maintain a cautious approach to introducing safe harbours, ensuring that the needs of consumers are prioritised above all else.

In our view, introducing safe harbours that remove liability altogether would place consumer trust and confidence at risk. Furthermore, utilising safe harbours to create strands of advice which reduce liabilities compared to full advice creates even more complexity, something that this Review should seek to eliminate as a factor to drive consumer engagement.

The call for input's suggestion that the FCA provides evidential rules for actions that 'tend to establish compliance', sharing real-world examples of compliant new models, and introducing 'hard-edged safe harbours' should be sufficient to provide firms with the confidence and certainty to provide advice. We expect these kinds of safe harbours to emerge from work firms carry through Project Innovate and the sandbox initiative.

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

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

In order to engender trust in financial advice and financial services more generally, consumers must feel confident not only in the quality of service they get but also that they are protected if things go wrong. Given the long-term nature of retirement savings and investments, consumers need to have the confidence that they are protected from poor advice, no matter when the poor advice becomes apparent.

Any attempts to limit liability must therefore be approached with caution. The outcome of this review must prioritise stimulating demand for advice and financial engagement as well as create the conditions for firms to innovate and broaden the availability of advice. However, this should not be at the expense of solid consumer protection and lower standards that could harm consumers in the long-run. And given that the focus of this review is primarily aimed at assisting average to low-wealth consumers, the potential harm of poor advice could be significant.

We believe that the introduction of a hard 15-year longstop could jeopardise consumer confidence in long-term saving and investment. The Government and FCA should therefore consider other ways to soften the impact of liability ***if*** it is supplied with sufficient evidence that the absence of a longstop genuinely contributes to a barrier to entry to advice or affects the types of consumers currently not able to access or benefit from advice.

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?

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

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

We are extremely encouraged by the steps that the FCA and Government has taken to foster the development of financial technology in a way that benefits a broad range of consumers, stimulates innovation and ensures that new models of financial services can emerge safely. Project Innovate is a forward-thinking initiative that demonstrates the FCA's willingness to encourage emerging business models. Furthermore, we believe the sandbox initiative is an excellent forum for experimentation, and the outcomes should help the FCA develop more pointed guidance on compliant models, and how automated advice services can operate effectively for a broader range of consumers.

Automated advice clearly has the potential to fill the affordable advice gap, but there are a number of issues that both the Government and FCA must consider as new technology is developed to meet the needs of consumers. Firstly, automated advice is reliant on the accuracy of the data that consumers input – and if there are inaccuracies, an automatic delivery of a result or recommendation could result in a poor outcome. Given that automated advice could be attractive to consumer segments with low wealth and potentially low financial literacy, the risk of misinterpretation of data requirements could be high. As suggested earlier in our response, and below in Q39, we believe the development of a Digital Passport that holds all of a consumer's financial information in one dashboard, which could then be submitted or shared with an automated advice service, could be an effective way of mitigating this risk.

The second is an automated advice service's ability to recognise whether or not its end recommendations, be it investment into a model risk-rated portfolio or the recommendation of a financial product, are suitable for an individual, and what mechanisms are in place to prevent consumers from buying products and services that are inappropriate for their needs. A consumer engaging with lower-cost automated advice may have a more complex financial need than the service can offer. The FCA should continue its work in exploring the risks and rewards of automated advice to address these issues.

Recent launches (such as Wealth Horizon and Cora, for example) demonstrate that automated advice models can be built within the regulatory framework as it currently exists. Combined with clear labelling defining the limited scope that an automated service can provide, we believe this channel, therefore, can flourish as a simplified advice model without reducing the high standards that already apply to existing regulated financial advice.

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

We see five key actions that can be taken by the Government and FCA to close the advice gaps that have been identified.

1. The first is to provide clear definitions on the difference between guidance and regulated advice that consumers can understand and engage with. This will give consumers absolute clarity on what constitutes financial advice (and the benefits and protections that accompany it) and what constitutes guidance and information. Creating clean definitions that have been robustly consumer-tested with a range of ages, genders, levels of wealth and financial capabilities will not only help consumers better engage with the services available to them, it will also help firms better define the services they are providing.

2. As one of the main aims of this review is to help consumers' get access affordable financial advice, we urge the FCA to do more to increase trust through greater transparency of advice charges. We believe that the opacity of pricing and consumers' inability to find out how much existing services cost act as a barrier to engagement. The FCA should strengthen its rules around adviser charging and disclosure, making it mandatory for advisory firms to publish their charges in an easily-accessible and standardised format, which can be provided to consumers through every channel.

We believe that this would empower consumers by giving them the ability to properly shop around for advice and to compare the cost of different services. This change could also motivate advisory firms to find innovative ways of demonstrating the value of their services, and enhance existing comparison services (directories such as those offered by the Money Advice Service, VouchedFor and Unbiased). Furthermore, we believe that this transparency should not only be applied to intermediaries but also to the underlying products that consumers purchase. We welcome the FCA's forthcoming asset management market study[11] and want to see outcomes which make pricing clearer to consumers.

However, greater transparency on pricing should be supported by the FCA by helping firms find better ways to communicate the value of advice. The FCA should additionally carry out work to help advisory firms show the value of their services, utilising its wide pool of consumer research, behavioural studies and work on smarter communication to share best practice.

3. We believe this Review provides the Government, FCA and industry with an opportunity to harness technology and empower consumers to better engage with their finances. The outcome of this review should look at ways to speed up the creation of sophisticated aggregation services that give consumers a full view of their financial picture, which can be shared with comparison services and financial advisers. We believe this will help consumers identify where they need professional help with their finances, optimise their financial decision-making and potentially streamline the costs of professional advice.

To this end, we back the creation of the Digital Passport for financial services, currently being built by The Savings and Investments Policy project[3]. Not only will this help with the accuracy and appropriateness of advice, it could also play a huge role in reducing the barriers to engagement with a digital service. Current aggregation services are limited in the

[11] https://www.fca.org.uk/news/asset-management-market-study

products they cover, or require consumers to manually input their own data to make best use of them, a task that is both time-consuming and daunting. Collaboration between the Government, FCA and industry is vital to making tools such as this success.

4. Existing public guidance bodies have a broad outreach to consumers. The Pensions Advisory Service helped 103,000 customers in 2014/15, with more than 1.16m people visiting its website. Almost 2m people have visited the Pension Wise website and it has delivered 40,600 appointments. Meanwhile, the Money Advice Service claims to have 8.4m engaged users and has helped 12.5m people, funding 250,000 free debt advice sessions.

Public guidance bodies must build stronger links with professional advice firms. We believe that the Government should introduce a robust referral mechanism, which signposts professional services to users of free bodies. Public bodies already recognise the limitations of the advice they can give, and are in an excellent position to judge when a consumer needs specialist advice. They should, therefore, be compelled to drive their users and customers onto professional services. We also believe that this should be complemented by the setting of key performance targets for statutory bodies, and regular reporting and review of the referral mechanism, enabling the Government, regulators and guidance bodies to continuously learn and react to drive further engagement.

5. The financial world is perceived by consumers to be complex, and this a large barrier to engagement. We therefore think it's vital that this Review seeks to tackle the jargon that is awash within the financial industry. Wider availability to advice and guidance alone will not enable consumers to be more informed or engaged with their finances – financial services companies have a duty to speak to their customers in plain English. We're pleased that the Government and FCA has backed the work currently being carried out by the Association of British Insurers on pension language, and that it is challenging this group to 'deliver a robust sector-wide solution that can simplify things for individuals.'[12] We ask both the Government and FCA to publish how it will measure the efficacy of this work, its impact on consumers and what actions it might take if the measures taken by this group do not have the desired success.

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 answers to Q29-35.

For further information please contact Gareth Shaw, head of consumer affairs at Saga Investment Services.

[12]www.gov.uk/government/uploads/system/uploads/attachment_data/file/486158/WPSC_response_final_web.pdf

The Financial Advice Market Review

Submission by Santander UK plc

1. Introduction

1.1 Santander UK plc (hereafter, Santander UK) is a wholly owned subsidiary of Banco Santander, S.A.

1.2 Santander UK is a financial services provider in the UK that offers a wide range of personal and commercial financial products and services. It has brought real competition to the UK, through its 1|2|3 products for retail customers and relationship banking model for UK SMEs. As at 30 June 2015, Santander UK was the most switched to bank, attracting 1 in 4 new retail customers. The bank serves more than 14 million active customers with c. 20,000 employees and operates through 900 branches and 68 regional Corporate Business Centres. Santander UK is subject to the full supervision of the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) in the UK. Santander UK plc customers are protected by the Financial Services Compensation Scheme (FSCS) in the UK.

1.3 With its building society heritage, Santander UK has sustained its position as one of the significant mortgage providers in a highly competitive and commoditised market. However, in all other segments, Santander is a challenger bank. In mind-set and business strategy Santander UK is fundamentally different to the Big Four. We have grown our PCA and SME banking businesses by innovating to win customers, whilst having a scale that gives us the geographic reach, brand, recognition and resources to make a difference.

1.4 Santander UK welcomes the Financial Advice Market Review and supports its intention to address gaps in the market for financial advice and to ensure all customers have access to advice they need at a price they are willing and able to pay. In the dynamics of a rapidly evolving marketplace, it is now more important than ever to ensure regulation supports rather than obstructs innovation for consumers. Financial Services are facing new challenges but also new opportunities with the rise of digital to reach more customers than ever before, but institutions will need support and clarity from the regulator and the Government if they are to be bold in pushing innovation for their customers.

1.5 UK assets under management are forecast to reach £7.4 trillion by the end of 2015 – a 9% growth on the prior year and the 7th successive year of growth (CityUK Research). As this trend continues, the retail investment market is moving away from the traditional advisory model and towards platforms in the mass and affluent segments of the market. However, with the implementation of the Retail Distribution Review (RDR) in 2013, increased conduct risks undermined the viability of existing business models leading to many banks withdrawing from the mass market. It is also estimated that up to a third of independent financial advisors pulled out of the market due to increased qualification requirements and new service fee conditions. As such, Santander UK agrees with the HMT and FCA assessment that in spite of this shifting landscape and the emergence of digital players, there remains a gap in the advice market.

1.6 Santander UK therefore makes four recommendations which it believes will counter the barriers to overcoming the advice gap. These are:

- Using the FCA's proposed **regulatory sandbox** to work closely with the regulator in order to confidently develop and market innovative services and products.
- Utilising currently dormant **customer data** to improve efficiency in process.
- **Definitional clarity** on the existing guidance.
- A **customer focused approach** in regulation, particularly around significant life events.

2. Recommendations

2.1 **Regulatory sandbox -** McKinsey estimates that online advice platforms will represent 25-30% of the total UK investment market by 2017 and there has already been a growth in online or "robo" advice in other jurisdictions, such as the USA. However due to uncertainty over existing guidance, regulatory action and high costs - the industry is currently lacking incentive to achieve this and to balance it with the provision of effective, personalised face-to-face guidance when needed. To do this safely and successfully, the industry would benefit not only from the introduction of the proposed sandbox itself, but vitally, from being directly engaged in the development, testing and even approval of advice processes via the scheme. If this could be introduced - working closely with institutions - it would in turn reduce the burden of compliance and oversight for providers, lowering costs and ultimately allowing banks to broaden their advice offering and re-invest in services whilst simultaneously building consumer confidence.

2.2 Of course, as the 'Call for Input' document notes, there have been previous attempts at similar initiatives including simplified products - approved by the regulator - that have failed to increase participation for less financially capable individuals. Charges Access and Terms (CAT) standard ISAs for example, failed to encourage customers into the financial planning market because it did not solve the underlying issues of confidence and understanding for those who were targeted. Using the sandbox in this way for future initiatives would differ from this because it would not only be aimed at enhancing customer confidence, but also, that of internal stakeholders. Once this level of clarity from the regulator is gained, it will provide firms with the confidence to return to, and even expand in the market.

2.3 **Utilising customer data -** Consideration should also be given to how the customer data banks currently hold could be securely and effectively utilised to allow providers to proactively approach customers. Technological advances could identify behavioural biases and recognise moments when face-to-face advice would be suitable for consumer's individual needs or when they might benefit from being directed to an execution-only platform, meaning less financially capable customers could be approached proactively to discuss their options where they may otherwise have been unaware they required or could benefit from advice. Leveraging this data effectively could also shorten the initial customer 'fact-find' which currently takes multiple hours (and is the same regardless of the level or type of investment to be made). Santander UK would support the appointment of an independent figure to assess this possibility with other providers and test willingness to work together in standardising.

2.4 **Definitional clarity -** There are aspects of the current framework that could be simplified to remove uncertainty and ensure simplicity in application. Building on the FCA's 'FG15/1: Retail Investment Advice' (January 2015), definitional clarity from the regulator over the guidance as to the varying forms of advice and the levels of intervention required for each would simplify the advice process for both practitioners and customers. Currently, the guidance is unclear and the legal framework is extremely complex in spite of the aforementioned work earlier this year. As such, fear of misdemeanours and subsequent regulatory action prevents advisors and institutions from entering the mid-market. Until the parameters are clearly defined, companies will remain at the outer edges of advice provision.

2.5 **Customer focused approach -** Santander UK also recommends that the advice process is re-focused onto the customer journey. Currently, the process followed is not targeted towards the customer's needs and overall position. Different types of advice, and the due diligence required to carry it out, should be tailored to better suit a customer at different stages of life or significant life events. Indeed, the complexity of an individual's needs can impact their likelihood to seek advice, as well as their wealth – but the two are often linked leaving customers at the lower end of the spectrum underserved as they are unwilling and unaware of the right type of advice to seek.

2.6 Santander UK recognises that customers – whatever their means - generally seek financial advice around the major life events such as saving for a first home, buying a property and planning for retirement. There is little forward planning and generally the need for professional advice is sought once the event is upon customers and not in advance. The HMT/FCA consumer spotlight segmentation model is useful, but needs more consideration of the customer journey itself and the significant life events.

2.7 To support these efforts, there should be greater focus on the provision of financial education. Santander UK is currently partnering with the Social Market Foundation to conduct research into financial capability and in particular, how individuals use of social media and digital content impacts on their financial capability. More work should be done to educate consumers given that individuals that are more empowered in the financial advice market are more likely to 'shop-around' for their services and know what form of advice they require. This will encourage individuals to demand more from providers, thereby increasing competition and driving-up standards.

2.8 Finally, Santander UK believes that in order to continue to address the advice gap, greater collaboration is needed between the industry, the regulator, the Government and FinTechs. Given the technological landscape is changing rapidly and with it customer needs, Santander UK supports an open and ongoing flow of dialogue. In recent years, uncertainty and insecurity has been embedded in the industry and in practitioners themselves. But if conversations about the market, where the difficulties are and their solutions could happen on a regular basis there would be greater willingness from all to engage in addressing these concerns.

3. Summary

3.1 Santander UK is committed to raising standards in all of the markets in which we operate, and as a scale challenger, we aim to innovate and to deliver products and services to our customers which are simple, personal and fair. The Bank is supportive of the aims of this review and welcomes its dual nature, involving both HMT and FCA, to ensure regulatory actions are well coordinated.

3.2 Santander UK continues to engage with the Review secretariat and is supportive of the ongoing work in this area.

Consultation response

Shelter response to the Treasury consultation on Public Financial Guidance, and the wider FCA Financial Advice Market Review

December 2015

shelter.org.uk/policylibrary

© 2010 Shelter. All rights reserved. This document is only for your personal, non-commercial use. You may not copy, reproduce, republish, post, distribute, transmit or modify it in any way.

This document contains information and policies that were correct at the time of publication.

shelter.org.uk
© 20162015 Shelter

Shelter

Shelter helps millions of people every year struggling with bad housing or homelessness. We provide specialist advice and support on the phone, face to face and online, and our legal teams can attend court to defend people at risk of losing their home.

However at Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That's why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

© 2016~~2015~~ Shelter

Introduction

Shelter welcomes this opportunity to respond to the Treasury consultation paper on Public Financial Guidance, and the wider Financial Advice Market Review co-ordinated by the FCA.

Shelter works to empower people with housing problems to keep, access and improve a home. We provide free, expert housing advice to anyone, no matter what their situation, through face to face, telephone and digital advice, as well as second tier advice services. Housing and financial advice is often linked and the provision of free-to-client, impartial financial guidance to give clients the information they need, to make financial decisions directly or to seek the right additional advice to help them to do so, is often an important component of our advice services.

