



**Rising costs, unaccountable  
regulation and over 16 million voters  
left without financial advice.**

**It's time to speak to your local MP**

**Libertatem  
Parliamentary  
Briefing**



### Use the parliamentary process to speak to MPs and reform the system

Regulators will find concerted interest from MPs difficult to ignore.



### Tell your MP how regulation is affecting the consumer – and your business

16 million consumers now unable to afford financial advice; more than 25,000 job losses across the sector; regulatory costs in excess of £1.1bn... It's time the Government took action.



### Let us know how you get on

Once you have seen your MP complete our simple, survey form and let us know how you got on:

[www.surveymonkey.co.uk/r/HRG2W6C](http://www.surveymonkey.co.uk/r/HRG2W6C)

Contrary to what many people think of our Members of Parliament, the majority of them are hard-working individuals who care deeply about the issues that affect their local community and the businesses that operate within them.

By following this adviser briefing, you can appraise your local MP of the current regulatory issues that personally affect you and your business, as well as highlighting the issues that the general public have today with finding affordable impartial financial advice, at a time when the Government is liberating pensions and encouraging us all to spend more.

Only by talking to your local MP can you get them to exert pressure on Teresa May's government to reform the current regulatory system – and bring about positive change.

### Book your surgery meeting with your local MP

You may have two MPs you can approach: One where you live and one where you work. If you do not know who your MP is, you can find out by visiting [www.parliament.uk/mps-lords-and-offices/mps/](http://www.parliament.uk/mps-lords-and-offices/mps/) and entering your postcode.

Your MP should also have a local office which can be found by entering his name into the Google search engine online.

Alternatively, you can ring the Westminster Office on **0207 219 3000** which is the main House of Commons switchboard.

Once you have made your appointment, you may be asked for ID. This is because there is increased security at many surgery locations since the murder of Jo Cox MP.

Libertatem's Parliamentary Briefing contains the points you should make but, in your own words, you should express your own thoughts and experiences.

Taking your regulatory invoices to show your MP is a very powerful tool in emphasising the true costs you are having to pay to the regulatory bodies.

### Adopt the right approach

TSC member Steve Baker MP recently addressed a Libertatem meeting and gave an insight into current TSC thinking regarding the FCA and the best way to approach your local MP. You can watch the video at <https://vimeo.com/185945831>

# Professional Advisers Fact Sheet

## THE CURRENT REGULATORY REGIME IS FAILING THE CONSUMER

- The existing regime is costing consumers in excess of £1.1bn per year.
- All the costs of regulation are paid for by consumers, not the taxpayer.
- The average financial adviser has faced an increase in current regulatory costs (including compensation) of 61% p.a. over the last 5 years.
- Due to the current lack of unaccountability, there is no practical brake on either the size or cost of the regime. It will continue to grow for as long as there is nothing in place to stop it.
- Advisers currently pay these costs on their client's behalf and charge it on as part of the fee for advice. This is currently circa 25% of the clients' bill. The more regulatory costs increase, the less affordable advice becomes, and the more consumers turn away from impartial financial advice.
- The costs for Libertatem's average member have increased from £4,200 in 2010 to £22,000 this year. If the current regime was paid for by taxpayers, it would be a small percentage of its current size and far better targeted.

