Summary of a Submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Collapse of Trio Capital and any other related matters.

Introduction

Thank you for the opportunity to contribute to your inquiry.

About seven years ago we (my wife and I) sought professional financial advice to assist in the management of a small investment portfolio and my superannuation.

The result is that through following professional financial advice we have lost the equivalent of my entire superannuation savings, I will have to work for a number of extra years and will still have no chance of enjoying the retirement for which we have been planning for most of our lives. The money has completely disappeared; the only hope we have of any real recovery is if the Government can provide compensation – and that appears to be a very slim hope.

With reference to the terms of reference for this inquiry, I would like to address my comments specifically to:

Item 1. the type of investment vehicles, funds and other products involved in Trio Capital, and the relevant regulatory regime;

Item 2. the points of failure in relation to .... advice;

Item 3. the relationship between the SMSF arrangements and regulatory coverage;

Item 4. The role of ASIC in monitoring Trio Capital and any subsequent pursuit of directors, advisors and fund managers;

Item 6. the access to compensation and insurance for Trio Capital investors including in circumstances of fraud;

Item 8. whether there are adequate protections against fraud for those who invest through self-managed superannuation funds as opposed to other investment vehicles;

Item 9. the appropriateness of information and advice provided to consumers, and how the interests of consumers can best be served in regulated and unregulated environments;

Item 10. the role of ratings agencies and research organisations in product promotion and confidence; and

Item 11. any other matters relevant to the collapse of Trio Capital in the further improvement of the financial services sector and consumer protection.

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Summary of Key Points

The main points made in this submission are, in no particular order:

1. The Trio fraud was entirely preventable, within and by the current regulatory system. It was allowed to happen by the lack of feedback in all parts of the system. This lack of feedback ensures failure to control as certainly as driving a car with your eyes closed will lead to a crash.
2. By appearing to investors to exercise a level of control that was not there, the implementation of the regulatory system has facilitated the fraud by decreasing the natural wariness of investors.
3. This is not a fraud that has relieved a few wealthy people of some excess cash that they could afford to lose; it is a theft that has completely destroyed the post employment lives of a large number of ordinary working Australians.
4. The money was not lost by reckless investment in high risk ventures in the hope of making windfall profits; it was stolen by someone with a licence from the Government to do so; from ordinary Australians trying to secure their financial future by seeking professional advice and following all the rules and regulations in place..
5. The Trio fraud is just one symptom of a much greater malaise in the financial regulatory system. Generally poor (negligent or incompetent at best, certainly deceptive and perhaps dishonest) practices by authorised, qualified, accredited and licensed financial advisers costs much more, but it is not as obvious.
6. Any new regulations or changes to existing ones need to ensure that feedback is built in, or the lack of control will persist and similar frauds will occur in the future.
7. Fees paid to financial advisers need to relate to the added value they provide for investors so that they are encouraged to make recommendations that will benefit the clients, not themselves. A percentage based fee should be based on the net value, rather than the gross value of the funds under management. (This may require payment of a higher percentage.) Fees based on gross FUM encourage the recommendation of over geared, and hence excessively risky structured investments.
8. Structured investments should not be offered to investors through financial advisers as the advisers them selves have demonstrated that they do not understand the investment so the investor has no chance of making an informed decision.

Our Circumstances

Background

I have worked as a professional all my life, and in making the decision to engage a financial adviser, we beloved that financial advisers were also professionals. We thought that we could expect advice that would specifically benefit us, based on the adviser's superior knowledge and experience of investments and financial matters generally. The various certificates, qualifications, accreditations, authorisations etc provided to the adviser by ASIC and other organisations created an aura or veneer of professionalism and regulation that imbued us with a false sense of security that the financial advice was being provided by competent, qualified and trustworthy professionals.

Every step of the way we were, according to ASIC's booklet, "investing between the flags". Now, when we find ourselves in a rip, we look to the beach for some help and find the flags have been packed up and the lifesavers have gone home.

Impact of the Trio Collapse

We have lost about a third of my life savings directly through the collapse of Trio.

