Niall Coburn
Kangaroo Point House
56 Thomas Street
Kangaroo Point
Qld 4169
Australia

Phone: 0488 488 649
Email: ncoburn@coburnci.com
Internet: www.coburnci.com

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SUBMISSION: WORK and PENSIONS UK PARLIAMENTARY COMMITTEE
(Note: This document replaces the submission made on 30 November 2020 as it contains updated material.)

To:
Rt. Hon. Stephen Timms MP
The Chairman, Work and Pensions Committee
House of Commons
London SW1A 0AA
United Kingdom

Dear Chairman and Committee Members

RE: Inquiry Submission – Protecting pension savers – five years on from the pension freedoms: pension scams

I am an international investigator and Australian Barrister and the principal of Coburn Corporate Intelligence Pty Ltd ("CCI") that has conducted investigations in relation to investment negligence and investment fraud globally. I am a former regulator and was part of an international team that wrote the rules and laws for the Dubai International Financial Centre and was appointed Director of Enforcement of the DFSA. Prior to that I was a senior investigator at the Australian Securities and Investments Commission. The following submissions represent my own views from investigations I have conducted.

Thank you for allowing me to make this submission and to bring serious issues to the attention of the Committee, concerning misleading/negligent financial products (Scams) that have affected elderly UK citizens, many of whom have lost their life savings with large insurers and investment companies registered in the UK. The mis-selling of financial products account for the loss of millions of pounds, and if not addressed, will make many elderly citizens dependent on your government for financial assistance in the future.

Overview

This submission gives an outline of two Class Actions undertaken by about eight hundred investors, who lost between £145 million and £200 million. It shows that mis-selling of financial products designed in London to elderly UK investors is hugely under-reported, and that a small number of major companies have consistently defrauded elderly savers by failing to disclose the true risk of certain investment products. As you will read, some large UK insurers and 'household names' are clearly not the 'honest brokers' they claim to be.

This Inquiry attempts to address several issues. The first questions I will address are:

1. What is the prevalence of pension scams?
2. What are the current trends in pension scams?
3. What are the common outcomes of pension scams for perpetrators and victims?

Current Trends, Prevalence and outcomes for elderly UK investors

CCI is acting on behalf of approximately 800 international investors who, between 2006 and 2013, purchased unit-linked life assurance bond products in Thailand, Indonesia, Cyprus and UAE (and one couple in the UK) (Bonds).

These Bonds were sold by Royal Skandia Life Assurance Ltd (Skandia) incorporated in the Isle of Man (IoM), that merged into Old Mutual International (OMI), now Quilter plc (Quilter) listed last year on the London Stock Exchange. OMI/Quilter subsidiaries are incorporated in the Isle of Man and regulated by the Financial Conduct Authority UK. Recently, Quilter announced that it is conducting a review of its IoM operations. I believe that this is connected to the issues litigated in the Quilter class action and set out in the statement of claim concerning the mis-selling of products to retail investors.

The Bonds were also sold by Friends Provident International (FPI), incorporated in the IoM and was acquired by Aviva plc (Aviva) in 2014. FPI was acquired by 360 Group last year we will refer to the insurers, OMI, Quilter, FPI, Aviva and 360 collectively "the insurers."

The Bonds are not permitted to be sold in the UK, USA, Hong Kong, Singapore or other commonwealth jurisdictions.

Class Action

Signature Litigation LLP located in London and CallinWild located in the IoM are the two law firms running the two Class Actions against the insurers FPI and OMI both registered in IoM. CCI conducted the investigation.

Retail investors (the vast majority are from the UK) have lost approximately £145 to 200 million in investments excluding damages, interest or loss of opportunity in respect of their investments with the insurers. The client monies were paid directly to the insurers in either the IoM or, as in many cases, into London. The majority of the clients were UK elderly retail investors who were expats in various countries or some who resided in the UK and were advised to invest in the IoM and other Channel Island jurisdictions.

Background of facts

Between 2006 and 2013, the Insurers promoted and marketed Portfolio Bond products through Independent Financial Advisers ("IFAs") and other intermediaries in Indonesia, Thailand, Malaysia, Cyprus and the UAE (the jurisdictions) to UK expats and other investors. In turn, IFAs would market these Bond products on behalf of the Insurers to retail expatriate investors, including retirees. Once the investors signed a Bond application, they became the clients of the Insurers and the IFAs. The Insurers paid the IFAs commissions for successful referrals and briefed the IFAs about their products. Although the Bond products and information were distributed by subsidiaries from the IoM, the head offices of the Insurers are in London where the parent companies Aviva and Quilter are listed on the London Stock Exchange.

Regulatory loophole

Neither the Insurers nor their Bond products nor the IFAs were registered or licensed in the jurisdictions they sold the products with. (FPI does have a limited licence in the UAE whereas Skandia/OMI does not). Some of these Bond products were caveated as not being for sale in certain jurisdictions. None of the relevant jurisdictions referred to herein were caveated in this way. The conclusion drawn by IFA and client alike was, therefore, that the insurer was appropriately licensed and that the bond was legally for sale in their respective jurisdiction. There was no disclosure about the unlicensed status of the IFAs or the Insurers to any investors at any stage. Explaining that the insurance products were unlicensed in the jurisdictions would have had a significant impact on sales. There is evidence that the Insurers knew that the IFAs were also unlicensed in the said jurisdictions. How could responsible Insurers allow unlicensed IFAs to market their products? Again, because the truth would have had a massive impact on sales.

Within the jurisdictions, the IFAs advised clients to buy the Insurers' Bond products. On having their advice to buy the Insurers' Bond products accepted, the IFAs then raised application papers which were signed by Investors. The Insurers insisted on any application being through an IFA. Clients could not buy a product directly from an Insurer. This followed the Insurers' dismissal of their in-house financial advisers some years earlier following which some IFAs were set up as independents by their previous employers. <u>The action was taken by the Insurers to distance</u>

themselves from the adverse results of some of their in-house advisers' actions. The Insurers, however, failed to make sure that the IFAs who recommended their clients to buy the Insurers' Bonds were appropriately registered and licensed in their jurisdiction even though, as in the case of OMI, the Terms of Business (ToBs) with the IFA required this information. In return for the recommendation to their client to buy a Bond and the consequential inception of a Bond the IFAs received commission payments from the insurers. This means that the IFAs had no professional indemnity insurance.

Once the bonds were incepted, investors were committed to pay management and other fees to the insurers. These fees were used to offset the commission payments to the IFAs for their recommendation and the client's purchase of a bond. Inception also meant that unsuspecting retail investors now had access to approved or permitted collective investment managed funds on the insurers' platforms that were only for sophisticated investors.

