36 Berridge Mews
London NW6 1RF

T/F: 020 7435 2620
M: 07900 248 150
E: adamsamuel@aol.com
W: www.adamsamuel.com

February 2006

# as news

# Dear Friends...

**2005 was the year in which Consumer Complaints and Compensation: A Guide to the Financial Services Market made it onto the shelves. Thanks to the usual last minute re-writing and a visitor from abroad who pushed me into finishing the proofs, it became available in May. While it was at the printers, the Financial Services Authority helpfully issued a warning on equity release that gave the impression that the regulator might have read page 206 in draft. It is not just a complaints book. The first 250 pages cover compliance problems. Anyway, you can order copies through www.adamsamuel.com, the publisher's website, Amazon and a variety of better quality outlets!**

**Other than that, this year, the business made more money than ever before by a significant margin. The year started well with the discovery that some work I had done on an international computer arbitration had produced an award for the client of over $9 million. Financial promotions, notably in the form of tip sheets generated significant revenue as the regulator tightened its grip. By the end of the year, firms were spotted copying Adam Samuel risk warnings - an unusual form of flattery!**

**Writing formed a big part of the income surge. Two years' work for Compliance Online has come to an end with Complinet, for whom I used to produce regular columns, luring me back. I continue to produce a monthly article for Compliance Monitor. This year, I made it back into Financial Adviser and Money Marketing. Slowly, a market is forming which will pay good money for high-quality technical writing.**

**Away from work, Café Moment and Ronnie's Bagel Store in West Hampstead have become favourite client entertainment haunts. I also encountered an unusually good meal at Est in Liverpool's Albert Dock. Summer saw me testing successfully the idea of running a virtual office from New York where the Frommer's walking guide was as good as any.**

**Adam Samuel**

# Financial Services Compliance

Compliance work this year has varied from the traditional (no, you really can't do that) style to creative problem-solving.

The June arrival of depolarisation found me re-drafting client agreements and initial disclosure documents. These threw up interesting challenges. First, IFAs can find it difficult to articulate the exact way in which they want to charge for their services. Second, the Financial Services Authority's definition of independence requires everyone to offer a pure fee-based option which does not fit well the way in which investment or mortgage business is actually done.

Payment of small quantities of trail commission and the accounting problems they create will remain a significant problem so long as the FSA fails to indicate clearly how much of these payments have to be credited to the customer's account. Many IFAs and mortgage brokers have to ween themselves off the habit of charging fees which coincide with commission amounts or procuration fees. This will compromise their independence if they do not provide a pure fee alternative and will at the very least require IFAs to produce a dreaded menu of commissions.

This all detracts from the central function of a client agreement: an exchange of promises about how things are going to be done under the agreement. It is far from obvious how the initial disclosure documents and menu contribute to that process.

**IFA's can find it difficult to articulate the exact way in which they want to charge for their services**

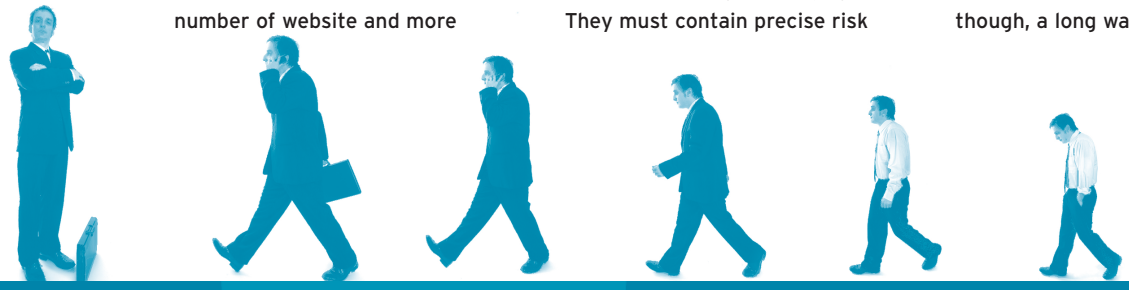
# Financial Promotions: A Continuing Growth Area

Financial promotions have provided endless entertainment this year. It started with tipsheets and two FSA fines on the subject. By the end of the year, I was involved in esoteric but nonetheless highly practical problems to do with the lack of difference between the notion of "balance" in advertising and the need to warn people of the risks and disadvantages of transactions.