Effect of poor advice generally

We lost more than another third by following professional financial advice. Even without the collapse of trio, our mattress could have protected my savings more effectively than our financial adviser.

Products involved in Trio Capital (Item 1)

At the time we invested in Trio products we were advised that it was a direct investment in international shares, and that therefore the capital was secured against equities. We were not informed that our money was being invested in unknown investments in a legally inaccessible jurisdiction. Our financial adviser apparently did not know where our money was going – not the action of a professional

Products where there is no transparency as to what is actually being invested in and no way of tracing funds should not be allowed to be sold to naive investors, and in this sense, anyone relying on financial advice is a naive investor.

Points of Failure in Relation to Products or Advice (Item 2)

The adviser does not have a crystal ball, and cannot be held accountable for the actions of others, however the adviser must take responsibility for their own actions and the consequences of them. They are not responsible, as far as we know, for the Trio fraud, but they are responsible for the extent of exposure of their clients to the fraud. There are a number of points of failure:

- The adviser recommended a product without knowing specifically where the money was going.
- The adviser recommended a product without carrying out (or at least without communicating to the client) a proper risk analysis. A partial list of potential misadventures does not constitute a risk analysis. A risk analysis should identify all significant risks, their likelihood of occurring and the potential impact if they did occur. It should then compare

the benefit of this investment over another without the same risks, and calculate whether or not this investment is therefore worthwhile.

- The adviser recommended risky and highly geared investments to clients approaching retirement.
- The adviser recommended holding the majority of a portfolio in one asset "to increase the diversification of the portfolio". As previously discussed, the adviser did not know what was being invested in, and therefore could not possibly have known that it would "increase diversification".
- The adviser recommended changing to a different margin loan provider because the current one would not lend against Absolute Alpha units. Instead of changing loan providers, this should have raised the alarm about risk.
- The system has failed in that lack of feedback has prevented the system from controlling the fraudulent activities of the fund manager and the possibly negligent behaviour of the advisers. Fundamental to any effective control system (electrical, mechanical, human, management .... whatever) is the concept of feedback. Information about the outcome of a process is used to modify the functioning of the process in a way that ensures that the result is the outcome that is intended. Drive a car with your eyes closed and you will soon discover that no matter how well you know the road or the map, the lack of feedback ensures that you will not have effective control.

Regulatory Coverage of SMSF Arrangements (Item 3)

The regulatory system as designed does not reflect the reality of how things happen out in the clients' end of the financial system. Financial advisers recommend movement of accumulated superannuation balances into self managed super funds. No information is given as to the increased risks, and in response to questions about risks, the client is told that the Government is very concerned with ensuring that people do not lose their super and finish up on the dole, so there is a very strict regulatory framework to ensure that SMSFs cannot invest in anything risky. This is reinforced by the information on the ATO and ASIC Web sites that talk repeatedly about the protection afforded by compliance with the system.

Remember that in all of this, the client is the least knowledgeable party in regard to the legislation and regulations with which the SMSF must comply and is therefore easily influenced by what the adviser says, particularly when reinforced by information from Government agencies.

The regulations need to ensure that the information given to clients by financial advisers cannot be misleading, particularly in respect of the degree to which the adviser can be responsible for the running of the SMSF.

The client's behaviour in following an adviser's recommendations without fully understanding the implications might seem to be very naive given what is at stake. However, they know that they are not experts in finance, and they trust the adviser – if they didn't trust the adviser they would not be seeking their advice. The regulatory system provides a veneer of accountability that encourages this trust.

The role of ASIC in monitoring Trio Capital and any subsequent pursuit of directors, advisers and fund managers (Item 4)

We trusted ASIC, other regulatory bodies, the relevant professional associations who accredit financial advisers, custodians, auditors, responsible entities and our adviser. If any one of these individuals or bodies had acted professionally, the whole fiasco would not have been able to occur. ASIC's role has been to assist the perpetrators by providing a veneer of professionalism and regulation that has lulled the victims into a false sense of security. If an unknown person approached you and asked for a couple of hundred thousand dollars, but couldn't say what he was going to do with it, his chance of success would be small. The regulatory framework provides the impression of regulation that has allowed this approach to be successful.

