Point/Counterpoint: What Should the Regulatory Requirements Be for Financial Planners Expanding into New Territories? »

Avoiding Regulatory Rigor Mortis

By Tony Vidler, Former Chairperson of IFA, New Zealand

As with most of the developed world New Zealand has undergone significant regulatory reform in recent years. It has been done well by international comparison, though it is apparent that regulation alone will not create an advice profession. It may be a catalyst, but not a cure.

The regulatory system that has been created here is principles-based, with clear behavioral objectives. They are largely a reflection of the professional standards developed through **FPSB and its affiliate member nations**. With a focus on principles rather than prescription the regulatory regime is relatively light-handed by international standards and provides great autonomy and personal responsibility for advisers, while largely leaving it to the market to interpret how the principles can best be achieved.

As a result New Zealand has not suffered the adviser, institutional and consumer dislocation experienced in the UK. Nor has it created the prescriptive, expensive & increasingly litigious compliance process that Australia has developed. Nor do we have the level of fiercely polarized ideologies in conflict that appears to be playing out in the USA.

Yet, despite the excellent framework created thus far, there are issues yet to be resolved, and all stakeholders have serious concerns, as regulation here has not accelerated the evolution of the financial planning profession.

The common objective of all industry stakeholders is clear enough though. That is a desire to generate greater consumer confidence and participation in the use of financial services and financial products. In plain English: everyone involved wants consumers to have better lives, with more security, personal autonomy & responsibility, and prosperity through greater use of financial services products and services.

Average Acceptable Standard vs. Best Practice Standards

Regulation alone simply does not achieve this objective. No matter how altruistic and benevolent Big Brother may be, the essential strategy of compliance management – or creating a culture of obedience – is to create commonality. That commonality must cater to something approximating the average acceptable standard – not best practice standards. Such uniformity stifles creativity, innovation and risk-taking which are essential ingredients to the development of new products, standards and market innovations. More importantly for the evolution of the advice profession however is that regulation in New Zealand has effectively marginalized the pursuit of best practice standards.

From the perspective of developing a financial planning profession, regulatory intervention has led to professional rigor mortis here.

A profession exists when consumers have faith in the ethical and behavioral standards because those standards create predictable and desirable consumer experiences. Any consumer knows the behavior and ethics they have a right to

expect – almost unquestioningly – from dealing with a profession. To create predictable professional experiences at a minimal professional level requires that standards meet three basic requirements. The standards must be:

1. Universal;
2. Visible; and
3. Enforceable.

Universal professional standards do not require uniform licensing status, nor do they require particular business structures or levels of independence. They must however have stringent ethical and behavioral foundations that apply equally to all market participants.

Ethical Uniformity

Public trust, confidence and acceptance of a financial planning profession will not be achieved until there is ethical uniformity.

It is equally imperative that those standards are visible to consumers. If they do not know and understand what the standards are, the standards themselves are relatively meaningless.

Regulation has not achieved visibility in professional standards here; we have achieved obscurity. The proliferation of new acronyms, pseudo qualifications and titles accompanying regulatory reform has created more market confusion than ever before.

Most people would consider enforceability of standards the natural domain of the regulator. In a principles-based regime though most enforcement activities are conducted behind closed doors, further undermining the objectives of the regulation itself.

There is no doubt that regulation alone cannot create a profession, but it can contribute to the development of one. To create a financial planning profession we must work with regulators, while being mindful that the standards we need shall be higher than the standards they seek.

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