Last year (2014/15), 4.5million people came to us for help - online, in person and over the phone. 116,000 calls for support were answered by our helpline, which is open every single day of the year, 4.4m people use the advice pages of our website and 69,000 people received help through our face-to-face advice and support services.

Shelter debt advice and financial guidance services

Shelter services are delivered via a combination of:

- A national telephone helpline
- online advice and web chat
- face-to-face legal advice and advocacy services
- face-to-face support services
- services in prison and via the Transforming Rehabilitation programme
- specialist services supporting clients with more complex needs.

In addition we provide an England-wide specialist second tier advice and training service (National Homelessness Advice Service), to support frontline agencies to deliver best quality advice regarding housing debt, to Local Citizens Advice, other independent advice agencies and Local Authority housing departments.

Shelter provides specialist debt advice in relation to housing (including mortgage debt) via services funded by the Legal Aid Agency (Community Legal Advice Contract), British Gas Energy Trust and a specialist Housing Debt Casework team funded by the Department of Communities and Local Government.

Shelter is also a registered intermediary for Debt Relief Orders.

Summary

- There is growing and urgent need for financial guidance and advice
- At the same time, there is evidence of advice deserts in some localities where private and voluntary advice providers have closed down. This has been exacerbated by changes to Legal Aid funding and scope, further restricting access to specialist advice.
- Timely and appropriate financial guidance can prevent longer term vulnerability or negative financial behaviours being established. This is more costly and time consuming to address when a person reaches financial crisis point.
- Recent changes to Government housing policy, such as the introduction of new homeownership products, such as Help to Buy, extended Right to Buy, Shared Ownership and Rent to Mortgage schemes, will create further need for financial education, guidance and advice to ensure people choose an appropriate housing option.
- Shelter recommends the creation of a Government-backed, comprehensive package of independent financial housing advice which is available free-to-client and guides them through key financial considerations.

© 2016~~2015~~ Shelter

- Shelter recommends that financial advice should be client-centred, aimed at meeting the needs of people at different life stages, such as starting work, starting a family, ill-health, retirement and bereavement.
- We recommend that a statutory body should co-ordinate debt advice by putting in place a single gateway for all relevant funding, with clear criteria, aimed at developing a diverse sector to meet the needs of local areas and clients.
- We would like to see increased client choice in where and how they access services, e.g. telephone, online, self-help, advocacy and practical interventions. This should ensure accessibility to clients covered by the Equality Act categories.
- Rather than reinventing a quality standard for financial guidance and advice, quality assurance should be based on the standards that already exist to ensure it is compatible with existing service delivery methods.
- Shelter is keen to work with the Government to advise in more detail what form financial guidance might take and how best to utilise the specialist housing debt advice and financial guidance that we provide.

Difficulties accessing advice

Across the UK, there are 8.8 million individuals who are over-indebted.[1]

Recent research from Citizens Advice[2] suggests that up to 14.5 million people who think that they would benefit from free advice have not taken any in the past two years. This number includes 5.3 million people who have needed free advice but haven't taken it and 735,000 people who have tried to get free advice in the past two years, but could not access it due to a lack of supply. As many as 10 million people who think they would benefit from free advice are not aware of public financial guidance, including 3.3 million people who said they needed free money advice but did not know it existed or where to get it. Finally, a gap in preventative advice means that as many as 23 million people who would have benefited from having money advice as a preventative measure, at least once in their life, have not received it.

Increasing advice deserts

The size of these gaps is shocking but comes as little surprise to us at Shelter. Even if people are aware that they need help to resolve debt issues, it is increasingly difficult to find legal advice and representation.

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO 2012) led to significant changes to legal aid funding, and the removal from scope of a great deal of advice work (including preventative and early-stage debt advice). Unless someone is actually homeless, or is in immediate danger of homelessness, it is now very difficult to get specialist debt or housing advice.

Despite Government assurances that the supply of Legal Aid would not be affected by LASPO, it is already clear that there are areas of the country where it is almost impossible to get legally-aided face-to-face advice. Ministry of Justice research published this month shows that the not-for-profit sector has halved in size since the last major study conducted 10 years ago,[3]

---

[1] Money Advice Service (2013) Personalising the debt sector: A segmentation of the over-indebted population
[2] https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/debt-and-money-policy-research/the-four-advice-gaps/
[3] MoJ (December 2015) Survey of Not-for-profit legal advice providers in England and Wales

© 2016~~2015~~ Shelter

The need for debt advice - a case study[4]

With a population of around 356,000, Barnet is one of the largest boroughs in London. Research by StepChange[5] 'showed that Barnet was the London borough with the highest levels of unsecured debt. The research showed that, on average, Consumer Credit Counselling Service (CCCS) clients in Barnet had £22,006 of unsecured debt. This is in line with MAS reports from 2013 that the most common debt type that clients present with is credit cards, around a fifth (21%) of clients said that they were concerned about this when they contacted a debt advice centre.

In 2013/14, 21% of Barnet CAB workload was debt advice. The CAB reported a sharp increase in the amount of debt enquiries, with clients increasingly finding themselves in debt. This has a significant impact on the security of their home as they may not be able to keep up with mortgage or rent payments and could face eviction. We know from MAS data that clients contacting debt advice agencies in the last six months have a younger profile than the population in Great Britain, are twice as likely to have a mental or physical disability that affects their day-to-day lives, and those contacting the debt advice service are far more likely to be from lower social grades.

A new market for financial guidance - affordable homeownership policies and schemes

The Government's current focus on 'affordable homeownership' will again change the context of the advice and guidance landscape. Schemes such as Help to Buy (Equity Loans and Mortgage Guarantee), extended Right to Buy, Shared Ownership and Rent to Mortgage are all designed to help people move from being tenants to homeowners. Government statistics show that 130,000 households have taken up the opportunity to buy their own home through Help to Buy since it was launched in 2013, 80% of whom have been first time buyers.[6] People assessing whether to purchase a home, most likely the largest financial transaction they will consider in life, need advice and guidance on whether taking on a large housing debt is appropriate for them and the possible consequences, in the short, medium and long terms, of their decisions.

Extending Right to Buy to social housing tenants will see people who are used to being tenants (and not being responsible for managing the costs of repairs and maintenance) becoming homeowners, and suddenly responsible for these on top of a mortgage payment. Our experience of mortgage debt advice is that former Right to Buy clients can financially overextend themselves and so access to specialist, independent advice is an important part of the process.

Schemes such as this could, more properly, be considered to be 'assisted' rather than 'affordable' homeownership schemes. Certainly they introduce a new section of the population to the home-ownership market, all of whom will need to fully understand not only the commercial offers made by mortgage companies but also, and as importantly, the implications of the various Government schemes. These include taking on a five-year loan as part of Help to Buy Equity Loan scheme, and being able to compare the cost of a typical Help to Buy mortgage payment with a rent payment in the Private Rented Sector. A crucial part of this will be help for people who get into financial difficulties with the schemes, and who potentially face a higher risk of repossession and homelessness - an unintended consequence.

Shelter sees a clear analogy here with PensionWise, the Government-backed guidance delivered face-to-face by Citizens Advice and via the telephone by the Pensions Advisory Service.

The Government should consider introducing a comprehensive package of independent financial housing advice which is available free-to-client, and guides them through different

---

[4] 'Local Needs Assessment' from Shelter's Barnet Capitalise Funding submission (unpublished)
[5] StepChange (2012) London in the Red
[6] https://www.gov.uk/government/news/help-to-buy-helping-130000-own-their-own-home

© 2016~~2015~~ Shelter

financial considerations including affordability in renting, homeownership, the implications of claiming Support for Mortgage Interest as a loan. This would be particularly appropriate at different life stages, such as starting work, starting a family, ill-health, retirement and bereavement.

We would welcome the opportunity to discuss in more detail what form this guidance might take and how best it could utilise the specialist housing debt advice and financial guidance that Shelter can provide.

Response to specific consultation questions

Question 1: Consumers in vulnerable circumstances and people who have protected characteristics under the Equalities Act 2010

In Shelter's view, it is very important that the sector builds services to meet client needs and recognise that people can be at times 'temporarily vulnerable' (e.g. following bereavement, loss of job, relationship breakdown, significant illness or have longer-term vulnerabilities). Timely and appropriate, financial guidance interventions can prevent longer term vulnerability or financial behaviours being established, which are more costly and time consuming to address.

In our experience, it can be embarrassing and difficult for anyone facing debts to seek advice. Experience from our Services shows that the decision to get advice is almost always driven by a crisis, and people find themselves under a lot of pressure before seeking the advice they need. Once people have got into debt, they miss payments, borrow money, catch up with one payment and then default on something else. Creditors call, putting pressure on people to pay and those who are most demanding, or threaten most forcefully, 'win'. Creditors increase the pressure on people by telling them things that are not necessarily correct, such as they will be taken directly to court. People then avoid answering the phone or opening letters until the situation becomes desperate and the bailiffs due or they do receive court papers.

Work undertaken by the FCA on consumer vulnerability[7] has been useful in highlighting the need for a flexible definition of vulnerability, based on customer needs and circumstances. The protocols developed for the financial sector in relation to the disclosure of vulnerability, management of sensitive information and dealing with wider family or support workers provide a useful framework to ensure that the public financial guidance sector takes a personalised approach - to deliver the most appropriate service for the client.

Digital financial guidance can be very helpful. However, 23% of UK adults do not possess basic digital skills.[8] Therefore, it will be important that any channel shift to online information and resources (e.g. self- help) needs to be complemented by access to direct help (by telephone or face-to-face where the client requires it).

Current advice provision is increasingly geared towards self-help or the client acting on advice given. For some clients, however, our experience suggests that a more interventionist and managed approach to the advice process can achieve better results more quickly. Vulnerable clients may have multiple issues to address, including financial capability, debt, welfare benefits and income maximisation, which are directly related to financial advice and guidance. Referrals from one provider to handle specific areas of advice can be detrimental to the client, because it means dealing with a number of different agencies and can require repeatedly describing the issues faced to a number of providers - passing vulnerable clients between and across agencies risks their disengagement.

Chapter 2: Debt advice

---

[7] FCA Occasional paper 8
[8] http://www.go-on.co.uk/issue/

© 2016~~2015~~ Shelter

Shelter

The importance of Government funded debt advice

Shelter believes that it is vital that Government funds debt advice. We recognise the findings of the Money Advice Service research in our own service outcomes. **For NHAS Housing Debt Casework, debt advice prevents homelessness or achieves another positive outcome in, on average, 60% of the cases we handle, even late stage eviction cases.** The benefits of debt advice to clients can include the following, many of which also have substantial benefits to wider society:

- Reduction and eradication of debt
- Improved emotional well-being
- Improved mental health
- Prevention of homelessness
- Maintaining employment and earning
- Increased income
- Avoiding criminality
- Reduced court process and associated costs.

Q2. What additional, or alternative functions and structures could a statutory body put in place to effectively coordinate debt advice provision?

Shelter has a number of suggestions as to how the current MAS process for awarding and co-ordinating contracts for debt advice could be improved. These include:

- taking more account of existing local need and provision;
- taking better account of wider advice needs and the needs for these to be catered for under one roof - to avoid multiple referrals which can lead to a poor customer journey;
- greater transparency, objectivity and accountability in awarding contracts
- improved engagement with the wider advice sector and funders.

In addition, we believe that MAS Quality Assurance could be improved. It is currently emerging as quite rigid and does not always work well with existing standards, which are already audited. This risks duplication, the exclusion of some providers and unnecessary cost and administration.

We recommend that a statutory body should co-ordinate debt advice by putting in place:

- A single gateway for all relevant funding, with clear criteria, aimed at developing a diverse sector able to better meet the specific needs of local areas and clients. Criteria should encompass multiple issues relating to debt, e.g. employment, health, relationship breakdown and domestic abuse (including financial abuse), welfare benefits and income maximisation, and life-stage advice needs.
- An accessible client gateway to debt advice delivered both nationally & locally.
- Increased client choice in where and how they access services, e.g. telephone, online, self-help, advocacy and practical interventions – creating a single journey for a client who can access support at different points depending on their particular needs.

Q3. What role should a statutory advice body have in providing quality assurance and setting standards for debt advice?

Shelter recommends that:

- Rather than reinventing a quality standard, quality assurance should be based on the standards that already exist to ensure it is compatible with existing service delivery models.
- Audits of quality standards should be transparent and independent – a process of self-assessment coupled with a process of verification.
- Quality assurance should focus on client outcomes, the impact and the value of the service to the client rather than bureaucratic process.

Shelter has noted with interest the MAS work on introducing a Standard Financial Statement (a template for recording income and expenditure amongst debt advisers and creditors), which will eventually

© 20162015 Shelter

replace the Common Financial Statement. It is currently being piloted with PayPlan and AdvicePro. We believe this will be a helpful contribution, provided the principles set out above are adhered to. However, we also feel that it would be helpful if the Governance Group developing the statement drew on representatives from the wider financial guidance and advice sector.

Q4. What scope is there to rationalise the funding of public financial guidance provision on debt?

We believe that a range of providers can better meet client needs for specialist advice and guidance and would not support there being a single, monopoly, provider of all debt advice. Shelter, for example, brings particular expertise in the crossover areas of housing and finance.

As stated in the consultation document, there are a number of organisations involved in funding debt advice at a national and local level. These include, for example, the FCA levy, BIG, MoJ, local authorities, corporate bodies, housing providers and local and national trust funds. As recommended above, a statutory body could better co-ordinate these funds and eliminate duplication, lack of targeting, artificial competition - both for funds and clients - and identify gaps in provision. Funding streams need to be transparent and provide a level playing field for a range of providers to bid for, and secure, funding.

Chapter 3: Pensions

Q6. How could the organisational delivery of public financial guidance on pensions be improved to provide greater efficiency?

Shelter understands that the Department of Work and Pensions (DWP) plans to tender for an advice provider for Support for Mortgage Interest (SMI) loans. Given that 45% of SMI claimants are pensioners[9], it would be logical to link this to pension advice. SMI loans will come into force from April 2018 and will be for both existing and new claimants of SMI - there are currently 170,000 SMI claimants so 45% would equal 76,500 pensioner households who are likely to require advice and guidance.

Chapter 4: Money guidance and financial capability

Q8. Are the statutory objectives underpinning MAS the right ones?

Shelter agrees that the statutory objectives underpinning MAS are broadly the right ones.

Q9. What role, if any, should a statutory body have in providing general money guidance?

Shelter believes that the role of a statutory body should not be to 'provide' general money guidance but to ensure that it is provided (any gaps identified and filled) by specialist, impartial, independent providers. It should also:

- ensure that there is universal access to clear information on all aspects of financial products and options (including affordable homeownership) – provided via a range of accessible routes;
- embed general money guidance into the school curriculum as a requirement for local education authority-managed schools, free schools and the academy network; and
- ensure access to provision via JobCentre Plus and DWP services.

The Government's focus on homeownership and access to products which support 'affordable homeownership' indicate a clear need for more joined-up money and financial capability support. Households will need to start planning for access to these products from very early adulthood and those

with student and other educational costs or debt will require additional support to assist their transition into financial independence.

Chapter 5: What does government need to provide?

Q12. How do you think that the government could best complement voluntary sector provision of financial guidance?

As set out above, Shelter (and the voluntary sector more widely) provides independent advice in a way that supports people with multiple and linked advice issues that could put them at risk of repossession and homelessness. Government-funded debt advice should underpin this provision locally and enable clients to choose which types of service they want to access, and how.

Shelter recommends that the government should map advice needs linked to local need and life stages, and coordinate the funding and development of services according to these needs. These should be in line with wider government policy e.g. new homeownership products, welfare reform and changes to the minimum wage.

Chapter 6: How should it be provided?

Q13. Do you think that the government could offer a more integrated public financial guidance service to consumers, throughout their lives? How do you think this could be achieved?

See above comments about the education system, life stages and pension advice.

Q15. Are the suggested core services the right ones? Should any core services be added?

The consultation document sets out minimum core services that that a statutory body (currently MAS) should continue to provide:

- deliver free-to-client appointments to meet the pension guidance guarantee (currently delivered under contract by Citizens Advice and TPAS); and
- co-ordinate delivery of free-to-client debt advice appointments.

To this, Shelter recommends adding:

- co-ordinate the delivery of free-to-client appointments to provide guidance on 'affordable homeownership' options.