At any stage or level in this process, if someone, anyone, had done their job properly, the fraud could not have occurred as easily, if at all. For example, we are told that Shawn Richard held a financial services licence equivalent to a bank. To obtain this, he had to apply. In his application, he claimed to have certain academic qualifications. It should have been a routine part of the application processing to check:

1. The institution exists and has some standing as an educational institution,
2. The content of the course leading to the claimed qualification is relevant to the licence being sought, and
3. The applicant has actually been awarded the qualification claimed.

Considering what is at stake here, it is not unreasonable to expect that such a simple check would be carried out. It is not sufficient to assume that someone who intends to commit a fraud is going to be honest enough to say so on their application for a Financial Services Licence. It doesn't require hindsight to point out that if these checks are not done, sooner or later a fraud will occur – fraudsters will not necessarily give honest answers to the questions in the application.

This licence, that has no backing in verified fact, then gives others (such as advisers and their clients) the impression that this person and their organisation have been checked out by ASIC, while the reality is that they have not been checked out by anyone, they have just filled in a form and paid a fee. From the client's perspective, it would be better if the licence did not exist – they would at least then know they were on their own as far as checking went.

The same applies to financial advisers. They hold a licence which is touted by the advisers, by ASIC on their website and in various publications, and by financial advisors' industry associations as indicating a certain level of competence and protection for the consumer. There is no check that the advice they provide is in any way safe, let alone of benefit to the client. Regular audits of SoAs would have detected faulty advice. Extensive audits would not be required because there is very little difference between the SoAs provided to quite different clients.

Because the activities of ASIC are superficial, the system creates an impression of regulation that is not there in fact. The reality of ASIC's role, the way the system is currently operating, is that it actively supports the criminals by providing them with the props they need to convince their audience of their bone fides.

Access to compensation or insurance (Item 6)

If we had a justice system, then in a case such as this, the victims would have their circumstances restored to the state they would have been in had the fraud not occurred. This is clearly not the case, and is impossible in the present system as there is no process or mechanism to enable this to occur.

Compensation requires provision of funds to restore the finances of those affected. Possible sources of funds include:

1. Recovery from those who benefitted directly from the fraud.
2. Recovery from those who contributed indirectly to the perpetration of the fraud.
3. Recovery from the insurance policies of those who contributed indirectly.
4. Provision of compensation from a pool fund.
5. Legal action against various parties who might have some liability and might have some funds.
6. Provision of compensation by the Government.

1. is practically impossible as they are not going to volunteer to return the money which is now ensconced in bank accounts overseas to which the Australian regulatory authorities have no access. Even Shawn Richard who received a discount on his sentence for contrition has shown no tendency to try and return any of the money to the investors – just the opposite. According to PPB large sums disappeared overseas just days before they would have had access to it. Likewise, the financial advisers involved are not rushing to return their "marketing allowances" to the investors from whom they were stolen.

The other authorities and corporations (2.) who enabled the fraud by not carrying out their professional duties, such as ASIC, KPMG and ANZ appear to be untouchable. They are large enough organisations to easily sustain the loss of the amount of compensation that would be required. The corporate bodies have benefitted from their role since they have been paid for certain services that were not provided. Again, they are not volunteering even to return the fees charged for the services that were not provided, let alone provide compensation to the victims for the consequences of not performing those services. Financial advisers also played a key role in that the investors would not have invested in Trio products had not they been advised to do so.

The insurance policies of those who contributed indirectly (3.) appear to have been woefully inadequate, and therefore not a viable source of compensation. Perhaps a possible source of funding for compensation would be this - PI insurance policies could be audited and the compensation bill could be shared among those advisers who have inadequate insurance. This is of course contingent on it being shown that advisers were guilty of providing negligent advice in respect of investment in Trio products.