It is important to understand why this arrangement could be advantageous over going directly to a fund. If the latter were attempted, a prospectus or information memorandum would have to have been disclosed to the retail client. In the case of the inappropriate funds this would alert the retail client to the risks of investment in that fund. There would also be a long compliance procedure during which the retail client would have to warrant that he/she was a sophisticated or professional investor. However, if the retail client was investing through an insurance platform, the Insurer acted as the professional investor or a nominee of the client, operating, in effect, like a trustee thus creating an illegal loophole that was never intended by regulations.

An elderly retail investor could thereby invest in a fund in which they should not be investing because of the high risk. This "loophole" created by the insurers circumvented basic consumer protection laws for retail investors or retiree lump sum investors through SiPP or QROPS arrangements from the UK. Retail Investors were unaware of this risky route to investing in funds on the Insurers' Bond platforms because there was no disclosure. The IFAs and notably, the Insurers were well aware of what was happening. The Insurers failed to vet their clients in the way that regulators in responsible jurisdictions would expect them to do, such as distinguishing retail clients from professional investors. The result was that the Insurers enabled the IFAs to mis-sell the Bond products to unsuspecting retail investors who were not fully appraised of the risks.

More often than not, the IFA would complete the fund choice in the application form, as it required insertion of ISIN numbers which would make it complicated for the client. The client would still have to sign the original application form but signing subsequent switch forms was normally delegated for expediency to the IFA, either on a discretionary basis or after consultation with the client.

In some cases, the Insurer (bond provider) would request a disclaimer signed by the client in the case of a professional investor fund, but when the fund is placed with the actual Insurer and the investment monies transferred to the fund house (such as Axiom, LM or any other) the Insurer does not question who the investor is because the bond provider, as nominee, is itself the investor and by definition as an institution is clearly a professional investor.

The client was the beneficial owner of units in the funds linked to the Bond product. The actual investor in the fund was the Insurer acting as nominee owner of the units purchased for clients. It is a bit like a Trust.

As far as the fund manager is concerned, the investor is Old Mutual or Friends Provident. The fund manager may be given a name reference of the client, but they will have no further data on the client. As far as they are concerned, the investor is purely and simply OMI or FPI.

This "loophole" that has effectively opened up alternative, risky or professional investor funds to the retail market on a huge scale by the Insurer. There will of course be investors who are qualified to invest in such funds, but the controls are minimal and there are many who are not. In any event such funds have proved unsuitable for any investors, let alone retail ones. The results speak for themselves for the 800 investors who are part of the class action.

To the best of my knowledge, the Insurers did not seek out funds to approve on their platforms. Rather, fund managers would approach the Insurers, who would then conduct some form of due diligence, before approving and accepting the fund for its platform. Once approved, fund managers would waste no time in informing IFAs that their fund was available on the insurer's platform and how good an investment it was for the IFA's clients. Inclusion on an Insurer's platform was an almost certain guarantee of investment from the Insurer's clients. (It is important to note that in the defence filed by FPI in November 2020, FPI states that it did no due diligence in relation to the suitability of the fund).

In the case of FPI, we have evidence that the funds were approved by FPI's head office in London, (Aviva, in London was not involved, but acquired FPI operations in 2014). One would have expected Aviva to have conducted a due diligence of the Isle of Man's operations and its compliance with consumer protection issues. Aviva uses its trademark on all Isle of Man information to clients. We have evidence from IFAs in written, signed statements that the Insurers assured the IFAs that they had conducted due diligence on these funds.

The approved funds vary with some being for sophisticated or professional investors only – for example, LMMPF, Axiom, Brandeaux, New World and Mansion. The Insurers made no differentiation of these higher risk funds and issued no risk warnings even though they were aware that many of their clients would be retail investors for whom the funds would be inappropriate. Meanwhile, the funds made available on the platforms by the Insurers, were represented to IFAs in the jurisdictions by the Insurers as "safe" for investors. The Insurers argue to investors who have made complaints that they are execution only, but in fact, they created the whole structure and operated so that IFAs provided the advice (which they knew was unlicensed) and would refer clients to purchase the Bond products in the funds and then they would take over.

I believe that the corporate group of Aviva and Quilter (Old Mutual) and its subsidiaries, exploited loopholes in the law to sell high-risk products to retail investors outside the UK and sold defective products.

Due diligence representations

Relying on the due diligence representation from the Insurers, the unlicensed IFAs believed Insurers had been conducting their own due diligence. The IFAs were buoyed by the high commission payments being paid by the funds. In addition to the commission payments being paid by the Insurers for the bond purchase, the unlicensed IFAs advised retail investors, to first buy unlicensed bonds from unlicensed insurers and then to invest in inappropriate funds for professional investors only made available by the unlicensed Insurers who purchased units in funds as a nominee, then on-transferred them to retail investors for fees. The Insurers could only do this because they had insisted upon and accepted the introductions from unlicensed IFAs and had then made the inappropriate funds available to the IFAs' clients. Thus, our investors were mis-sold both the bonds and the funds and only because the Insurers enabled both parts of the mis-selling.

Once the bonds were incepted and in accordance with the bond terms and conditions, the Insurers would send periodical fund Valuation Statements to the investors. The Insurers assessed the fund values and then sent the valuation statements to investors. The statements relating to some of the funds – for example, MPF and Axiom - were deceiving for if the insurers had conducted a proper due diligence they would have realised that in fact these funds were a fraud and were worthless. The clients paid the Insurers management fees to provide these statements to investors. The information contained in the valuation statements was fundamentally based on fraud and it was worthless. LM and Axiom were in fact fraudulent funds. Accordingly, valuation statements sent to investors were also wrong and negligent.

You are no doubt aware of the Financial Services Royal Commission in Australia that concluded in February 2019. Commissioner Hayne found that "fees for no service" to clients was criminal conduct and certainly contravened the Corporations Act, including directors' duties and the terms of the Financial Services Licence of the entity. Many banks, fund managers and insurers have faced significant penalties and have settled class actions as a result of this.

Parent companies

My contention is that the insurers' parent companies, Quilter and Aviva in the UK, used their IoM subsidiaries to circumvent or breach basic consumer protection laws internationally and acted negligently in providing flawed valuation statements to investors. In doing so, the Insurers, as parent companies, used their subsidiaries, OMI and FPI, to sell bonds through the introductions made by IFAs, knowing that neither the Insurer nor the Bonds nor the IFAs were appropriately registered and licensed in the respective jurisdictions. By doing so the parent and subsidiaries breached basic consumer protection principles. There is direct evidence from some Regulators in the jurisdictions, as well as from some of the IFAs and clients, to this effect.

