Submission to Joint Committee on Corporations and Financial Services – Future of Financial Advice

Please consider the following in your deliberation.

Firstly let me state that I fully support a more professional and accountable financial advice industry and that some things that have happened in the past (i.e. Storm etc) are a sad indictment but should not be taken as indicative of financial planning generally. Storm should not have happen but their business model was very well known throughout the industry and despised by the majority long before the GFC tested its integrity. In my view ASIC has a lot to answer for, for not identifying and dealing with this a long time before it blew up and hurt so many people.

The provision of financial advice (that is advice that has serious financial consequences), however, is not solely a financial planning matter. Many accountants give financial advice on a daily basis as do many real estate agents when selling investment properties. There has been just as many, if not more, examples of, not just poor advice by RE agents, but also downright fraud. While infrequent, advice that has financial consequences given by both accountants and even lawyers has poor. But in all these examples there seem to be no problem in RE agents receiving commission payments or accountants and lawyers needing to have clients "opt-in" to ongoing services.

My business has always been a mainly "fee-for-service" business and I know many of my fellow financial planners have moved that way over the years, not driven by the expectation of FOFA but more because the industry as a whole has been moving that way as it matures and also because it a model that clients can more easily understand. In fact approximately 80% of my income is generated from fees but there are many smaller clients that need and benefit from my advice where a "fee-for-service" model is not appropriate. In fact it could be argued that it is these very people who need the advice the most.

In my view it is not the paying of commissions that is the issue but the level of commissions some products have been allowed to be paid. For example there is no product that can justify a 10% commission, but ASIC has approved many PDSs that clearly state these levels and higher. Indeed questions should be asked at levels of anything greater than 2%. The real estate industry bodies have recommended commission levels that are generally used by agents. So why can't there be industry recommended maximum commission levels for financial products and for ASIC to closely monitor and challenge products that offer higher levels?

The concept of "opt-in" smells like the application of a "nanny state"; let's protect the public from themselves. What other similar profession, or indeed industry or business, is obliged to operate in similar way? Indeed what other business (let alone a profession) would face the prospect of the proposed substantial financial penalties for getting the paperwork wrong?

This is a serious issue, not just because of the impact on an industry that has proven to be generally well behaved, but more so because it will impact on the very individuals that it is said to protect. In any financial planning relationship there should be a well defined engagement process; a contract if you like, that spells out the services to be provided and the amount and means of paying for those services, whether by commission or fees. Really no different to any other industry or business, and just as it would apply anywhere, the client has legal redress should the services contracted not be provided. If the services are not provided then a refund should apply if payment had previously been made.

As for the issue of always acting in the client's interest, this is a real ferphy as this has always been the case. You would not find anyone in the financial planning industry that would not agree that this is the case now anyway. There is a clear fiduciary relationship between client and financial planner now and there has been successful legal action in the past because of a failure in this duty. But it sound good for a politician to claim that this duty will be legislated.

I only hope that some common sense is brought to the fore in this debate. This is poor legislation driven by a government that has been influenced by the union dominated industry super funds. Why aren't we holding ASIC to count for its many failures? If my industry is being targeted, why not other industries? I'll leave the answers to these questions and also (hopefully) some rational and objective debate to our legislators with the hope that for once the right thing is done.

Regards

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