Compensation via route 4. Has been awarded to those whose funds were invested via a "regulated" superannuation fund. Such a mechanism does not exist for SMSFs and other investors.

Route 5. appears to be the only route available to many of the victims, but it cannot work. Most of the victims now have very limited resources and many are struggling to meet day to day living expenses, let alone fund involved legal action. Some will not live long enough to see the end of a lengthy court case. Trio has evaporated; ASIC is busy shutting gates to make sure no more horses bolt; the custodians and regulators appear to be untouchable; we

have no resources with which to fight extensive, expensive legal battles – it was our money that was stolen, remember!

WHERE? HOW? Through WHOM can we even try to recover our losses? Even if legal action was successful, it would only result in partial recovery as the courts would probably apportion liability to a number of parties and only some of these would be able to be made to pay.

This leaves route 6. – I respectfully suggest that responsibility lies with the Government, who are the architects and overseers of the financial and regulatory systems, and that they should accept responsibility, initially, for providing compensation for the victims. We welcomed the Government's recent decision to compensate some of those who have lost money in the Trio affair, but, given the quantum of our loss as a proportion of our retirement savings, we are significantly distressed at the decision to not compensate those invested "outside the flags" and to include us in that group. The criteria for investing "inside" or "outside" of the flags are clearly enunciated in the ASIC publication "Investing Between the Flags" and we (and many others like us) have invested "between the flags" and yet still have no recourse to effective compensation. The Government are the ultimate overseers of the system. It would be a responsible and humane course of action for them to compensate the victims so that their lives are no longer destroyed. The Government then has the resources, the time and the understanding of the systems, processes and law to follow up those responsible and take whatever recovery and/or punitive actions might be appropriate. They should investigate and vigorously pursue those responsible so that the consequences are transferred from the victims to the perpetrators and to those whose negligence enabled it. The consequences should be sufficient to fully compensate the Government for the funds outlaid on compensation and investigation, and to send a clear message that these types of frauds will not be profitable in Australia. Any lesser action encourages a future repeat of this type of fraud. The actions taken so far, including the very light sentence handed down to Shawn Richard are hardly a deterrent.

The total cost to the Government would possibly be less than the current decision, that will result in a significant number of retirees being paid the age pension, as the outlays described above would be recoverable; the additional aged pensions are not.

Adequacy of fraud protection for SMSFs (Item 8)

Adequate fraud protection would either prevent the fraud from occurring, or limit the consequences of fraud for investors should it occur. The current regulatory environment clearly does neither and is therefore grossly inadequate. It seems that the current system actually helps the fraudster because the investor is led to believe (by advisers, by Government agencies and by industry bodies) that there is some protection and is therefore less wary than they might otherwise be.

The current regulatory system would have a better chance of protecting against fraud if it was actually applied.

There have been no checks on the veracity of information contained in Shawn Richard's application for a financial service licence – the system was not applied.

The custodians (ANZ?) did not provide any custodial protection for the clients' money – the system was not applied.

The auditors of Trio (KPMG) did not check that the investments actually existed – the system was not applied.

The advisers did not carry out risk analysis – the system was not applied.

The consequences of this non compliance with the system have been vested solely on the investor – almost the only party who did comply.

While ever the system is applied in such a way that the only serious consequences apply to the party that is not at fault, and there are relatively little consequences for those who are, there is very little motivation for those who are part of the system to change, and therefore fraud is encouraged. Even Shawn Richard has received a sentence that is hardly deterrent in terms of the sums of money he has acquired through his involvement in the Trio fraud.

The other side of protection is to protect against the consequences of fraud by compensating those not at fault. This also has clearly not occurred in this case, and there seems to be no path or mechanism by which it can occur.

Advice from ATO and ASIC regarding running SMSFs implies that abiding by the rules provides protection, but the evidence in this case indicates that it does not.

The Appropriateness of information and advice provided to consumers .....(Item 9)

This section of the submission outlines a number of flaws in the Statements of advice that led to us investing in ASF, and then includes commentary on other statements of advice showing the generally flawed nature of advice being given by licensed and qualified financial advisers.

