

## **RESPONSE BY THE ASSOCIATION OF INDEPENDENT FINANCIAL ADVISERS (AIFA) TO HM TREASURY CONSULTATION ON FSMA SECONDARY LEGISLATION**

This response is submitted by AIFA on behalf of the seventy per cent of the IFA market which it represents. Our interest is in the issues to do with advice centres and workplace advice. We offer no comments on other sections of the consultation.

### Overall Stance

We support the Treasury's objective of removing unnecessary obstacles both to advice centres in their work and to employers in promoting the merits of pension provision.

### Advice Centres

The Treasury will be aware of our involvement in a project making the skills of qualified advisers available to advice centres on a pro-bono basis.

Q1: we could understand why advice centres might become unduly cautious about what they say to those using their services for fear of crossing an ill-defined boundary between information and advice. We would not want those in need of help to lose out as a consequence. But we also would want to proceed with caution and believe that any exemption has to be made subject to conditions.

Q2: We do not believe in legislation for the sake of it so, unless advice centres themselves are hampered by the effect of the RAO, we suggest that it is left unchanged, in case attempts at clarification throw up new ambiguities.

### Conditions of Exemptions

We do not believe that advice centres are itching to enter the commercial market for advice and our concern is to ensure appropriate protection for those who turn to them.

We agree that the service offered by an advice centre should attract no payment for that service from a provider.

We agree that the principal purpose of the service should be debt counselling.

We also believe that PI insurance (or, at the very least, some other form of indemnity) should be carried for this work. This is important on two counts; first, it will protect the centre if its clients choose to be litigious. Second, the underwriters, as a condition of insurance, would probably ensure that controls

were in place which ensured that advisers did not stray beyond their brief. We suggest that the biggest risk for any advice centre which takes advantage of any exemption is if their advisers are drawn beyond their expertise and their brief in discussion. Management controls of a type favoured by the PI market could be the best antidote.

Whilst we understand that these advisers will be expected to assist their clients in completing and understanding forms sent out by financial services companies, this should not extend to the actual arranging of a transaction and advice centres should not be allowed to open agency agreements with providers, even if no payment is involved.

Those offering advice may well be encouraged to become qualified at least to a basic level in financial issues; and we suggest the Government consider whether some basic qualification should be made compulsory. We do not believe that this should go as far as requiring advisers to be as qualified as financial advisers.

#### Workplace Advice

We are sympathetic to the view that employers are being asked to help their employees obtain pension provision but are hamstrung for fear of a technical breach of regulations. Again, we detect no enthusiasm amongst employers to take over the role of IFAs; indeed many work with IFAs to ensure that their workforce receives appropriate advice. We accordingly support the removal of technical pitfalls for employers.

Any change in legislation has also to be set in the context of other initiatives, such as the Informed Choices project, which give more information about where professional advice can be found.

In addition, the menu project will give employers and employees alike more information about the services and costs of advisers.

#### Real Time Promotions

We suspect that restrictions on the making of misleading statements are probably sufficient control over the fool-hardy or exaggerated claim. The publicising of such a restriction will also be sufficient to keep employers careful about what is said. But a more controlling and nit-picking regime is likely to lead to carefully scripted statements listing formulations which may and may not be used. These will inhibit the flow of information and their fine nuances will anyway be lost on many employees.

### Exemption subject to Conditions

We suggest that there should be conditions applied to the exemptions. We see these exemptions as applying only to instances where the employer has no financial interest in the promotion of the product; and that the exemption should apply to pensions and to other related employee benefits, such as death-in-service arrangements; it should not extend to other forms of financial service.

We do, however, question whether the exemption should be restricted to those employers who make contributions to pensions, as this might disadvantage some employees and make them even more remote from addressing their pensions needs.

We would welcome a condition that the availability of independent advice should be signposted. This is perhaps a predictable response from us but it could be a useful discipline on any employer who misused the exemption as it would direct employees (and their representatives) to an alternative source of comment and information. It could have the same effect as the requirement on advice centres to carry PI.

If this condition about the signposting of independent advice was in place, it might be possible to contemplate a broad exemption which leaves something to the common sense of the employer. We do not anticipate that many will stray beyond their brief and risk the backlash of dissatisfied employees. Indeed, the more complex the exemption becomes, the more likely that employers will refrain from saying anything as they will be worried that every statement could turn into a regulatory breach.

We suggest that the exemption should not cover personal advice; we do not think that the giving of "class" advice to a group of new recruits (for example) should be prohibited, even though we would expect many employers to turn for help to an adviser.

The most beneficial outcome will be derived from this exemption, if it enables employers to focus on the provision of information and the promotion of their pension arrangements.

**AIFA**  
**May 2004**