The first problem is that firms have to understand what a regulated promotion is. They then need safe processes to ensure objective approval of copy that falls within that definition. Ultimately, they have to be able to judge what risk warnings and other material are required to keep their copy clear, fair and not misleading. This year, I have had to review a number of website and more conventional promotions, trying to balance the needs of functionality with concerns about likely FSA intervention. In theory, there are three levels of regulation for financial promotions: general, specific and direct offer. General promotions which do not focus on a particular product have to be clear, fair, and not misleading. The FSA reasonably interpret "fair" as "balanced". Specific promotions have to describe the commitment and risks involved. It is unclear how this differs from the requirement of "balanced" for general promotions. Equally, websites and newsletters that generally promote IFAs encounter problems when nobody knows whether to cover them with risk warnings and how. The direct offer rules cover material designed to sell something off the page. They must contain precise risk warnings. However, nobody knows whether these must also be applied to specific promotions. After all, they do represent the FSA's recommendations for clear promotions of the products in question.

In practice, the regulator attacks promotions of all types if they relate to toxic or higher risk products and do not contain full risk warnings. General advertisements for pension unlocking, VCTs, equity release and precipice bonds must all comply with the rules for specific promotions. The same applies to tipsheets which typically recommend small-cap and other riskier shares.

There is work going on behind the scenes to achieve some form of standardisation in this area. It is, though, a long way off.



# The Gathering Storm: General Insurance

**a grown up debate should itself improve standards**

An area for the future appears to be a growing crisis in general insurance. This year, the FSA has found some major problems with payment protection insurance and critical illness products and widespread compliance failures in policy summaries issued across the board. The fundamental problems often stem from the way in which the contracts are drafted. Obscurity creates risks that the sales process will not explain significant or unusual exclusions ("SUEs" a great new regulatory acronym!). If these are left out of the policy summary and the sales process, insurers could find themselves liable for claims that they thought had been excluded.

The regulator is also rightly concerned at the number of people who buy policies under which they can never claim. The insurer's knowledge of the policyholder's lack of eligibility could lead to the exclusion of such a requirement from the contract by the courts or an Ombudsman.

# Complaint handling

This year, my complaint handling activities have covered four key areas: helping IFAs pursue their clients' cases with providers, training, building complaints procedures and assisting companies to defend unjustified claims against them.

A growth area continues to be helping IFAs deal with problems they are having with product providers either directly themselves or in helping clients. Much of the time, this just involves setting out the basic facts and explaining why the insurer cannot escape its obligations. Sometimes, though, the obtuseness of some product providers suggests they would be wise to review their internal procedures to ensure that their main form of distribution does not turn against them. The main problem is product providers who decide not to provide fairly basic help to IFAs at no obvious cost to themselves which they are probably legally required to give anyway.

Happily, some companies employ staff that will encourage management to have another look.

One result was that an IFA sailed up to me at the Institute of Financial Planning's Annual Conference to tell me that a particular insurer had paid his client £36,000. A double take was required to recall that this stemmed from a letter and a phone call to an insurer who had made an mortgage endowment compensation offer and left it open six months and the client had missed the deadline and with it the right to go to the Ombudsman. Ultimately, the firm still owed the money. Six months delay could not make a bad sale good.

Training continues to teach me. One team I trained labels its abusive complaints as "profane". This charmingly implies that all its other expressions of customer dissatisfaction are "sacred". The same team employs staff to answer FSA regulated complaints in German. We had a fascinating discussion on the "Prussian" impression left by saying "This is our final response" in the language of Goethe.

