

## Commission ban is a game of consequences

By Matthew Vincent

They seemed to forget it was my money . . . Was that a taxpayer bemoaning the bonus culture at a bailed-out bank? An investor complaining about “exit charges” on a with-profits policy? Or a saver denied access to a higher-interest account?

It could easily refer to any of these injustices in the financial services industry. In fact, it was an indictment of the one type of organisation that should be on the customers’ side: a fee-based independent financial advice firm.

How and where the phrase came to be uttered – in a dispute between two advice firms at the Royal Courts of Justice – made me realise a worrying consequence of the regulatory reforms now under way.

Then – in the slightly less adversarial atmosphere of the FT canteen – I heard of another regulatory impasse that could see customers’ interests overlooked, again.

Together, these two legal problems threaten to leave customers stuck with advisers they don’t want, and forced into investments they’d rather not use. Let me explain why.

That court case was brought by Towry, one of the UK’s largest fee-based advice firms, against the independent financial adviser group Raymond James. Towry claimed that seven former advisers had poached clients when they left to join Raymond James – in breach of the “non-solicitation” clauses in their employment contracts.

Last week, the judge ruled that the advisers had been approached independently by clients and [dismissed Towry’s £6m claim](#). However, more significant was how the situation came about and how the clients, including the witness quoted above, found themselves in it.

Back in 2009, [Towry acquired broker Edward Jones](#) – and with it, all the investors who used the firm. Many did not wish to become clients of Towry, arguing that its services differed from what they wanted, and tried to transfer their assets out of the merged firm. This led to 349 complaints to the Financial Ombudsman about delays in releasing their cash.

Some former Edward Jones advisers wanted to return to being advisers in local branches, serving local customers. So, when Raymond James gave them a chance to do this, they took it. Some former clients then saw a chance to go back to advisers they were familiar with, and sought them out. But, while it was legal if the clients approached the advisers – as there had been no “solicitation” – it would have been illegal under the “non-dealing” clause in most firms’ contracts. Non-dealing means a client cannot go back to a former adviser if the client’s account has been acquired in a takeover.

Now, the Financial Services Authority's Retail Distribution Review (RDR) is about to set [new requirements for advisers' qualifications and fees](#) – which not all will be able to meet. So there will be more takeovers, and more clients transferred.

Ultimately, it should ensure higher standards of advice – but if it means more investors find themselves bought and sold, and unable to return to an adviser they trust, how can this be reconciled with the regulator's overall directive: treating customers fairly?

That second legal problem concerns the banning of commission payments to advisers, under the RDR. Again, this should ensure better advice, with all risk of bias and mis-selling removed. It is to be applied retrospectively, though, which means [“legacy” and “trail” commission from long-term investments, sold a long time ago, will also end](#). Any client seeking to top-up an existing investment, or take advice on switching existing funds, will have to pay a new advice fee, as the cost of advice will not be covered by commission any more.

Most advisers agree with that, and any client should be happy to pay for good advice, from the right adviser. Even Towry's head of client proposition, David Middleton, says it will remove any incentive for an adviser “to keep the client in an inappropriate packaged product”.

However, the products that most need topping up are old personal pensions. And the providers of these were originally told by the regulator that legacy and trail commissions would not be banned. So they didn't modify their systems to allow for fees. One told me this week that the legal, tax and disclosure changes would cost millions.

Advisers may therefore be left with no choice but to put top-up investors into new products, with less favourable terms.

What all these clients need is a transfer window, allowing them to put their money into the right product, with the right adviser, before the RDR comes in next year. Whose money is it, after all?