A Submission to the

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry

"There needs to be a recognition of the differences between those financial planners who act as stewards on behalf of their clients, and those financial advisers who act as conflicted agents serving both their client and a third party financial product provider – and the public should know how to recognise these different players"

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Recognising differences; an efficient and rapid means of improving financial advice quality – permanently.

Key Summary

- Significantly raising the global standards of education of all players categorised as financial advisers under the existing Corporations law has been a very slow process and is likely to continue to be characterised by negotiation by the major players within the funds management and superannuation industries. RG 146 has been in existence since September 1999 (as IPS 146) and yet we have seen little real increase in minimum standards.

- This *slowness of implementation* is evidenced by the fact that CP153 was due to be implemented more than two years ago and is still not finalised.

- These minimum standards are seen as an embarrassment by professional financial planners.

- There are already a significant (but certainly not a majority) of advisers who are operating under a higher standard than the minimum required by Corporations Law – free from conflicted remuneration and with a significantly higher level of qualifications and commitment to on-going education.

- ASIC seems focussed on maintaining a single level regulatory approach under which all people providing financial product advice as per Corporations Law should be considered equally, despite the PJC (Ripoll) report identifying that "The licensing system does not currently provide a distinction between advisers on the basis of their qualifications, which is unhelpful for consumers when choosing a financial adviser." (Ripoll report para 5.87)

- By creating a meaningful distinction between the terms financial planner (higher standard) and financial adviser (current standard), the public will be able to determine which type of adviser will best suit their needs. This higher standard should be assessed 'in practice' in a similar fashion to the shadow-shopping exercise undertaken by ASIC perhaps annually.

- By enabling a distinction between those on the minimum level from those who meet or exceed a higher level will introduce a market-based response that is likely to have a more efficient impact on raising the overall standards of those providing financial advice than a strict regulatory approach.

- The cost of this differentiation should be borne by both the advisers and planners who wish to be differentiated as well as the government.

- This does not preclude the government and regulator from pursuing the development of global higher standards for financial advisers.

7 step approach

The higher standard Financial Planner designation would be required to meet the following 7 step plan:

1. Designates must be members of an approved professional association that requires adherence to a professional code of conduct.

2. Designates must satisfy an advanced formal examination every three years OR meet a total of 120 hours of approved CPD each three years

3. Designates must hold at least an advanced diploma level qualification in financial planning OR hold a professional designation by an approved professional association

4. Designates must agree to participate[1] in a shadow-shopping exercise at least once every two years

5. Designates must agree to a quality of advice audit by approved specialist practitioner auditors[2] unrelated by employment or organisational link every three years

6. Designates must not be employed by a financial product provider or related entity

7. Designates must operate on a strictly fee-based basis for prospective clients where all adviser fees are disclosed to the client prior to engagement

It would be expected that the funding of this would be from a combination of fees collected from members and support from the federal government and regulator.

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[1] The 'client's' should be real clients who will pay for the advice, and then be re-imbursed by the practitioner if the advice is deemed inappropriate. Assessment of the advice should be made by approved specialist practitioner auditors.

[2] Approved specialist practitioner auditors should be appointed by a professional standards organization that may be one or more of the professional bodies already existing, or a new body with links to academia, practitioners and professional associations. These auditors will have completed additional training and will need to apply for these positions. This should be seen as the ultimate financial planning professional designation.

Introduction

Having been a financial adviser/planner for more than 20 years now, I have seen a large number of regulatory and legislative changes. All of these changes have been made in the name of the client's best interest, yet time and time again the changes do little to stop the bad behaviours of those typically described as 'rogue advisers'.

The financial crisis that commenced in 2007 and led to a number of high profile corporate collapses (in particular, Storm Financial) has led to a review of the actions of financial advisers. Financial advisers are generally perceived to operate under agency theory where a natural conflict occurs between the best interests of the agent versus the principal.

The legal definition of financial product advice, under Corporations Law, sits clearly in the product distribution (agency) part of a continuum between the adviser's employer/licensee as principal at one end, and the client as principal at the other.

Over the past decade or so, there has been a significant transformation amongst ***professional financial planners*** to move to a fee-based method of remuneration that better allows them to offer strategic advice without the issue of conflicted remuneration.

Focussing on a long term, goals-based relationship with a client – free from conflict - is better defined under a stewardship approach where the planner's actions are more aligned to the best outcome and interests of the client.