Statements of Advice recommending investment in Absolute Alpha

- The continual use of phrases such as “holding international equities” gives the misleading impression that the fund will own international equities. This is not the case according to the PDS. Page 30 indicates that ASF invests “in leading absolute return investment managers through a deferred purchase agreement”. It also touts their “ability to participate in a wide variety of financial products and global markets not available in traditional investor products”. This hardly sounds like “holding international equities”.
- There is a whole section here on a completely unrelated investment that would have been relevant to other clients of this adviser. This indicates the generic nature of this SoA.
- The numbers in the SoA are wrong.
- The use of the word equity on page 13 seems to be in the sense of our equity in the portfolio, as against the usage elsewhere in this document (e.g. page 14) as a synonym for “shares” or “securities”. Consistent use of vocabulary is one of the fundamentals of effective communication.
- Value calculations are incorrect. Gross Assets are shown as increased, even though the components are the same. Nett assets are shown as unchanged, even though Gross assets have increased and liabilities are unchanged.

Inappropriate advice generally

Over the time during which we were paying for professional financial advice we received a number of Statements of Advice recommending a range of investments. Generally these would be presented sight unseen at a meeting at which the advisers’ representative would run through the SoA pointing out what they wanted us to know and at the end of the presentation we would be expected to sign a form accepting the advice. We believe that

advice we were given is significantly flawed, and benefits mainly the adviser with little or no chance of benefitting the investor.

In summary, the advice is found wanting in a number of respects, in no particular order:

- It is structurally flawed
- It is factually flawed
- It is strategically flawed
- It is tactically flawed
- It goes against principles of safe investing
- Different SoAs given at the same time are inconsistent with each other
- Risk assessments are incomplete or non-existent
- They do not consider the full picture
- Cash flow is not usually considered
- The advice given is generic, not specific to individual clients
- Incorrect personal information is used
- Sometimes what is written is deliberately deceptive
- The advice given is not consistent with our instructions
- The recommendations did not include sufficient diversification
- No indication is given of potential or expected returns
- The presentations given are of poor quality
- Advisors do not appear to understand the advice they are giving
- Insufficient analysis is given to form a sound judgement
- Investor risk profiles are rubbery

Each of these problems is discussed below in a limited amount of detail and with some examples given.

It is structurally flawed

It was recommended to us that we invest in a structured investment that included a "capital guarantee" that was put forward as one of the main benefits for investors. We were told that this meant we could not lose on this investment. From the investor's perspective, this investment has significant structural flaws. The "capital guarantee" applies only to the financier, not the investor. The financier's capital is guaranteed by the investor, not, as was represented to us, the other way around.

It is factually flawed

In one example, when presenting the case for a particular investment, accumulation index returns were used to justify a price index linked investment product. When analysed using the correct index, it was impossible for the investor to benefit, but guaranteed that the adviser would.

It is strategically flawed

Much of the advice given is strategically flawed in that highly geared investments are recommended to clients approaching retirement who have clearly indicated no income is available to support the geared investment strategy should things go awry. Gearing is also a very poor strategy when markets are at historic highs.

It is tactically flawed

Even though the strategy of gearing was fatally flawed for the position of markets at the time, the tactics for its deployment made it even more flawed. The deliberate capitalisation of interest on a margin loan can only lead to disaster in a market that is well above long term averages.

It goes against principles of safe investing

We accepted advice that went against what we thought we should do in the mistaken belief that we were the ignorant ones. This included:

- Capitalising interest.
- Investing only for tax gains
- Lack of diversification
- High risk for little or no return
- Excessive gearing ratios.

Different SoAs given at the same time are inconsistent with each other

Often we were given SoAs at or about the same time that when looked at together are inconsistent with each other. Sometimes, the data was inconsistent throughout the one SoA. Some examples of these inconsistencies are:

- Recommending increased gearing when expecting the market to be flat or negative .
- Different values are given for the same data item in different parts of the same SoA
- The advice given is contrary to the principles stated
- Invest more in one asset, ASF, to increase diversification
- In a portfolio that was mainly Australian shares, recommending redemption of an investment in overseas share to purchase a structured investment in Australian shares to “increase diversification”.