Conclusion

Recent changes to Government housing policy, such as the creation of new homeownership products, means that the landscape for financial guidance, advice and advocacy around housing options is changing rapidly. There is an increasing need for people to objectively consider the financial implications of different tenure options in the short, medium and long terms at different life stages. There is a clear need for a comprehensive package of independent advice which is available free-to-client and which guides them through different financial events over a lifetime.

Shelter is keen to work with the Government to advise in more detail what form this guidance might take and how best to utilise the specialist housing debt advice and financial guidance that we provide.

For more information, please contact:

Vicky Pearlman, Policy Officer,

© 2016~~2015~~ Shelter

SIMPLYBIZ COVERING NOTE IN RESPONSE TO THE

FAMR "CALL FOR INPUT"

We have pleasure in submitting this covering note as part of the formal response from the SimplyBiz Group Ltd (SimplyBiz), to the "Call for Input" in respect of the Financial Advice Market Review (FAMR).

About SimplyBiz

SimplyBiz provides compliance and business support services to over 2,500 directly regulated IFA firms throughout the UK, incorporating around 6,000 individual advisers. As such, we represent a significant proportion of FCA regulated firms and the financial advice sector as a whole. In addition through our not- for-profit New Model Business Academy (NMBA), we provide information, education and training support to in excess of 9,000 individuals who are not users of our commercial support services.

In formulating our response, we have conducted an extensive communication programme over several months with the firms served by SimplyBiz and the NMBA, including but not limited to, regular circulation of papers, publications and general commentaries on the FAMR and related issues. We have also held 135 group meetings across the country, where almost 4,000 advisers have had the opportunity to provide input. In addition, our Chairman, Ken Davy, has personally met with the principals of around 200 of the IFA firms we serve to hear their views and separately we have surveyed a further c500 individual advisers. This has resulted in numerous telephone conversations, e-mails and face to face discussions with advisers wishing to express their views, concerns and ideas in respect of the FAMR. In view of our overall reach in the advice market (which is greater than many trade bodies), along with the extensive opportunities for input we have given the firms and individual advisers we serve, we trust you will agree that our response is soundly based and represents the views of a substantial proportion of the IFA sector.

Introduction

We warmly welcome the FAMR and believe it is a timely and critically important step towards revitalising the post RDR "Advice" market, in all its forms, for the benefit of consumers.

In formulating our response we have focussed on the review's five key aims as outlined in the "Call for Input" introduction as set out below.

Importantly and for clarity, please note that in our response, we use the term "advice" in its legal and regulatory context. Where appropriate the terms, "information and guidance", are used to define services which are not regulated advice. We have adopted this methodology because of the important consumer protections and safeguards which accompany regulatory advice. This reflects our concern that blurring the edges between advice, guidance and information will result in serious consumer detriment.

<u>The Review's Five Key Aims</u>

- The extent and causes of the advice gap for those people who do not have significant wealth or income?
- The regulatory or other barriers firms face in giving advice and how to overcome them?
- How to give firms regulatory clarity and create the right environment for them to innovate and grow?
- The opportunities and challenges presented by new and emerging technologies to provide cost effective, efficient and user-friendly advice services.
- How to encourage a healthy demand side for finance advice, including addressing barriers which put consumers off seeking advice?

Key Aims

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

   We agree that there is a significant and serious "advice gap" which is getting worse.

   Loss of Advisers –The single most significant cause of the "advice gap" is the reduction in the number of financial advisers since regulation was introduced in the 1986 Financial Services Act. When regulation commenced in April 1988, well over 200,000 financial advisers were registered with FIMBRA, the then regulatory body for advisers. By 2005 the number of advisers had reduced to c75,000 and post the RDR it is now down to c22,000. This is a drop of 90% in the number of advisers available for consumers to access in just 27 years. The "Man from the

Pru" may not have provided the best possible value however, the fact remains that millions of ordinary consumers built up savings and protected their families as a direct result of the "Man from the Pru's" advice and encouragement.

Fear of Fees – The advice gap for the less well-off has been further exacerbated by the RDR which, by removing commission as an option, has forced advisers to concentrate on their better-off clients who are more willing and able to pay fees for financial advice. A survey carried out some 10 years ago by SimplyBiz found that two thirds of IFA clients were C1 or below. In a recent (December 2015) SimplyBiz survey we found that 56% of IFAs now spend less time on their less-well-off clients than pre RDR, whilst post RDR 73% have increased the time they devote to their wealthier clients. The reality is that pre-RDR, advisers subsidised the cost of dealing with less well-off clients through the remuneration they generated from their more wealthy clients. Post RDR this cross subsidy is no longer possible.

Choice of Payment Method - Removing the ability of the client to choose whether to pay for advice by fee, or commission, has therefore reduced the availability of advice for less well-off consumers who are put off by fees. The irony is that probably the most comprehensive study of remuneration ever carried out was in 2002/3 by the highly esteemed consultants, Oliver Wyman and Co. This study found virtually no evidence of commission bias amongst advisers with the exception of, to a limited extent, single premium insurance bonds. The limited bias which they did find apparently stemmed primarily from large institutions, such as banks, negotiating central deals with providers for greatly enhanced rates of commission. At the risk of stating the obvious, the less well-off consumers the FAMR is seeking to help are, by definition, unlikely to be in a position to invest capital in insurance bonds or anywhere else. We therefore have a situation where, the media's misplaced obsession with commission bias, and its subsequent ban, has contributed directly to less well-off consumers having significantly reduced access to advice.

Inertia – The fourth reason for the advice gap is inertia. To save, particularly for a long term objective such as retirement or to protect one's family requires a change in an individual's behaviour and spending priorities. Indeed, by definition it requires the sacrifice of consumption today for a future, often undefined or uncertain benefit, and in the case of life insurance, specifically for the benefit of someone else. As a result it requires a catalyst, such as "The Man from the Pru"

to break through the inertia and encourage the behavioural change required for the consumer, particularly the less well-off, to start saving and/or protect their family. Saving for the future and providing for one's family in the event of tragedy are "socially desirable" and should be encouraged; anecdotally they also lead to greater social responsibility and better citizenship. Without the individual advice and encouragement of an adviser all the evidence is that consumers save later, and save less. Equally, without advice they are also much less likely to protect themselves and their families.

In summary therefore, there is a substantial and growing advice gap which has three main causes:

a) A shortage of financial advisers as a result of increasing regulation which has seen a 90% fall in the number of advisers since 1988.

b) Changes to adviser remuneration post RDR has removed the client's freedom to choose to pay for advice through the product via commission rather than directly through a fee. Faced with the prospect of paying fees the less well-off in particular are reluctant to seek advice.

c) Fewer advisers and the fear of fees result in less likelihood of access to an adviser who would otherwise be the catalyst for the behavioural change needed to encourage the less well-off in particular, to set aside money for their long term needs.

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

We need greater simplicity, less regulatory intervention and a more stable and less costly regulatory framework.

Regulatory Overload – During 2015 the FCA have issued 42 Consultation Papers, 28 Policy Statements, 7 Discussion Papers, 7 Guidance Consultations, 6 Occasional Papers, 5 Finalised Guidance Notes and 4 Quarterly updates. This is roughly two per week and whilst clearly not all were relevant to financial advisers, equally clearly, there is little chance that the average adviser will have either the time or inclination to read them. What advisers do sense however, is the overall weight of regulation and the overwhelming need for them to cover their backs

when dealing with clients. This means that even when the regulator issues a relaxation or a clarification saying that, for example, suitability letters need not be so extensive, advisers still feel it is essential to cover every possible aspect in a lengthy report. Their concern, with some justification, is that if, in a few years' time, a client complains to the Financial Ombudsman Services (FOS) unless they have ticked every single box and covered every possible point, the FOS will find against them. The current market concerns and perceived inconsistencies between FCA and FOS in relation to Pension Freedoms and insistent clients are a striking example of this problem.

For this to change consumers must take a greater responsibility for the decisions they make and FOS/FCA must be aligned. If the adviser can demonstrate that the client was given and acknowledged a straight forward explanation of the advice and the basic reasons for that advice, FOS should require the client to provide clear evidence to the contrary before upholding a complaint.

The reality is that, IFAs in particular, have an extremely low complaint ratio and an even lower upheld claims record. Indeed, the FOS statistics demonstrate that, in a 30 year plus career, an individual adviser is unlikely to have two claims upheld against them, and the likelihood of a claim exceeding £5,000 is remote. Nonetheless, the fear of a claim and the need to safeguard themselves against both FOS and the FCA itself, is a serious barrier to the availability of advice as it dramatically reduces the time advisers have available to see clients. Regulatory overload, both actual and perceived, means that very few advisers are able to spend more than 30% of their time actually advising clients. The impact of the dramatic reduction in the number of advisers in recent years is therefore exacerbated by the fact that those advisers who remain now have significantly less time available to give advice.

Regulatory Costs – The direct and indirect costs of regulation are barriers to both retaining current advisers and attracting new firms into the advice market. The FSCS and the unlimited liability for advice are dealt with separately below, however, the ever increasing direct cost of regulation is seen by many firms as an unstoppable juggernaut. This is particularly the case for smaller firms who make up the overwhelming majority of the IFAs and whose direct regulatory fees can often exceed 10% of their net income. Regardless of the size of the firm however, all advisers are impacted by the indirect costs involved in providing advice. As highlighted above, complying with the FCAs regulations and protecting

the practice from the perceived impact of FOS' decisions, results in unduly lengthy reports and much unnecessary research. Both factors significantly increase the time taken to provide advice and therefore its cost without doing anything to enhance the quality of advice being given or the service to the consumer.

Funding the FSCS – The FSCS is an essential element of the framework of consumer protections and is rightly, widely supported by the financial community, as it compensates consumers who have suffered losses if a firm has gone out of business. Unfortunately, because the firm that has created the liabilities no longer exists it is not possible for the "Polluter to Pay". This means that any funding mechanism for compensation is bound to be unfair as the cost falls, not on the polluter, but elsewhere. Nonetheless, the current method is so unfair as to be a grotesque injustice in respect of IFAs. An IFA has no possibility of being aware of a firm that is creating future liabilities, nor influencing it, or preventing it, yet despite this they have to pay 100% of the costs of compensation.

There are basically four parties involved in the advice process, the adviser, the product provider, the client and the regulator. Currently only the adviser pays the costs of compensation, despite having no ability to influence, prevent or even be aware of a potential problem firm. A problem firm being the one creating the liabilities for the FSCS through being careless, reckless or plain dishonest in the advice they give and the business they run.

So, who should bear the cost of the FSCS? Clearly the regulator, despite being the one who most obviously should be aware of a problem firm, is not going to contribute to the FSCS. Equally obviously, clients could pay via a product levy which would only ever represent a tiny portion of their investment. A product levy operated very satisfactorily in general insurance for about 30 years, until changed by the FSA a few years ago. According to press comments, we understand that despite a product levy being by far the fairest method it is unacceptable to the FSCS/FCA. We see no logical reason for this stance however this only leaves product providers, and advisers to pay for the FSCS.

Product providers have, or ought to have, significantly greater market intelligence, both individually and collectively, than anyone other than the regulator. This extends far beyond their normal commercial relationships with advisers, for example: they write the cheques for transfers and receive the

investment monies. They also have access to a wide range of other market information, so they are well able to identify potential "problem firms" at an early stage. We believe it is essential therefore, that product providers become the primary funding source of the FSCS. Indeed, our view is that they should fund the whole, cost as advisers do at the moment. Each provider's percentage of contribution could, for example, be based on their size, their new business income, their share of products generated by the advice sector or a number of other objective measures. Having said that, we can see an argument for advice firms to make a token contribution and could therefore, support a contribution from the advice sector of up to 20% of the cost of the FSCS, with providers contributing the balance.

Lack of a Long Stop – the lack of a Long Stop is a barrier to the availability of advice. This is primarily because, as outlined above, advisers devote significant amounts of unnecessary time, resources, and effort, into covering their backs in relation to every aspect of their client's affairs, fearing that if they do not do so they will create a future liability. The lack of a Long Stop also adds to the overall feeling amongst advisers that they are seen as an easy target by regulators, media and public. You will also be aware of the activities of claim chasers who are able to pursue alleged claims against advisers at no risk to themselves, whilst creating significant work and cost for financial services firms. The FAMR Paper refers several times to sub-standard advice however, as highlighted by the FOS statistics, sub-standard advice is not of itself a significant problem for most firms or advisers. The key issue is the small minority of "problem firms" who are careless, reckless, or dishonest and who give bad advice, pocket the proceeds, and close down, leaving the liabilities to fall on the FSCS and be paid for by the rest of the advice sector.

In practice, a Long Stop is unlikely to have a material impact on consumers or advisers, however it will be a very important psychological step in both instances. For clients it will be a further step towards educating them of the need for them to take greater personal responsibility for their actions and for advisers it will be an important element in restoring confidence in the sector and encouraging new entrants.

We note the various options set out in FAMR and believe the simplest Long Stop is a straightforward 15 year period from the provision of the original advice.

In summary, the barriers firms face and how they can be overcome are:

a) Advice firms are faced with regulatory overload. There is simply too much regulation. The focus of the FCA should be on dramatically simplifying and reducing it, whilst at the same time the consumer should be expected to take some responsibility for their actions in terms of understanding the impact of the advice they have been given. We are not advocating caveat emptor however, if we are to increase the availability of advice the playing field between the adviser and the advised must be more balanced.

b) The simplification and reduction of regulation would significantly reduce the cost of advice whilst balancing the interests of the adviser and the advised. This would increase both the number of advisers and the time available to provide advice.

c) Addressing the gross unfairness of the FSCS funding and introducing a 15 year long stop would have a transformational impact on sentiment in the advice sector and play a major part in increasing consumer's access to financial advice.

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

The comments and proposals above will, if acted upon, make a significant contribution to improving regulatory clarity and will therefore help create the right environment for innovation and growth. In particular, reducing and simplifying regulation, changing the FSCS funding model and making consumers more responsible for their actions, will encourage innovation and growth.

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

The Opportunities – Technology is rapidly advancing and offers enormous scope for delivering information and tailored guidance to internet users. We do not however believe that, on its own, technology will be able to provide the much needed advice the Government wants the less well-off to have access to.

The internet does however have the unique ability to provide cost effective, user friendly information and tailored guidance, to the widest possible audience. It can become the gateway to personalised financial advice. As such it has the potential, subject to the important regulatory changes we have set out in this response, to significantly reduce the cost of providing "regulated advice". This is particularly relevant if the Government's objective of giving the less well-off access to good quality advice is to be achieved. For example, if a consumer has provided information via the internet on their personal circumstances it would save significant time and cost if an adviser could rely on this information to provide personalised advice. At the present time this is not permissible and any adviser that did so would be potentially in breach of FCA rules and would also have no possibility of success if a case was to go to FOS.

The Challenges – Information and guidance are not advice. A consumer taking action based on information or guidance, from whatever source forfeits their rights to redress and the consumer and regulatory protections, which sit alongside "regulated advice". We have a major concern that the casual use of the term 'advice' in relation to information or guidance, for example "The Money Advice Service", is potentially misleading users, or potential users, of such services. The casual or careless use of such terms will result in consumer confusion and frustration when they are given information and guidance rather than advice. Indeed, the IFA sector is already experiencing an increasing number of examples of this confusion and frustration amongst consumers. We strongly urge that clear warnings are provided by any service however provided, which is not regulated advice. For example a simple traffic light system could be introduced with GREEN to indicate "regulated advice" with all the applicable consumer and regulatory protections and RED for anything which falls short of "regulated advice". We believe the consumer has a fundamental right to be informed whether he or she has the benefit of their important and hard won consumer protections and potential redress available under regulated advice.

In summary, the new and emerging technologies can dramatically improve the quality and availability of information and guidance for consumers.

a) Technology presents an excellent opportunity to enhance the quality of information and guidance available and widen access to advice for the less off if advisers can rely on the generic output provided by the user and the technology.

b) The issue of ensuring the consumer knows what rights they have, or do not have, as the case may be is essential if technology solutions are to be the gateway to the personal advice they need.

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

The proposals set out above supported by education will in themselves help to encourage the demand side and reduce the barriers to advice by:

Reducing the cost of advice and simplifying the advice process.

Maximising the use of technology without losing the personal touch.
Increasing the number of advisers and the time they spend with clients.

There are however two further changes which would eliminate the major barrier which discourages less well-off consumers from seeking advice.