This paper differentiates the terms 'financial planner' and 'financial adviser' using both stewardship theory (financial planner) and agency theory (financial adviser). Further, it proposes a methodology to create a market differentiation between financial planners and financial advisers that will allow the public to be able to select which suits them best.

Background

As a result of the fallout from the financial crisis (that commenced at the end of 2007), and in particular as a further result of a number of high profile investigations into behaviours of financial agents, the role of the financial planner or adviser has been publicly brought into question. After a joint parliamentary enquiry (Parliamentary Joint Committee on Corporations and Financial Services (PJC)) into the collapse of Townsville based advisory group Storm Financial and others, a number of recommendations were made regarding the conduct of those who provide financial product advice (Ripoll, 2009a).

The government of the time modified these recommendations into what has been called the Future of Financial Advice (FOFA) reforms, and they have become amendments to the Corporations Act (2011)

Perhaps at the centre of this debate is the issue of the adviser as sales agent or trusted adviser, encapsulated in commentary from the PJC "On one hand, clients seek out financial advisers to obtain professional guidance on the investment decisions that will serve their interests, particularly with a view to maximising retirement income. On the other hand, financial advisers act as a critical distribution channel for financial product manufacturers, often through vertically integrated business models or the payment of commissions and other remuneration-based incentives."(Ripoll, 2009b)

The explanatory memorandum for the Corporations Act 2011 'Future of Financial Advice' amendments expressed the rationale behind reforms. "The underlying objective of the reforms is to improve the quality of financial advice while building trust and confidence in the financial advice industry through enhanced standards which align the interests of the adviser with the client and reduce conflicts of interest."(2012a)

The key question addressed in this submission relates to the effectiveness of these reforms to achieve those goals.

This round of legislative change is widely held within the industry as being the most significant in the brief history of financial advice - It is by far the most costly and difficult to implement.

Perhaps it is important to remember that the catalyst for these changes – the collapse of Storm Financials' advice model – has resulted in ASIC action against only seven advisers since the collapse in 2008. Storm's fees were widely recognised within the industry as being exorbitant at between 2.5 and 7 times the industry average, but would not have been outlawed under the proposed commission ban. They would, however, have been illegal under the ban on asset-based fees on borrowed funds. Later I will discuss the concept of 'bad apples' and 'bad barrels', but will introduce this concept here to enable reflection on the relatively small number of advisers involved in the Storm issue.

The Corporations Act (2001) only defines financial advice, perhaps narrowly, in terms of a recommendation regarding a financial product. However, I note the different emphasis provided by the Financial Planning Standards Board, whose definition of a financial planner is "A financial planner is someone who uses the financial planning process to provide a client with integrated strategies to achieve financial and life goals. The planner can take a holistic view of your financial situation – reviewing your budgeting and saving, tax, investment, insurance and retirement needs – or work with you on a single financial issue but within the context of your overall situation. This holistic approach may set the planner apart from other financial advisers, who may have been trained to focus on a particular area of your financial life." (FPSB, 2006). This is a more accepted definition within the financial planning profession.

The literature suggests that financial advice is naturally subject to an agency problem (Kingston and Weng, 2011a, Finke et al., 2009), and yet rarely describes the development of professional financial planning in a way that deals with this problem. The author asserts that there may be a difference between the provision of financial product advice (financial advice) – as defined in the act above – and a relationship that goes beyond financial product advice. For the purposes of this paper, I will refer to this deeper relationship as ***financial planning***. I will explore if this deeper relationship is more adequately explained under stewardship theory rather than agency theory.

This paper will consider that *financial planners*, operating under the guidelines provided by the Financial Planning Standards Board (FPSB) and adopted by the Financial Planning Association of Australia (FPA), should be seen as acting according to stewardship theory.

Further, *financial advisers* operating specifically under Corporations Law should be seen as acting as agents of their employers (typically related to a financial product provider) under agency theory.

There is one important caveat, however, with the above description. That is, financial planners must be free from the influence of financial product providers and therefore cannot be employed by, or directed to act, by a financial product provider.

What's in a name anyway?

The Financial Planning Association of Australia (FPA) has made a number of submissions to government that the term 'Financial Planner' should be a proscribed term able to used only by those who are members of a professional body that requires adherence to a code of professional practice that specifies the 'client first' principle. I would agree in principle with this submission along stewardship grounds.

There is no opportunity under Australian law for a differentiated approach such as suggested above because the law does not recognise any difference in the behaviours of the two distinct groups identified. If increased trust of financial advisers is an objective of legislative reform, surely a consumer should be encouraged to identify those acting under one relationship theory or the other.

