

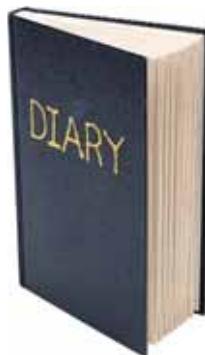


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January 2008

Dear Friends . . .



This is my annual newsletter, a sort of report to friends and customers on what I have been up to in the previous 12 months.

2007 started with me panicking that I might need to be regulated under the Compensation Act because of the advice I give on the merits of consumer financial services complaints. After a decade of helping people deal with regulators, I faced a dose of my own medicine. I filled in the form and sent off the cheque with a note to the effect that I thought I was exempt under the Act. A friendly Trading Standards Officer agreed not to process my application if his legal advisers agreed with me. Ultimately, my membership of the New York Bar saved me and the cheque has never been cashed. Still, it was a close-run thing.

As readers of last year's letter might have guessed, at the time, I was also having doubts about the direction of my business at the time. I re-drafted my business plan to clear my thoughts. A friend derided the product as a "general stream of consciousness". He was right but the effect has been the desired one of giving me a clearer idea of what I am doing. Looking back, it has not changed the nature of it very much but it has re-charged my enthusiasm.

My business remains a combination of writing, training, advising, fixing problems and resolving disputes, focused on retail financial services and international commercial problems. Changes revolve around little things. After almost a decade of working with me on my website, Debbie Jenkins and Joe Gregory have finally moved onto other pastures. They did a great job and provided excellent company in the process. Rhian Wheeler has completely re-designed the site, work that is already drawing plaudits.

Books loomed large in 2007. I started co-writing the second edition of Tamasin Little's book on Financial Promotions which should appear in 2008. We were students together and then lost contact for over twenty years afterwards. I have just finished producing an update document to go with my complaints book. It could easily become the basis of a second edition if enough pressure is applied to the publisher!

Work continues to send me across the country from Devon to Edinburgh, not to mention a couple of trips to Switzerland. I also welcomed a number of visitors to the Golden Eagle pub, from as far a field as Hong Kong, for some serious singing. Come and join us. Record-breaking rower and Polar explorer, Jan Meek, has been walking with me towards the source of the River Thames. We started in Greenwich and are slightly west of Oxford at present!

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All Change in Financial Services Regulation



The Financial Services Authority's decision to re-draft the conduct-of-business rules for investment and general insurance business and the complaint rules for everyone dominated my workload in 2007. At the same

time, the FSA started the Retail Distribution Review. This could produce the second major change in the way investment and savings products are delivered in five years. To be able to respond coherently but quickly to all this, a few "limited sleep" nights have been necessary.

The conduct-of-business reforms were necessary. The Markets in Financial Instruments Directive (MiFID) required the investment rulebook in this

area, COB, to be re-done. At the same time, gaping cracks in the insurance version showed that it needed a makeover too. As part of the new enthusiasm for principles-based regulation, both rulebooks are much shorter than their predecessors. All this suggests that a reform of the mortgage rules is not far away.

MiFID has very little to say about complaint handling. So, the re-ordering of the rulebook was unnecessary and

All change in financial services regulation cont.

poorly done. It is also being carried out in two stages, As a result, two chapters I wrote for a book on mortgages in 2007 had to refer to "DISP, newDISP and proposed DISP". "NewDISP" was the subject of a lecture I gave to the London Insurance Institute in November.

Frustration at the FSA's lack of interest in putting the obvious problems right with the complaint rules bubbled over into the creation of the "Re-draft DISP group". Three of us met in the Pillars of Hercules pub in Soho on a number of occasions this year over a "few" beers and re-drafted the rulebook, the way it should be. At the same time, we produced notes to indicate changes and how our rules could be used to develop best practice. Anyone complying with our version would actually be observing the official rules.

More generally, this idea of quality groups tackling bits of the rulebook seems vastly preferable to the current approach of the FSA haggling with various trade bodies. Perhaps, our next job should be the conduct of business

rules and financial promotions.

Meanwhile, the Retail Distribution Review smacks of regulatory desperation. Basic compliance standards remain worryingly low. The regulator knows that its risk-based approach to supervision has failed. Depolarisation in 2005 had minimal impact. Now the regulator wants to try something new. The problem is that its proposals appear to hurt most the group of whole of market financial advisers who generate the fewest numbers of complaints and the lowest percentage of those upheld, not to mention the highest level of business persistency. The review's idea that a financial planner is a person with an appropriate range of exam passes who negotiates his commission levels with his client would normally bring in another group of people who I work with - trading standards officers - on the basis of a breach of the Trade Descriptions Act!

One of the stranger bi-products of the MiFID changes has been the discovery that a number of

independent financial advisers have clients resident abroad. For many, this generated panic. However, it is actually not very difficult to apply for the relevant variation of permission. Most reputable firms would comply with the relevant capital requirements anyway. Firms, though, must avoid ticking the all countries box in the MiFID passport application and select just those where their customers live. Otherwise, they will be inundated with letters in a variety of exciting but difficult languages!