Clarity of costs - Much has been written over the years about the need for transparency of product costs. The results all too often, however are countless pages of gobbledegook which as far as the consumer is concerned could be written in a foreign language. What is needed is a simple indicator, such as APR, which applies in the consumer credit market. Such an indicator is available now. It is the Total Expense Ratio (TER) of a product. TER is a guide, not an absolute measure of value, however it is a remarkably helpful and comprehensive guide to the cost of a product and whilst cost is not the only factor to judge a product by, it is an important starting point for consumers.

Adopting TER as the industry standard would make comparisons and the understanding of products dramatically simpler for consumers and eliminate the need for countless pages of what to them is so often meaningless verbiage.
Any consumer requiring the full product details should of course be able to request them as of right. The use of TER would remove a substantial barrier for consumers seeking advice.

Remuneration via the product - We do not advocate a return to commission however we do believe that consumers should have the right to decide how they pay for advice. This choice was removed by the RDR with the result that many

consumers, particularly the less well off, are reluctant to seek advice. This results directly in serious consumer detriment as arguably the less well-off have a greater need of good quality financial advice than the wealthy.

We believe that advisers and product providers should have the ability if they wish, to offer consumers the choice of having the adviser's fee paid via, and over the life of, the product rather than by a direct fee. This change, in conjunction with the introduction of TER, which would clearly reflect the adviser's remuneration costs, would remove barriers which put off consumers from seeking advice and encourage a healthy demand side for financial advice.

Conclusion

We believe the measures set out in this covering note which forms an integral part of our response to the "Call for input" in respect of FAMR will fully meet the Governments objective of improving the availability of advice, particularly those who do not have significant wealth or income.

We commend it to you and would welcome the opportunity to discuss them with you or provide any clarification you may require.

Ken Davy
Chairman
SimplyBiz Group Ltd

21st December 2015

List of questions

1. 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?

Dependent upon the nature of the vulnerability, we believe this to be the case.

The FCA Occasional Paper No. 8, published in February 2015 makes a useful contribution to this debate. In particular, those who are ill or living with serious illness, are carers of those with serious illness, have been bereaved or are experiencing unemployment, are likely to be in need of financial advice and may not have the means or the predisposition to seek or be able to access advice. There can also be a misconception that advice is not available to those with certain medical or health conditions. There is a need for greater diversity and inclusion in the provision of advice.

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

Financial advice may be categorised in a number of ways, relating to the level of detail and personalisation. These may be broadly described as

Simplified advice – where the adviser or process owner takes regulatory responsibility for the advice provided, but this is within a specified parameter of 'suitability', that is suitable but not necessarily the **most** suitable solution.

Focused advice – where the advice is limited to one or more specified need areas, and it is made clear that other need areas may exist, but have not been addressed at the customer's request.

Full Regulated Advice – where the adviser makes a detailed personal recommendation covering all need areas to a consumer in their capacity as an investor or potential investor based on their personal circumstances.

Unfortunately with the exception of "Fully Regulated Advice", the definitions and regulations confuse both consumers and advisers, therefore for simplified advice to work much greater regulatory and practical clarity would be required as well as the unequivocal cooperation of FOS.

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

We believe there is an increasing demand for personal professional financial advice, however consumers are often put off by the cost (perceived or real), and are also not sufficiently aware of the benefits of advice.

Research from Old Mutual shows that those who seek advice and then have regular reviews are significantly better off over the longer term.

- Respondents in retirement who didn't set a target or receive any financial advice generated an income of £18.1k

- Those respondents in retirement who didn't set a target but received financial advice at least once generated an income of just under £25k.
- Those clients who set an income target and received financial advice more than once had an income uplift of £9,598 over those with no target or financial advice.

Clearly financial advice is worth paying for as a substantial income uplift is likely to result.

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

We have no evidence relating to the demand for advice from sources other than professional financial advisers.

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

It should be noted that in general consumers do not seek advice without a catalyst/life style event that prompts action, hence the need for more advisers, simpler products and regulations to make easier access to advice available to all.

Not all needs fall within the scope of regulated financial advice. This is aptly described and explained in the Citizens Advice Bureau (CAB) Report "The four advice gaps - exploring the different gaps in provision of and access to free and paid money advice" published in October 2015.

The recent Pensions Freedoms have created an increase in those seeking advice for the first time.

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

It is our view that the FCA Spotlight segmentation model is of use in exploring consumers' advice needs, but may be in need of updating in relation to the members in each segment. Also the boundaries between the categories are likely to become less distinct over time, given the additional flexibilities provided by 'pensions freedom'. This again highlights the need for simplification.

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

In general the segments seem appropriate. The initial focus of the review may be best placed on those segments approaching pre-retirement phase within the groups.

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

Consumers at all levels of wealth and income can benefit from advice. In general there must be a perceived need, either protection, savings or decumulation, at retirement or severe debt, before someone will pro-actively seek advice. The less well-off however are much less likely to seek advice particularly post RDR as they are put off by fees. See our covering note for more details.

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

Cost (real or perceived). Advisers are seen as a service for high net worth clients. The less well-off are particularly put off by the prospect of having to pay fees for advice.

Availability / access / number of advisers – all have reduced over the last few years, partly as a result of RDR, and the associated strategic changes that took place within banks and insurers and direct sales forces. This has reduced easy access to advice for most consumers, who now have to seek out an adviser. This requires more effort on their part, and given the national inertia of consumers when addressing important long-term financial needs, manifests itself as part of the reason for not seeking advice.

This issue of inertia also aligns to the psychology of investment decisions and costs, as opposed to the potential benefits from professional advice, when set against an immediate up-front cost of fees.

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

See our response above and in our covering note.

11. 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 less well-off are much less likely to seek advice post RDR. Please see our covering note for more detail.

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

It is our view that robo-advice is not 'advice' which, by its very definition needs a human element. The use of technology will however enable access to financial products for a wider selection of consumers.

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

Pre- RDR, the wealthier clients subsidised the provision of advice to those who were less well-off. In the current environment, where fee-based advice is the norm, this option is no longer available, thus many less well-off consumers perceive that advice is now out of their reach because of the upfront cost.

Reducing the cost of providing advice is an imperative, and one that advisers would welcome. The fixed and variable costs of running an advisory business with the high direct and indirect regulatory costs, including the additional and unforeseen levies imposed by the FSCS make reducing the cost of advice difficult. Regulation must be simplified and the funding of the FSCS radically changed if the costs of supplying advice are to be reduced.

Technology will make the process smoother and is likely over the long–term to reduce costs.

Financial advisers have experienced significant change over the last 4-5 years with the introduction of RDR, and the changing / upgrading of business models, which has put additional pressure on margins / profitability.

Simplified regulation and advice processes would enable advice to be delivered at lower cost.

14. 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?

Providing a service that allows the cost of advice to be spread over time via the product, would be a particularly positive development. This function was previously provided by 'commission'; however any new scheme would need to take account of the requirement to be 'transparent' in terms of cost.

This has a significant impact on the market for regular savings and the entry of consumers to the market to enable access to a diversified range of savings products. We believe that adopting Total Expense Ratio (TER) is the key to cost transparency which would be readily understood by every level of customer, however it would be of particular benefit to the less sophisticated consumer.

15. Which consumer segments are economic to serve given the cost of supplying advice?

At present, it is mainly wealthier clients that have the capacity and / or willingness to pay for advice. However, this does not need to be the case.

Dependent upon the type of advice that is being offered, the cost could be tailored to the complexity of the consumer's circumstances and the degree of 'suitability' promised by the service providing regulation is simplified to significantly reduce both its direct and indirect costs.

16. Do you have any comments on the barriers faced by firms providing advice?

There are number of barriers faced by firms in providing advice. These are fully explored in our covering note, and include

- Regulatory overload for basic mainstream savings and investment products
- The general volume of regulatory guidance direction and change
- The increase in general regulatory costs, which this year have spiralled for many advisers in a manner which is neither fair or justifiable
- Funding of the FSCS which has seen a significant increase in levies
- The lack of a long-stop

Psychological barriers for firms, particularly in connection with the future treatment of complaints by FOS are a major issue in this context. The industry is perceived to have been subject to the retrospective application of standards. There is significant caution amongst firms / advisers, as expressed by the debate over insistent clients and approaches to pension transfers under the new Pensions Freedoms. Given their experience to date, advisers are rightly cynical of FOS and regulation.

The issue of liability for the advice provided by others under the FSCS is a key barrier faced by firms, and the subject of current consultation by the FCA.

The lack of clarity offered by the FCA in relation to the boundaries of each type of advice is a significant issue. This led to a number of potential advice solutions to the 'advice gap' identified in the run-up to RDR being 'pulled' because providers were uncertain as to whether they would be accepted by the FSA (now FCA), and the lack of guidance and reassurance, or indeed certainty, from the regulator.

17. What do you understand to be an advice gap?

The analysis provided by Citizens Advice in their report "The four advice gaps - exploring the different gaps in provision of and access to free and paid money advice" of October 2015, provides a useful basis for consideration of the 'advice gap'.

The concept of an 'affordable advice gap' consisting of an estimated 5.4 million people who are, in theory, willing to pay for advice, but not at the current level of cost; the 'free advice gap', an estimated 14.5 million people who are not in a position to pay for advice, but for whom it would be of benefit; and the 'awareness gap' of an estimated 10 million people who are not aware that advice is available and how to get it, and thus miss out on the benefits of advice, are of use in illustrating understanding .

The concept covers both those who are unable to afford advice (economically) and those that are able but unwilling to pay for advice via an upfront fee. In part the benefits of advice have not been sufficiently promoted by government / public agencies as well as more generally in the media.

18. To what extent does a lack of demand for advice reflect an advice gap?

We do not believe there is a lack of actual demand; simply that advice has been portrayed as unaffordable. This could be remedied by a change of approach and we hope that the FAMR is an indication that the Government and the FCA are prepared to take a fresh approach to regulation. Specifically we refer you to the proposals set out in our covering note.

19. Where do you consider there to be advice gaps?

The majority of the population would benefit from financial advice to a greater or lesser degree. This degree is likely to depend on the complexity of their circumstances, and is not necessarily linked to amount of capital or their on-going income. For various reasons outlined in our covering note too many consumers do not have access to the advice they need. The less well-off in particular suffer from the advice gap.

20. Do you have any evidence to support the existence of these gaps?

Please see our covering note, however data provided to the FCA and published in the media supports the premise that these gaps are present and significant.

21. Which advice gaps are most important for the Review to address?

It is our view that this review should focus on those who are willing to pay for advice but find the cost prohibitive, and those that are not aware of the availability of advice, but may be in a position to afford it. Reducing the direct and indirect costs of regulation along with greater use of technology to deliver information and guidance as explained in more detail in our covering note, has the potential to make high quality advice widely available.

22. 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, we consider this to be the most immediate need; however the importance of having a basic understanding of investment vehicles, in particular those where pension monies are invested both before and after crystallisation is also of importance.

With time the level of knowledge will grow. Once consumers understand that they have a vested interest in understanding these vehicles, as may be seen in the US (401K accounts), engagement will grow.

The involvement of Government is needed in promoting financial education to all sectors of the population. For those in work, the provision of 'Automatic Enrolment' provides a significant opportunity to engage with consumers through workplace pensions.

23. 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)?

Whilst these are clearly arbitrary numbers we support the broad principles they imply.

24. 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?

It is our belief that the FCA Handbook could be simplified and made easier to interpret and apply. We support the FCA's efforts to simplify the approach in the areas of capital resources, and customer communications, however there needs to be a determined and coordinated drive by all concerned to simplify regulation in all its aspects.

25. 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?

It is essential that there is a consistent approach from the EU and within the UK in respect of the provision of advice and consumer protection, and that there is a synergy between the two so that advisers do not continue to be overloaded with regulation.

26. What can be learned from previous initiatives to improve consumer engagement with financial services?

We believe that the support of the media, the trade and professional bodies and industry leaders is required to ensure effective delivery and improved consumer understanding.

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

Reviewing approaches to the regulation of advice in other jurisdictions, particularly that have previously adopted similar approaches to pension decumulation may be of benefit in formulating an approach for the UK.

An approach similar to the examples provided in the FCA Discussion Paper 'Smarter consumer communications', originating from Australia, could prove to increase engagement between consumers and the profession.

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

As previously stated, engagement is likely to increase over time, given the necessary self-interest that will develop, initially with pensions, but over the longer term with Government policy to make consumers shoulder greater risk and responsibility for their own actions. Aside from this, there needs to be consumer education, along the lines of 'people like you…' and the behavioural trends akin to those demonstrated through engagement with social media.

Behavioural biases may also be linked to generational differences in behaviour and so may need a range of alternative strategies to address.

29. 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 introduction of a 'safe harbour' would be welcomed however not as a substitute for the necessary overall reduction and simplification of regulation. Where a simplified "safe harbour" approach is adopted it must be absolutely clear that there will be no repercussions retrospectively regarding the advice.

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

In particular we believe that the area of advice in relation to insistent clients and pension transfers would benefit from this treatment, as long as the recognised regulatory process had been followed and suitably documented, thus reflecting that the duty of care applied is appropriate.

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

Firms should be subject to the same High Level Principles (HLP) and duty of care to consumers .

32. Do you have evidence that absence of a longstop is leading to an advice gap?

Yes. Please see our covering note.

33. 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?

Yes. Please see our covering note.

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

Certain financial products are, by their nature, long-term, however other disciplines, including the legal and medical professions, have limitations. Consumers should have the right to redress where poor advice or administration is determined to have occurred however the psychological impact of a long stop for advisers and to remind consumers of their responsibility to understand what they have bought will be significant.

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

Where issues are identified outside the suggested 15-year period, if felt essential a section of the FSCS fund be ring-fenced over time to address the issue.

36. **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?**

This is a rapidly developing area however automated advice must carry the same consumer responsibilities and protections, including redress as any other form of "regulated advice". If it does not the consumer must be made aware that it is information or guidance and that should they act on it they are forfeiting their consumer rights and regulatory protections.

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

No comment.

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

The potential confusion between information, guidance and regulated advice leading to significant consumer detriment.

39. **What are the main options to address the advice gaps you have identified?**

Please see our covering note.

40. **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?**

We believe product and regulatory simplification along with improved and readily understandable transparency through TER plus clear demarcation between, information guidance and advice are essential requirements which will deliver good consumer outcomes without distorting the market.

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

Care is required to maintain the adherence to the High Level Principles (HLP) regardless of the method or approach to advice.

Providers of simplified solutions, which are likely to be delivered via technology based platforms, must meet the stated regulatory requirements for that process.

In particular the boundaries between information, guidance and advice must be made abundantly clear to consumers along with their relevant benefits and disadvantages.

Financial Advice Market Review

SMF response to the Call for Inputs

Social Market Foundation
11 Tufton Street
London SW1P 3QB

www.smf.co.uk

Contents

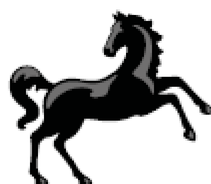
Executive Summary 4
SMF response to the Call for Inputs 5
A perspective from Citizens Advice - Rachael Badger 16
Financial Advice and Financial Resilience: An Australian Perspective – Professor Kevin Davis 18
How technology, new legislation and an understanding of economics can solve problems around financial advice – John Fingleton and Andy Reiss 21
Is choice in financial services any good? – Alison McGovern MP 24
A perspective from Lloyds Banking Group - Steve Smith 26
Staying focused on what consumers want – Kitty Ussher 28

Acknowledgements

This report has been made possible by the generous support of Lloyds Banking Group. We are particularly grateful to Steve Smith and Sumantra Prasad for their guidance and comments.

Kindly Supported By

LLOYDS
BANKING
GROUP



Executive Summary

The Government – with the FCA – is considering how to maximise the number of people who can find the form of financial advice that they want on a need they have and at a price they are prepared to pay. This feels particularly important during a time of earnings growth when households may be able to significantly improve their financial resilience for the future.

Our essay sets out three scenarios on which this objective could be achieved. It describes what is attractive about each scenario and what challenges it raises. The essay is followed by a range of responses from leading experts and policymakers.

The three scenarios are:

Scenario 1 - Enhancing the role of primary financial care

This scenario envisages a bigger role for retail banks and pension providers – in other words, the companies that most consumers already have a connection with - in filling the advice gap.

Scenario 2 – Building the data exchange

The review's Call for Inputs describes some of the opportunities for advice provision created by new technology. Our scenario goes further in suggesting that, when consumer data can be analysed more intelligently and shared with the consumer's consent between providers, then the opportunities for improving the supply of advice provision become even larger.

