



THE NEWSLETTER OF LIBERTATEM | FEB 2017

## FCA must think again on FSCS

**The FCA's recently published CP16/42 looks at the funding of the FSCS which outlines a collection of partial answers –but fails to deliver a solution**

THE TRADE PAPERS will probably tell you to rejoice that FSCS fees may get cheaper thanks to some proposed funding from providers, but we have been here before. We had provider support with the PIA but, as it was a voluntary arrangement, it quickly fell apart just a few years.

What is really needed are permanent solutions to a ongoing problems that refuse to go away, rather than ones which merely paper over the cracks.

### **The amounts paid out will continue to increase**

No Long Stop means every additional year traded makes another year for claims. FSCS can still pay out on claims for advice given before 1988. This is compounded by the actions of FOS who keep making judgements outside the normal tenets of commercial law, creating more company failures.

### **FSCS cover should be funded by those who seek to benefit**

The current FSCS scheme has a profound funding mismatch. There are 16m potential claimants on FSCS - the sum total of all those who have received advice since 1988.

The current FSCS is paid for only by the 6m clients who sought advice this year, which puts an unwieldy burden on the currently advised. Any idea of a

levy on new products would do the same. This method makes the cost of FSCS a major disincentive to the widening of advice which the FAMR initiative seeks to encourage.

If we want to expand the availability of advice and create a workable solution, we need a method that spreads the funding throughout as many of the 16m as possible. The most obvious way would be to put a specific charge on investments. That way, all those holding products and solutions would be contributing, even if they are not currently receiving advice. Given the number of product providers and platforms in existence, this charge would be demonstrably easier to collect than the current system.

### **Bring certainty to the PI Market**

From the FOS perspective, PI exists to pay out what ever awards are given. As a result, we now have fragmented PI cover with many providers fast leaving the market.

The PI market and Advice market are intimately entwined. Either we have a healthy PI market and independent advice – or we have no PI and no advice.

### **Reforming FOS**

Most Ombudsman schemes content themselves in giving the client a dispute system that

delivers what they might receive in a court of civil law. The rules of evidence, limitations and judgments are the same and it works for both sides, as neither really wants the costs of a court.

But FOS has slowly separated itself from mirroring civil law and has instead embarked on a restitution regime which no law court would contemplate. And this is all delivered without limitations or the safeguard of appeal.

The number of failed firms and claims would diminish expedientially if FOS and FSCS stuck to resolving claims purely based on commercial law. Good quality PI Insurance would be maintained and the number of successful claims would drop.

### **The fantasy of risk-based FSCS charges**

The FCA's divisive answer is to split advisers between "risky" and "Safe". Those who are proven to have advised on high risk products will fall into the "Risky" category.

But for this to work, a significant number of advisers would have to be placed in the section, otherwise why bother? Those designated as being "risky" are likely to face both higher FSCS charges and higher PI charges, thus compromising the financial health of their business. They

are therefore more likely to fail (and to phoenix) so we end up with less advisers paying more FSCS charges. Applying additional charges to designated "risky" firms will surely be a short-lived idea.

### **Change PI Cover**

Perhaps most bizarre element of CP16/42 is the idea that all advisers should be shoe horned into one insurer. Those of us with long memories will remember that FIMBRA tried this early on and failed.

The attraction of this idea to the FCA is that it and FOS can continue to act as the consumer's guardian angel, awarding pay outs as they see fit whilst their captive PI company is writing the cheques.

If we presume a PI company can be found to accept it, they would have the monopoly over all regulated advisers. Without market competition, PI rates would increase massively. These would include the PI Insurer's margins – all topped by IPT at 9%. It might be better to stay where we are.

### **So, what is Libertatem's answer?**

Obviously, as a profession we cannot continue like this. But there is a simple answer. We must realign FOS with the tenets of the civil law. After all, why should clients expect any more than they might receive within the legal process? This will not only stabilise the PI market but would also encourage investors into the advice market.

And then we come to the "one-size-fits all regulator. Unless we can separate professional advisers from the major players, we will continue to be treated as if we have access to client funds.

Ideas such as risk-charging are divisive within the sector and are doomed to fail. A captive PI insurer is just madness to everyone – except the regulator.