Risk assessments are incomplete or non-existent

In statements of advice given as late as May 2010, the assumption was made that Astarra funds would be providing an income stream to support other geared investments and no mention of the possibility of Astarra’s collapse was made in discussion of possible risks.

Risk assessment is a well documented objective process, even if some of the data is of necessity somewhat subjective. In the example given above risk analysis has been completely inadequate, and had it been completed properly, the investment could not have been recommended. In fact none of the advices received have included a proper risk assessment beyond an incomplete list of hazards and personal opinion, usually not documented, as to what might happen.

They do not consider the full picture

Often the SoAs only give part of the picture. This has resulted in a false picture of affordability being given, adding significantly to the risk of actions taken. For example, the capitalisation of interest in the margin loan was not considered in cash flow discussions, but the potential increase in capital value of the equities in the margin loan was considered as income to support other borrowings, as well as being required to remain in the margin loan to maintain the LVR.

Cash flow is not usually considered

SoAs for investments that require significant cash flow do not usually include calculation of cash flow requirements. In most cases, cash flow was discussed verbally as it is an obvious concern for a portfolio that by definition has to be self contained, but this was not documented.

The advice given is generic, not specific to individual clients

Advice is not Private, Individual or specific to us even though these words are used in the SoAs. We frequently received information with numbers that do not relate to our situation, and occasionally with names other than ours in the documents. A further indication that the advice was generic is the inclusion of whole sections that relate to investments that we do not have.

Incorrect personal information is used

Details listed in the SoAs as personal information provided by us is not the information we provided. From time to time additional incorrect statements are slipped in without our knowledge or consent. In many cases, these additional statements directly contradict the information that we have given.

The advice given is not consistent with our instructions

Our original instructions were that we wanted the investments under management to grow over time without us having to input time to manage them or extra funds to support them to achieve this. We had also instructed that the investment portfolio was to be managed so that assets outside of the portfolio were not exposed to any risk, whatever might happen to those within it, and that preservation of the existing capital was paramount.

Not one of these instructions was followed. The investments did not grow, they shrank. We have had to input significant time and additional money to support them and gearing has been done in such a way that assets outside of the portfolio are at considerable risk.

The recommendations did not include sufficient diversification

A large proportion of funds has been invested in individual investments such as Astarra. Too many of the investments are structured around debt. Portfolios are almost entirely built around shares.

No indication is given of potential or expected returns

The expected returns, which should be the fundamental driver for the investments, are rarely given in SoAs, but were often discussed in meetings. Once I started to do my own research and analysis, I have found that the expected returns given verbally to justify investments have sometimes been more than double what could reasonably be expected.

The presentations given were of poor quality

The presenters were usually poorly prepared, knew very little about our individual financial circumstances, could not answer questions about detail and had difficulties if diverted off the script. During one presentation, the funds were described as capital guaranteed – but the presenter could not explain the mechanism for providing the guarantee. They were described as conferring "beneficial ownership" of equities, but he could not tell us whether any dividends earned were returned to the investor or to the financier.

Advisors do not appear to understand the advice they are giving

Whilst recommending highly geared strategies, the advisers have not understood (or have been deliberately misleading with respect to) negative gearing as an investment strategy.

Our adviser has repeatedly recommend investments where there is little or no probability of capital increase at anything like the rate required to break even, let alone make a net profit over the term of the investment. They appear to be ignorant of how these investments are intended to work.

Insufficient analysis is given to form a sound judgement

Lots of words have been provided in the SoAs we have received, but there has not been any evidence of detailed analysis to determine likely outcomes. For example, we have not seen any evidence of financial modelling of our portfolios. Not one of the statements of Advice has clearly identified the quantitative assumptions underlying the advice.