Breach of UK Financial Services laws and regulations

Both Aviva and Quilter are licensed under the UK Financial Services Markets Act. Under this Act, the FSA Handbook sets out principles for the conduct of business. We assert the conduct of Aviva and Quilter and all the subsidiaries, who sold the Bond products, breached "conduct of business rules" contained in the Handbook. These principles include:

a. that a firm must conduct its business with integrity (Principle 1);
b. they operate with due skill, care and attention (Principle 2);
c. that they observe proper standards of market conduct (Principle 5);
d. that they must have regard to customers' interests (Principle 6);
e. that they must pay due regard to the information of its clients and communicate information to them in a way which is clear, fair and not misleading (Principle 7; and
f. that a firm must take reasonable care to ensure suitability of its advice and discretionary decisions for any customer who is entitled to rely on its judgment (Principle 9).

These Principles have territorial application with respect to "appointed representatives". We would say that the IFAs are appointed representatives in the jurisdictions and therefore these Principles apply and have territorial scope.

I anticipate that Aviva and Quilter will insist that the sales of the Bonds were from the IoM, that the Bonds were incepted under Manx law and that therefore the IoM is the jurisdiction with standing. My view is that the issues transcend the jurisdictional construct regarding the IoM. Rather, it is a UK company group issue for the Aviva and Quilter Boards who knew, or ought to have reasonably known, that there were fundamental breaches of the Consumer Protection Laws internationally by their subsidiaries. The parent is responsible for the actions of its subsidiaries, especially when they breach the law and deprive UK citizens of their life savings.

One final matter needs to be brought to your attention. The Insurers (and other insurance companies) all have remarkably aligned terms, commission rates, charges and even response to letter dates. Bearing in mind that they are all domiciled on the small island community of the IoM one cannot but gain an impression of collusion perhaps even producing a cartel. This would undoubtedly be difficult to prove but the companies involved should be held to explain how they arrive at such similarities.

Evidence presented by CCI

a. Investigation Report from CCI.

b. Thirty-two sworn witness statements from investors in Indonesia, Thailand, UAE and the UK.

c. Five sworn witness statements from IFAs who sold the Bond products.

d. One sworn statement from the manager of the LM Investment Management Fund, Thailand Office.

e. Letters from regulators in the relevant jurisdictions.

I am happy to share this information with the Committee upon request.

Overview - Insurers

QUILTER

Quilter was listed on the London Stock Exchange on 27 March 2018. They had previously been known by the name Old Mutual Wealth Management Limited. Quilter is now the parent company of its subsidiary Old Mutual International, which is incorporated in the IoM. It is OMI that sold the misleading investments to elderly UK investors. OMI had acquired Skandia in 2010 and from that time onwards, both Skandia and OMI logos appear on the letterhead sent to clients. It is particularly concerning that Quilter should behave in this way, when they describe themselves as a leading UK wealth management business providing investment solutions and investment platforms to 900,000 customers. They are clearly not the 'honest brokers' they claim to be. As mentioned, Quilter has just announced a review of its IoM operations.

Quilter operates in the UK under the regulation of the UK Financial Conduct Authority (FCA). OMW's practices do not respect or observe industry standards as defined by the UK FCA, and the international principles set out by the International Organisation of Securities Commissions (IOSCO) and International Association of Insurance Supervisors (IAIS).

Quilter is supposed to obey the laws and rules of the FCA and act in the interests of investors. These practices give Quilter a rightful reputation as a company of probity - a reputation that Quilter is looking to take to the securities market. These practices include conducting a thorough due diligence on funds the company allows its clients to invest in, thereby adding an element of assurance in the fund. These good practices were recognised by both IFAs and potential clients with an expectation that the same practices would be devolved throughout the company. In other words, Quilter and OMW's modus operandi and reputation were strong marketing messages for the company as a whole, and OMI in particular.

Aviva

Aviva Plc is listed on the London Stock Exchange and is the parent company of FPI, incorporated in the IoM. Aviva acquired FPI in 2013/2014 and is liable for the Insurers' subsidiary company's actions in the IoM and in London as it would have acquired FPI's liabilities. FPI IoM has recently been acquired by 360 and has retained approximately 20 million pounds from the acquisition in light of the class action proceedings.

As for Quilter and OMW, Aviva operates in the UK under the strict regulation of the UK Financial Conduct Authority (FCA). Aviva's practices respect and observe imposed and self-imposed high standards of consumer protection as defined by the UK FCA, and the international principles set out by the International Organisation of Securities Commissions (IOSCO) and International Association of Insurance Supervisors (IAIS). Again, like Quilter and OMW, these practices give Aviva a rightful reputation as a company of probity. In Aviva's case, the due diligence conducted in London is extended to its IoM operation. This was known to IFAs and gave them an assurance that any fund made available by FPI would have passed the rigours of a formal due diligence.

Sale of the Bond products

Between 2006 and 2013, FPI approved and promoted a Bond product to IFAs in the jurisdictions. The Bond products were known as Reserve Portfolio Bonds (RPB), International Protector (a life insurance product), Premier Savings Plan and Summit (a "mini bond" product). In turn, the IFAs would market the Bond products to investors who entered into RPB's (Bond products).

Between 2006 and 2013, Quilter approved and promoted a number of Bond products to IFAs in the jurisdictions. The Bond products were known by different names, such as Executive Investment Bond (EIB), Executive Redemption Bond (ERB), Executive Investment Portfolio Bond (EIP), the Collective Redemption Bond (CRB) and Collective Investment Bond (CIB) (Bond products). In turn, the IFAs would market the Bond products to investors who entered into RPB's.

The Insurers produced and provided promotional material for distribution to IFAs to provide to their clients. Some of this material often contained a "warning" that these Bonds were "not for use in the UK, Hong Kong and Singapore," by the IFAs or clients. The implication here, by omission, was that the product was for use in the jurisdictions.

Once investors signed the Bond product after representations by the IFAs, investors became the customers of the Insurers.

In these circumstances, the IFAs were not, however, truly independent, as they received commissions and/or payments from the insurers as reward for directing clients into Bond products. For OMI, it is an important issue to maintain that the sale of the bonds was the sole responsibility of the IFAs. This would mean that the IFAs had agency status. However, the terms of business between the insurers and the IFAs seem to be drafted to state that the IFA is not an agent of the Insurer. Should it be proved that the IFAs were agents or intermediaries of the Insurers, then the Insurers would surely have a responsibility for the actions of their agents or intermediaries. If the Insurers knew that either the agents or intermediaries, who were unlicensed, were also selling the Insurers' unlicensed Bond products, then the Insurer should be held responsible.

The actions of the Insurers

Some Bond products had insurance components where others did not, but essentially the Bond products were financial products characterised by the Insurers and approved by the IoM regulator as insurance products. Investors needed to make a minimum investment of £25,000 to £50,000 to be approved for a Bond application. Once a bond was incepted, clients then had access to purchase units in collective investment schemes on a Bond platform.

