More to SIPPs

**SIPP blog – October 2015**

**SIPPs – interest “turn” still a cause for concern**

Back in 2001 - when we almost succeeded with a MBO of the SIPP provider I was running (Personal Pension Management Ltd long since defunct) – I was questioned by the VC who was backing us about the sustainability of the interest “turn” that we derived from the pooling of bank accounts. At the time it made up around a third of our revenues. We had a strong legal opinion that confirmed that provided we made clear to clients that we derived income through the aggregation of bank accounts then there wasn’t a problem.

I was reminded of this by some comments made by a regulatory expert at the recent Henry Stewart conference that I chaired. These comments were on the back of the recent FCA consultation document CP15/30 in which the FCA reinforced previously expressed concerns about the lack of disclosure of this element of a SIPP providers income. The FCA made it clear that they propose to require full disclosure of what they view as part of the SIPP charges levied on SIPP investors. This is despite the fact that in 2013 the FSA introduced a disclosure regime for this element. In the FCA’s view it has clearly not been fully adopted by all SIPP providers.

Leaving the question of just how you disclose this element in a meaningful way to one side for a moment the speaker at the Henry Stewart conference suggested that it would not be a surprise if there could be retrospective application of the disclosure rules with providers potentially exposed to compensation claims where the “skimming” of client bank accounts had not been disclosed in the past. When asked about how far back claimants might seek to go she suggested it could certainly go back to when the operation of SIPPs was first regulated in 2007 and could potentially go even further back.

Now you do not have to be a rocket scientist to work out the impact if such claims were confirmed. In CP 15/30 the FCA estimate the annual income derived from interest turn across all SIPP operators to be in the region of £60million. I believe that is an underestimate with the true figure being nearer a £100million. If we assume that the total number of SIPPs is 1 million then simple arithmetic suggests that this is equivalent to an annual charge of between £60 and £100 per client. Of course not all operators derive income in this way so the effective annual cost per client is higher. Moreover it will vary between operators depending on the bulk rates that they have negotiated with their bankers –and between clients depending on the investment strategy followed.

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I have always held the view that provided that there is adequate disclosure of this practice then there is no reason why a client should feel disadvantaged –particularly when in the past the interest paid on individual client SIPP accounts has been higher than they would have been able to obtain from the same bank if they had invested the funds themselves. However in a period of low or zero interest rates this argument looks less convincing – and will put even more emphasis on what is regarded as “adequate” disclosure.

It is somewhat ironic that this issue has surfaced at a time when banks are renegotiating downwards the bulk rates payable to the point where one SIPP provider has apparently been advised that from next year the bulk rate payable will reduce to zero. It seems likely that this trend will continue. That suggests that the FCA proposal in CP15/30 is a little late. There is also an issue about whether interest derived in this manner should be regarded as a “hidden” charge when pooling of client accounts is commonplace in other sectors –not to mention the “bulking up” of personal pension contributions that has been normal practice in the life company sector.

However my real concern is the matter of retrospectivity.  I read a very interesting article recently by a lawyer Alan Hughes in which he argued that there appears to be “at least circumstantial evidence of some element of retrospectivity” in the regulation of the SIPP market. This was in the context of the operation of SIPPs since 2007- when they were first regulated - and the absence of specific rules governing such operation. He argued that the failure of the FSA to make such rules at outset along with its reliance on the interpretation of very broad-based principles to impose requirements sometime after the event starts to look like retrospective regulation. The latest proposal regarding bank interest disclosure seems to be another example of that approach.

Without wishing to exaggerate matters – and I find it very hard to believe that retrospectivity could apply beyond the date when the regulatory regime for the disclosure of bank interest was first introduced in 2013 – this is another worrying development for SIPP operators. And this time it’s not just the smaller operators of SIPPs who appear to be the target of the FCA’s attention. More than one larger provider has previously stated that the reduction in interest rates has contributed to a fall in profits. What’s for sure is that if the FCA’s proposal in CP15/30 is adopted then the majority of SIPP operators will have to rethink their stance on this issue –and some may be very worried about the risk of retrospective legal action.

One can argue whether this latest proposal from the FCA is fair –and it should be

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remembered that at this stage it is just a proposal. Question 11 in their list of questions in CP15/30 reads “Do you agree with our proposal to clarify that SIPP retained interest charges should be included in projections and charges information? If not how would you suggest we level the playing field for disclosing charges between SIPP and other pensions?” Once again it seems as though SIPPs have been singled out for special treatment and yet it is hard to argue that the disclosure of this element to date has been uniformly effective.

Quite how the FCA envisage the impact of this “charge” being illustrated fairly and effectively when clients’ cash holdings can vary enormously – often changing from day to day – is unclear. What’s more if a client chooses to move some or all of his SIPP cash assets into an alternative bank account - maybe on a fixed term basis - are the FCA expecting the bank to disclose the margin they retain? Given that this issue has been around in the SIPP market for many years –and also in the SSAS market - I am left wondering what has prompted the FCA to act now when the “margins” are much smaller than in the past and continue to reduce.

However the real worry is that the tardy tackling of this issue could give rise to a fresh spate of legal battles and compensation claims. I would urge the FCA to tread very carefully in framing new rules in this area –and would encourage SIPP operators and AMPs to respond appropriately to the consultation paper.

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