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news

Dear Friends...

I hope that everyone had a good Passover, Easter, second Eid and the like. December's trial newsletter received a sufficiently positive response to justify one three times a year. So, here we go.

The December effort generated some fascinating responses including a vigorous one in Latin in response to my attack on its use in consumer correspondence. I also learnt that Moslems send Eid not Ramadan cards.

I am increasingly aware of technological change. (The recent introduction of the 0207/8 codes for London has caused enough chaos.) In the last quarter of 1999, I received significantly more e-mails from customers than ever before. I hope to have a website by the time I write my next newsletter. Currently, readers can find details about me including a paper on financial services compensation at http://homepage.tinet.ie~ugf. I have also commissioned some design work for the business as a whole. Combined with the hi-tech projector I purchased last year, the business should have a smarter, more up-market feel.

On my travels, I have continued to pound the wonderful Liverpool Heritage Trail. While the area near my base in London has a road named after Spencer Perceval, the only Prime Minister to have been assasinated, Liverpool has a plaque honouring the man who did it!

It remains only to wish everyone a great summer.

Adam Samuel

Compliance

Happily, I have continued training advisers, supervisors and compliance staff to prevent compliance problems. In January, I did a case study workshop followed by a session on drafting "Reason Why" letters. A group of about 50 people helped me draft a specimen letter "live".

There are some key points which are easier to state than to implement. With bad files still a feature of the industry as a whole, I can be a little dogmatic here.

The fact-find should be just that: a full description of the customer's circumstances, aspirations and expectations. It mustn't contain advice. Or else, a regulator can assume that the facts have been "adjusted" to fit the advice. The document should also be comprehensive. It is rarely possible to give good advice otherwise. Limited fact-finding throws away business opportunities.

Risk assessment continues to cause problems. Being a cautious (or any other type of) investor may mean three different things. You may not want anything that could put your capital at risk. You may wish to invest cautiously the particular amount. Finally, you may want a generally cautious portfolio but can accept riskier investments. The fact-find must differentiate between these different profiles.

Finally, the fact-find should enable a compliance monitor to list the general options available and find one of them recommended in the reason-why letter. If not, either the fact-find, the recommendation or the monitor's knowledge is probably faulty.

The reason-why is all part of the process of selling the advice to the customer. It has to be built logically. Start by stating the key fact-find information with a bearing on the advice. Any information, which might indicate an alternative solution should be listed.

The making of the recommendations should follow smoothly from the facts. One client produces a before and after table. Printed alongside each other, they help identify whether the advice matches the client's objectives.

Do you need full disclosure of the risks and disadvantages of the product in a reason why letter? PIA Regulatory Update 67 suggests so, at least for income drawdown. This makes sense anyway. The charges, investment risk and other disadvantages play a key role in the adviser's recommendation. A clear explanation helps to show that disclosure has been properly done. Client-specific disclosure is much more likely to be read than pre-printed material such as Key Features documents. This all reduces the risk of customer surprise and complaints.

The December letter mentioned execution-only business. Someone at a life office told me recently that her company had stopped paying commission on it and noticed that such sales had almost dried up as a result.

At the same time, a customer told me that the Glossary definition of execution-only in the PIA Rule Book and

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Compliance continued

Regulatory Update 54 do not tally with the Pension Review Guidance. The latter, unlike the first two, includes a customer who expects but does not receive advice. Curiously, PIA Rule Notice 35 gives the impression that, in introducing the current definition, the regulator wanted to reduce not increase the scope of execution-only.

How this all works can be seen from a pension review case. The client responded to a direct mailing by seeking advice. He was just sent the proposal which he signed. He expected advice. Did he, though, receive it? I think that he did. Sending the proposal form would have meant to the client that the firm was recommending the policy. Perhaps, the exclusion of the word "expect" from the definition of execution-only is not that important. It has not stopped the PIA/FSA from ordering a life office recently to re-open all its pension review execution-only cases.

The other major development is Regulatory Update 72 on endowments. Since it represents the regulators' understanding of the rules, it will lay down the standards for both past and future business across the board. Endowments, though, are increasingly becoming a complaint handling rather than a future sales issue.

