

Welcome to TISA talk, this week –

- Malcolm Small, Director of Policy at TISA, questions why “pension liberators” exist and the risks they present both to the consumer and pensions industry.
- Jeffrey Mushens, Technical Director at TISA, comments on how the FCA’s stance on breakable term deposits, putting pressure on banks’ capital ratios, conflicts with the PRA’s remit to improve bank balance sheets.
- Peter Smith, Head of Distribution Engagement at TISA, discusses the blurred distinction between information and advice.

#### **PENSIONS LIBERATOR FRAUDS – CROOKS OR LEGITIMATE?**

At a recent meeting of the Small Pot and Pension Transfer Technical Advisory Group, the issue of so-called “pension liberators” was the subject of heated debate, with many members reporting suspicious transfers or activity and retrospective investigations, in some cases revealing 10% of transfers to such schemes. Pension “liberators” claim to be able to turn a pension fund into cash, or an interest-free “loan” in return for a percentage of the fund, irrespective of your age, by transferring to their own pension scheme. There are a number of permutations of these schemes, and they are often targeted at the financially vulnerable, although many in the Group reported “cold calls” to their own mobile phones. Users of such schemes are at very high risk of total loss of their funds through the promoters absconding altogether; others will receive their fund, unaware that as an “unauthorised payment” it will be subject to a 55% tax charge, a fact seldom disclosed. It is suggested that around £400 million has already been through these schemes.

We have to ask, however, why a market exists for these schemes. If you have lost your job, or are heavily indebted, paying the next bill can look more important than a pension fund whose utility may be many years in the future. One of the problems with pensions can be the very fact that they are “locked up” until pension age. In fact, we once had a short lived system of “loanbacks” for self-employed Section 226 personal pensions in the 1980’s, whereby the policyholder could borrow from the pension fund in case of need. Whilst very few actually did so, the additional comfort that the fund could be accessed if needed made the “sale” easier.

“Liberator” schemes are as easy to establish as a UK pension scheme or a QROPS, the registration hurdles at HMRC being minimal. Some of the latter may be domiciled in locations where it is perfectly legitimate to access the whole fund as cash, free of tax, thus operating entirely within the letter of the law, if not its spirit. Many, however, will take high charges and leave the customer facing a hefty tax charge. This is a big problem, and it is unlikely to go away any time soon. As even the Regulator reluctantly points out, schemes have a legal duty to act on a legitimate transfer request from a member, so administrators can be caught on the horns of a nasty dilemma. More at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

**Malcolm Small, Director of Policy**

#### **FCA AND PRA PULL IN DIFFERENT DIRECTIONS OVER CASS RULES**

Twin Peaks. Who remembers that? But that’s the way some members are referring to the split entities arising from the

demise of the FSA and Journey to the FCA. It’s a reminder that there was a reason why regulation was put in one place.

The issue arose in the context of client money and term deposits. The FSA/FCA would like such deposits to be breakable in the event of an insolvency or liquidation, and are putting pressure on the banks to agree break clauses. But this damages banks’ capital ratios, and the PRA as part of its role is busy trying to shore up banks’ balance sheets. The Twin Peaks are pulling in different directions!

The issues of diversification between five or more banks of client money, disclosure of returns by firms on client money, and whether firms are entitled to margins on client money are all hot topics right now. Given the current business models of most firms managing client money, whether platforms or wealth managers, this is pressing for commercial reasons. TISA’s view is that any changes can’t be imposed by the back door, but only through an open and consultative process.

We’re inviting the FSA/FCA to a future session of the Client Assets Technical Committee where this, and other pressing issues, will be debated.

**Jeffrey Mushens, Technical Director**

#### **WHEN ADVICE IS NOT ADVICE**

With the financial services market currently racking its brains to determine the alternate methods of distribution to UK consumers following the introduction of the RDR, a number of different models are being considered which may confuse the consumer and breach the regulations. One of the main dilemmas is the blurred distinction between information and advice. The entire financial services industry is full of grey areas where consumers may think they are receiving one thing, when in fact they are officially being given something rather different. This problem is especially acute in the investment world, particularly with the emergence of execution only intermediaries, discount brokers and investment platforms together with electronic media. A vast amount of information has sprung up which offers investors a great deal of diverse information and research but not advice. This naturally competes against independent financial advisers who, as the name implies, do give advice as well as offering access to research and financial data.

Investors need to be crystal clear about whether they are receiving financial advice or not. If they mistakenly think they are, they can be lulled into a false sense of security about the appropriateness of the products or solutions they are buying. This results from financial advisers on the one hand and intermediaries on the other hand, both helping investors with their investment choices and both offering the benefit of research, information and analysis. Some investors could be forgiven for failing to spot the difference. The real issue is whether drawing together information, fund lists and other research and information provided should not be construed as amounting to a recommendation or advice. However, if it looks like advice, sounds like advice and feels like advice, then investors are going to consider that it is advice. As far as advice is concerned, there is no halfway house. If a consumer is using an intermediary they are just as much a DIY investor as someone who simply picks up the phone and deals directly with financial groups. This will clearly be a future area of focus for the FCA.

**Peter Smith, Head of Distribution Engagement**