The Bond products were linked to the Bond platform. The Bond platform contained collective investment funds. These funds were placed on the Bond platform by the Insurers, following due diligence and approval in London and the IoM. The funds on the Bond platform were made available for investment to clients of the Insurers who purchased Bond products. While some of the funds, such as LM Managed Performance Fund (LM/MPF) (Gold Coast, Australia) and Axiom Legal Financing Fund (Axiom) and Premier New Earth Solutions Recycling Facilities Investment

(New Earth), were directed at professional investors only, the insurers failed to distinguish either the Bond products or the funds on the Bond platform, between professional or retail investors.

I believe the Insurers would receive fees and/or commissions from fund managers who agreed to place their funds on the Bond platform. The Insurer would act as a professional investor or nominee to obtain units from the fund manager, as a professional investor and then these units would be transferred to the retail investors according to their application forms which indicated the amounts of units a retail investor has purchased in the fund. UK elderly investors would pay fees for the management of these units and receive valuation statements concerning the value of the units in the fund assessed by the Insurer. Clients would give instructions to sell units in the various funds and the Insurers would receive fees on the sales so that the Bond platform acted as a de facto stock exchange.

The Insurer's staff would periodically value the funds on the Bond platform and send valuation statements to customers. Investors relied upon this information. Valuations are available online to clients and IFAs.

The Insurers would market the Bond products and the Bond platform to IFAs in the jurisdictions representing itself with marketing material and supporting documentation. The former carried the Insurer's logo and details and would be passed on to the client by the IFA. The supporting documentation would be used by the IFA for the client to make the application for the product and to make the relevant investments in funds supported by the platform. In this way the client came to know the Insurer, have confidence in the Insurer, and believe that both the IFA and the Insurer were acting in that client's best interests.

The Insurers entered "Terms of Business" Agreements with IFAs. IFAs became intermediaries for the Insurers and agents for the clients. In authorising the IFAs to act on its behalf, the Insurers created a legal relationship with a third party who became a client of the Insurers. In return, the IFAs received commissions, fees and trailing commissions from the Insurers. Despite an assertion to the contrary in the ToBs, an agency arrangement was thereby created under law.

The insurers also benefited from a close relationship with the funds and the fund managers, especially in the case of LM/ MPF. LM directors regularly visited the IoM to brief the Insurers on all aspects of the fund. The Insurers would therefore have been fully conversant with matters like redemption issues

IFAs were not licensed in the jurisdictions, and Bond products were not registered

The ToBs required IFAs to declare their legality within their jurisdiction. Many of these IFAs had no appropriate registration or licence within the jurisdictions. The insurers were therefore aware that the IFAs in the jurisdictions were not licensed and had no regulatory oversight. At the same time, the insurers knew that its clients were being advised by these unregulated IFAs. The situation was ignored by the insurers. FPI's ToBs are contained in the Witness Statement of advisers.

In the Witness Statement of an IFA (adviser) the point is made that the insurers would have known that in Thailand, the IFAs were not licensed because they were never asked what their regulatory

details were, which is unusual compared to other jurisdictions such as the UK. There was no mention in the ToBs about regulatory licences or qualifications.

OMI's ToBs, however, did ask these relevant questions about licensing. Either the IFA gave false information or OMI ignored the information given. Either way, OMI must surely have been aware of the reality of the IFAs' true legal position.

Neither the Bond products nor the funds were registered with regulatory authorities in the jurisdictions, and were not approved to be marketed, promoted or sold in the jurisdictions. Nonetheless, both the Bond products and funds admitted to the Bond platform were marketed by IFAs in their jurisdictions and the insurers were aware of this fact.

The Insurers knew that the IFAs were not registered or licensed as an insurance company in the jurisdictions. Despite this, the IFAs promoted and marketed the Bond products to investors in the jurisdictions and the Insurers accepted the Bond product applications from investors who were resident within the jurisdictions, as if the Insurers were appropriately registered and licensed. As a matter of contract law, applications were often signed in the jurisdictions. Representations were made in the jurisdictions.

Unaware of the Insurer's true legal position, the IFAs advised investors to invest in the Bond products and recommended collective investment funds on the Bond platform in the jurisdictions.

The process was that once a client's Bond application was accepted by the insurers, the bond was incepted by a contract between the applicant and the Insurer. The applicant became a client of the Insurer. This entitled the client to invest in the Bond products and funds on the Bond platform where the Insurer obtained the units required from the fund manager as a nominee. For these privileges, investors were charged administration fees, investment dealing fees, regular policy management fees and early withdrawal fees (fees) by the Insurers.

There was little or no disclosure to investors by the Insurers of the risks of investing in funds on the Bond platform or that the funds could be worthless. Importantly, there was no proper disclosure about risks to investors and most importantly that they could lose their entire investment.

Inadequate due diligence was undertaken before funds were admitted onto the Bond platform. This inadequacy was not disclosed to investors at the time or subsequently.

Funds approved onto the Bond platform by the insurers

Between 2009 and 2013, LM Investments Pty Ltd (LM), was the fund manager of LM Managed Performance Fund (LM/MPF) (Gold Coast Australia). LM/MPF was approved by the Insurers, in London and the IoM, to be placed on the Bond platform and recommended to the IFAs as intermediaries for the Insurers. The IFAs recommended investment in the LM/MPF and other LM products to clients between 2009 and 2013. As Bond holders, these clients were also clients of the Insurers.

The LM/MPF was reviewed by the Insurer's staff in London and the IoM, and valuation statements of the LM/MPF were sent to clients by the Insurers - including the clients represented here - between 2009 and 2013.

Between 2009 and 2013, Axiom Legal Financing Fund (Axiom), operated by Tangerine Investment Management Ltd (Tangerine) was approved by the Insurers, in London and the IoM, to be placed on the Bond platform and recommended to IFAs as intermediaries for the Insurers.

Between 2008 and 2013, New Earth funds were registered in the IoM in relation to a waste management group of companies, operating in the United Kingdom. New Earth sub-funds were linked to insurance company portfolio bonds available only to "qualifying" investors. New Earth was approved by the Insurers, in London and the IoM, to be placed onto the Bond platform and recommended to IFAs as intermediaries to the Insurers. The IFAs recommended the investment in New Earth and raised approximately £200 million internationally.

Promotion of Bonds to IFAs

The Insurers represented to unlicensed IFAs in the jurisdictions (who, according to the ToB were the agents of the Insurer's clients) that the Insurers conducted due diligence on funds prior to them being admitted onto the Bond platform. The Insurers conducted "roadshows" to IFAs and investors in the said jurisdictions. The IFAs passed this information on to their clients as a further assurance of the Insurer's and a fund's probity. I have a copy of the FPI roadshow slides.

I have obtained statements from IFAs whose evidence is that it was represented to them that the Insurers undertook due diligence in relation to the funds and that they would not have advised their clients to purchase units in the funds had they known the Insurers would not take responsibility for placing funds onto the Bond platforms.