A pension review manager responded to December's plea for more compliance officers to come from his ranks with some depressing comments. He pointed out that companies wanted "yes-men" in senior compliance positions. Quality people would be removed if they stood in the way of marketing and sales departments

Complaint Handling

I have been involved in some exciting complaint handling these last few months. The emergence of a major endowment problem led me to launch a new course on that subject. The first set of feedback was extremely positive. I ran the course as a single day although it would probably have been better over two or three half days. We had no shortage of material to discuss.

My first financial services complaint case was a missold endowment. I have been tackling these types of issues on sales and mortgage courses going back to 1996. So, sessions on endowments are not a leap in the dark.

In February, I participated in the Infoline Complaint Handling Conference. On the first day, I had the graveyard slot after lunch to generate a frenzy over endowment and FSAVC complaints. Conscious of the way conferences slide away from anything controversial and therefore practical, I persuaded the organizers to let me run some case studies on the first day and then chair a session the following day with two other people examining some more real scenarios. If you want copies of my paper, please ask. I produced a handbook on complaint handling for conference participants. To obtain one, contact Infoline on 01323 430816.

The key points about endowments are that firms should never have sold them after the abolition of LAPR in March 1984 to single people without dependants, those who have previously lapsed one, low risk investors, investors over 50 (probably 45), foreigners and anyone else unlikely to maintain payments into the policy for the full term. Finally, it was difficult to justify endowments when they became more expensive than capital repayment loans.

When upholding complaints, always offer a refund plus interest in exchange for the policy surrender. As an alternative, pay what would have been repaid had a capital repayment loan been chosen (see April's News from the Ombudsman Bureau), adding compensation for any resulting increase in future life cover premiums and mortgage switching costs. The latter may include lost MIRAS where a home improvement's loan has been remortgaged.

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Generally, the new interest in complaint handling seems very healthy. People are now talking more than ever about improving standards. The danger, reflected at the conference, is that the focus will be on the anodyne rather than finishing the work correctly and effectively. We all want to be pleasant to our customers (although some have a funny way of showing it). However, blubbering effusions of goodwill do not make customers feel that their concerns have been addressed. It does not impress regulators either.

What the client wants is an apology and a coherent explanation of what happened, why it happened and (ideally) why it won't happen again. He needs to be convinced that any compensation offered is the maximum to which he is entitled. To deliver this, staff need a combination of product, legal and complaint handling understanding. Soft skills are important. On their own, though, they do not satisfy clients or regulators. Speed, clarity and high quality reasoning is what it is all about.

An angry conference participant attacked me for investigating compensation (asking what would have been repaid from a capital repayment loan in an endowment case) before deciding whether to uphold the complaint. This is not a big an issue for good complaint handlers. They tend to guess the general outcome of complaints from a quick read of the file. It seems uneconomic to plough into a case without a clear idea of what is at stake and slow up an investigation that involves little staff time but which may prolong the case considerably if delayed.

On the evening between the two days of the conference, I took some people on a pilgrimage to Ombudsmanning. We saw the IOB's original offices, currently occupied by

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Pension Review

The review continues to keep me busy. Early this year, a project manager gave me one of my favourite compliments: "The effect of your training has been to send our acceptance rate through the roof." The pre-course work for a session we were about to do contained a number of excellent opt-back-in and decision letters. The opt-back-in letters contained full disclosure of the scheme benefits and avoided any hint of a capping threat. Notes on file then said that in spite of their earlier view on the subject, the customers had joined the scheme. The offers set out the key facts succinctly at the start and explained why the offer concerned was being made. They were a pleasure to read (and were Latin and jargon-free!).

Recently, I have been training all levels of staff from project managers to the most lowly information gatherers. The latter are great fun. Many desperately want to learn and ask impossible questions. A group of them has forced me to make an addition to the first part of my training programme. I now explain how the review process and standards can be reconciled with each other.

The discussion grew out of an opinion I wrote for the project manager of that company on group personal pensions (GPPs).