Libertatem are making some headway. But, as always, the major issue for us is apathy. Not only in the 90% of advisers who have yet to ally themselves with a trade association, but also in the attitude of many providers who are dependent on the sector for business.

As a profession, we all need to wake quickly and do something about it, before it's too late.

# FOS must stop blaming IFAs for the FSA's Connaught shambles

Libertatem has always taken a deep interest in the Connaught Fund. Firstly, because Connaught is a microcosm of everything that is wrong with regulation. And secondly because we have members who are involved.

The **Connaught Series 1 Income Fund** was created by two FSA regulated firms – Tuita and Capita. It was a fund which sought to arbitrage the difference between the interest rates available for bridging loans and an acceptable return to those lending the fund their money.

Its Memorandum of Information was created by Capita and offered lenders reasonable safety for this type of investments, as long as the owner of the fund (Tuita PLC) stuck to the rules of the memorandum. However, Tuita didn't and its directors started to defraud the fund.

**Enter stage left the hero of the story: George Patellis.**

George joined Tuita as its new CEO and quickly realised that Tuita's directors were misappropriating Connaught's funds. He resigned and approached the FSA to report the fraud. His warnings were ignored and he faced regulatory criticism for blowing the whistle. As a result, he has been placed in limbo for last three years and has experienced difficulties restarting his career.

George complained to the UK Complaints Commissioner who has recently ruled in his favour. In terms of the fraud the Commissioner said: "Either the regulator failed to understand this, which would be grossly negligent, or chose to ignore it, which is arguably worse."

**The Commissioner's findings are particularly damning on the FSA's inactivity:**

*"Despite being given the evidence, the regulator failed to act and so an additional group of consumers invested another £100m in the fund. There was absolutely no reference made to the serious financial irregularities, allegations and evidence of fraud and a serious gap its funding position.*

*"These were the material facts that all advisers and investors should have been notified of, but never were. This failure in communication cost investors many more millions of pounds as the funds remained open to new investment for another year during which even more fraudulent activity took place."*

**The most revealing element was the Commissioner's finding in terms of advisers:**

*"However, in my view, the FCA's choices about what information not to put in the public domain, and the emphasis on IFAs, may have had the effect of shifting the focus away from the possibility that there might also have been regulatory failure."*

**Rather than admit its failings, the FSA (now FCA) has tried to dump the blame on advisers. The FOS claims that advisers are at fault for not knowing what the regulator knew – but did not share. The adviser's actions are then declared to be fraudulent by the FSCS, leaving the client with nothing.**



**Is regulation in place to protect the consumer, or to protect the powerful? The way the regulator has dealt with Connaught suggests it's the latter – and the UK Complaints Commissioner appears to agree with this damning assessment.** ”

Put another way, the Commissioner is saying that rather than admit its failings, the FSA (now FCA) has tried to dump the blame on advisers. In this, it has found a helpful collaborator in FOS who, to save the regulator's blushes, has decided that all Connaught cases are to be found against the adviser – whatever the evidence.

FOS claims that advisers are at fault for not knowing what only the regulator knew – but failed to share. The blanket approach adopted by FOS is to encourage victims to attack their advisers, which fails to resolve the issue. It also provides those who were responsible for the fraud the cover required to avoid paying back the proper amounts.

When FOS declares against the adviser, the PI cover does not pay out as it does not cover fraud. Thus, the adviser firm fails and the claims fall on the FSCS.

**But (and here is the sting in the tail) the FSCS also does not cover fraud.**

So, the victim is told by FOS to claim against the adviser in the distant hope of they will receive a pay-out. Unable to cover the cost of the action, the adviser's firm fails and the victim is referred to the FSCS to settle the claim. Then the FSCS rule that the case was fraudulent so no payout is forthcoming. The only winner is the regulator who has successfully swept another embarrassing case under somebody else's carpet.

Throughout 2016, Libertatem has been asking the same question: Is regulation there to protect the consumer, or protect the powerful? It cannot do both. Connaught proves it is the latter.

We started 2016 with an adjournment debate on Connaught and a motion of no confidence in the FCA. We ended 2016 with a face-to-face meeting with Kirsten Oswald MP, Chair of the Connaught All Party Parliamentary Group, during which she agreed to table a motion in Parliament (see right).