Scenario 3 – Designing choices

Auto-enrolment is changing – or even reducing – the need for advice about pension saving. Other nudges, potentially expanding the scope of auto-enrolment to cover other forms of saving, may be a compelling alternative to raising financial resilience more gradually through advice alone.

SMF response to the Call for Inputs

Introduction

The conventional starting point for thinking about the supply and regulation of financial advice is the 'advice gap'. There is good evidence that such a gap exists. Citizens Advice research suggests that up to 5.4 million extra people would consider paying for advice if it cost less. LV=, the insurer, has spoken about improving the advice offer for 'middle Britain' – for example, they observe that "there are many retirees who do not plan to see an adviser before they access their pension." The Call for Inputs issued by the Financial Advice Market Review (FAMR) puts the point more broadly:

> "Currently not all consumers may be able to find the form of advice that they want on a need they have, at a price they are prepared to pay but, in the context of increasingly complex financial choices, the aspiration must be to maximise the number who are able to do so."

While these are all persuasive statements about the persistence of an advice gap, conceptually we cannot define a gap without first thinking about what it is a gap between. In other words, the advice gap is a function of what decisions consumers might need to make; what challenges they face in making those decisions; and then, to the extent that those challenges are best tackled by the provision of advice, what the supply of advice looks like.

Each of these stages in defining the advice gap has implications for what we think the solution might be. After all, if we start with current definitions of the advice gap, then we are assuming that the answer to what decisions consumers might need to make is a fixed one. It is not.

Consider how auto-enrolment for pensions is changing the answer, broadly speaking from how much and in what way to save into a workplace pension to when to increase your contribution level or consider how much and in what way to save for shorter-term needs.

We can envisage many other changes by which the decisions consumers might need to make would change as well. For example, if lending conditions were tighter or looser, then the answer to what decisions consumers might need to make would change too. As interest rates rise, more consumers might benefit from having another think about the mortgage they are using, or trying to switch some of their unsecured personal debt.

Equally, whenever we use a definition of the advice gap, as well as assuming we know what decisions consumers will need to make, we also assume that we know what challenges they will face in making them. Do we? The description of those challenges is contestable. Do people borrow too much, or is the challenge they face that they do not shop around enough when borrowing?

Another critical question on defining the challenges consumers face may be whether they save the right amount; and whether those savings are balanced in an appropriate way to meet their short-term and longer-term needs. Equally, when investing their savings, are they prone to make risky decisions; or are they too risk averse? The answer to what we think the advice gap is changes depending on our answer to that question too.

Finally, once we have a clearer idea of what decisions consumers might need to make and what challenges they face in making them, we should ask whether financial advice will help them, or whether something else might help them more.

What if those earning a middle income – broadly speaking, those with the capability to save more and improve their financial resilience – were auto-enrolled to buy income protection insurance, or to make non-pension savings to provide a buffer against unexpected costs? Would that serve their needs more directly than trying to fill some version of the advice gap?

This opening discussion is designed to preview the two key features of this essay. The first is that, given the contestable nature of the advice gap, instead of presenting evidence about the characteristics that it has, we will focus in the first part of the essay on summarising evidence on the challenges facing consumers. This will help us to work out what it is that advice – or other interventions – should be trying to achieve.

The second point is that there is no single right answer to filling the advice gap. There are approaches that will rely more or less on advice in helping consumers face the challenges of improving their financial resilience; and each of those approaches will have different implications for the supply and regulation of related financial services.

To recognise this complexity, and to help pick a way through it, this essay will describe three alternative approaches to filling the advice gap, including what those approaches mean for the supply and regulation of advice, plus what each approach might mean – necessarily, in broad terms only – for the rest of the financial services market.

These are ambitious goals for a short essay but questions about advice cannot be adequately separated from the other questions identified in this introduction. Fortunately, the review of the market launched by the government is in itself ambitious with a wide scope.

This publication also contains a set of responses to our essay – so where we do not live up to the ambitions stated here, our other contributors will do. Those contributors are:

- Rachael Badger: Rachael leads Citizens Advice's policy research on Families, Welfare and Work. She was a Senior Policy Adviser at HM Treasury.
- Professor Kevin Davis: Kevin is Professor of Finance at the University of Melbourne and Research Director of the Australian Centre for Financial Studies.
- John Fingleton: John was Chief Executive of the Office of Fair Trading from 2005 to 2012, having previously run the Irish Competition Authority. He is a Board member of the debt charity StepChange.
- Alison McGovern MP: Alison is a former Shadow Cities Minister and the Chair of Progress. She has a long standing interest in how to improve financial resilience for individuals and families.
- Steve Smith is the Director of Competition and Regulatory Strategy at Lloyds Banking Group.
- Kitty Ussher: Kitty is the Managing Director of Tooley Street Research and a member of the Financial Services Consumer Panel. She writes here in a personal capacity.

Part One: Advice To Do What?

The unavoidable starting point for a discussion about the challenges facing consumers is that levels of financial resilience are presently low. Our analysis of Understanding Society – an annual survey that samples over 40,000 individuals – finds, on the latest results available, that only 59% of people have any positive net financial wealth. That is to say that everyone else has (non-mortgage) debts that exceed their assets; and the median net financial wealth accumulated by people is very low, barely £800.

We can also calculate what these savings are equivalent to as weeks' worth of income. We find that almost four in ten people have less than 1 weeks' worth of income in savings; and that a total of six in ten have less than 12 weeks' worth of income in savings.

There are specific groups whose position is particularly precarious. We find that the median among people who are renting privately is a mere 2 days' worth of income in savings; and that those in social housing do not even have that. Equally younger age groups, perhaps inevitably, have only been able to build up small amounts of financial resilience: the median amount that they hold in savings is less than a weeks' worth of income.

What these results miss out is the rising rate of pensions saving. According to analysis by the Department for Work and Pensions, 9 million workers are estimated to be newly saving or saving more as a result of auto enrolment by 2018. Their contributions are expected to amount to somewhere between £14-16 billion in additional saving per year by 2019/20. While the contribution level sought through auto-enrolment is too low to ensure an adequate income in retirement; smaller workplaces have yet to participate; and people who have been auto-enrolled may drop out in the future – these are these challenges, nevertheless we have a strategy for this major aspect of financial resilience and we are on the way to improving it.

The gap therefore is in short term saving. Work by the Money Advice Service reinforces the findings from our analysis. For example, they find that four in ten adults have less than £500 in savings to cover an unexpected bill; and that three quarters of working age adults do not have a savings buffer equivalent to three months' income.

Building this variety of financial resilience may deliver a range of important outcomes: it provides cover for a 'rainy day' and it can also help people to achieve other goals, whether that is buying a car or helping their children with the costs of education or otherwise getting set up in life. But, while these outcomes taken together build powerfully the case for saving that goes beyond saving for a pension, people may require a different type of product to achieve each outcome. For example, an insurance product may be better suited to cover the risk of sickness and not being able to earn an income; whereas saving for a fixed goal in the medium or long term may mean there is value in looking at investment products as well as instant access products.

Crucially, the decision about which of the outcomes to pursue at any one time, and hence which products to use - or whether to pursue and use a combination of them - will depend on individual financial and other life circumstances. If you are planning for a family, then you may be thinking about

goals-based saving. On the other hand, if your children are already in work and you have a decade or more of your own working life ahead of you, then your priority may be to protect your working income.

The implication of these remarks is simply this: people may need advice at a range of different moments in their lives to help them make decisions about the range and mix of outcomes they are seeking to achieve; the amount of money they need to be saving to do that; and what products they may therefore require.

Having said that though, the question we may be begging is whether people do need financial advice to help make these decisions - or if they can make them otherwise.

These decisions could even be taken out of their hands, either completely through a legal obligation to make short term savings (whether through the state or privately) or partially through auto-enrolment. We will return in Part Two of the essay to the different options available for meeting the challenge. What we are doing so far is to establish that it exists.

The second dimension to financial resilience is borrowing. The availability of debt provides financial resilience; though it can also erode it – if either the level or cost of debt becomes too high. Since the financial crisis, we have seen some deleveraging among households. Our analysis of the responses to the Understanding Society survey suggests that the proportion of people holding debt (excluding mortgages) has fallen from 34% in 2005, before the recession, to 29% on the latest figures available. The median value of the debt has however increased – 17% in real terms over the same period. Equally young people and those living in private rented accommodation are in a materially worse position. For example, the median value of the debt held by people aged 26-35 has gone up to £5,300 – a real terms increase of 45% since 2005.

Further to the specific challenges faced by some groups, there is a broader issue too. The Office for Budget Responsibility forecasts that household debt will rise in the coming years to reach 163% of household income by 2019-20. Bank of England Governor Mark Carney has expressed concern about these debt levels and spoken about how high household debt levels contributed to the depth of the last recession – and the "grudging" nature of the recovery. Any tightening of borrowing conditions, if it comes, may have two consequences: this form of financial resilience may become less broadly available than it would otherwise be; and the provision of advice about debt may have a different character – focused to a greater extent on the management of debt rather than the provision of it.

As with the outlook presented for short term savings, meeting this challenge on debt – to the extent that it is met through the provision of advice – depends on in-detail information and making a fit to individual circumstances. Figuring out how individuals can exchange information with potential providers, at low cost, is therefore critical. This issue of data exchange will be at the heart of one of the scenarios we present in Part Two.

Before we move on to those, it is critical to observe that the challenges we have identified facing consumers on financial resilience are concurrent with low levels of financial capability. The very same consumers who would benefit from being able to improve their financial resilience lack the skills and knowledge that they would need to deploy in order to achieve that improvement.

Money Advice Service research suggests that around four out of ten adults are not in control of their finances, i.e. they do not know their current account balance to within £50, do not feel their approach to budgeting works well or cannot keep up with their bills and commitments without difficulty. New analysis that we have carried out on financial capability suggests that the probability of low scores on financial capability is higher for young people, those on lower incomes and those with lower qualifications.

In posing these challenges, there is a risk that we may look to the FAMR to solve problems that are wider and more systemic in nature, beyond the scope of what the improved supply of financial advice can achieve. Nevertheless this is the context in which we have to think about the role of advice: consumers facing challenges on resilience and capability, both at the same time; with little evidence that either resilience or capability is improving in significant terms.

Part Two: Advice, And What Else?

We have commented already that thinking of advice in isolation from other financial services is not helpful. But managing the complexity of the interactive choices that we are therefore left to consider is difficult. The aim of this part of the essay is to tease out those choices through presenting three scenarios for the future of advice and related financial services. The three scenarios are not mutually exclusive – in other words, it is likely that we can mix and match aspects of the three scenarios – but they do help to illustrate some of the trade-offs that the FAMR will have to consider.

Scenario 1: Enhancing the Role of Primary Financial Care

Analogies are always risky, especially healthcare ones, but consider the following argument. Most consumers – 96% - have a current account. By the time that auto-enrolment for pensions has rolled out to all workplaces, 10 million people will have a pension provider too. These relationships involve regular contact – in the case of current accounts, that contact may be daily, for example, in the form of text alerts or using a mobile banking app. And the provider typically has a lot of information about the consumer's financial circumstances. We might say that the relationship is like that between a patient and a General Practitioner doctor.

Furthermore, the consumer will frequently consult the provider on – and then ask the provider to service – a wide range of financial decisions, whether that is taking on a personal loan, setting up an Instant Savings Account or changing job. To focus on the bank relationship, which is more regular and engaging than the relationship people tend to have with pension providers, the bank will not always be the provider of the credit or savings product, but it will probably be handling the servicing of it, for example, moving a regular payment from the current account into the other product. In a similar way, the GP is consulted on – and sometimes directly provides, and where not, services – a wide range of decisions made by the patient.

The major difference (for the purposes of this analogy) is that the GP is expected to provide advice when the patient wants to make a decision about their health. If you want to quit smoking, the GP is supposed to help you; and this focus on the prevention of health problems or the strategic management of patient health is growing. By contrast, neither the bank nor the pension provider is engaged to the same extent in the long term management of the consumer's financial health.

What this means is that, in thinking about how to improve the supply of advice – to achieve the more fundamental objectives of enhancing financial capability and resilience – sometimes we have to go the long way around to bridge the advice gap, finding a way to make it economic for someone else to appear on the scene with advice rather than enabling the provider with an existing relationship to do it.

The changes that would have to be made to realise the shift that we are describing here are controversial, and we will return to the reasons why that is the case in a moment, though they are relatively simple to identify. For example, the shift to upfront charging for advice that followed the Retail Distribution Review is a major reason why banks and other front line providers do not in practice provide to consumers the advice that they could do. Many consumers do not want to pay for advice in this way.

Paying for the availability of advice through monthly fees on current accounts or the charges collected by pension providers might be more acceptable to them.

The problem with such a future is that it threatens recreating the problems of the past. Transparency for the cost of advice is not a regulatory accident; it was introduced to improve outcomes for consumers. But that choice has consequences: better protection for those who are willing to pay for advice upfront and can afford to do so arguably has been won at the cost of reduced availability, which means that some consumers at least are experiencing worse outcomes. The question is whether a revised approach can achieve positive outcomes across the board: leverage the scale and existing relationships of banks and pension providers to supply advice to consumers who do not have it for the moment; without diminishing protection.

Relying more on the providers of primary financial care, as we have styled them here, raises a second issue too: it potentially reduces competition. If banks and pension providers have a wider role on advice, then we may expect that the products and services they themselves offer will end up occupying a larger share of the consumer's basket. Incumbency may be reinforced. Competitive pressure may diminish.

That said the tools for retaining competitive pressure are available; and that pressure can help to ensure the objective of consumer protection.

The introduction of the 7 day Current Account Switching Service is an important precedent in this regard. This facility is now shaping a more dynamic relationship between customers and providers, including through the introduction of new offers by providers to encourage customers to switch. Creating similar switching processes for other financial products and services would help to balance a greater role for providers in providing primary financial care and ensuring that consumers can nevertheless shop around easily.

Though merely creating the switching process is not enough. The remedies that the Competition and Markets Authority (CMA) is consulting on, as part of its inquiry into Personal Current Accounts, illustrate what else is needed to ensure a stronger competitive environment. For example, the CMA foresees that banks would be required to prompt consumers to review their own current account versus other products available in the market and to do so particularly at times when the consumer is more likely to switch. The same requirements could be introduced for a wider range of products – for example, personal loans or Instant Savings Accounts, where the points when switching is more likely may be, respectively in relation to those two products, when the consumer has missed a payment or the Bank of England has changed interest rates.

In other financial services markets where consumers are prompted to review their contract on a regular basis, for example car insurance, competition is stronger and there is significant evidence that proximate messages such as text messages are particularly effective at changing consumer behaviour.

To strengthen the impact of these messages, they could be seen as a regulated communication, in a similar way to statements of terms and conditions. On this basis, the content of the messages could be standardised to ensure that framing problems – which may vitiate consumer choice - do not arise.

Furthermore, the CMA could stipulate that these messages include a prompt for consumers to access their own data, meaning that they start the process of exploring alternatives with better information about their own needs. A direct URL embedded within a text message, an in-app notification or email would be the most direct way of encouraging consumers to take action in these ways. These tools provided by new technology are important: we have the opportunity now to promote competition while asking a lot less of the consumer in terms of actively searching out the best deal. Clicking on a link or following a prompt in an app can now provide consumers with information about the rest of the market that previously was only available to the most activist consumers.

In other words, what this scenario suggests is that consumer protection can arguably be secured – through the easier availability of switching in financial products combined with the use of technology to keep consumers informed about their options – without foregoing the benefits of using a financial services provider that consumers already contract with for other services to supply advice too. It may be possible therefore to bridge the advice gap without going the long way around.

Scenario 2: Building the Data Exchange

Our first scenario envisaged a role for technology in helping to reach a better place on the provision of advice. The Call for Inputs from the FAMR has itself picked out the role of technology in a different way: to reduce the cost of providing advice. As the document suggests, "automated advice has the potential to be much cheaper and quicker than face-to-face advice and we are interested in the effect this could have on the cost and availability of advice."

Broadly speaking, technology can reduce the cost of providing advice in three ways: it can eliminate the need for a face to face meeting between the consumer and the adviser, with the discussion taking place via, for example, a video chat rather than in a branch; it can substitute for some part of the adviser's time in generating recommendations for the consumer; and it can facilitate the collection of the information that is needed about the consumer's needs and financial circumstances before tailored recommendations can be offered.

