SIPP blog – August 2015

SIPPs – another fine mess you've gotten me into

I guess by now I shouldn't be surprised at anything that emerges from the regulator on the subject of SIPPs. There have been numerous well documented failures in the advice regime governing SIPPs that it's hard to believe that worse could follow. And yet a few days ago reading the FCA's final enforcement notice in relation to TailorMade Independent(TMI) I felt yet more despair and disillusionment.

I should stress that I have no first-hand experience of this particular firm nor the suppliers of the investment products which were used for the SIPPs which the firm recommended. More than half of the affected customers invested in overseas property operated by the Harlequin group of companies, which are under investigation by the Serious Fraud Office. My reason for raising this latest debacle is that once again it highlights the issue of where should the buck stop in these situations –and who should be responsible for compensating investors? The facts speak largely for themselves.

Over a period of three years between January 2010 and January 2013 1,661 customers invested over £112million into SIPPs which held a range of unregulated investments including green oil, biofuels, farmland and in many cases overseas property. The SIPPs ranged in size from £5,000 to £440,000 and averaged around £67,500 –well below the industry average. The vast majority of the SIPPs were funded by transfers from other pension arrangements. An unregulated introducer or agents of that introducer were the source of over 95% of the leads that TMI "advised". More details are available by reading the FCA's enforcement notice.

This case has some similarities and is on a similar scale to the "1 Stop Financial Services" case where the FCA issued a final notice in April 2014. In that case 1,959 customers invested again just over £112million into SIPPs of which 49% was invested in overseas property developments operated by Harlequin. In this case the period was somewhat shorter – October 2010 to December 2012.

Those of you familiar with the history of SIPP regulation will recall that during the period covered by both these cases the FSA (this was pre-FCA) conducted their second thematic review of SIPP operators and published their findings in October 2012. One of the findings of this review was that the FSA found inadequate controls over the investments held within some SIPPs operated by a number of providers. They highlighted "an increase in the number of non-standard investments held by some SIPP operators, with often poor monitoring of

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this.” They also found “poor corporate governance, which in some firms may have resulted in the firm being targeted by other parties for the purposes of facilitating financial crime. These other parties included both FSA-authorised and unauthorised firms, based in both the UK and abroad.”

I draw attention to the above extracts because the timing of this thematic review seems to me highly relevant. It commenced in April 2011 and presumably the FSA must have discovered both these cases in conducting their review and yet no action was taken to stop more customers being misled until late 2012 and early 2013. I assume also that the FSA would have had separate processes in place for monitoring the activities of advisers – particularly those writing disproportionately high volumes of SIPP business.

Coming back to “where does the buck stop” in these cases I assume it will be the FSCS. As we know advisers have seen their FSCS levy increase dramatically this year largely as a result of SIPP compensation claims with a warning that a further increase is possible. It seems very likely that SIPP providers may also find their FSCS levy increase in the future. That is not unreasonable –after all it’s what the FSCS is there for. But it does seem to me that that the sharing of responsibility in this way is fundamentally unfair.

There are at least five parties involved in the detriment to the customers involved in these cases:

- The regulated advisory firms and their principals who have been found to have failed
- The unregulated introducer firms that passed many of the customers onto the regulated advisers
- The SIPP providers who accepted this business
- The FSA/FCA who failed to take action in a more timely fashion
- The customers themselves

I believe that there is a strong case for reviewing how the compensation schemes work in these cases. It seems to me that the SIPP providers who accepted this business should accept more responsibility. I have no idea how many providers were involved but given the volumes involved and the nature of the investments there appears to have been at the very least an absence of adequate business monitoring and controls amongst some providers. I suspect the new capital regime introduced for all SIPP providers will have been prompted by the failings in these & similar cases. Whether that regime is the appropriate response is another issue!

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It also seems to me that the FSA/FCA have some awkward questions to answer about their apparent inactivity in both these cases and the monitoring systems that were employed. The volumes of SIPPs in these two cases – averaging over 30 new SIPPs a week – should surely have prompted more urgent action. Perhaps the FCA –or the government in lieu - should also make a contribution to the total compensation costs which are likely to be very large.

I hope that there are no more cases like this to emerge – although my confidence is low. The damage caused to the SIPP market and the costs to the industry –and ultimately new and existing customers are huge. Once again a combination of greed, ignorance and inertia have brought the whole industry into disrepute. And this at a time when the concerns around pensions scamming linked to the new freedoms at retirement are growing all the time –with some justification it would seem.

It would appear in this case that justice has been served in part through the issue of the enforcement notice and the consequential penalties. However for justice to be seen as having been fully served we need the SIPP providers involved to step up to the plate and accept their responsibilities –and the FCA in lieu of the FSA also to accept that they fell short of the standards expected and to fund part of the compensation that will undoubtedly be forthcoming via the FSCS. There's no harm in dreaming!

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