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the Funeral Services Ombudsman. Then we ate at the Sicilian Avenue Spaghetti House where the first Insurance Ombudsman, James Haswell, used to charm members into compensating their customers in the early 80s.

In a recent case, the appointed representative of a life assurer advised a client to surrender a bond of that office and invest the money in an unauthorised investment. The assurer compensated the customer for the full amount of his loss and claimed on his PI cover. Arguing that the transaction was actually two separate ones, the insurers declined to pay the loss caused by the unauthorised investment. The life office asked for an opinion indicating that the insurers had agreed to be bound by the result (of which more under dispute resolution).

Much of the discussion revolved around whether the transaction involved one or two distinct acts. It didn't really matter. The key question was whether the authorised act of the adviser had substantially contributed to the loss of the investor's money in the unauthorised investment. In this sense, the case was very like a home income plan where an authorised transaction (the sale of the investment bond) gives rise to an unauthorised product, the mortgage which then generates the loss. In the Bowden case, nobody doubted that the Investors Compensation Scheme had to pay off at least some of the clients' mortgage.

A new case supports this approach: Martin v. Britannia. The judge said that the assurer would be liable under section 62 of the Financial Services Act for re-mortgage losses in a churning case.

In the end, I advised that the life assurer was right to uphold the complaint on the basis that its adviser had, in giving authorised advice, caused the customers to lose all but a few thousand pounds of their investment.

The Martin judgement is important for complaint handlers generally. Some companies think that courts would see cases in a less-consumer friendly light than an Ombudsman Bureau. The Judge in Martin rejected the view that the customer's signature on the fact-find protected the assurer when the document was not accurate. He declined to take into account the financial expertise of the client. As the judge pointed out, the client did and was entitled to rely on someone claiming to be an expert. The judge preferred the client's recollection to the adviser's on everything.

This corresponds to my experience of Ombudsman hearings. In all but one of those that I have attended, the policyholder won. With the Financial Ombudsman Service, there is much talk of a dramatic increase in hearings. One of my customers has suggested that I offer training in this area. In fact, one company some time ago ran a simulated hearing exercise with me which proved very interesting. I certainly can provide training in this area.

What worries me is that the legal profession will try to sell commercial litigation skills to the financial services industry without any experience of the relevant type of proceedings. Hearing management is all about good basic complaint handling. Firms should not reject a complaint without having a full salesman's statement describing what happened and the customer's circumstances at the time. Before doing so, they need to verify its accuracy using at least the fact-find and ideally a third party or best of all the customer. (Customers agree with firms about the facts more often than one might think.) All points of law should have been discussed in the senior management letter. So, the file should be all ready for the hearing at the time the rule 8.2.6 final decision letter is sent.

The company's task at the hearing is to overcome the natural perception of the client as underdog. Low-key presentation is everything. The purpose of the hearing is to find out what happened and very little else. An adversarial approach in such an atmosphere can be fatal. Companies should have raised any questions for the client and any argument on the merits in advance ideally in the senior management letter. Allow the Ombudsman to question the complainant.

Finally, be prepared to concede defeat gracefully and settle instantly. Everyone feels much better. The customers think that they have won and appreciate the company's goodwill. The Ombudsman does not have to make a decision. The company thereby rises in everyone's estimation at no cost if it was going to lose anyway.

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Pension Review continued

These are in the review since they are personal pensions. So, where they have been sold to people who can join an occupational scheme, their sale needs to be reviewed. That, though, is not the problem.

The key question is whether a firm can be liable for lost GPP benefits under the review. GPPs are not mentioned anywhere in the guidance. The Redress Guidance, though, requires firms to put the customer in the position in which he would have been had the firm acted compliantly.

Where an occupational scheme becomes a group personal pension and the client doesn't join, the original sale continues to cause the loss of employer contributions and any bulk discounts in the charges attached to employee premiums. This is because, at the offending sale, he was not told about the advantages of employer-provided pensions and has a front-end loaded personal pension which he cannot stop without losing much of his investment. The personal pension typically receives as high a premium as the customer is prepared to pay. So, the fact that the customer could have kept it going while joining the GPP is irrelevant. Enquiries of the original scheme made under the Guidance are likely to reveal the existence of the GPP. In the circumstances, the basic redress rules require compensation to include lost GPP benefits with adjustments for over-contributions and future charges.