The Motion was duly tabled in December and we urge all IFAs to contact their MPs and ask them to support it. To find out who your local MP is visit [www.parliament.uk/mps-lords-and-offices/mps](http://www.parliament.uk/mps-lords-and-offices/mps) and insert your postcode. If you live and work in different constituencies, write to both MPs.

If you would like a template, please contact us here at Libertatem and we will gladly send one out to you.

The past few years have seen advisers cast as scapegoats by the regulators. We must ensure the lessons created by Connaught are learned in 2017.

## Early day motion 781

### CONNAUGHT FUND

- Session: 2016-17
- Date tabled: 07.12.2016
- Primary sponsor: Oswald, Kirsten
- Sponsors: Fellows, Marion, Mullin, Roger, Blackman, Kirsty, Bardell, Hannah, Gray, Neil

That this House welcomes the findings of the Complaints Commissioner following complaints lodged by George Patellis and Adam Nettleship regarding the loss of over £100 million by investors in the Connaught Income Series 1 Fund;

Notes that Mr Patellis was Chief Executive of Tiuta PLC, a firm at the heart of the scandal, and his efforts to whistle-blow on mismanagement of the fund were met by a response from the Financial Services Authority (FSA) that the Complaints Commissioner described as uncoordinated and fragmented, and failed to prevent continuing detriment to investors;

Regrets the refusal of the Financial Conduct Authority (FCA) to accept the Commissioner's recommendation that Mr Patellis receive a public apology for the lack of care over his treatment as a whistle-blower and the defensive and insensitive manner in which it has defended the FSA's failure to refer Mr Patellis' evidence to the police or to advise him appropriately on his ability to do so;

Further notes that Mr Nettleship is an Independent Financial Adviser (IFA) and that the Commissioner found the FCA's emphasis on investors looking to IFAs for compensation may have had the effect of shifting the focus away from the possibility that there might also have been regulatory failure;

Considers that the Commissioner's findings raise serious questions of regulatory failure; expresses concern over whether companies involved in the Connaught Fund demonstrate an appropriate commitment to high ethical standards;

And calls on Capita as original operator of the fund, and its successor Blue Gate, to acknowledge their responsibilities and offer investors realistic compensation.



## It's time for advisers to start setting the agenda

For the last 18 months, Libertatem has been concentrating on what is wrong with the regulatory system and, as a result, Parliament has been highly critical of the FCA and its acolytes.

Next year, we will see the 30th anniversary of financial services regulation in the UK. In that time, the sector's representatives have been bombarded by a myriad of consultative documents from regulators demanding responses to their increasingly theoretical ideas.

It's fair to say that this one-way process has failed to deliver. We now have a multi-billion-pound regulatory industry which has not only failed to protect consumers from bad advice, but is now increasingly denying them access to good advice.

**It is time for change – and for Libertatem to take a more positive role.**

Top of the Libertatem agenda is for advisers to become a proper profession. But if we are going to complete this transition, we need advisers to take the lead and be the ones suggesting new regulatory initiatives. Libertatem started this process last year by suggesting adviser were regulated by their own professional regulator - the Professional Advisers Regulator (PAR). If advisers get behind the initiative,

it could even happen.

HM Treasury would improve regulation simply by imposing a moratorium on the FCA and its cohorts issuing any policy and consultative documents in 2017. Instead, why not reverse the process and let all the other representative bodies issue documents to the FCA and the Treasury for their response?

Not only might this inject some much-needed modesty into Canary Wharf but it will also concentrate their thoughts on practical solutions to real issues.

We must separate the regulation of professional advisers from that of other financial companies if we are to deliver proper standards, a practical dispute mechanism and an attractive career ladder for those entering the profession.

**The upside to advisers and clients is huge. But will advisers rise to the challenge?**

All real professionals concentrate on what unites them and work to increase their profession's influence and privileges. But the last 30 years have seen advisers tend to concentrate on what divides them, instead of working for the common good. If we are ever going to do more than talk about being a profession, surely now is the time to do it.



Regulatory costs have risen, on average, by nearly £2,000 per adviser, each year for the past three years. Libertatem will fight for the future of financial services in the UK – and costs just £240 per annum.