## THE CURRENT REGULATORY REGIME HAS REMOVED ACCESS TO ADVICE FROM 16.5M CONSUMERS

- There are currently 40.6m UK citizens of working age or retired who are potentially in the market for Financial Advice. (Source: Office of National Statistics – ONS)
- Historically 23m sought advice: 16m via Independent Financial Advisers and 7m via the high street banks. (Source: Libertatem - The Heath Report 2 2015)
- Since the Regulatory Distribution Review (RDR) was announced in 2008, removing commission from investment advice and increasing academic levels without grandfathering, 13,500 advisers have left the industry with total job losses more than 25,000. (Source: Libertatem - The Heath Report 2 2015)
- In addition, to trade in a commission-free environment, advisers have been forced to cut the number of clients each adviser is servicing from 405 to 195. (Source: Libertatem - The Heath Report 2 2015)
- The net result is that 10m adviser clients and 6m banking clients no longer have access to affordable financial advice. This has left millions of consumers unable to source advice on the new Pension Freedoms, while exposing them to a number of Pension Scams.
- In an attempt to fill a void created by their own Regulator, the Treasury now seeks two solutions:
  - i) They will combine the Money Advice Service, TPAS and Pension Wise into yet another quango funded by those consumers who access advice. It will not actually advise but, as previous attempts have shown, it will create greater confusion to the consumer.
  - ii) They seek under The Financial Markets Advice Report (FAMR) to create a guidance environment, in which

generic 'guidance' replaces 'advice'. This is likely to lead to consumers misadvising themselves and potentially buying overpriced products.

## THE CURRENT REGULATORY REGIME CONTINUALLY FAILS TO PROTECT THE CONSUMER

For the market to operate properly the regulator must act when given detrimental information. Yet they continually fail to act when required to do so. Examples include:

**The Connaught Fund** – The FSA (now FCA) failed to act when given concrete evidence of fraud within the fund. Thanks to their regulatory inaction an additional £69m was invested by consumers in a fraudulent fund. The FOS are now encouraging those consumers to take action against the advisers who recommended the fund – advisers who were kept in the dark by their own regulator.

**Equitable Life** – The FSA failed to instigate the Policyholders Protection Act in 2000 and encouraged the company to trade out of its insolvency, resulting in a loss of £8bn to Equitable Life clients. After 20 years of delay, taxpayers were forced to fund a £1.5bn salvage plan, leaving millions of Equitable clients with huge losses.

**Harlequin Group** - £120m lost by consumers in a property company. Yet again the regulator failed to share its intelligence with the consumer and advisers, resulting in huge losses when the company went into liquidation.

**Banking Scams and Frauds** – The current regime has allowed the RBS, HBOS and Libor scandals to happen under its watch, and then protected the guilty.

## THE CURRENT REGIME IS PROFOUNDLY UNFAIR TO CONSUMERS – AND FINANCIAL ADVISERS

- Huge gains have been made by the sector to improve the professionalism of advisers in recent years. There is now a minimum of a grade 4 examination, with many going on to take degree level examinations. Consequently, professional advisers (who have over 65% of the advisory market) only represent 3 in 1,000 successful Ombudsman claims.
- While Professional Advisers' exposure to FOS claims are very small, the attitude of the Financial Ombudsman Scheme (FOS) towards the sector threatens to destroy the Professional Advice market. The original concept of FOS was to offer those consumers who believed that they had been wrongly advised access to a resolution process which copied civil law, but did not come with the same, prohibitive costs. This is particularly important to Professional Advisers who take out Professional Indemnity Insurance to settle any such claims. Professional Indemnity is based on civil law claims.
- Again in this climate of unaccountability, FOS has now expanded their role from civil law resolution to decisions based on whatever FOS believes is correct. They are the both judge and jury of these decisions – with no right of appeal. Historically compliant advice is now open to retrospective attack, giving rise to uncertainty and fear in the sector.

■ This creates four issues:

- i) To mitigate against retrospective attack, advisers are forced bombard their clients with sheaves of paperwork not designed to advise the client, but to protect the adviser from future attack. This adds to the cost of the advice, but is the only way an adviser can protect his business. If advisers were able to trust the process, much of this wasted effort could be avoided.
- ii) FOS decisions are becoming increasingly eccentric. Two very similar cases can be given to different resolutions. They are also being used to hide regulatory failures. FOS has arbitrarily decided that all Connaught cases are to be found in favour of the client, whatever the evidence. This covers up the FCA's failure to act and inform advisers of the situation – the adviser is guilty of not knowing about a fraud which only the regulator knew about.
- iii) Ambulance Chasers have been successfully pursuing PPI cases, with many of them growing into large businesses. When PPI claims start to drop in 2017, where will Ambulance Chasers go next?
- iv) Professional Indemnity Insurers are becoming increasingly anxious about FOS's antics and some have already withdrawn from the market. If this withdrawal increases, good advisers will find it difficult, if not impossible, to get cover. As PI Cover is a regulatory imperative the whole advisory sector is under threat.