The position is more difficult where the client moves employer and fails to join a GPP. There, the unsatisfactory answer appears to be that if you do not find out about the group arrangement, you can ignore it. If the customer or a third party makes you aware of the GPP, you should probably compensate the customer.

In the last few months, I have encountered a couple of cases where the customer has gone bankrupt during the review. The Guidance is silent on this. So, firms have to continue with the review in the normal way, obtaining an acceptance from the trustee in bankruptcy. Firms cannot seek to evade the bankruptcy in transfer cases by not offering a top-up where reinstatement is possible.

A recurring theme is schemes like the Building & Civil Engineers Scheme where the employer contribution is tiny to non-existent. The Inland Revenue has confused matters by allowing scheme members to renounce their B&CE benefits retrospectively and so continue with the personal pension. Since many members are not particularly aware of the scheme let alone the beneficial AVC arrangements, sending letters giving members this choice is potentially hazardous.

Check out the B&CE website www.bandce.co.uk. The key is that the scheme is non-profit making and provides AVC benefits in bulk for its members. Returns on the scheme have been good and I have yet to see a personal pension that has out-performed it.

First, though, you need a satisfactory loss assessment method. The B&CE is essentially non-contributory. This produces two possible approaches where premiums have been paid. The correct way to do this, blessed by Inland Revenue PSO 21 para 17, is to ask the scheme to reinstate on the basis that the personal pension contributions would have been paid to the AVC facility. Neither SIB nor PIA follow this approach in review over-contribution cases. Each ignore the AVC scheme's performance.

These differences have awkward implications. Where the customer never left the scheme, the case falls outside the review and the purist approach should be applied (offering a refund as an alternative). The calculation is crucial since it will give the client an accurate basis in which to decide whether to stay with the B&CE scheme. Using the Guidance approach for a review case will distort things.

Soon, the FSAVC review will be with us. I have a training course ready to be launched the moment that the actual guidance comes out. The impression is that we face "deja vu all over again". Prepare to abandon all hope of winning cases on compliance and causation.

Far too many acceptances are still being held up by dire lawyer-inspired decision letters. Neither the guidance nor the law requires you to refuse to admit that you are wrong, fail to set out clearly the facts on which your decision is based at the start where most people can find it or use type faces designed to deter acceptance.

In a recent case, the client declined to accept the offer unless the firm deleted its refusal to admit liability. Unfortunately, the firm froze. It just needed to ask the customer to delete the offending paragraph and return it with a signed acceptance. The company could then accept the client's offer so long as the full and final settlement section remained untouched. In that situation, the customer could not have sued the firm anyway because of the discharge.

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Dispute Resolution

Recently, I have been involved in two unusual pieces of dispute resolution. The first, described already, involved a request for an opinion accompanied by the comment that the PI insurers had agreed to be bound by my opinion. When I realised this, I rushed off to their solicitor disclosure of my previous business relationship with the assurer. I think that at that stage I was an expert not an arbitrator.

When I write opinions, I usually send them in draft to the client before finalising them. I told this to both the assurer and the solicitor for the PI insurer. By their agreement or acquiescence, did they agree to arbitrate? There would now be a binding procedure where both sides would have an opportunity to make submissions. I should probably have sought everyone's agreement to waive their right to appeal on a question of law under Arbitration Act 1996. Happily, though, the matter seems to have resolved itself amicably with pleasant thank-you letters all round.

Last year, I helped reform the Institute of Financial Plannng's Disciplinary Procedure. In particular, we introduced the idea that every complaint should be submitted to an Independent Investigator. This was to increase the public accountability of the process. In the first case under the new rules, I was appointed the Investigator and my final report has gone to both sides. The Committee's decision was reached within two months of the complaint being made and it will be published in "Financial Planning".