Failure of LM/MPF, Axiom and New Earth on the Insurer's Bond platform

LM/MPF

LM operated as the Responsible Entity (the fund manager), for the LM First Mortgage Income Fund (LM/FMIF). The LM/FMIF was frozen in 2009 with no redemption payments and went into receivership on 8 August 2013, with BDO being appointed as receivers. BDO has estimated a return to investors, as at June 2016, of less than 15 cents in the dollar, and over AUD$300 million in losses for thousands of investors.

In 2009, LM and its directors, irrespective of the losses in LM/FMIF, established and marketed the LM/MPF fund to approximately 5,000 international investors - raising approximately AUD$430 million between 2009 and 2013. The fund had an investment memorandum rather than a prospectus and was designated for professional investors only and not for retail investors. The investment memoranda were provided to the Insurers for sharing with investors. This did not happen.

The investment memoranda had instructions and documentation as to how to make investment in the fund. The Insurers would complete the documentation to make an initial investment thereby establishing themselves as the professional investor. Thereafter, for each subsequent investment the Insurer was required to complete further documentation. This documentation required a warranty that no laws associated with the investment had been breached. Clearly, this warranty would cover the registration of IFA, product and Insurer.

In or about 2010, LM and one of its directors, Peter Drake, made an application to the Insurers to admit LM/MPF onto its Bond platform. The application was accepted following due diligence of LM/MPF by the Insurers. That review would have revealed that one of LM's other funds, namely LM/FMIF, was then suspended from trading and was unable to pay investors. The fund is now in the hands of a liquidator. Despite this knowledge the Insurers accepted LM/MPF on its bond platforms.

Further, in relation to LM the insurers in their due diligence ignored serious red flags. When the FMIF (First Mortgage Income Fund) was suspended in 2009, FPI and Quilter (OMI) should have questioned the validity of the LM MPF. It became apparent that most of the assets the LM MPF invested in had first mortgages held by LM's FMIF and also were Peter Drake developments (the Director of LMMPF and the Responsible Entity (Trustee) LM Management. Basic enquiries by the FPI and Quilter (OMI) in their due diligence would have revealed this and the conflict of interest involving Drake.

LM marketed LM/MPF to IFAs in the jurisdictions, announcing that it had been admitted onto the Bond platforms by the insurers.

IFAs in the jurisdictions promoted, marketed and sold to investors LM/MPF via the Insurer's Bond products. Elderly UK investors deposited substantial amounts of their life savings into LM/MPF.

In or about 2010, because of concerns raised about the slow payment of redemptions, the Insurers suspended LM/MPF from its Bond platform and its staff attended LM on the Gold Coast, Australia and conducted a review.

In or about late 2010, the suspension was removed from LM/MPF and the fund continued on the Bond platform organised by the Insurers. The IFAs in the jurisdictions continued to market the Bond products and LM/MPF on the Bond platform between 2010 and March 2013. There were no warnings or disclosures sent to investors by the Insurers, to indicate that they had raised concerns about LM/MPF and had suspended it for a time on their Bond platform.

In or about late 2011 or early 2012, the Insurers knew - or ought to have known - that there was a danger that LM/MPF might suspend its redemptions. Nonetheless, the Insurers continued to accept Bond applications from investors for entry into LM/MPF on the Bond platform until the fund went into administration in March 2013. The insurers did not warn their clients. Periodic valuations of the LM/MPF continued to be sent to investors by the Insurers. These valuations were found to be completely incorrect as in fact the fund was a "Ponzi scheme" and a fraud and is the subject of a regulatory investigation by the Australian Securities and Investments Commission (ASIC).

In March 2013, LM/MPF went into administration, and then receivership, owing approximately AUD$430 million to 5,000 investors internationally. Elderly UK investors are many of those who lost all their funds.

Axiom

In or about 2012, Axiom was incorporated in the Cayman Islands and operated by investment manager, Tangerine - also incorporated in the Cayman Islands. The Insurers accepted Axiom onto the Bond platform in or about 2012, after conducting a due diligence.

The director of Tangerine (the fund manager to Axiom) was a UK solicitor, Timothy Schools (Schools), who was the sole director of Tangerine and operated a law firm, ATM Solicitors Ltd (ATM Solicitors) in the UK. Schools operated Axiom and played multiple roles, including founder, investment manager, loan manager, director and promoter. Funds were lent to various entities through ATM Solicitors.

Tangerine was incorporated in the Cayman Islands on 19 December 2011 and took over as investment manager for Axiom from The Synergy Solution Ltd - a company owned by Schools' wife and others in the UK.

The Insurers reviewed the operations of Axiom, valued the fund and undertook due diligence on Axiom, Tangerine and Schools before admitting Axiom onto the Bond platform in 2012.

Between 2007 and July 2012, the UK Solicitors Disciplinary Tribunal (SDT) took action against Schools for misconduct.

Schools was also involved in a number of companies that went into either administration or liquidation between 2000 and 2012 - namely Life Repair Group Ltd, Life Repair Sales Ltd, Fast Track Litigation Services Ltd, Fast Track Indemnity Ltd, CMS Investigations Ltd, Pulse Mobile Ltd and Rococo Joe's Ltd.

The Decisions of the SDT and the failed corporate entities are searchable by name and entity in the UK.

The IFAs in the jurisdictions promoted, marketed and sold Axiom as a fund approved by the Insurers on the Bond platform to investors and other customers.

The Insurers received fees from Tangerine for placing Axiom on the Bond platform.

The Insurers sent to investors and other customers periodic valuation statements on Axiom.

IFAs continued to send applications to the Insurers from investors and other customers for the purchase of Axiom units on the Bond platform in or about December 2012. These applications were accepted and processed by the insurers. The periodic valuations of Axiom which were sent to investors by OMI/ Old Mutual were incorrect.

Axiom went into receivership in December 2012, and this still continues. No funds have been returned to investors. It still owes more than £120 million, and there is no prospect of any monies being returned to investors – amongst whom are many elderly investors from the UK.

Axiom has been exposed as a fraudulent fund, and there are numerous proceedings in the UK by investors against Axiom, Schools and others. A Grant Thornton report points to substantial evidence that the money lent to law firms from Axiom was misused under the terms of litigation agreements. Criminal action is being taken against the directors.

New Earth

Between 2008 and 2013, New Earth sub-funds were marketed as an opportunity for "qualifying" investors to profit from landfill diversion and renewable energy. The aim of the company was to provide long term growth by investing directly or indirectly in recycling facilities in the UK. In or about 2013, the New Earth group of companies raised additional capital of between £200 to £300 million via an initial public offering.

New Earth units were to be sold by intermediaries via insurance company portfolio bonds for "qualifying" investors. However, there were no warnings of the risk to investors and the Insurers accepted application forms from retail investors, without any attempt to distinguish between professional and retail investor classification.

On 16 June 2016, New Earth group of companies and its funds went into administration and on 31 August 2016, went into liquidation with Deloitte appointed as liquidator. There appear to be serious issues that relate to malfeasance or negligence on the part of the operation of the New Earth group of companies and the sub-funds. The liquidator continues investigations and cannot find the majority of funds that have "gone missing". Again, many investors from the UK lost their funds.