Investor risk profiles are rubbery

The advice given is supposed to be based on, among other data, an actual assessment of investor risk profile, and this is supposed to be continually updated to reflect any changes in the investors' circumstances. We do not remember a risk profile assessment being carried out. It might have been based on our initial discussions with the financial advisor, but there has certainly been no ongoing assessment. Nevertheless, in various SoAs we are described as having a risk profile of conservative (doc 47), balanced, assertive or aggressive. Sometimes more than one profile is quoted in the same document.

The role of ratings agencies and research organisations (Item 10)

Extracts of information from ratings agencies, such as a graph or a brief comment were used to justify recommendations. To my knowledge, we were not given full reports, nor were the contents of full reports discussed during presentations. We were not made aware that the product providers paid to have their products rated.

Other relevant matters (Item 11)

Inappropriate Business Model

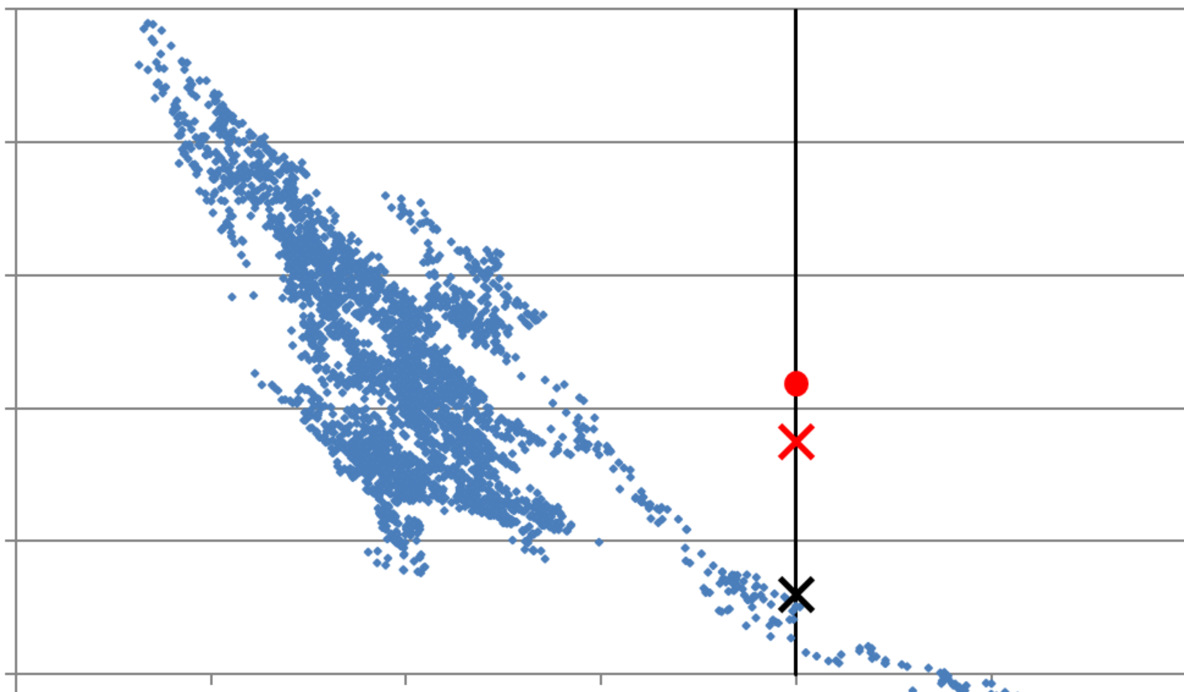
When we sought the advice of a professional financial adviser, we assumed that they would be operating on an advisory or professional service business model. I.e. The consumer is subjected to outside circumstances beyond their own experience, and therefore seeks assistance from an adviser. The Adviser applies accumulated knowledge and/or experience that the consumer does not have to ensure that the outcome for the consumer is optimised, and usually significantly better than the consumer could achieve without assistance from the expert. The adviser's goal is to improve the circumstances of the consumer. Adviser's returns are driven by external events that create the need for their services. Ultimately, the consumer is motivated to use their services because the value they add exceeds the fee they charge. This is the business model expected of, among others, doctors, lawyers and consulting engineers; and, we mistakenly believed, of financial advisers.