I continue to review and build complaints procedures. Sadly, DISP (the FSA complaint rules) remain surprisingly fiddly. So, even in quite a small organization, a complaints procedure may need a huge number of largely redundant words. Still, with apologies to Sheryl Crow, "if it makes [the regulator] happy, it can't be that bad".

Finally, the complaint made against an IFA, briefly mentioned in last year's newsletter, has just been thrown out by FOS. It looks increasingly likely that this £500,000 claim will fail. I do not fight everyone's complaint corner. Essentially, the case has to be properly defensible under the rules before I will touch it. That means that I do not defend advice to take out mortgage endowments.

even in quite a small organization, a complaints procedure may need a huge number of largely redundant words

# Writing

The Complinet deal, signed towards the end of the year, confirmed an impression that there is a developing market for writing that combines technical precision with readability. In the future, one can see a group of people who can produce this, negotiating serious deals with publishers who need rather more than just reporting.

I still produce a monthly column for Compliance Monitor and did a Compliance Officer Bulletin on the need to reform the FSA complaint rules early in the year. I went back to old favourites from the past, Financial Adviser and Money Marketing. My copy also appeared "under cover" in material produced by Taxbriefs and, in the summer, I rewrote a course module for London Met University on complaints.

The Institute of Financial Planning invited me to run a compliance workshop at their Annual Conference for the third year running. The theme of my contribution, "Minimum Acceptable Compliance" describes the way in which small IFAs cannot be expected to comply with the entire rulebook but need to focus on a series of topics: client agreements and IDDs, financial promotions, training and competence, advice standards and having a decent complaints procedure. The paper appeared in a Money Marketing article.

# Dispute Resolution

This year has been my most enjoyable and profitable in this area for many years. As always, the fun has come from totally different directions. In June, I received my first appointment as a World Intellectual Property Organization Domain Name panellist. This means that I essentially judge whether a trademark owner or licensee can kick someone else off the internet whose website name appears identical or confusingly similar to the mark and who is acting in bad faith.

By telling WIPO that I would be on the end of an internet connection through the summer, I picked up a string of further appointments. As many who know me well appreciate, judging is an activity that comes fairly naturally! So, the cases have not taken very long. They have improved my basic intellectual property knowledge and possibly my dispute resolution status abroad.

The other new initiative has come from trading standards officers. Increasingly, these local authority employees are setting up trader-approved schemes whereby local businesses receive recommendations in exchange for subjecting themselves to a form of dispute resolution. A training company, Ipso Facto, found me on the internet and has arranged wildly oversubscribed seminars about how best to build the dispute resolution wing of the scheme.

An interesting angle has been the way in which the Office of Fair Trading has an approval arrangement for these schemes that was originally designed for trade bodies. Some of the independence requirements do not work terribly well for local authorities with their limited budgets and lack of identification with the firms complained about.

I have been increasingly active in Chartered Institute of Arbitrators affairs. Membership of the Arbitration Sub-Committee has led to me joining the Practice and Standards Committee. At the same time, I successfully completed the fast-track oral assessment towards obtaining a fellowship. Two more stages remain for that.

# Improving Standards

**insurers could find themselves liable for claims that they thought had been excluded**

In the advice area, there is a continuing need to produce forums and publish material on what is good, not actual, practice. First, a grown-up debate should itself improve standards. Second, the parties will be able to use published material on what advisers should be doing in complaint cases. One of the jobs for 2006 is to set up regular gatherings of this type and publish the outcomes.

In the meantime, I am becoming more involved with the Chartered Insurance Institute, writing a small chunk of the new contract certainty course book and joining a couple of committees.

# And finally....

January 6th marks the tenth anniversary of my business: any ideas for a celebration?

All that remains is to wish you all a compliant, dispute-free 2006.