

<http://www.moneymanagement.com.au/Article/Stricter-definitions-around-salesman-and-advisers-not-needed-Bobbin/478607.aspx>

Stricter definitions around salesman and advisers not needed: Bobbin

27 April 2009 | by Lucinda Beaman

The parliamentary inquiry into banking and financial services is sparking debate within the industry, with financial services lawyer Peter Bobbin responding to a submission recently made by a Queensland financial planner.

As reported by *Money Management* last week, Bruce Baker of Puzzle Financial Advice made a submission to the inquiry in which he suggested that regulations must ensure that “financially naïve” consumers be able to readily distinguish a “financial product salesperson from an adviser who is acting in the client’s best interest”.

“If Storm Financial was clearly identified as a financial product sales business ... fewer consumers [might] have lost money,” Baker said.

Baker agrees with the UK Financial Services Authority’s view that consumers benefit from a differentiation between “independent investment advice and financial product sales”.

But Bobbin has responded by saying that “more regulation is not needed”, saying that existing law accounts for this need and as such “all the profession must do is follow the law”.

Bobbin pointed to the November 2008 Queensland case of *Evans vs Brannelly* (a Westpoint decision). That case contained a quote which Bobbin believes negates the need for further regulations or definition around the roles played by financial product salesmen versus financial advisers.

“If people who call themselves investment advisers are going to act as financial product salesmen, they need to make it quite clear to the people with whom they are dealing that that is what they are doing, or they will be held to the duty of care appropriate if they are reasonably relied on as giving objective advice,” District Court Judge McGill said in his judgment.

“In my view, this case is showing that the courts will put the flesh to the skeletal framework that [Financial Services Reform] was seven years ago,” Bobbin said.

“Effectively, District Court Judge McGill is saying that if you say you are a financial planner then be one, if you are a product salesman then don’t call yourself a financial planner.”

As such, Bobbin said, “regulatory changes are not needed”.

“The law already recognises the difference.”

Bobbin believes this judgment should be “compulsory reading for all compliance professionals and advisers”.