Against this background, the FSA continues remorselessly on with its Treating Customers Fairly programme. The Institute of Financial Planning sent me to speak at three regional meetings on the subject. Over the years, I have done consulting work on almost every aspect of this subject. I now offer a top-to-bottom TCF review of advisory businesses, covering financial promotions, client agreements, training and competence, advice standards and complaint handling.

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Financial Promotions

Financial promotions (“advertising” in layman’s terms) dominated my financial services work in 2007. I successfully adapted my training course for an IFA and mortgage network. With product providers, the challenge has been to move beyond teaching staff the rules and towards producing high quality marketing material. This is not easy when the rules require such horrors, as the “lifetime allowance” for pensions, to be explained in plain English.

The new conduct-of-business rules have re-set the promotions rules for everything except mortgages although chapter 3 of the mortgage rules cannot be long for this world. On the investment side, MiFID has



improved the clarity of the regulations although in some ways, the new provisions are stricter. A Compliance Officer Bulletin, I wrote in the summer, covers them in detail. ICOBS, the new general insurance rulebook.

has reduced the provisions on the subject to a bare minimum. The effect is that firms will have to study everything else that the FSA produces on financial promotions to keep up-to-date with the regulator's thinking on the meaning of "clear, fair and not misleading". The new edition of the Financial Promotions book will cover all these changes.

One area which concerned me this year was websites prepared for IFA firms. Some of these contain considerable amounts of detail that does not relate to the specific business. In one case, much of it did not pass "clear, fair and not misleading" just because it described product areas where the firm did not operate.

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Fixing Things

In the financial advice community, none are more hated than claims management firms, "ambulance chasers". These became regulated in 2007 and an inevitable consolidation of the sector followed. This made the remaining businesses more formidable and strangely more necessary than ever. Financial advisers who spot problems with their customer's insurance, mortgage or investments have a duty to help resolve them. One obvious thing to do is to help clients complain.

However, few advisers do this well. The Financial Ombudsman Service (FOS) also has a strong presumption against making orders for costs. This forces firms to charge a percentage of any amount that they help their clients recover.

For some years, firms have been passing complaint cases to me to deal with or advise on: hence my worry about the need to apply for authorisation as a claims management firm. Sometimes, the adviser knows that if the complaint fails, the client is likely to turn on him. The "ambulance chaser" now becomes a necessity. I use different approaches depending on the problem. Sometimes when a



technical expert opinion is required and I believe in the position, I will provide such an opinion to be disclosed to the firm and FOS. On other occasions, just drafting correspondence makes more sense.

Presented in this way, claims management is also just a form of dispute resolution within the financial services industry. One of the last 2007 Financial Services and Markets Tribunal cases (Edwards) concerned an argument about whether an adviser with a previously unblemished record had become unfit and improper because of something he did in the middle of a dispute with the owners of his firm. If the parties involved had agreed to have their problem resolved by a neutral appointed by one of the trade or professional bodies, someone's career would never have come so close to destruction.

Arbitrating

In 2007, my dispute resolution activities took a step up with my appointment to the Hong Kong International Arbitration Centre's domain name arbitration panels. My first case followed soon after. At the same time, the World Intellectual Property Organization continues to send me a steady stream of cases. I finally made it to their panellist meeting in October and made and renewed a number of good friendships.

I continue to sit on the Practice and Standards Committee and the Arbitration Sub-Committee of the Chartered Institute of Arbitrators. I was primarily responsible for the sub-committee's new guideline on dealing with disputes involving parties with unequal resources. More excitingly, the international arbitration community is starting to debate the merits of our work. The October ABA London Conference featured a session heavily devoted to one of our other guidelines.

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Writing

Writing continues to play a huge role in the Adam Samuel business. Complinet pays me a retainer to write about retail issues for their online financial services compliance service. I write a monthly column for Compliance Monitor. The joint-authored Financial Promotions book should appear during 2008. For those who cannot wait for it, a Compliance Officer Bulletin contains an analysis of the new COBS rules on the subject. Money Marketing and Financial Adviser continue to

take features articles from me. I still help write the Chartered Insurance Institute's coursebook on contract certainty in insurance contracts.

This year's House of Lords decision on the interpretation and separability of arbitration clauses pushed me into publishing something that echoes my 1989 book on jurisdictional problems in international arbitration. It will appear in Arbitration International in 2008. Otherwise, on a lighter note, a US journal, Alternatives published

my piece on how to judge a cybersquatting case quickly but thoroughly enough to make it pay.

It only remains to thank all my friends and customers (many fit both categories) for a third consecutive record-breaking year for me workwise and more importantly another varied and satisfying one. Have a great 2008.