The Result

As a result of investing in LM/MPF, Axiom and New Earth, via Bond products on the Bond platform, designed and orchestrated by the Insurers, a substantial portion of the life savings of many elderly investors, including those from the UK, were lost. <u>The LM/MPF, Axiom and New Earth were professional investor funds and should never have been approved, promoted, marketed or sold to elderly retail investors in the jurisdictions.</u> Fundamentally, the insurers admitted LM/MPF and Axiom onto its Bond platform when they were fraudulent funds and in relation to New Earth, when there was substantial debt and consequential malfeasance.

As a general point, one of the requirements of all funds to be approved by FPI and Quilter (OMI) was that there had to be liquidity. This could have been weekly or monthly – however, LM MPF, were illiquid as was Axiom and New Earth Resources.

Misrepresentations

IFAs and Insurers made representations to clients, who subsequently invested in funds on the Bond platform in LM, Axion and New Earth and many other products. The following misrepresentations were present:

a. the Insurers were a "safe haven" for financial security - the Insurers having vast resources;
b. the Insurers' global presence was indicative of their position - their international reputation warranted their legal presence in that particular jurisdiction;
c. the Insurers' previous provision of bonds to other clients was indicative of their legal operation in that jurisdiction – if there was any question as to its probity, Old Mutual was a company that would be transparent;
d. the Insurers were a trusted, household brand-name in the UK;
e. the products were safe and low risk - appropriate for expatriate retirees;
f. the products were appropriate for retail investors;
g. the products would provide reasonable returns on lump sum investments;
h. that the Insurers undertook due diligence on the funds placed on the Bond platform;
i. the Insurers would periodically review and value the funds on the Bond platform and issue valuation statements to customers;
j. valuation statements issued would show the value of a customer's investment connected to the funds on the Bond platform;
k. customers would have to pay entry fees and ongoing management fees on their investment portfolios with the Insurers; and
l. customers would pay entry fees, ongoing management fees and withdrawal fees when investing in funds on the Bond platform.

Even if investors were exposed to the risk that funds would fluctuate in value, they were not exposed to the risk of a total loss of capital invested in the bond. That risk was never disclosed.

Elderly UK investors, accepting the advice and/or recommendations from the IFAs, would complete a Bond application form. For example, in the case of OMI, there was a dealing instruction form entitled "Dealing Instruction form – Royal OMI Portfolio bonds/accounts" - both being raised by the IFA. The recommended funds for investment included LM/MPF, Axiom and New Earth which had been approved and made available by the Insurers. The Insurers would then act on the instruction form and acquire the units as nominee from the fund manager and then allocate the units to the client in accordance with the Dealing Instruction form.

In many instances, investors provided cheques representing their investment amounts and the entry fees and/or made transfers to Old Mutual in London or the IoM upon completing the Dealing Instruction form. Knowing that their clients had been advised by unregulated IFAs, these transfers of funds were accepted by the insurers with no check on the appropriateness of the client as an investor in the fund. This was despite the Insurers knowing that some funds, LM/MPF, Axiom and New Earth for example, were for professional investors only and in the full knowledge that many, if not all of their clients would be retail investors. Therefore, knowing the risks that a client

was taking, the insurers failed to make the most rudimentary checks expected of a company of good repute, and failed to disclose the risks.

Elderly UK investors relied upon the information provided by the IFAs and the Insurers in making their investment decision and in deciding to purchase a Bond product and purchase units in funds on the Bond platform for which the Insurers received fees. Elderly UK investors relied on the periodic valuation statements issued by OMI or FPI to investors and other customers about the value of funds on the bond platform.

Retail investors

The funds were collectively managed investment schemes that were registered in different parts of the world, LM registered in Australia, Axiom registered in the Cayman Islands and New Earth registered in the IoM. The funds were directed towards professional investors only and the insurers had no screening processes in place and did not distinguish between retail and professional investors. The truth is that no professional investors would invest in these funds because they were "Ponzi schemes" and so the real target was unsuspecting retail investors with significant or life savings to invest.

Insurers or IFAs acted illegally and were not licensed to conduct business in the jurisdictions

The Insurers failed to conduct proper due diligence to ensure that the IFAs were licensed in the jurisdictions to promote, market and sell the Bond products or promote funds on the Bond platform.

The Insurers did not register the Bond products or funds on the Bond platform, or any disclosure documents, with the regulatory agencies in the jurisdictions, even though the Bond products and the funds on the Bond platform were marketed and sold by IFAs on behalf of the insurers in the jurisdictions.

The Insurers were not registered and/or licensed with the Office of Insurance Commission (OIC) Thailand. Any promotion, marketing or selling of Bond products in the jurisdiction was therefore illegal. We have an email from the Regulator.

The Insurers were not registered and/or licensed with the Indonesian insurance or securities regulator - the Securities Exchange Commission (SEC) Thailand. Any promotion, marketing or selling of Bond products in the jurisdiction was therefore illegal. We have obtained a letter from the SEC Thailand.

The Insurers were not registered and/or licensed with the financial services regulators in Cyprus. Any promotion, marketing or selling of Bond products in the jurisdiction, was therefore illegal. We have an email from the regulator.

The insurers were not registered and/or licensed with the UAE Insurance Authority (except FPI a limited license). Any promotion, marketing or selling of Bond products in the jurisdiction was therefore illegal. We have a letter from the regulator.

The insurers knew that the IFAs were unlicensed and were therefore acting illegally in the jurisdictions and did not have professional indemnity insurance.

The Bond products, such as Executive Investment Portfolio bond , that contained explicit warnings "Not for use in the UK, Hong Kong and Singapore" implied that the Insurers were legal, and that these products were for use in other jurisdictions. The Insurers knew that neither the company nor its products were registered or licensed in the jurisdictions. The Insurers knew the Bond products were not to be sold to citizens in the UK, Hong Kong and Singapore, which implied that care had to be taken in the marketing or selling of Bond products in other jurisdictions on account of regulatory requirements.

Non-disclosure of risk by the Insurers – breach of 'utmost good faith'

The evidence from the investors' witness statements indicate that the Insurers failed to disclose to investors that:

a. the Insurers were not registered or licensed in the jurisdictions.
b. the Insurers' products were unregistered in the jurisdictions.
c. the Insurers acted as professional investors in acquiring units from funds (designated for professional investors only) and then transferred/sold those units to elderly retail investors.
d. the Insurers <u>knew</u> IFAs had no regulatory approval, because of their unlawful status, to market Bond products or advise on LM/MPF, Axiom or New Earth funds in the jurisdictions.
e. the Insurers <u>knew</u> IFAs had no indemnity insurance, should investors receive negligent advice, or the products prove defective.
f. the Insurers took no responsibility for due diligence or reviews prior to funds being admitted onto the Bond platform.
g. the Insurers took no responsibility for the failure of funds on the Bond platform.
h. the Insurers took portfolio fees, even if the investors lost most their investments.
i. the Insurers failed to disclose the full risks of the Bond products and the funds on the Bond platform.
j. the Insurers did not distinguish between professional investors and retail investors in relation to funds on the Bond platform.
k. the Insurers provided negligent or incorrect valuations issued in respect of LM/MPF, Axiom and New Earth funds; and
l. that investors could lose their entire life savings by investing in funds on the Bond platform via a Bond product. <u>The Insurers collected millions of pounds in fees and continue to do so.</u>

How are existing enforcement tools being used?