Realising each of these cost savings raises slightly different challenges. The first cost saving comes from a channel shift: providers may initiate it, but consumers have to be willing to make it. There is some evidence to suggest that, while they are so willing for simple transactions, they are not for complex ones.

The second cost saving is largely a function of how good the technology is, or can become. This is an investment challenge, so the prospects for meeting it will depend on future demand.

Perhaps the most significant potential for cost saving though lies in the third item. Technology can not only speed up the collection of the information that is needed, it can eliminate duplication in collection too. In other words, much of the relevant information is already held by a single financial services provider - for example, the current account provider – or, where the consumer has shopped around to a significant extent, then by a group of financial services providers. Therefore, in the same way as we have a common architecture for payments across financial services, we could be thinking about a common

architecture for data exchange. Another model for thinking about this could be the FCA's proposed 'pension dashboard' which brings together a person's pension data across all their long-term savings accounts.

There would be an upfront cost in creating a broader version of such a dashboard. However, we are not contemplating a central database, rather a set of common data standards which mean that all the relevant information about an individual consumer can be aggregated and shared between providers with the consumer's consent or at their initiative. It is quite likely that existing work to improve midata will take us close to what is described. And there are aggregator tools already on the market which aim to do the same.

Once it is possible, data exchange of this sort will have further dynamic effects too. For example, it may allow financial services providers to better target product and indeed advice offers to those consumers who are in a position, based on their data, to benefit from them. The dashboard, to continue with that metaphor, therefore becomes a tool which aids decision-making on the supply side as well as by consumers. Such targeting by providers may allow further reductions in the cost of advice, stimulating demand and in turn drawing out more supply.

Creating a virtuous circle seems conceptually possible; however, getting to the place envisaged by this scenario is hard work. Progress on midata has already been slower than some people anticipated and a proposal like this one raises the level of ambition much further. Nevertheless, given that the FAMR has identified the cost of advice as a significant inhibiting factor to the development of the market, thinking hard about the full potential of technology in reducing cost is preferable to focusing only on a much narrower category of cost reduction, such as so called robo-advice.

Scenario 3: Designing Choices

We have already explored briefly in this paper whether advice itself is always the best way to help consumers meet their needs. Specifically, auto-enrolment for pensions saving means that rather than providing advice to consumers to help tip them into that variety of saving they are enrolled into it automatically – though can choose to withdraw from it if they wish.

Equally, the auto-enrolment takes place without relying on consumers to make their own unique decision about which provider – or which fund – they will use. This is not a nudge in the end, it is a shove, plus it is a direct alternative, and almost certainly a much more effective one, to providing advice.

Our third scenario therefore envisages a wider role for auto-enrolment – or prompts that stop short of it while nevertheless providing an alternative to advice in enabling consumer decision-making. A strong version of this, for example, would be to auto-enrol people who are earning above a threshold amount into short term and therefore more accessible savings. These could provide financial resilience in the event of unexpected costs, or allow people to achieve other goals, such as a large one off purchase.

Alternatively, the auto-enrolment may only apply when people receive a pay rise above a threshold amount, so ensuring that at least a proportion of their future gains are secured to the aim of improving

financial resilience. If auto-enrolment feels too firm as an intervention, then prompts could take their place. The consumer could receive targeted alerts about savings options when their income reaches a threshold amount or every time that they receive a pay rise.

It is worth adding that more extensively designing choices in this way does not necessarily mean there is no role for advice. In fact knowing that consumers will be auto-enrolled or prompted in these ways could enable providers to target advice, either through first having established relationships with employers or by marketing directly. Being able to target advice to people who are more likely than the average to start saving is likely to mean there is improved supply as compared to when the advice offer may need to be a blanket one.

Nevertheless the change that is envisaged in this scenario is a major one. Arguably it is too early in the rollout of auto-enrolment for pensions to even consider it. A review of auto-enrolment is planned for 2017. Perhaps expanding the role of auto-enrolment should wait until after that review has made a robust assessment of the policy to date.

However, if auto-enrolment is to be considered for other forms of saving, in relative terms as soon as 2017, then extensive policy and regulatory change in advance to improve the supply of advice may be of limited value. Practically speaking, by the time those changes were being implemented, further auto-enrolment would already be on the horizon.

That is not to say though that auto-enrolment is necessarily the best policy choice. It is for example hard to say whether auto-enrolment across a wider range of products is consistent with high levels of competition. There may be competing priorities for auto-enrolment too. One feature of the UK welfare system is that it provides relatively low levels of replacement income for people out of work. Income protection insurance would materially improve resilience to that risk. It may well be a better option for some people than short term savings; or, at the least, they should prioritise it over short term savings.

Similar issues arise when thinking about debt, or indeed the interaction between debt and savings. Deploying in the optimal way the money that a consumer may have available between paying down debt, buying insurance and making savings is likely to vary to such a large extent across different individuals that auto-enrolment or even prompts may be less appropriate than tailored advice.

Fundamentally, the issue is that everyone has to plan for a retirement income, hence auto-enrolment for pensions saving makes sense. But the priority of other forms of financial resilience varies much more. Auto-enrolment may therefore conceptually be the wrong tool, though prompts – or other gentler changes to the choice architecture – may remain appropriate.

One solution, for example, could be to auto-enrol people for a set savings rate, without assigning those savings initially to specific purposes. Then, when a threshold amount of savings have been accumulated, the individual could be prompted to allocate them across different purposes and products. At that point, the individual may also be willing to pay upfront for advice, more so than at present. In this case, auto-enrolment would not be taking the place of advice but creating a basis for when advice becomes useful and valuable.

Conclusion

As we have said, these three scenarios are neither mutually exclusive nor provided as full replies to the questions posed by the FAMR. However, we hope that they illustrate some of the leading possibilities for conceiving of the future of financial advice – and a wider set of financial services. It is very difficult to make choices about the future of advice without considering these related issues about competition, data exchange and the level of guidance – or paternalism – that government should adopt to ensure a step change in financial resilience.

That – a step change in financial resilience – fundamentally is the opportunity here: to use this period of economic growth, characterised by high employment and rising earnings, to significantly improve the financial capability and resilience of individuals and households, in a way that perhaps was not done in previous periods of economic growth. This essay is intended as a contribution to achieving this broader objective, as well as to making progress on the financial advice market; and some responses to it now follow.

A perspective from Citizens Advice

Rachael Badger

Most of the consumers whom the Financial Advice Market Review is trying to help don't much care about regulatory definitions and don't even see price as the most important factor when considering advice. To really respond to consumer needs, the Review must go further than changing regulations and must change how people think about and engage with information, advice and guidance about money. It must deliver advice people will trust; must take full account of how people actually use the internet; and must make free money guidance and paid-for financial advice mutually reinforcing.

First, it's trust and independence that actually matter most to consumers looking for help to make important decisions about their money. In our recent research 57 per cent of people said trust was one of their top two considerations when choosing a financial adviser, and 44 per cent mentioned independence. But only 28 per cent talked about price. And 8.5 million of us would be more likely to pay for advice if we could get help to find the right adviser. This means that referrals from trusted institutions and people - whether friends, employers, banks or doctors - could significantly increase demand for advice. And it means that more transparency around pricing, fees and consumer protections - and Trip-Advisor style customer feedback - would benefit the sector.

Second, digital advice and guidance tools will be an important part of the puzzle. Great digital content can break down barriers, can speed up long fact-find processes, and can help people to compare products such as ISAs much more easily. More broadly, we could empower consumers by telling them what others in similar situations are doing to shore up their finances, based on their browsing history - for example starting a pension after finishing paying off a student loan, or buying life protection after getting married. But for all but the most confident and sophisticated consumers, digital advice doesn't yet provide a complete solution. Most of us want to verify and validate what we find online with someone who is trained or qualified to help us - especially if we are making huge, highly personal decisions like deciding how to provide for our retirement or our children.

Third, the advice market forms part of a continuum with effective information and guidance about money. Rather than falling into two separate camps - the 'will pay' and the 'won't pay', we as consumers are a more dynamic group willing to pay different amounts, at different times in our lives, for advice on different issues. You might be willing to pay a small amount when buying a house in your thirties, but want to use shopping around tools to choose the best ISA in your forties, then read the money pages but opt to pay for full advice on investing in the stock market in your fifties. And guidance can also act as a launchpad for taking advice; those who get guidance on their options as they approach retirement are more likely to go on to pay for product advice than those who don't.

In the last twelve months local Citizens Advice helped consumers with 1.8 million queries about debt and personal finances. Our experience is that responding to what people need is crucial, and this suggests a three point plan to increase demand for financial advice. We should use trusted touchpoints;

support digital advice but recognise its limitations; and treat free guidance and financial advice as two sides of the same coin.

Financial Advice and Financial Resilience: An Australian Perspective

Professor Kevin Davis

Improving financial decision-making of individuals to promote financial resilience is a difficult challenge. One reason is that the available financial resources (i.e. incomes) of many are too low to make financial resilience feasible, let alone pay for financial advice. Another is that behavioural biases and low financial literacy put detailed personal financial planning low on the priority list. And for those with financial flexibility and resources getting good professional advice can, as Australian experience (and that elsewhere) shows, be problematic.

In thinking about these challenges, it is worthwhile to note the differences and connections between data, information, and advice. Modern technology provides the capability to collect large amounts of data about an individual's financial (and other) characteristics. This is potentially of significant value to both the collector and the individual, not to mention other commercial entities. But the value can be greatly enhanced when data from disparate sources can be combined and made easily accessible and useable, providing information which can improve knowledge and decision making. The recent Australian Financial System Inquiry recognised this in framing recommendations on data collection and sharing.

But for many individuals, availability of information will not be sufficient to lead to improved financial decision making. Assistance, in some form, will be needed. One, extreme, response is compulsion, such as occurs as part of Australia's retirement incomes policy. There, mandatory employer superannuation contributions (currently 9.5 percent of wages) are made into individual accumulation accounts provided by institutional superannuation funds (or self managed funds). The current debate in Australia about how the allocation of new employees to different funds is made (currently largely determined by provisions of industrial relations agreements) indicates both the political sensitivity and market-share consequences which need to be considered in any mandatory system.

Mandating some level of long term retirement savings requirement can be motivated by appeal to behavioural biases, and by the existence of a government funded "safety net" in the form of the universal (but means-tested) age pension, which lead to private under-provision for retirement. But to apply those arguments to shorter term personal financial planning decisions seems a step too far, particularly given the diversity of personal financial circumstances and needs.

Here, "nudges" or "shoves" have more appeal, and particularly so if they take the form of removing undesirable distortions created by the existing tax system or other regulatory features. One such is the taxation of nominal rather than real (inflation adjusted) interest rates. Even if savings behaviour is not responsive to that distortion, it adversely affects after-tax returns and thus the ability to accumulate wealth in low risk savings products. In the current low- inflation, low interest-rate, world, this may not be seen as a significant issue – but the minimal impact on current tax revenue means that this is the ideal time politically to make such long-run beneficial changes.

Compulsion and nudges go part of the way, but those individuals with a degree of financial flexibility (from surplus current income, accumulated wealth or borrowing capacity) will generally want assistance at some times with financial planning and decision-making. But for most, the required advice is fairly basic. In Australia, at least, it goes along the lines of "pay off the housing mortgage, contribute (if funds available) to tax-advantaged superannuation savings, only make risky investments with money you can afford to lose, don't borrow excessively, invest lump sum retirement savings receipts with a view to achieving an adequate income stream for life".

All fairly basic but, of course, the devil is in the detail. For example, how do individuals decide at retirement on how to best allocate their savings to deal with longevity and other risks? The Australian Financial System Inquiry approached this by recommending that superannuation funds "nudge" (but not default) their members into "comprehensive income products for retirement" which have been preselected as being suitable for member characteristics, and which incorporate some longevity risk protection.

That approach also avoids, to some degree, the danger of exposing new retirees with now discretionary wealth to the dangers of inappropriate advice – where Australian experience suggests there have been many devils! Conflicted incentives and low levels of apparent expertise of advisers have driven a set of legislative reforms (known as "Future of Financial Advice FOFA") aimed at improving financial consumer outcomes. They include enhanced educational requirements for advisors, remuneration structure constraints (on commissions rather than up-front fees), improved information for customers.

The outcomes of those changes are yet to be seen, but skirt around the fundamental dilemma in financial advice. Except for the very well off (who arguably can look after themselves) substantial financial advice is a service required on a (highly) intermittent basis. It is not, unfortunately, like dealing with a trusted local doctor, whose future income is not directly dependent on provision of advice. Nor can one be comfortable that advice from a regular supplier of financial services such as a bank is not influenced by staff incentives to "sell" more in-house products.

How then does an individual identify which possible adviser to use, and how much, and in what form, to pay for advice? Particularly so when financial advice is arguably a "credence" good – one where the quality is not discoverable until much later, if ever. Even the development of comparison/evaluation sites giving ratings of advisers face the problem that realisation (and hopefully, well-informed opinions) of advice outcomes may be many years delayed.

"Robo advice" holds out hope for low cost general financial advice, where individuals may be willing to pay up-front fees which mitigate the adverse effects of the operator being remunerated by commissions or through links to financial product providers. Use of Robo-advice for more specific personal financial advice seems more problematic cost-wise, but this would be aided by the development and integration of relevant data sets about individual characteristics to which the customer could grant access.

Improved data and dissemination of financial information to assist personal financial decision making and planning is undoubtedly part of the path towards better consumer outcomes including better and cheaper advice. The big challenge lies in ensuring that adviser incentives are aligned with customer needs, and that expertise is appropriate for the type of advice being provided.

How technology, new legislation and an understanding of economics can solve problems around financial advice

John Fingleton and Andy Reiss

The SMF essay on the provision of financial advice provides a very thorough and useful overview of the issues in the in the context of the government consultation.

Finance can be complicated, making it inaccessible and hard to understand for many consumers. Different tax treatments and incentives make it even more impenetrable. The regulation of financial products further exacerbates the complexity. Our comments focus on how technology may alleviate some of these issues.

Individuals may need help with their finances in several ways:

First, at a basic level, many need help in understanding what level of debt or savings would be sensible for their particular circumstances, and thereby to spend accordingly. That has an impact on most of us on a day-to-day basis.

Second, those who have managed to save may need help in understanding the sort of products that they should be buying, and from whom.

Third, a select few need help in allocating investments between different asset classes, which markets are going up or down from one month to the next – this is highly sophisticated advice. We will not address this aspect.

And fourth, many may also benefit from "nudges" to encourage us to save, or not to spend. This is not advice *per se*. Legislation, such as pensions auto-enrollment, combined with technology, may well have a positive effect. And technology may help us better understand behaviour and monitor outcomes, leading to superior policy interventions.

Some people, of course, need no advice, and no behavioural nudges, or at least consider that to be the case.

For the first category of advice, the basic, sensible sort, there is an issue around education, and sadly around helping those who have overspent and become over-indebted. Technology may provide some answers. Digital banking applications and some personal financial management tools can, for example, help customers to keep track of types of spending. They can flag events when something may not be affordable, perhaps nudging behaviour changes, encouraging saving, discouraging overspending. These applications should make it easier to engage with finance, and so to keep better control. HM Treasury's initiative to encourage banks to allow customers to share their transaction activity with third parties, including personal financial management tools, will reduce the friction and time involved, allowing more people to engage more easily. Establishing open standards for data sharing will enable greater competition and innovation over time.

The second category of advice, around savings, applies to many people, from those with some savings, to the "mass affluent." They have, between them, a great deal of wealth, but they generally have limited access to the sort of sophisticated advice that wealthier people can buy. Some may still need help on sensible levels of debt, spending and saving, but then there are significant challenges in dealing with whatever is there to invest. Historically, the pooling of pensions meant that economies of scale and scope were better realised, and final salary pension schemes created useful incentives. This illustrates the challenges in a more atomised market.

All advice is not necessarily good advice, and it may take 20 or 30 years for a customer to assess the quality of that advice, something that economists call credence goods. This creates a problem in terms of pricing and incentives.

Changes in the last few years in the way in which advice is charged for have aimed to increase transparency, but in some instances have driven advisors out of the market, leaving something of a vacuum for many who need advice. So how can we incentivise good advice? The benefit of good advice should increase proportionately with the wealth to which the advice is applied. The fees generally increase too, which explains why it makes economic sense to provide good advice to wealthy people, but less so for less wealthy people. The cost of providing that advice goes up more slowly, so there is operational leverage. But perhaps that advice can be leveraged with technology, and imparted to the mass affluent, and not only the truly wealthy.