It is disappointing that the most recent opportunity for the government to provide the public with a qualitative differentiation between financial advisers and financial planners has been missed. In a speech to the Financial planning Association on the 13th April 2011, the Hon. Bill Shorten described the evolution of financial planning "from the early days of life agents... to financial advisers... to the professional financial planners which make up your membership today" (Shorten, 2011).

Despite this (at the time) ministerial recognition of the difference between 'advisers' and 'planners', the recently enacted legislation (Commonwealth_of_Australia, 2012b) reverts to a description that does not differentiate. This legislation simply requires that anyone who calls themselves a financial planner OR financial adviser must be a representative or authorised representative of an Australian Financial Services Licensee (AFSL).

This change has been described by the then Minister as a part of the FOFA reforms (Shorten, 2012). However, the reform simply continues to link both terms to the recommendation of a 'financial product'. If proscribing the term along the lines that simply require anyone using the term to be an authorised representative of an AFSL, and the educational requirements to meet this standard have not yet changed, and all parties involved in the scandals that led to the FOFA reforms met this standard - it is difficult to see any benefit in the changes.

In the USA for example, financial intermediaries are identified as either investment advisers or brokers. These are proscribed terms that provide for a differentiation along the lines by only requiring investment advisers to provide a stricter adherence of fiduciary responsibility (Finke et al., 2009).

Agency and financial advice

According to Angwin (2007), agency theory has application in the fields of accounting, economics, finance, marketing, sociology and others. He defines agency theory as "focussing on the relationships between parties where one delegates some decision making authority to the other"(Angwin p.113). This is a virtual exact match to the process for many people who seek advice from a financial adviser. The client seeks the answer to the question – what is best for me to do? The agency '*problem'* exists where the self-interest of the agent produces a sub-optimal result for the principal (Eisenhardt, 1989).

One can understand a legislative approach to dealing with a perceived agency problem, as Davis et al state, "According to agency theory, losses to the principal resulting from interest divergence may be curbed by imposing control structures upon the agent"(Davis et al., 1997).

While the Corporations law in Australia defines financial advice explicitly and exclusively with the recommendation of a financial product (see under next heading), others see the process differently. Himstreet describes financial planning as "more of a process than a product" (Himstreet, 2012) in the context of advisory firms moving from product advice businesses (such as brokerage houses) towards deeper relationship based financial planning businesses. He suggests that a fiduciary duty exists (under US law) "to eliminate conflicts of interest and prevent an adviser from taking unfair advantage of its clients trust"(Himstreet, 2012).

This submission will not explore the concept of fiduciary responsibility in detail.

Agency theory presents two main players – the agent and the principal. Much of the literature(Jensen and Meckling, 1976) (Fama and Jensen, 1983) regards this in the specific context of company manager/CEO/Board of Directors as agents and shareholders as principal. For the purposes of this paper, I will consider the client as principal and the financial adviser/planner as agent.

Despite the earlier discussion regarding the proscribing of the terms, 'financial planner' and 'financial adviser' have been used interchangeably for many years. In the Australian context, the Corporations Act (2001) does not define either of the terms separately but rather identifies anyone who provides 'financial product advice'. The term 'financial product advice' is defined in s766B of Corporations Act 2001 as meaning "a recommendation or a statement of opinion, or a report of either of those things, that:

(a) Is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or (b) could reasonably be regarded as being intended to have such an influence."(2001)

The line "is intended to influence a person or persons in making a decision" seems to establish a principal-agent relationship between the client and the adviser, and this is further evidenced by the more recent amendments to Corporations Law regarding financial product advice.

Financial advisers are generally perceived to operate under agency theory, which describes the relationship between a Principal (who requires some service to be performed) and an Agent (who performs that service). Complicating this is a second relationship that exists between the majority of, but not all, financial advisers who act on behalf of an employer (or licensee)[3] who *may* also produce financial products expected to be recommended by the advisers. This is a second, and competing, principal-agent relationship that may conflict with the adviser-client relationship. Note here that this secondary relationship technically can only exist where the adviser or planner is employed by, or directed to act, by a third party product provider.

