SIPP blog – July 2014

I don't know about you but I'm becoming rather disillusioned with the SIPP market and the bad news stories that seem to be more regular and more alarming. I would not be surprised if a number of SIPP operators are thinking seriously about throwing in the towel concluding that the regulatory risk and worryingly the retrospective nature of that risk is now too great.

As many of you will know I have been involved with SIPPs since their inception in 1989. As a result the contents of Memorandum no 101 published by the Revenue in October 1989 are engrained on my memory. This memorandum provided guidance on how individual investors' contributions could be invested and the range of acceptable investments and became the "bible" for SIPP providers for many years. As Memo 101 made clear schemes could decide the extent of investment choice allowed to SIPP investors and might choose to limit investments to those selected by an investment manager. Others might choose to give investors "direct say as to the specific investments to be held and when they should be bought or sold." No mention of the provider having any responsibility for those investments or their suitability.

Of course 25 years ago investment regulation was in its infancy. Wind the clock forward and the world is a very different place. A few days ago the FCA published their "dear CEO" letter on the back of their latest thematic review of SIPP operators which focussed on two main areas one of which was "the due diligence procedures that SIPP operators used to assess non-standard investments".

The FCA made it clear that they expect SIPP operators–aside from understanding the nature of an investment – to "ensure" that an investment is genuine and not a scam and that an investment is safe/secure and can be independently valued. At no point in the letter is any distinction made between business introduced direct and via an adviser. The FCA observed that most firms don't have the expertise or resources to assess these non-standard investments whilst also pointing out that the due diligence guidance also applies to "standard" investments.

My conclusion is that most SIPP operators will stop accepting non-standard investments – even where introduced by an adviser who will have undertaken all necessary due diligence on the investment to satisfy his own regulatory requirements regarding suitability and risk. Not only does this seem to be contrary to the original "raison-d'etre" for SIPPs but what does it

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say about the quality of the advisory profession? It seems that SIPP operators must pay the price – in terms of lost business opportunity and/or extra costs- for inadequacies in regulatory supervision of advisers. To me that is unreasonable and unfair.

Talking of which I found the recently publicised Financial Ombudsman's determination in the case of Mr A and Berkeley Burke extraordinary. I must make it clear that I have only read the published decision and am unaware of all the background. Nevertheless what I find surprising is the reliance on the findings of the FSA's first thematic review. In particular the examples of good practice that the FSA observed and the suggestions that they made at the time which included "routinely recording and reviewing the type and size of investments recommended by advisers so that potentially unsuitable SIPPs can be identified" and "routinely identifying instances of execution-only clients and gathering data regarding the aggregate volume of such business". Note these were only examples of good practice not requirements. There is no reference to due diligence of investments and tellingly the FSA stated "We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs". In that same review the FSA said "In general, firms were able to demonstrate good safeguards to prevent investments, inadvertent or otherwise, into taxable property."

Given the above it seems strange that the Financial Ombudsman apparently put so much store by the review findings in reaching his determination. This determination also contrasts with a number of determinations by the Pensions Ombudsman last year which appeared to give far less weight to the first thematic review findings.

Of course the findings in the first thematic review contrast with some of the findings in the two subsequent reviews which lead me to conclude that the original FSA thematic review was flawed – in which case why is it being relied on in Ombudsmen determinations – or that operators standards have dropped or that the goalposts have been moved – in which case let's be open and honest about this and let's have a proper debate about the whole SIPP regulatory frame work rather than a stealth initiative.

There's a lot at stake here – more than £100billion of SIPP assets are still to vest for example and it makes me wince when I see headlines like "Lawyer declares Berkeley Burke ruling a "game changer" for SIPP providers." I don't have much admiration for claims chasing businesses but I fear this prediction may turn out to be correct and that's why I expect the shutters will come down on most "non-standard" investments once the new capital requirements are announced. For me that will be the end of the SIPP market as originally

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conceived and naturally I believe that will be a great shame.

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