

Paying Attention To Pensions

9 Mar 2015

In next month's newsletter, we will examine major pensions issues facing independent financial advisors (IFA's). Here, Aziz Rahman summarises some of those issues and their legal implications.

Pensions have not traditionally been thought of as an area where controversy reigns. But in recent years the pensions industry has commanded increased attention from the authorities, the government and even the general public.

Last year, the Financial Conduct Authority (FCA) was lambasted for the way it announced an investigation into closed book pensions. Many in the industry were critical because the announcement caused share prices of some insurers to drop sharply. The incident showed the sensitivity of pensions as an issue: in this case, the regulators, the pensions providers and pension holders all stood to be affected. And yet this was just one in a series of changes to the pensions industry this millennium. As we enter a new year, there are a number of factors affecting pensions that IFA's have to be both aware of and able to respond to appropriately.

Our next newsletter will examine many of these issues in detail, from a legal point of view and from the perspective of the IFA. Here, I just want to flag up some of those concerns that can prove problematic for IFA's who are closely involved in the pensions industry.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500

Fax +44 (0)1422 430 526
DX16001 HX1

One of the most obvious is, of course, pension liberation. Call it liberation, busting, unlocking or whatever else people know it as; it involves an investor taking their money from their pension early and is not usually a wise move. People are tempted to do it when they realise the low returns they will receive on retirement. This has stimulated a mini industry of people who “liberate” a person’s pension – but only for a large fee. This may seem a sharp practice but it isn’t illegal.



The question of dishonesty – and, therefore, fraud – arises if investors are persuaded to put their liberated pension cash into a proposition far riskier than where it was previously. In such situations, it is essential that an IFA is able to take steps to prove that they acted honestly and with the best of intentions. Specialist legal help can assist in building such a case should the authorities indicate they are looking to prosecute. But it may even be worthwhile seeking legal advice before taking any action with clients’ money that could bring such problems at a later date.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

IFAs can clearly play a vital and effective role in pension liberation. However, the pension liberation industry is not regulated, there is no compensation to the individual if promised returns fail to appear and, for these two reasons alone, it is an area that attracts those looking for fraudulent gains. Such people may use completely legitimate IFAs, who are regulated by the FCA, to give the fraud an air of respectability. In these situations, an IFA may be able to show they acted honestly and were not, therefore, part of any fraud carried out, thus saving themselves from any possible prosecution. Yet the damage to such a person's professional standing, not to mention the time, cost and stress, will do little to enhance their future career prospects.

At Rahman Ravelli, we are strong advocates of due diligence and the need for compliance. Pension liberation is an area where such an approach is vital; especially as the Chancellor's Autumn Statement ushered in huge freedoms from April 2015 for the over-55's looking to spend their pension money how they wish. From April, pension liberation could grow rapidly in size in the UK. It is important that IFAs are aware of the risks that go with this.

Before anyone can liberate their pension they do, of course, need to have purchased one some years earlier. IFAs are ideally placed to advise on such schemes and have done so for decades. What has changed in recent years, however, is the approach of the regulators. As any IFA knows, anyone wanting to sell a pension has to be authorised to do so by the FCA; under s19 of the Financial Services & Management Act.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

Since replacing the much criticised Financial Services Authority (FSA) in 2013, the FCA seems keen to take a far more aggressive approach when it comes to IFA's and pensions selling. Its handbook replaced the FSA's and carries in it a wide range of standards and principles. Its high level standards section refers to 11 over-arching general principles. Treating the customer fairly is just one of these principles – this principle alone sets six requirements of those selling pensions. There is not enough space in this article to examine them all. The point that needs to be made that IFA's have to know where they stand with the FCA before, during and after any pensions transactions they are involved in. If they do not, or they are unsure, then immediate, expert legal help must be sought.

That we have this article without even mentioning the Pensions Regulator indicates the amount of regulation facing IFA's who sell pensions. But that does not mean that, as it comes up to its tenth birthday, the Regulator can be ignored. It is yet another body that any IFA has to take clear legal steps to comply with. Since replacing OPRA (the Occupational Pensions Regulatory Authority) in April 2005, it has been proactive in ensuring regulation and has taken a particular interest in the potential risk of any pensions products being sold.

In its role of registering every pension scheme and protecting investors, anyone running a pension scheme (a trustee) has to be formally recognised by the Regulator. This recognition can require intense scrutiny by the Regulator, whose need to see evidence of real investment, Relief at Source (RAS) tax relief being properly claimed and proper money management systems used by trustees are the types of enquiries that can protect investors. In the current pension liberation climate, the Regulator's diligent approach is as likely as anyone's to uncover illegality.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

To make their own investigations into potential investment to make sure they are not implicated in wrongdoing. Anyone familiar with the allegations of made by HM Revenue and Customs (HMRC) last year at Birmingham Crown Court as part of the major pension fraud case (*Operation Cactus Hent*) that saw a number of IFA's in the dock will be aware that pensions are targets for tax fraud – and IFA's can quite easily become embroiled, knowingly or unwittingly. The *Cactus Hent* case did eventually fail to gain the convictions HMRC was seeking; due mainly to the pension scheme in question ticking all the statutory boxes. But it is a clear indicator of HMRC's increasingly aggressive approach to pensions. Cases that would previously been taken on by the Pensions Ombudsman or HMRC using the civil law are now more likely to be prosecuted.

HMRC, the FCA and even the Regulator can choose the civil or criminal route for their cases. In most instances, an IFA under investigation will prefer a civil settlement. But without taking on specialist business crime lawyers at the earliest possibility, the chances of securing a civil outcome can be remote.

As this article has indicated, pensions selling and management is a lively legal area at present. Our next newsletter will examine the issues outlined here and others that are on the horizon for IFA's working in this sector. It is vitally important that those operating in it use their financial expertise to stay on the right side of the authorities – or seek the appropriate legal expertise to help them do this.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1