SUPERANNUATION INDUSTRY: STRUCTURE AND OPERATION

THE UNISUPER CASE STUDY (PART 2)

My primary submission [No 22] included a 'case study' illustrating concerns arising in a decision of UniSuper to impose a special asset-based fee on its pensioner members of 0.25% p.a. (capped at $1500 p.a.) – a substantial fee from which other members of UniSuper are exempt.

No proper explanation has been given for the imposition of this fee on pension members only. One inference is that the proceeds are used to provide an expanded range of educational and advisory services free-of-charge, mainly to non-pension members: the levy can accordingly be seen as a form of trailing commission that is used to fund 'free advice' in much the same vague way as commission-taking advisers typically claim to do. So seen, this special fee is unfair and with the services provided free-of-charge predictably likely to be overused, entirely inefficient. The imposition of this fee mocks the concept of 'not for profit'.

At 31 August, when my submission was lodged, I was awaiting a reply – since received, dated 29 September – from UniSuper to a renewed formal complaint about this injustice. On 28 September (one day before responding to my complaint) UniSuper put a submission [No 82] to the Committee about the 4th term of reference: *'the role of advice in superannuation'*.

The matters are related.

Unisuper's response to my complaint

Unisuper's CEO responded to my complaint on 29 September but once again chose not to offer any proper explanation of the rationale for the 0.25% levy -- she simply asserted that:

- the trustee has adopted a different view from mine about the appropriate recovery of costs associated with the delivery of services such as member education and advice; before concluding

- *"the trustee takes very seriously its responsibility to balance the competing interests of its members, and asks you to accept that (the fee has indeed been levied) on that basis"*.

For the record, I do not accept that the UniSuper trustee is entitled to levy an onerous fee on one class of member for the purpose of providing services primarily to another class of member, free of charge.

My submission to the Committee: I would like any implied notion of super fund trustees having such 'absolute and unaccountable discretion' to set fees of their choosing to be addressed and set aside as unconscionable. In saying that I do not envisage the Committee addressing a particular dispute, rather the issue of principle is about the scope that appears to be open to super fund trustees generally to set fees as they choose without any reasonable explanation given to affected members likely to feel aggrieved when they see the impact of the decision on themselves as most unfair.

A superannuation industry ombudsman could be empowered to adjudicate on such disputes.

If UniSuper does, possibly, have any useful role in the provision of even general advice to its members it is not appropriate that they then propose that the advice be given 'free of charge' and that the costs be recovered from other members who either do not need advice or who may have separately paid a professional financial planner for any advice they may have needed. If UniSuper has useful advice to offer to its members it should be required to recover the cost on a fee for service basis – it surely should not be entitled to put fees up so it can offer competitively-defensive 'free' advice to some members at the expense of others.

Speaking frankly, there is no reason to expect UniSuper, or any other fund administrator, to have any comparative advantage in the provision of educational and advisory services to members about their superannuation situation. Still speaking frankly, it is very likely that any advisory arrangement that Unisuper were to put in place would hardly be totally independent and, on the contrary, would be very likely to foster its own business.

I have a very clear preference for independent financial advisory services to be made available to the community and to be priced on a fee-for-service basis, not least to members of UniSuper which is still a 'closed fund' and, with that privileged and protected status, not at all considered 'independent': at the very least any regulatory concessions to 'funds' (including industry funds) should be limited to those funds standing openly in the market – the best 'open' funds need no such concessions of course, they would be readily recommended to most Australians by any independent financial adviser.

[Needless to say UniSuper again says in the letter to me that the higher fees paid by its pension members are very likely to be still lower than the cost of alternative products -- the inference again being that they are entitled to charge fees (make an expendable profit) at their discretion unrelated to necessary member costs and without any obligation to be accountable to their members.]

The CEO of Unisuper did eventually concede that the May letter accompanying statements to pension members should have specifically drawn attention to the fee increase applying specially to them: her related apology was nonetheless compromised by the rider that *"the responsible managers within UniSuper will ensure that future communications do not repeat this error"*. [Line managers may have again been responsible for the oversight, though one might have expected the need for forthright communication to have been well learned by senior management in 2002 when the special fee on pension members was first similarly imposed 'without notification' and then reduced and capped following my complaint.]

UniSuper's submission
(the role of advice in superannuation)

The submission [No 82] put to the Committee by UniSuper on 28 September, among others of a like inclination is, to my mind, fundamentally flawed.

UniSuper's essential proposition is that they should be permitted to provide educational and advisory services to members 'free of charge' and recover the cost of doing so by levying additional fees on the accounts of members generally rather than recovering costs from the members needing advice (and as they may unfairly choose, impose asset-based fees as a % of account balances of pension-members only).

All this is put forward by UniSuper notwithstanding that the practical effect of the arrangement would be essentially the same as the arrangements (otherwise derided by UniSuper) where planners skim commissions 'forever' from customer accounts instead of charging fixed upfront fees-for-service (fixed fees which could be recovered over a couple of years by installments deducted from the accounts of individual customers so serviced).

On the face of it the UniSuper submission seeks relief from a regulation preventing it from serving its members: a hidden face of the UniSuper submission is a proposal to do the very things which it complains are being done by the discredited 'for profit sector'— at best it would mean providing 'advice' free of charge to some members while loading 'forever' fees onto all members, at worst it would continue to levy additional 'forever' fees exclusively on pension-members generally no longer needing advice. The UniSuper proposal is unfair and unbecoming of an organization primarily serving Australia's academic community.

Unisuper derides the 'for profit sector' as providing 'a very costly service' to those well-off while disregarding 'young and low income earners': advisers taking sales commissions are indicted as likely to withhold their best advice to clients to secure higher commissions for themselves.

However fair that criticism may be in general, the correct answer to that problem is not to give similar powers to industry funds, especially ‘closed funds’ like UniSuper.

Not content with that, the UniSuper submission asks that any exemption from current industry regulation to give ‘general personal advice’ be restricted to product issuers and employers (mainly industry funds). Unisuper then says it does not believe this ‘favour’ would ‘create an unfair advantage for them over specialist financial planning entities’ when many might expect that it would .

End piece

The need for ordinary Australians to have access to the best independent financial planning advice is most likely to be met under fee-for-service arrangements by professionals acting quite independently of particular providers of super fund services, including UniSuper.

The problems now inherent in the commission-driven financial planning and advisory industry is unlikely to be properly addressed by allowing UniSuper (or any like minded fund) to substitute an exclusive arrangement of their own choosing simply because they offer to load their fees less than others.

I am disappointed with the behaviour, actual and proposed, of Unisuper and I would be doubly disappointed if a committee of the Australian parliament were to endorse the proposals now put by Unisuper. More specifically, I expect the ‘in principle’ of Unisuper’s current levy of special fees on ‘pension members’ to be criticized and rejected by this committee.

Peter Mair
20 October 2006