Agency relationships are often characterised by a conflict between the two parties as the agent may be motivated to pursue their own goals at the expense of the principal (Sundaramurthy and Lewis, 2003). This conflict has been a key reason for the Future of Financial Advice (FOFA) amendments to the Corporations Act currently being enacted. Even though there was no conflicted remuneration involved with the Storm Financial case (as defined under corporations law), excessive fees charged on geared investment strategies led to the conclusion that an inappropriate fee model added to the problems of the case. Storm charged clients a seven per cent up-front fee (Ripoll, 2009b) on the total investment including borrowings which was between 2.5 and 7 times the industry standard rate.

Complicating the agency approach is the fact that there is frequently a secondary agent-principal (A-P) relationship between the financial adviser/planner and their employer or legal controller. Because of the nature of the Corporations law in Australia, the vast majority (more than 80% according to the ASIC submission to the PJC(Ripoll, 2009b)) of advisers licensed by the regulator ASIC (Australian Securities & Investment Commission) are subject to an employment-

[3] All providers of financial advice (under Corporations Act 2001) must either hold an Australian Financial Services Licence (AFSL), or be an 'Authorised Representative' of one.

like A-P arrangement. The holder of an Australian Financial Services Licence (AFSL) authorises advisers to act on its behalf and under its rules.

However, we need to be aware of the limitations in treating the client as a principal according to agency theory.

Agency theory assumes that the principal's main interest is in profit maximisation. Here we run into problems of defining what is meant by profit maximisation. In a simple example, the agent should simply recommend an investment that will produce the highest long term return. Anything short of this surely means that the agent is not acting in the best interest of the principal. It would be folly to suggest that one can predict with certainty the long term performance of any investment, and so we perhaps need a better definition of profit maximisation as it might apply to a client of a financial agent.

Martynov suggests that much of the debate regarding agency theory vs stewardship theory is "because scholars cannot agree on the unit of analysis"(Martynov, 2009). I hope to avoid this criticism here as I am focussing simply on the relationship between a retail financial services client (investor) and provider of financial advice as defined under Corporations Act 2001 – s761A & s766B. Importantly, he defines the role of stewards as "Such managers are assumed to be positive stewards of the principal's wealth"(Martynov, 2009), which links nicely to the concept of the role of financial advisers and planners.

Agency theory clearly applies to an employer-employee relationship. It is widely quoted that more than 80% of all Australian advisers are licensed under one of the 'big 4'[4] Banks or AMP (Kingston and Weng, 2011b). While this is true, it somewhat distorts the factual difference between those 'employed' by the licensees and those simply 'authorised' to provide advice under the license conditions. 'Authorised representatives' are required to abide by the business rules that apply to the organisation and to meet all requirements of Corporations law, but may actually operate separate businesses. Kingston and Weng, perhaps mischievously, do not use the term 'authorised', but rather use 'sponsored' which implies incorrectly that they receive

[4] ANZ Banking Group, Commonwealth Bank, National Australia Bank and Westpac Banking Corporation

sponsorship to be able to provide advice. In fact, virtually all non-employee authorised representatives *pay*[5] the licensee for services and access to the right to make 'financial product' recommendations.

Further, the Act stipulates that all licensees must provide an 'Approved Products List', or APL. This is the list of financial products that the licensee has deemed suitable by research, training and availability for its representatives to recommend. In a vertically integrated business such as a bank or industry superannuation fund (where the advice licensee is also a product manufacturer) the risk of making a biased product recommendation may be higher. This is clearly one of the implications of the 'FOFA' legislative changes, although this does not *per se* produce a conflict.

Interestingly, this aspect of conflict of interest has been completely ignored by the legislative amendments – instead focussing on structure of remuneration of the adviser and in legislating for a 'best interests' duty.

Kingston and Weng linked the agency problem to funds management and 'financial planning' together and implied that this produced a situation where too much risk was recommended by advisers for clients too close to retirement (Kingston and Weng, 2011b). It is unfortunate that they specifically relate financial planning to active funds management and therefore equate the poor performance of the global equity markets to this problem. The unexpected failure of a financial product is surely a problem for the product provider first, and then an issue only to the adviser if the risk has not been adequately considered and managed. Hindsight is a wonderful tool to resolve this issue and lay blame.

Clearly there is an agency conflict problem that exists because of the issues of an adviser needing to service two masters (principals), but the legislation has actually moved more advisers towards this conflict rather than away from it as smaller independent firms of advisers are moving to become authorised under larger licensees to protect business value and help manage uncertainty. Reflecting on actions in Australia as a result of the FOFA changes, Kennedy

[5] These fees range from $15,000 pa to $60,000 pa dependent upon the services and size of company

states, "What I'm seeing more of is boutiques handing in their licence and going back to the institutions for purely fiscal reasons, so that they can reduce their costs and in some ways enjoy the subsidisations that exist within institutions,"(Kennedy, 2012)

Almost all of the recommendations found in the FOFA amendments relate to the removal of commissions and the introduction of a 'best interests' test, although this best interest is yet to be defined[6]. If the comment above by Kennedy is accurate, the move towards vertical integration of financial product providers with advice may be problematic.