## THE CURRENT REGULATORY REGIME FAILS PARLIAMENT AND THE DEMOCRATIC PROCESS

- The current regulatory system was created by the Financial Services and Markets Act 2000 (FSMA 2000). The Act created a Regulator, Ombudsman and Compensation Scheme which was meant to be “independent” of government. However, The Treasury is happy to take responsibility for things that go right. This Peek-a-Boo type of responsibility is an affront to democracy. MPs are unable to bring ministers and their regulators to account because of this process.
- In practice, the regime is highly influenced by the Chancellor & Treasury. In turn, the Treasury is heavily influenced by the Banks and other large players.
- For advisers, the regulator's “independence” means that they cannot successfully use the normal Parliamentary processes to influence the regime which increasingly controls their life. MPs who question the Treasury are told that regulation is beyond their influence as it is “independent”. There is also a strong suspicion within the sector that MP's letters are replied to by FCA staff, seconded to the Treasury.
- The Treasury Select Committee regularly questions the regime but, thanks to FSMA 2000, the FCA is not obliged to answer the questions and has shown a lack of respect for the TSC and Parliament in general.
- The Treasury appears to be the only people happy with the current regime:
  - i) It allows them to have influence without taking responsibility.
  - ii) The regulator can bury Government Failure and other

embarrassments and protect the powerful.

- iii) This useful process is paid for by consumers, not the taxpayer so is not restricted by Government budgets.

## HOW THE CURRENT REGULATORY REGIME FAILS THE PROFESSIONAL ADVISER

- Sadly, despite offering such a low level of risk to the consumer the current regime insists on treating professional firms as mini-banks, not professionals. The levels and complexity of reporting created puts a disproportionate burden on small companies and presumes provincial practices to be multi-national firms. The questions also presume that professional advisers sell products, rather than advice.
- To develop further as a profession, we need to move adviser's regulation over to a professional body and away from the discredited FCA. Longstop is the shorthand name for the regulator's failure to apply the Limitations Act 1980 to the financial services advice market. It is illegal but difficult to challenge. Professional Advisers are the only profession that faces this imposition.
- If the regime wants to extend exposure of Professional Advisers to claims beyond the Limitations Act, it must ask Parliament for that power. The practical issue for advisers is firstly, that they must store and maintain paperwork in perpetuity, rather than the normal six years. Of more concern, however, is that advisers can be pursued well after they have taken retirement.

## SO WHAT IS THE SOLUTION?

- The prime issue, as far as the industry is concerned, is the current regime's lack of accountability. We need to return accountability to regulation so that Parliament can bring the regulators to account. This will face Treasury resistance but must be done if consumers are to receive the advice they desperately need. The current lack of accountability leads to:
  - Sloppy, expensive and destructive regulation, like RDR.
  - An elitist attitude which presumes regulators possess a greater knowledge than those who work in the sector.
  - The abuse of their powers – a good example being “Longstop”.
  - An abuse of Parliament and MPs by both the Treasury and the Regime.
  - The refusal to accept sensible solutions – FSCS costs alone have increased by more than 100% per annum as a result.
- As demonstrated above, there are 16m potential claimants on the FSCS scheme. But their compensation is being charged to only 6m active clients. This is unsustainable.
- The obvious solution is a charge on all investments introduced by advisers over the years. This would ensure that all 16m clients paid their share of the cost not just the 6m currently advised.
- The FSCS refuses even to contemplate or research a change. We believe this machismo is directly linked to the FSCS's lack of accountability.