Robo-advisors, as some new tools are termed, can capture the sort of value or advice that wealthier individuals are getting. Robo-advisors have two main functions. They profile each customer, and they invest. While a high-end advisor might provide a bespoke service, like personal tailoring, a robo-advisor can ask a series of questions about, for example, the customer's age, risk appetite, planned retirement age, and expected contributions. The profile is then used to categorise the customer into a range of products; in tailoring the analogy would be off-the-shelf suit sizes.

For investment, a robo-advisor can use algorithms to allocate investments across multiple asset classes. Schwab Intelligent Portfolios, for example, use 20 different asset classes. Transparency means that systems can be readily accessed for regulatory inspection. But the quality of the product is about the return, as well as the risk taken and the price paid to achieve that return. It is well known that the average professional fund manager struggles to beat relevant benchmarks, yet they withdraw substantial fees over a typical multi-year investment period. The difference between, for example a 0.5% annual fee and a 1% fee can be very substantial over the lifetime of an investment. A robo-advisor can remove fund managers' behavioural biases, in theory reducing certain risks, and due to lower costs, can keep fees low.

The final issue is not one of advice *per se*, but about "paternal, libertarian nudges" to encourage positive behaviour, in this case, how to get people to save more. The SMF essay discusses issues around legislation on pensions auto-enrollment. Auto-enrollment helps people to overcome what economists call "status quo bias," when people prefer to do nothing rather than to take action. "Overchoice" is where people are paralyzed with the thought of too many options; Overchoice can aggravate status quo bias. Individuals may also be held back by "fear of regret," where someone might foresee regretting a decision, and "time inconsistency," where the current impact of locking away cash is more negative than

not having that cash in the future. Both fear of regret and time inconsistency can also lead to status quo bias.

Auto-enrollment defaults people into saving: if they do nothing, they save for a pension. It turns saving into the status quo. They have to actively opt out of saving if they wish to. Technology could take this a stage further, since an auto-enrollment decision only applies once for each period of employment. Moving irregular amounts of money (outside of salary-related contributions) into a long-term savings product can also be annoying and time-consuming, which puts some people off saving more than they could. This is not captured by auto-enrollment.

Some financial management platforms will be able to aggregate details of a person's entire range of financial products, and other accounts, from all sorts of providers. These could include details of banks accounts, credit cards, mortgages, savings, pensions, as well as utilities, mobile phone, and even supermarket loyalty schemes. Technology may bring down the cost, and increase the services available. A platform could compare pricing for some of these products, recommending alternatives. A smart platform could also decide how much a customer could afford to put into long-term savings every month, based on income, outgoings, as well as short-term savings objectives (e.g., for a holiday). Critically, the platform could initiate movement of money, perhaps with a quick permission, according to customer preferences and smart algorithms. Forthcoming EU legislation, the second Payment Services Directive (PSD2), will let third parties, with consent from the customer, move money from customer bank accounts, for example into savings products. This would make it effortless to save for pensions "automated" pension saving, reducing a considerable amount of friction.

We have argued that technology, new legislation and the application of insights from behavioural economics will help to solve problems that were previously considered impossible to crack. Technology has the potential to help people who struggle with their finances to avoid serious problems. It can also help those with savings to choose suitable products, and through competition, to lower costs. Moreover, with increasing levels of data sharing, and PSD2, complete financial management tools will enable customers to aggregate their financial affairs, and, with minimal friction, to optimise saving levels.

Is choice in financial services any good?

Alison McGovern

The public economic debate has, in recent years, been macro-heavy. This is understandable. When public debt has been consistently above 80% of GDP, and progress to see that stock of debt fall has been glacially slow, it is natural for macro concerns to dominate.

However, most people can also see how the countries macro-economic position does rest on the foundations of the micro-economic decisions of its citizens. How much to work, and therefore how much tax to pay. How much to save or spend. Whether to buy or rent somewhere to live.

So keeping just to macroeconomic debate really only ever answers half of the question. We must have both. And that's why I welcome this essay. It looks seriously at the options that face consumers when taking some of the most important financial decisions that affect their chances and their quality of life. And these choices, whilst huge on their own for that individual, are also important in aggregate for us all. We must get this right.

But I wish to respond by unpicking a more philosophical question that I believe the essay poses but does not quite answer. That's the question about choice itself. Is choice any good?

Now, some people think that's a stupid question. People who think that freedom - understood quite simply - is a basic good to which we all are entitled, would just answer positively. Yes, of course choice is good, they might say. Any kind of freedom to choose is a good thing.

I don't agree with this idea. Choice can be good, but only under certain conditions. Let me explain. Imagine a situation where you have a choice to make, but the only options you have are equally bad ones. Being hit in the face or punched in the stomach, for example. Or between two meals that you equally dislike.

Supposing that they are both genuinely equally bad, what can be said about this situation that is good? Maybe it could be suggested that 'at least you get to choose'? But if both are bad, how is your choosing any better than the option being picked at random? You still face a bad option either way.

So I think the benefit of choosing for a person comes from its instrumental value to something else we hold dear. And I believe that that thing, that moral value, is the dignity we feel in making a choice that is good for us. Another way to express this would be the self-respect gained in progressing our life. Choice can be good when it is a method of getting to the right thing for ourselves (or our family, or community). The choices we want to make are those that help us take control of our own lives, and that give us the power to be and become the things we wish to.

Choice is important, yes, but only in relation to how it can help us live dignified and empowered lives. There is a lot that could be said about this in relation to public policy.

However, I have two brief reflections arising from this and the information in the essay. Firstly, I wonder if this way of thinking about choice might help us realise when the availability of unconstrained choices to make is not a good thing. If a person could not reasonably be thought likely to make a good choice for themselves (perhaps because the situation is really complex, or the risks were very great), why not use defaults or auto-settings to help make sure the right decision is made? As with pension auto-enrolment this removes risks that would exist if no active choice is made.

I think most people would agree with this, but auto-enrolment has taken a long time to progress, even despite what seem evident benefits.

And secondly, I reflect on the idea of what it feels like to make a good choice. In order to do so people need to feel both capable of making the choice in front of them, and also that there are a range of good options.

This is clearly where information and advice have a huge role to play. I am sure that the use of new technology will help to empower consumers. Seeing more quickly where their money is going helps to make best use of it, especially where finances are tight. Which in turn will help identify sources for saving and building up capital.

And the financial services sector must offer people clear understandable choices that are good options for them. This might seem obvious. Yet our recent (and more distant) history demonstrates that it was not a commitment that was always stuck to. You can't make a good choice if you are having the wool pulled over your eyes on costs, or subjected to pressured selling.

Finally, there is clearly a role for detailed and expert advice before certain choices and the essay covers this. But I would just add that before we try to design public policy to secure it for people, we ought to be clear what the purpose of that choice is, and make sure that people have a good set of options to pick from.

The possibility for more power and control over our own lives is a good thing, done in the right way, in order to empower us. But this doesn't imply any benefit in an absence of regulation, government action, or intervention. It requires good research into how people make the best choices, well thought through policies, and a clear purpose.

And that purpose is the ability for each of us to fulfil our potential. Nothing less.

A perspective from Lloyds Banking Group

Steve Smith

The issues that the Financial Advice Market Review (FAMR) is trying to address are complex and challenging, however, we believe that there are clear opportunities to make real progress and ensure customers can get access to the advice they need.

We think extending the analogy used in the SMF report about access to medical advice is a good way of thinking about what is wrong with the advice market today and how the FAMR could help to fix it.

At the moment, customers who want advice of any kind have to go and see a specialist, like a hospital consultant, and typically pay an upfront fee to do so even if they have relatively simple needs such as wanting to invest in a low cost tracker ISA. This is a bit like going to a pharmacy to ask for advice on having a cold and being told you have to go and see a consultant at a hospital to advise you.

In the same way that customers can get simple advice over the counter in a pharmacy for simple concerns they should be able to do this for simple financial advice. If what they need isn't as simple as it first appears they would be told they need to see a more specialist general advisor (like a GP). And if their situation is more complicated they might be referred to an expert like they would be referred to a hospital consultant.

Simple over the counter advice whether delivered face to face or digitally would serve most customers' needs throughout their life. They would be able to be advised on savings, simple investments, simple protection etc. Some may need to go and see their GP at important events such as having a child but very few would need to go and see a consultant.

Tailoring advice in this way would make it more available and more affordable to a larger group of customers. However, to do this we need a regulatory regime that supports this vision and allows the development of a market that serves different groups of customers in a way that suits them.

Currently a sophisticated customer buying a relatively simple product that they can easily switch out of is treated the same way as a customer who is relatively inexperienced and about to buy their first pension or mortgage. We need to make sure we have protections in place for the customers that need them but make the process simple and easy to use for those who are comfortable making their own financial decisions. The regulatory framework should provide strong incentives for providers to understand their customers and then tailor advice and disclosure based on the customer's knowledge and experience and based on the type of product they are buying.

Any regulatory regime should also provide strong incentives for providers to simplify their products, for example, by reducing redemption penalties for products with longer time horizons that tie customers in.

The right framework could potentially transform the customer experience and encourage more customers to seek advice while also allowing providers to substantially reduce the cost of advice so it offers better value for money for a much wider group of customers.

There are other steps we could take to help more customers get the advice they need.

One of the most time consuming aspects of financial advice is for the adviser to establish their customer's existing arrangements and use that information to determine their needs before giving advice. This is particularly a challenge in pensions where customers can have several pension pots from different employers. The introduction of a pension's dashboard which uses open standards for sharing customers' data could overcome this challenge.

We should also look to build on existing auto-enrolment arrangements for customers who have simple saving and protection needs and who are currently saving through their employer's pension scheme. By starting with large employers we could quickly help significant numbers build up savings and get protection for their families.

Staying focused on what consumers want

Kitty Ussher

Any discussion of how to fill the "advice gap" relies crucially on where you think the gap actually is. But rather than basing the analysis of the gap on an external assessment of what consumers might *need* in order to increase their own capability and resilience, we should stay focused on what it is that consumers say that they *want* from the advice market.

These are two very different things. In policy terms, it makes a lot of sense to explore options that raise the financial resilience of households. People who feel financially secure are less likely to require taxpayer support, and increasing financial security will help us bear down on poverty, almost by definition. So getting people to focus on their financial health and make sensible medium-term decisions is all good. But all of this misses the more fundamental point of whether those consumers who know that they want advice, regardless of whether the experts think they should have advice, are able to access it in the right way. For the former, there two issues that need urgent attention.

First there is a definitional point. Regardless of who is paying for what, consumers do not understand the difference between advice, regulated advice, so-called "guidance" and sales and this makes the market opaque, not helped by the government putting out separate consultations on advice and guidance at the same time. Much policy attention has been focussed on these questions in recent years but from a consumer point of view all that matters are two basic questions: "how much does it cost me?" and "can I trust it?". On the cost point, the answer is straightforward: some basic advice is given for free by the government, in a variety of ways for a variety of reasons, but you can also pay to get your own, which could be quite specific and might include product recommendations.

The crucial point is around trust. Some paid-for advice is well-regulated with recourse available to consumers if it is shown to be inappropriate; some free "advice" is actually marketing designed to increase sales. It seems to me that the two categories of regulated advice and marketing are mutually exclusive such that non-regulated information posing as advice should be required to disclose that up-front, just as pseudo-stories in newspapers are required to display an "advertisement" banner. If the sole outcome of this review would be to make that happen, then it would be a good step forward. It is irrelevant whether advice is delivered via on-line computer algorithms, face-to-face or any other way: what matters is whether it is regulated in the consumer interest, and whether consumers understand what they are getting.

Second, different people want different things at different times: any discussion of an "advice gap" requires as a prior step a decent segmentation of the consumer market. Both the Financial Conduct Authority and the Money Advice Service use segmentation models that are useful starting points. Further research is needed to understand what it feels like in different parts of the market: to the extent that demand for advice is greater than supply for different people or in certain situations, the policy conclusions then flow quite easily to fill the actual gap.

Only when these questions are resolved can we then move to the related issue of whether the advice market should also be used to raise capability. In this regard, I think the word "advice" is too vague. If we think that more people should be conducting a holistic review of their financial situation, to increase their understanding of risks and ultimately change behaviour, then that is the area where a market should be built. This is not so much about "advice", as a personal finance MOT. Then we are back into the territory of policy carrots, channels and sticks. Government could start by providing vouchers for the "financial MOT" from regulated providers to the vulnerable cohorts identified in the segmentation analysis. Banks and other providers could be required to offer it, just as utilities are required to offer energy efficiency services. A more extreme solution might be to require it, either at regular life stages or before taking out certain products.

From:
Sent: 22 November 2015 17:58
To: FAMRSecretariat
Subject: South West Financial Planning

Introduction:

In April '08 I career-changed with the simple objective to make a real difference to people by putting my clients in a better financial position for having taken advice (ticking my own box of making a difference to lives through my vocation), not for me to be hunted-to-extinction through a broken and unfit-for-purpose system that demonstrates all the characteristics of a 'protection racket'

8 years of inappropriate/unjust/unsustainable cost hikes from a broken system is enough for me and requires action (FCA fines received from banks and negligent advisers vs. FSCS levy funding/compensation paid out from a fund from IFAs –NOT from the fines imposed)

I don't take kindly to threats to my livelihood from any government or their appointed regulatory bodies and I can't just turn my cheek away and pay these scandalously high fees for too much longer. I don't believe in bullies or Protection Rackets.

A Fees and Levies system that in its current form doesn't ...

- punish/reclaim from those who actually mis-sold products in the '80s, '90s, '00s or more recently
- compensate UK clients out of the FCA fines money brought in
- accrue for any potential future risk-tailored to each and every individual IFA for the business they write/have written and the risk this may, or may not pose.

My motivation? Simple. My own survival for 2016, 2017 and beyond.
Forget any motivation to closing the advice-gap. If I can't afford to operate, what does it matter to me how wide or narrow any advice gap is?
I'm 42 years old. I've got c.20-25 working years left.
If I graph the annual fee and levy cost amounts and annual rises (with interim levies) from 2008 to now in 2015 and continue the exponential trend... who in their right mind would continue with such a risky self-employed vocation?
Approximately 22,000 advisers left from tens of thousands, probably a few hundred thousand, less than 10 years ago.

I believe the vast majority of IFAs and IFA firms are so fearful and beaten-up by the regulator they have no fight left in them- either that or they're happy to risk starting to price existing clients and new prospects out of future advice/ turning to robo-advice.
Robo-advice in itself is an amazingly short-sighted move and probably panic-led by all the IFA firms launching such facilitation.
Who in their right mind would create such short-sighted wins whilst at the same time making yourself potentially **obsolete** in the future- certainly obsolete to the mass-population at least (Low Net Worth, Medium Net Worth).
Is it only a matter of time before HNW's tap into robo-advice also, bypassing the need for any human IFA interaction or their associated fees? Why the hell wouldn't they?

LIST OF QUESTIONS

Q2.Restricted should never have been called restricted. 'Limited research or panel of providers' would have described it far more positively for consumers.

Q3. You should ask Unbiased and other search sites for their figures. I get a regular stream of referrals. Demand 64,000,000 UK citizens... served by 22,000 advisers?? You can do the maths yourselves.

Since 2006 there has been a massive exodus/cull of IFAs which will accelerate in 2016 and 2017 purely due to the exponential annual increases FSCS levy. Our own firm's increased by 470% in 2015 vs. 2014
470%!!!!
How is that justifiable?!
The not-fit-for-purpose current system of FCA, FSCS, MAS etc. paid for by all IFAs, but actually 80-90% of those IFAs will probably never have any need for the FSCS.
The innocent majority of IFAs are paying for mainly banker's wrong-doings and a minority of IFAs.
Additionally all fines by the FCA don't even go into the FSCS pot to pay out compensation !
And don't even get me started on the flagrant misappropriation of our levies in the cost of changing from FSA to FCA, moving head office to Canary Wharf, and now moving yet again and £200 per head allocated per FCA employee for the Christmas party?!! It seems our regulator needs a regulator.

Do you actually think other financial professions like accountants and solicitors are being punished and squeezed every single year with annual fee and levy hikes the way IFAs are?
I wonder what the numbers of accountants, solicitors back in 2000, 2005, 2010 were vs. 2015?
Run the same numbers for the hugely diminished numbers of IFAs across the same years. Stark contrast would be viewed.
It's very clear the bank have deep enough pockets to stomach levy/fee hikes. I'm telling you in no uncertain terms I do not!