**It's time to join your trade association**



## Busy end to 2016 caps off impressive first year

It's hard to believe that we only launched 18 months ago and that May 2017 will see us enter our third year.

For many, the fact we are still here at all is a major surprise. But not only are we still here, we are now actively taking the good fight to the regulators that continually threaten to close down the profession it is there to both protect and promote.

Since September we have held meetings in the Thames Valley region, on the Isle of Man and in Oxfordshire, with more planned for the New Year.

We also produced a video featuring Garry Heath who explained the reasons why the profession needs to unite as one behind an effective trade association. As a tool for attracting new members, it proved to be hugely successful and we urge all advisers – members and non-members alike – to view it on our website [www.libertatem.org.uk/downloads/other-key-downloads](http://www.libertatem.org.uk/downloads/other-key-downloads). Garry clearly explains the difficulties the sector faces and outlines the way forward, with the need for an effective trade association representing the interests of financial advisers being paramount in both protecting and driving the profession forward.

December saw our involvement in the Connaught Fund take a massive, positive step forward when the All Party Parliamentary Group,

headed by Kirsten Oswald MP, table an Early Day Motion 781. We galvanised advisers to contact their local MPs and urge them to support the motion, which questions the role of the FCA in the affair.

### A welcome change in attitude

The beginning of 2016 saw us approaching a number of potential commercial partners with a view to gaining financial support.

The response was, to be honest, underwhelming.

However, in recent weeks, we have seen a couple of the major players approach us asking what they could do to help us.

Meetings have been tabled in the coming weeks to see how they can assist us and it is hoped these partnerships will benefit both Libertatem and our membership.

## Libertatem: to Join or not to join? And what are the costs?

If you're not already a member but are thinking about joining Libertatem, here is a brief summary of the costs and what you can expect from us

Recent weeks have seen a large surge in membership numbers here at Libertatem as advisers grow increasingly wary of the FCA and their long term objectives.

**But one question that is coming up on a regular basis is 'do I have to register all of the advisers in my firm, or can I just sign up those that want to join?'**

The simple answer is whilst we would much prefer you enrol all of your advisers – you can subscribe just those that wish to join.

The fees are £240 per member per annum (this goes down if firms wish to sign up 3 members or more with the first two members being charged at £240 each and subsequent members being charged £120).

### So what do your annual fees pay for?

Your fees go towards the cost of running the organisation, lobbying, PR and representing the impartial advice community in Whitehall. We are based outside London (in not so sunny High Wycombe) to keep our overheads and costs at a minimum.

We regularly advise the Treasury Select Committee on the problems caused by RDR, the regulatory system and the ever-rising costs of funding the regulator.

We also assist members who have encountered problems with the regulator and the ombudsman, especially with regards to insistent clients and regulatory failures, such as the Connaught Fund (series 1). In addition, we organise regional meetings and are currently initiating activities with local MPs across the country.

We have recently produced a paper for the TSC proposing sensible and workable changes to the present regulatory structure and will be meeting two members of the committee in the near future to discuss our role with them and the issues currently faced by the impartial advice sector as a whole.

Finally, we are currently in talks with product providers, making them aware of the current trends in the sector – a sector they rely on to promote their products - with a view to obtaining more financial support.

Ultimately, we feel strongly that the sector needs to be treated and recognised as a profession. To that end, this year we will seek to form ties with the CISI (formerly the IFP) and the PFS with a view to devising a common strategy that will see advisers finally being treated as such by the regulator and kept apart from the rules and regulations governing the banking sector.

To find out more about Libertatem and our activities, please visit [www.libertatem.org.uk](http://www.libertatem.org.uk).

If you would like to join us you can email us for an application form at [join@libertatem.org.uk](mailto:join@libertatem.org.uk).

If you don't wish to join us, but would like to make a donation to support our activities, you can do so via paypal via our website at [www.libertatem.org.uk/donations](http://www.libertatem.org.uk/donations)

The impartial advice sector is sleepwalking towards extinction. It's time to wake up and do something positive to safeguard the future of our industry.

After all, together we are stronger.



**The Impartial Advisers Association**

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