Some investors have made complaints to the insurers, the Financial Ombudsman at the Office of Fair Trading and the Insurance and Pensions Authority/Financial Conduct Authority (FCA, the financial regulator) all in the IoM. The Insurers have offered various, sometimes contradictory and always specious explanations. The Ombudsman has either rejected jurisdiction through some reason in favour of the Insurers stating that the fault lies with the unlicensed financial advisers (**IFAs**), intermediaries of the Insurers, who sold the products, and that the Insurers bear no responsibility. The FCA have been ineffective and have not held the Insurers responsible in any way and have failed to deal with the matter, even though clearly in their remit. The consequence of the Non action of the FCA is that down the road UK government will be supporting these retirees that lost their life savings to the insurers.

It is appropriate to the ask the FCA to start investigating the issues outlined. In Australia, the Financial Services Royal Commission pointed out the damage to the economy when the Australian Securities and Investments Commission sat back and did nothing. Since its final report in 2019 AUD8 billion is being returned to consumers through remediation who were poorly treated by banks and insurers. Class actions against these institutions have levelled the playing field. Lazy regulators who are paid by the public and sit at computer screens shuffling paper need to be "called out," and an inquiry like yours should expose them.

A complaint with a detailed overview was sent by CCI to the Financial Conduct Authority in February 2017. No action has been taken and no follow up despite several emails to the Head of Enforcement, Mark Steward. We offered to provide evidence, but the offer was never taken up.

Recommendations

There appears to be no regulatory co-ordination or surveillance by the FCA (or other regulators) about misleading products being offered to UK elderly investors. There is a complete absence of any enforcement action in this area. The minimum requirements should be that if insurers are registered in the UK with regulators, must disclose all the risks to UK investors and clearly state that if they invest in this product, they explain their license status and the full risks ie "investors can lose all their money" or as the case may be.

Investors should also be warned that investments in the IoM, Guernsey and Jersey, do not provide the same protection as investments in the UK and that it is expensive for investors to have recourse before the courts in those offshore jurisdictions. If there is negligence in investing their savings, it is very unlikely that given the expenses involved are prohibitive that it can be pursued.

The FCA should have a "product intervention power" where it can issue a Stop Orders on a product, on the parent company if it is listed or is licensed under the UK regulatory regime, where risks are not disclosed and the product is marketed to vulnerable investors such as the elderly.

The Insurers were involved in receiving fees for no service as many investors had paid for a review of their funds portfolio yet there is no evidence that any review took place.

Conclusions

FCA has allowed Insurers licensed in London to circumvent of IoM laws and UK Consumer Protection standards.

The FCA has failed to investigate the arrangement between the Insurers and the IFAs which allowed unsuspecting retail investors to access unsuitable and inappropriate Bond products and funds on the Bond platform without any regulatory oversight or consumer protection safeguards in place. In short, the Insurers effected the mis-selling of inappropriate, professional-only funds to retail investors, with no real disclosure of risks.

The Insurers marketed the Bond products as insurance products when, in reality, they were financial products that required more appropriate disclosure to investors in accordance with international standards set out by IOSCO guideline principles, IAIS, and recent insurance cases that have been decided before the European Courts.

The Insurers did nothing to remedy the lack of safeguards in respect of the disclosure of risks, the quality control over intermediaries and the due diligence in respect of intermediaries or agents who were permitted to market and sell Bond products and funds on their Bond platform to investors.

The regulators in the UK and IoM have stood by and let the Insurers exploit the loopholes in the IoM regulatory structure to circumvent basic standard international consumer protections and regulatory requirements by marketing high risk Bond products and funds on the Bond platform to unsuspecting elderly UK retail expatriate and UK citizens in the jurisdictions referred to - using their brand name as a safety haven and their UK practices as a wrong exemplar. This circumvention breaches not only the letter and spirit of basic UK consumer protection principles but international financial regulation guidelines that place consumer protection and appropriate disclosure as the basic requirements.

The Insurers knew that IFAs as intermediaries, were unlicensed in the jurisdictions where the bonds were sold and signed terms of business with IFAs. Now the Insurers blame these IFAs for selling the products. Selling unlicensed products is a criminal offence in the UK, Hong Kong, Australia, Singapore, USA and many EU countries.

The Insurers knew, or ought to have known, that unlicensed IFAs were not required to comply with any regulatory standards or professional body codes, nor be subject to any regulatory oversight. The insurers thereby knowingly exposed investors to unnecessary risks when it was within their capability to protect them by providing proper and fair disclosure.

Structure

The Insurers failed to distinguish between professional or retail investors and fostered an illegal structure that directed unsuitable and inappropriate investment products to investors. In a recent case concerning a public media company, Kwickie, ASIC prevented accountants acting as nominees, then on-providing units in a fund to retail investors. ASIC said in a statement that the sophisticated investor test has to be applied in a way consistent with the law. "**Otherwise retail**

investors will not be afforded the safeguards in making appropriate investment decisions the law explicitly applies for."

The Insurers, in the circumvention of consumer protection and regulatory standards, placed investment fees, commissions, and profits before customer safeguards.

Breached UK Financial Services Principles

We assert that Quilter and Aviva, as parents of the subsidiary, knew or ought to have known the illegal actions of their subsidiaries which breached Principles set out in the Financial Conduct Authority's Handbook under the Financial Services Markets Act 2000. In the Handbook, there are a number of Conduct of Business Principles 1 to 11, which have, in some form or another been breached having regards to the conduct of the Insurers explained in this Submission.

Under PRIN 3.3 we assert that these Principles have territorial application, notably Principle 5 – the name Quilter/Old Mutual, in whatever context, is synonymous with the UK financial system - and Principle 10 – a failure to warn clients of risks is not safeguarding the client's assets. We argue these Principles have a wide scope with respect to "appointed representatives" and they apply to activities wherever they are carried out in the jurisdictions. Other clauses may be equally or more applicable.

We also note that the insurers may have breached the Principle set down in the Markets and Financial Instruments Directive 2004 (MiFID). These are EU requirements and notably apply to the UK and Cyprus. These Directives set out Consumer Protection Principles, similar to those in the FCA Handbook.