Q4. Demand from other sources: I have no evidence from any of my own clients or otherwise saying there is an appetite for non-human interaction or guided financial information

Q8 and Q9. If a client/prospect's life savings in the bank is <£2k, <£5k, <£10k is it value for money/affordable for them to pay an initial fee £300, £500 or £700 for Financial Planning?
Purely driven by the fixed astronomical costs to operate as an IFA, we all have to charge a minimum fee to initially engage and bring on a client. This varies usually from £400 - £800. Even then it probably doesn't cover the true cost to trade anyway, but it is at least a contribution.

Raising our profits is exceptionally hard to do and we are forever haemorrhaging our profit margins through the cost of living (CPI up to 4% - 5% per annum across the last 7 years!) and exponentially increased/way above inflationary increases to all annual fees and levies. Compound CPI and higher fees/levies over the last 8 years and our ever-diminishing profitability is a joke.
The majority of advisers also charge a lot less as an initial fee percentage than they did 7+ years ago as the marketplace is increasingly competitive also.

Q11. My main comment is in the 1980s and '90s the "commission/sales" culture arguably caused the majority of the mis-selling.
The Banks, Building Society's and Insurance House cultures of "SELL SELL SELL!" and the pressure the salesmen faced to keep their jobs by meeting targets.
However, be warned now, in 2016 and the years that follow you will see the same pressure return to many IFAs not because of a cultural pressure, but directly from the need to remain profitable due to unaffordable fees and levies for 2016 to the FCA , FSCS, MAS etc.
Be very warned of what you are creating here and with whom the true blame must lie.
The Treasury and FCA are creating this pressure again.
Ever-increasing cause and effect of mis-sales, scandals and therefore in the future even higher fees required as a result of new mis-selling. Hmm...Get the picture yet?

Q12. So called Robo-advice is a move towards self-obsoletion/removal. The Higher net worths are amongst the tightest with their money anyway, so why should they continue to pay for financial advice when the Low and Mid Net Worths have found a cheaper Robo-option? They will elect for Robo-advice also.

Q16. Throughout 2014 and again in 2015 I personally have been told I'm paying a further ad-hoc/interim £150 here, or £200 there, for "interim levies".

I'm now being told I have to pay an additional FSCS levy of £3,016 throughout 2016 (higher than 2015's- which in itself is already too high)

That's an additional £3,016 out of my take home pay
I would need to write £4,131 worth of new/incremental business JUST TO PROTECT MY MARGIN FROM 2015 and to pay for this additional £3,016.

Have you any idea on how much time and additional cost is required to find and conduct £4,131 worth of new business? It's probably 2 months easily- possibly 3 - 4 new clients.
So I now need to do all of that just to protect my margin. Let's play this out....I spend 2 months finding this new business, but I've lost the time of 2 months to service my existing clients. Do you get this yet? Any penny's dropping?

Once you compound this with George Osborne's new 7.5% Dividend Income Tax from April 2016- then it's easy to do the maths to see it is entirely unaffordable to continue as an IFA under the current system from April 2016.

Q17. It's all about supply of IFAs (which is at an all-time low) vs. the population who would be better off if they could afford advice.
If our FCA/FSCS/PI costs were fair and relevant then we could bridge so much more of the advice gap as our fees could be lowered.

Q30. Pension switches, Annuity Sales and Drawdown. There needs to be a time where ambulance chasing "no win no fee" parasites cold-calling people into future years to spark fires where there is no need for one are outlawed by the government.
Along with allowing the likes of Wonga.com to trade, it is a disgrace that this government allows the ambulance-chasing 'solicitor-types'

Q32. Longstop: this needs to be sensible and affordable by IFAs.
When giving advice we are aware of claims way into the future, therefore our advice has to pay for this to an extent also. I don't agree with it but we need to protect ourselves.

Is it not this government and regulator that has facilitated, presided over and allowed: Arch-Cru; The Banking Collapse and its intrinsic reckless lending and investing; the demise of what once was a reasonable and sensible mortgage lending market in the UK; Osborne's Pensions Freedom; Pension Guidance (irrelevance) and now Robo-Advice.
The regulator did not have any Guidance to Advisers on Pensions Freedom until the second week of May 2015! Our clients were asking for our help since March 2014.
ALL of these episodes amount to, or could in the future amount to reckless mis-selling scandals.

Q35. All fines imposed on banks and advisers found guilty of misconduct/negligence should go directly into the FSCS pot to pay out those who are awarded successful claims.
If 99% of complaints are against the banks then they should be paying 99% of the levies/fees.
All IFAs should be looked at on an individual basis on the business that is on their books. i.e. if there are no SIPPs invested in anything other than mutual OEICs/UTs and no Arch-Cru/ Keydata then why oh why are we having to pay?! When I say "we" I mean "why do I have to pay"?! I career changed in 2008. Have a guess how may Endowments I ever advised and sold/ Arch-Cru/ Keydata/ SIPPs invested into anything other than mutual funds? That's right none. Nada. Zero. Yet here I am paying through the nose to my own extinction for the liberty to trade.

Q40 and Q41
Please stop hunting IFAs to extinction by persisting with a system that is simply punishing the good.

At least Dick Turpin had the decency to wear a mask whilst he robbed from the good.

These are entirely unjustifiable, unfit-for-purpose. You are forcing us to try to scramble to write more business just to survive!

We will either exit the profession, or some might be tempted into unethical selling!! Wake up before it's too late for all of us.

If you don't radically change the system then I will say goodbye now and don't forget to turn off the lights when you leave the building for the last time.
The time is now.
Be very clear and understand, this is **critical**
I am at a crossroads and am now paying my levies out of my life savings. That cannot be right surely.

Regards,

Colin

Colin Mitchell BA(Hons), DipPFS
Independent Financial Planner

South West Financial Planning
Little Kernow
7 Southcott Road
Bideford
Devon
EX39 4AY

www.sw-fp.co.uk

South West Financial Planning is a trading name of Fairstone Financial Management Ltd, which is authorised and regulated by the Financial Conduct Authority. Registered Office: 1 The Bulrushes, Woodstock Way, Boldon Business Park, Tyne & Wear, NE35 9PF. Registered in England No. 05574120.
#
DISCLAIMER: This message and any attachment are confidential and may be privileged or otherwise protected from disclosure. If you are not the intended recipient, please telephone or email the sender and delete this message and any attachment from your system. If you are not the intended recipient you must not copy this message or attachment or disclose the contents to any other person. Any views or opinions expressed in this email are those of the author only.

<u>Input for FAMR December 2015</u>

My background - I have been in the Insurance and Financial advice industry since 1985 and have owned my own independent financial advisory business since 1993. I have advised and continue to advise many hundreds of clients.

Our clients interest is at the forefront of all dealings and statistics from the FCA and FOS confirm IFA's have a very low % of claims for bad advice upheld (unlike the Banks etc. who appear to have been given MORE trust by the government/regulator in respect of them being able to authorise their own advisers which after the PPI, Pension and Endowment scandals appear somewhat hypocritical).

Many small businesses are successful by earning and retaining the trust with their local clients and their hard earned wealth over many years.

I **believe regulation to be absolutely necessary** and have welcomed the need for more professionalism and qualifications within our ranks which has been completed in recent years. I do believe however that the government's constant successive increases in regulation to possibly be over burdensome and so complex you may not always <u>see the wood for the trees</u>.

Regulated Financial Advice has become an expensive service, we are financially unable to reduce our fees which at £117 per hour for face to face independent financial advice is competitive and compares very favourably with accountants and solicitors. As **we are financially accountable for the lifetime of the product/service/advice we give,** this comparison is valid!!

Our fees are likely to be too high for the mass market for a number of reasons but mainly due to the **high cost of both regulation and Professional Indemnity Insurance especially in view of the perceived retrospective looking back at advice given in thematic reviews and actions by FOS, increasing cost of the Financial Services Compensation Scheme Levy and the increasing time needed to be spent on regulation and reporting to the regulator.**

Small businesses are best served to provide local **face to face** mass market unbiased financial advice which statistics have always indicated offer good outcomes. New ways of providing financial advice are required. HOWEVER the ever increasing complexity of advice areas including the new pensions freedom, inheritance tax planning and insurance related protection products such as life and critical illness insurance are less effective when non face to face advice is given. YOU ALREADY HAVE CONFIMATION OF THIS WITH THE PENSION WISE SERVICE!!!

Local based small businesses are within the mass market communities yet the level, complexity and total cost of regulation/FSCS is becoming a barrier for expansion and recruitment. If you were to actually take time out and read our Compliance Plan which then incorporates our Training & Competency Manual, Treating Customers Fairly Manual and numerous other manuals with the ongoing review of all of these it is a wonder we have time to see and do such a good job with our clients!!

For example – I have to and enjoy ongoing competence, I choose seminars to attend which are not always local, additional training courses, listen to industry specialists, regular tests and so on which not only cost me money but also my valuable time. I have to confirm details of the CPD I have completed, why I attended a course, what I learnt, the benefits to myself/staff/clients and then any follow up etc. I am going to do. As a professional confirming attendance at an event or confirmation of a satisfactory test result should suffice. How many advisers who are very busy would take the time out and cost to their business for something not worthwhile to them?

FSCS –THIS MUST BE REVIEWED AS A PRIORITY

With the increasing cost of the FSCS Levy it is no longer financially viable for a number of quality firms to stay in business meaning there are fewer firms contributing into an ever increasing black hole of a FSCS!! How can advisers charge lower fees? **The scheme asks good advisers to pay for the advice given by bad advisers but more importantly what actually happens is the pool of advisers have to pay into the FSCS most often for areas of advice that the majority have never considered suitable – in recent years for example UNREGULATED INVESTMENTS, SIPPS, TAX AVOIDANCE SCHEMES,PENSION SCAMS?**

FSCS Solutions – cap the compensation for unregulated investments at circa 50% of the current limits with it reducing to nil in for example 3 or 4 years after publicity campaign (FSCS continues to spend huge amounts promoting your money is safe in your bank/building society yet I have hardly heard any advertising about the risks of pension scams and ensure you always seek regulated financial advice!!)

Cap the compensation for so called tax avoidance schemes also

Introduce product levies – IT WORKS FOR THE TRAVEL INDUSTRY WHICH IS A MASS MARKET AND IF YOU ARE CONCERNED ABOUT ADVICE FOR THE MASS MARKET introduce product levy at least on low risk solutions – perhaps kitemark them – if a product meets certain standards and invests in regulated investments only, surely the possibility of poor outcomes reduce and therefore a levy per policy would not be so burdensome **(WHERE DO YOU THINK ADVISERS GET THEIR MONEY FROM TO PAY INTO THE FSCS – CLIENTS OF COURSE)**

A THOROUGH & INDEPENDNET REVIEW OF COSTS OF RUNNING FSCS/FCA/FOS is required – the location of offices, staff salaries, pension arrangements – most clients and advisers can only dream of the benefits of working for The FSCS etc. – OTHER AREAS OF GOVT ARE BEING ASKED TO REDUCE BUDGETS BUT NOT THE FINANCIAL CONDUCT AUTHORITY, FSCS, FOS AS FAR AS I'M AWARE – clients pay – there are no money trees.

Re consider the situation with investments in SIPPS – non regulated investments should either not be included (can be governed by the SIPP providers & a different cooling off notice provided) or a lower maximum as above

Introduce levies according to the actual areas of advice and products each firm have advised on rather than treating all of us the same – I have never advised on these film schemes, unregulated investments and overseas property investments yet they have cost me and my normal hard working clients many thousands of pounds – you indicate product levy isn't fair however my clients pay anyway – I am going to disclose my FSCS levies so clients are aware of the amounts paid out just to be regulated and hence the cost of our advice.

My costs to the FSCS scheme are circa 6% of my turnover which actually means on new investments a charge of circa £70 per product on average whilst ongoing advice means circa £20 pa per client – this is significant and unsustainable. Our Professional Indemnity Insurance is now costing circa 3% of turnover (more to include run off cover) plus FCA fees of circa 1.5% and total compliance costs of circa 6% which means circa 15% of total turnover is spent on being regulated and the FSCS. Little wonder unregulated advice and unregulated investments are on the increase – very profitable but not for the one off client!

Long Stop - We remain responsible for our advice for the lifetime of the policy/investment (with No Long Stop unlike the legal profession etc.!!) which does not encourage new recruits and certainly is a barrier for new firms to set up.

The implementation of the Retail Distribution Review (RDR) with clients paying fees instead of commission has not been detrimental to my advisory business **however clients with smaller funds to invest/regularly save are not able to afford our advice** through no fault of theirs or ours.

As the costs to run our businesses continue to increase we can't offer advice at a lower cost when we will then be financially responsible for many years to come. Most banks whose board of directors are responsible for profitability initially chose to either close their advisory businesses or substantially restrict advice to high net worth clients. This is evidence that fees are fine for those with wealth but is a barrier to those on lower earnings. I do not advocate the re- introduction of commissions but our costs must reduce before we contemplate reducing fees.

Financial Ombudsmen Service – I have had no dealings however I would like to note that an advisory practice can't appeal a final judgment which a customer then accepts whereas criminals, murderers and people wishing to appeal extradition can appeal through UK courts and subsequent European parliament!! This is not just and must be reviewed as this is against my civil rights.

Independent Financial Advice has many benefits to customers including providing impartial financial advice, access to the whole market rather than a restricted panel of products/companies, experience and qualifications in financial matters and above all explaining clearly to clients their options, advantages and disadvantages of the options available and in effect holding their hand while they make quite often life changing decisions. This shouldn't be just for those who can afford our fees HOWEVER as stated above successive governments have created an ever increasing and confusing rule book whilst burdening the industry with a potentially long term unfunded financial services compensation scheme.

Turkeys don't vote for Christmas so you are unlikely to agree to any simplifying of the rule book or an honest fundamental review of the costs of regulation including FSCS, but it is required in order to increase adviser numbers, encourage new innovative products, services and means of providing advice.

The new Pension Wise service principally guides clients towards independent advice which I believe is a good thing. I have no knowledge of the standards of service/knowledge but assume it is acceptable. I understand the take up rate has been lower than expected – proof people like and require face to face advice in respect of long term important financial decisions. It is far easier to be scammed over the internet rather than at an office which has been there for many years.

Decision Trees – I am not convinced of the effectiveness or true understanding of these. It must be remembered that my industry deals with paper/numbers/jargon (unfortunately) and individuals are easily confused, I am confused when I look at a car engine, is that the fault of the engine, should the manufacturer make it simpler, no – I pay for a mechanic who is qualified to service my car because I do not understand how it works and neither do I wish to know. Law is complex, accounts and finance can be complex.

Greater education of finance at school – pay local IFA's to give some simple advice

Complaints Handling companies – these require additional regulating because they are/will continue to look at new types of service/advice/products to retrospectively encourage complaints which are not only high in costs but also time.

I believe for many years to come a large proportion of our population will still require face to face advice, they can see the whites of my eyes, they can see the office we work in, make a judgment on whether we can be trusted – these are all very important when you are dealing with peoples wealth, long term finances and are responsible for the long term financial wellbeing of a widow/child etc. plus we have an ageing population who generally speaking like reassurance of their decisions and someone accountable if it goes wrong.

Please do not consider the above as a moan about regulations – far from it. I just believe there are now possibly too many rules which may not be so affective, they muddy the water **whilst not enough publicity is being given for people to take responsibility of their own actions, for them to seek regulated advice AND there should not be a safety net to those who have sought greedy solutions, taken unregulated advice or invested in unregulated products.**

Why should clients who have paid for regulated advice contribute for those who haven't. If you book a holiday that is not ABTA etc. and you lose money you have to take your own responsibility. The state is encouraging people not to take responsibility for their own poor actions!! Greed should not be rewarded but for those advisers and people who invest in higher risk unregulated investments are rewarded when it goes wrong by the FSCS.

Thank you and I hope some of the above are properly considered. I have taken valuable time to think and construct this whilst I have also visited my 2 local members of parliament because I believe passionately in my industry. We benefit widows with financial security, allow people to enjoy long and secure retirement but there are flaws as acknowledged by the need of the review and it should be considered from a fresh not just tinkering with the status quo!!! Look at the Dyson, Internet, Smart phones etc. – think outside of the box and please do remember caveat emptor. People are being encouraged that there will always be someone else responsible for their own bad decisions.

Neil A Goldie

Director and owner Southam Financial Planning Ltd

5 High Street Southam CV47 0HA