Our adviser operated on a retail business model. I.e. the consumer enters the retailer's territory, and is then offered products with "information" that is more spin than substance to convince the consumer that they should purchase the product. Any product that the consumer will buy is a "good" product. It is up to the consumer to independently ascertain the worth of the product to him and the veracity and relevance of the information supplied. The retailer's goal is to sell as much product as possible. The retailer's returns are driven by the amount of product they sell. The consumer is motivated to approach the retailer because they want the product, however, there is no expectation that the seller will act in the best

interests of the consumer. The consumer knows that they cannot trust without challenge whatever the retailer tells them about the product.

Benefits only the adviser (and the financier)

When analysed more closely, using only information publically available at the time the advice was given, many SoAs recommend investments that provide a significant and guaranteed benefit for the adviser, but minimal, if any potential benefit for the investor. Any real benefit to the investor would require extremely abnormal market conditions. For example, in the following graph, the blue dots represent 20 years of market performance. The vertical black line represents the state of the markets at the time the recommendation to invest was made. To break even, i.e. just to recover the interest paid, the return would have to be on the black vertical line, at or above the level of the red X. You don't need to be a financial genius to recognise that the returns are not likely to be anywhere near this level.



Fees

Fees were charged on the "Gross FUM" amount. In the case of Astarra, we were still being charged a management fee on the full amount invested in Astarra up till the time we left the adviser. Well before this time the funds were known to have disappeared. We were being charged by our financial adviser for managing the funds long after those responsible for the funds had admitted that even they were no longer in a position to manage them.

The fee should be charged on the net value as that is what the adviser has been asked to manage. If the adviser uses gearing prudently, then they will be rewarded by the increase in the net funds owned by the client. The motivation for the adviser would then be to maximise the net worth of the client, not maximise the LVR of the portfolio.

Overly Complex

Statements of advice were overly complex, but short on real information. There was no simple statement of:

1. This is what it will cost up front
2. These are the ongoing costs

3. These costs will be financed from.....
4. The expected returns are.....
5. These are a match with the objectives and resources of your portfolio and are compatible with your risk profile, therefore we recommend this investment.

Insufficient Diligence in Making Enquiries

My limited investigations and analysis of some recommendations has shown them to be flawed. Our professional advisers should certainly have been able to determine this with the resources available to them. Even a small modicum of due diligence in analysing or investigating potential investments would have indicated that the investment options are much wider than shares and that the available strategies are for more varied than simply maximum gearing and tax benefits.

Conclusion

The Trio fraud should not have occurred – the current regulatory framework has the processes in place that could have prevented it. Ineffective implementation throughout all levels of the system, from Government regulatory bodies that provide licences and general supervision of the system, to industry associations that provide qualifications and accreditation, to the financial advisers who provide advice to consumers, allowed, or even encouraged, the fraud. The primary gap in the entire system is loss of control caused directly by the absence of appropriate feedback.

The harsh reality now for a number of senior Australians is that they face a future of poverty having saved all their lives to provide themselves a modicum of comfort, not luxury, in their retirement without becoming a burden on their fellow working Australians.

We have a legal system that is handing down relatively insignificant consequences to those directly responsible; assigning no accountability to those whose negligence facilitated it; not even recognising that there appears to be a broader problem of incompetence in the industry generally that has far greater (although not as obvious) consequences than this fraud – while the victims, who have abided absolutely by the rules, regulations and recommendations of the regulators and advisers whose job is to protect their interests and to whom they have entrusted their financial future, are left with nothing and no hope of recovery. Even were there are legal path to compensation, this would be inaccessible to them as their life savings have been stolen.

The superficiality of the "punishment" meted out by the courts is aptly demonstrated by the sentence handed down to Shawn Richard and the discount given for "contrition". He is so genuinely contrite that he has not offered to return one cent of the money he has squirreled away overseas to the investors from whom it was stolen.

We have a legal system, but we certainly do not have a justice system!