Breach of legal obligations – disclosure of risk

I believe that the Insurers, in the jurisdictions, breached their duties of care in tort, utmost good faith as an insurer, negligence, misrepresentation (non-disclosure); and engaged in unconscionable conduct. We have drafted a statement of claim expanding on these matters in greater detail. There was a total failure to disclose to investors the real risks, whereby investors could lose all their money. And there was NO due diligence on the products.

My belief is that the Insurers breached basic consumer protection standards and appropriate disclosure obligations to investors as set out in international principles by IOSCO and IAIS.

The policy schedule to investors should have been drafted in such a way that the standard terms and conditions did not require policyholders to make the connection between several clauses in different places in order to understand the risk issues involved. There was no disclosure of serious risks, i.e., investors could lose everything and neither the Insurer nor the IFA were licensed to sell or market the products in the said jurisdictions.

The Insurers should have provided information and advice to the policyholders, regardless of the fact that the policies were mediated by IFAs, selected by and obliged to act in the interests of the policy holders.

The Insurer's information to policyholders should have specifically addressed the inherent risks of the product including, for example:

a. The particular risks in the underlying funds; the amounts of fees and charges which could reasonably be expected, and their effect on returns; and above all, that investors could lose all their savings.

b. Discretionary rights of the Insurer to stop surrender payments in the case of adverse development of the value of underlying funds or liquidations of third parties.

c. Disclosure that the Insurers and intermediaries were not licensed or registered in the jurisdictions, and that the Insurer took no responsibility for the risks of the total loss of investments, and that these products were not sold in other jurisdictions such as the UK, Hong Kong and Singapore because of their non-compliance with consumer protection requirements in those regulatory regimes.

Product Design - London

My understanding from an individual formerly employed by Skandia International (now Quilter) in the relevant area is that design decisions about the product were made in London. Additionally, in an FPI pamphlet from London sent to an investor, FPI's Colin Tipping, Investment Proposition Director at Friends Life, confirmed that FPI conducted due diligence on the funds it markets.

In the pamphlet, Mr Tipping was interviewed, and answered questions put to him by FPI. One of the questions was, "How do you select the managers you use?" (i.e. managers for the Bond platform). "Across the group, we have more than 100 managers at our disposal and within the international business, more than 40. After initiating a search, we produce a short list. Our team does a lot of desk-based research: Crunching numbers, doing attribution, understanding how a fund-manager delivers. Then we go through due diligence. For a new manager, we will do the initial due diligence, understanding how that manager is organised. We use a thematic risk-based approach, looking at the manager's process from end to end including their risk and compliance model, how they operate and outsourcing arrangements." **The team which does this work is based in London.**

In the pamphlet, Mr Tipping is asked, "How is your fund selection team set up?"

Answer: "More than 40 team members are involved in getting funds on our platform. There is a governance team, which does a lot of desk-based research. They conduct corporate due diligence and site visits and ensure that investment guidelines are codified in agreements. Then there is the fund and research selection team. Their job is to find managers and interview them. They also run our fund products in the UK which we run internally. Then there is the investment communication team. They take the investment ideas, interview fund houses and produce the basis of our marketing material. The bulk of the team is located in London with international business headquarters in the IoM."

In one instance, FPI illegally sold a Bond product to a retired couple, Mary Reilly and her husband (now deceased) in Aberdeen. This is in breach of UK financial services laws.

The UK parent entities knew what the IoM companies were up to in terms of promoting these products internationally with no disclosure as to risks and knowing that there was a low standard being applied to elderly retail investors in the jurisdictions.

The second issue is whether these investors have jurisdiction to proceed in the EU against the Insurers. In a series of landmark decisions, the German Federal Court (BGH) held for the first time that unit-linked life assurance policies often qualify as investment products; and that therefore they are retroactively subject to much more stringent case rules developed by German Courts over recent years. As a result, life insurers have been liable for hundreds of millions of dollars for mis-selling products and for having inadequate standards and terms and conditions.

Evidence from the Foreign Regulators

I have relevant letters from regulators in Thailand, UAE and Cyprus which indicate that the IFAs were not licensed to sell their products in the jurisdictions. The Thai regulators confirm that the insurers were not licensed to market or sell products in their jurisdiction without a licence.

What more can be done to prevent pension scammers operating?

In my experience it is the large Insurers and the large investment companies that appear to be designing risky products and mis-selling products for consumption in offshore jurisdictions, knowing that they are targeted at elderly UK investors. The disclosure statements used by the big firms are usually totally inadequate and they do not fairly disclose the risks involved.

These issues can be overcome by making the parent company responsible for financial products disseminated by their subsidiaries to UK investors and therefore requiring them to treat consumers or investors fairly and apply the same regulatory standards as in the UK.

What has become abundantly clear is that UK investors who are resident in other countries are exposed to high-risk financial products without any appropriate recourse. In the long term, that may mean that when expat investors lose a majority of their life savings, they may have to return to the UK and be reliant on the UK pension system, with their savings going to the profit of large conglomerates.

It may be argued that any issue outside the UK should not be considered. However, investing has now become an international affair and jurisdictions in the Channel Islands were created by the Privy Council and are clearly associated with the UK and therefore should have the same standards and should have similar rules and regulatory standards that protect investors from misrepresentation or negligent products.

What more can be done to prevent individuals becoming victims of pension scams?

UK regulators like the FCA need to be more proactive in this area in terms of surveillance and enforcement. A product intervention power could provide a useful regulatory tool to the FCA. Regulators need to be more co-ordinated in dealing with the mis-selling of products to elderly and vulnerable UK citizens whether they reside inside or outside the UK. Finally, Parent companies listed in the UK should be held to account for the conduct of their subsidiaries who mis-sell products, especially where products are mis-sold to the elderly and vulnerable.

What role should the pensions industry have in preventing scams?

There should be a compensation scheme established where investors can seek redress if they have been advised by a subsidiary to invest in an unsuitable scheme. Also, see above in the Overview.

Is HMRC's position on the tax treatment of pension scam victims correct?

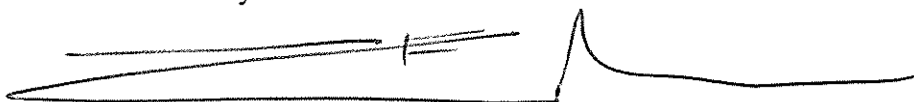
No comment on this area.

Are public bodies co-ordinating the response to pension scams?

My experience is that there seems to be a lack of co-ordination, information, surveillance, and enforcement action by regulators in this area. Unless this is addressed strategically, more mis-selling of products and scams will emerge, and elderly investors (if they lose substantial savings) will be driven to rely on the UK government's social security for their future.

Thank you for considering my submission. I am happy to appear before the Committee and give evidence should you deem it appropriate.

Yours sincerely



Niall Coburn
Managing Director