In an interesting paper, written after the excesses of the 1980's corporate collapses, Trevino and Youngblood describe the differences between 'bad apples' and 'bad barrels', "The bad apples argument attributes unethical behaviour of an organisation to a few unsavoury individuals"(Trevino and Youngblood, 1990). They then go on to describe the bad barrel where "something in the organisational environment poisons otherwise good apples"(Trevino and Youngblood, 1990). The recent Commonwealth bank financial planning scandal springs to mind as an example where a small number of advisers have tarnished the reputations of a much larger number of (probably) ethical, quality financial advisers and planners.

The parliamentary enquiry that was launched as a result of the Storm Financial collapse, as catastrophic as it was for their clients, involved less than 14 advisers out of a nationally defined pool of more than 16,000. This could be a case of bad apples. On the other hand, the move towards more vertical integration within the industry may increase the risk of the bad barrel approach. If either of these cases applied, we would need to question the outcome of the FOFA legislative program.

But…Financial Planners may act as Stewards for their clients

Stewardship theory has been described as "a special case of agency theory"(Caers et al., 2006). An important difference between Agency theory and Stewardship theory is that the actions of

[6] There is significant legal and professional debate as to whether this is possible at all.

the agent are seen as aligned with the principal's and further that the agent will not pursue their own goals at the expense of the principal (Davis et al., 1997).

While Agency and Stewardship is seen by many as separate theories of management (Davis et al., 1997), others see them as a continuum (Caers et al., 2006) or that Stewardship is simply a part of Agency theory (Albanese et al., 1997).

Angwin suggests that stewardship applies when "Their interests and utility motivations are directed to organisational (*read clients*) rather than personal objectives"(Angwin, 2007).

Agents acting as Stewards display the following characteristics that differentiate between the two theories as described in figure 1.

Figure 1.

Dimension	**Agency Theory**	**Stewardship Theory**
Theoretical basis	Economics	Psychology/Sociology
Approach	Control	Collaboration
Principal-Agent relationship	Goal conflict	Goal alignment
Agent's motivation	Mainly extrinsic	Intrinsic
Organisational identification	Low	High
Human behaviour	Individualist	Collectivist
Governance mechanisms	Monitoring & incentives	Empowering structures

Source: Based on Davis, Schoorman, and Donaldson (1997) and Sundaramurthy and Lewis (2003).

In particular, note the points regarding collaboration, goal alignment intrinsic motivation and collectivist behaviour and now consider the approach specified by the professional body that represents financial planners (not advisers) above.

The international Financial Planning Standards Board (FPSB)[7] establishes a specific 6-step process that helps to identify those acting as 'financial planners'. Further, they provide a global certification, or accreditation, known as the Certified Financial Planner (CFP) status.

In Australia, the FPA (the licensee of the CFP standard), requires holders of the designation to declare that they adopt the 6-step process.

1. Gather relevant client data
2. **Identify client goals**
3. **Identify financial issues**
4. Prepare the financial plan
5. Implement the financial plan
6. Review and monitor goals, strategies and recommendations

We would like to take these steps a little further, though.

Financial Planning has professionally developed over the past 20 years or so along holistic lines. To truly provide financial planning, the word '**all**' must be added to the first three steps.

So…is limited or scaled advice really the answer?

Gathering 'all' relevant data, identifying 'all' client goals and identifying 'all' financial issues ensures that decisions reached have considered as many factors as possible. Until the FOFA changes, not considering 'all' the above required a prominent warning to be applied to 'advice'

[7] The FPSB is the professions global certification body, independent of professional associations, that establishes and licenses the CFP accreditation and status.

to ensure the client understood the risks of focussing on single issues. This was known as the 'limited advice' warning and took the form of a disclaimer in written advice provided to clients.

The emphasis on 'scaled' advice provided for in the FOFA legislation seems to actively encourage what was previously known as limited advice. The fact that this style of advice has been enthusiastically embraced by vertically integrated financial product manufacturers is reasonable cause for alarm amongst professional Financial Planners. The mantra espoused by these providers and, it must be said - the legislators, is that clients most often only need single pieces of advice and much less need comprehensive financial planning. There is significant research into financial literacy that establishes poor understanding of complex financial concepts and/or a tendency to oversimplify problems (Bateman, 2011, Lusardi, 2012, Hastings and Mitchell, 2011). It is not a stretch to question whether individuals are able to understand if they need limited or comprehensive advice regarding a financial issue.

The key emphasis on the above steps is the consideration of the client's goals prior to the development of any recommendations. Further, the FPA has had an enforceable code of professional practice since 2009 that consists of eight principles – the first of which is to "place the client's interest first"(FPA, 2011). The 'client first' approach seems to be more aligned with the Stewardship approach than with Agency as it implies the agent's motivation is intrinsic.

In an environment where remuneration for financial advisers is linked to the positive action of the client (i.e.; the sale of a financial product), it is difficult to see any type of relationship other than that defined under Agency theory. Although where the relationship is based on an agreed remuneration model where a recommendation to act – *or not to act* – based on what is in the best interests of the client seems to be more bound by Stewardship theory.

By not considering fee-based, strategic advice in Corporations law, but rather focussing on an assumption that all financial advice must be product based (biased?), the reform known as the FOFA amendments may fail to achieve their objectives. Of particular concern is the silence regarding non-financial products such as direct property investments (and advisers) who are remote from the reach of the Corporations Act and its regulator.

In a paper that supports the development of financial planning as a profession, Overton suggests that “Financial Planning has matured and grown more technical over the past decades” (Overton, 2008). She articulates the theoretical basis of Financial Planning along the lines of the Financial Planning Standards Board (see further in paper).

By linking Financial Planning to strategic management and planning, she confirms that the financial planning process requires a goal-setting approach perhaps at odds with a product sales approach. This view is supported by Yeske, who details the links between financial planning and the theoretical field of strategic management. He identifies a number of similarities between the goals-based approach of strategic management and the goals-based approach of professional financial planning (Yeske, 2010). It would be foolish and counter-intuitive to suggest that a strategic manager would consider one element in isolation from the overall strategy, yet as we will see later, the new legislation encourages this approach with the introduction of the concept of scaled or ‘pieces’ of advice.

The introduction of a ‘best interest’ rule to the Corporations Act (2011) might seem to be forcing advisers and planners towards a Stewardship approach, but as Duska suggests “It sounds noble, but what is it? How do we know what the client’s best interest is?”(Duska, 2011). Based on the introduction of a similar law in the US by the Securities and Exchange Commission (SEC), he proposes it is too difficult a standard to meet and is already being watered down due to practicalities of implementation (Duska, 2011).

Conclusion

The introduction of legislation that will be costly and difficult to implement was perhaps not the most efficient manner to deal with agency problems related to financial advice and financial planning. The separation of those acting under a stewardship relationship (financial planners) from those acting under an agency relationship (financial advisers) by proscribing the use of these terms separately and specifically may have been a simpler and less disruptive approach. If the difficulty for the public is in identifying the ‘good apples’ from the ‘bad apples’, then *not* *providing for* any differentiation in terminology, training or conflict of interest management might lead to a failure of this round of legislative change.

Perhaps if the term Financial Planner was used only by those who adopted a remuneration approach free from conflict, who were not related to or employed by a specific product provider/manufacturer, who were able to demonstrate that their recommendations were based on a holistic goals based approach as well as maintaining a specific on-going relationship to monitor the continued implementation and adaptation of the plan, we could go a long way to resolving the agency issue. Added to this would be an expectation of higher qualification than the minimum mandated and a willingness to be externally audited by a suitably qualified professional (perhaps annually)

In a frank and obvious statement, Duska simply puts it – “if we would just outlaw fraud and deception and prosecute it when we encounter it, using some basic common sense, we might be better off than we are with an overabundance of compliance rules” (Duska, 2011).

In the end, the aim of any legislative change designed to improve the quality of advice received by Australians must first help members of the public identify who provides quality advice. The financial literacy research suggests that this is unlikely to occur through education alone. Attempting to ensure that all those who provide financial advice under the current Corporations Law will be able to achieve a significantly higher standard in a reasonable time is also unlikely to succeed given the resources and capabilities of the regulator, and the push-back from the financial product industry. After all, we are here discussing events that took place more than seven years ago and are at least a few years away from realising meaningful change.

A hybrid system where the legislation recognises a significantly higher standard while gradually moving the lower bar higher is likely to have a more immediate and effective impact.

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