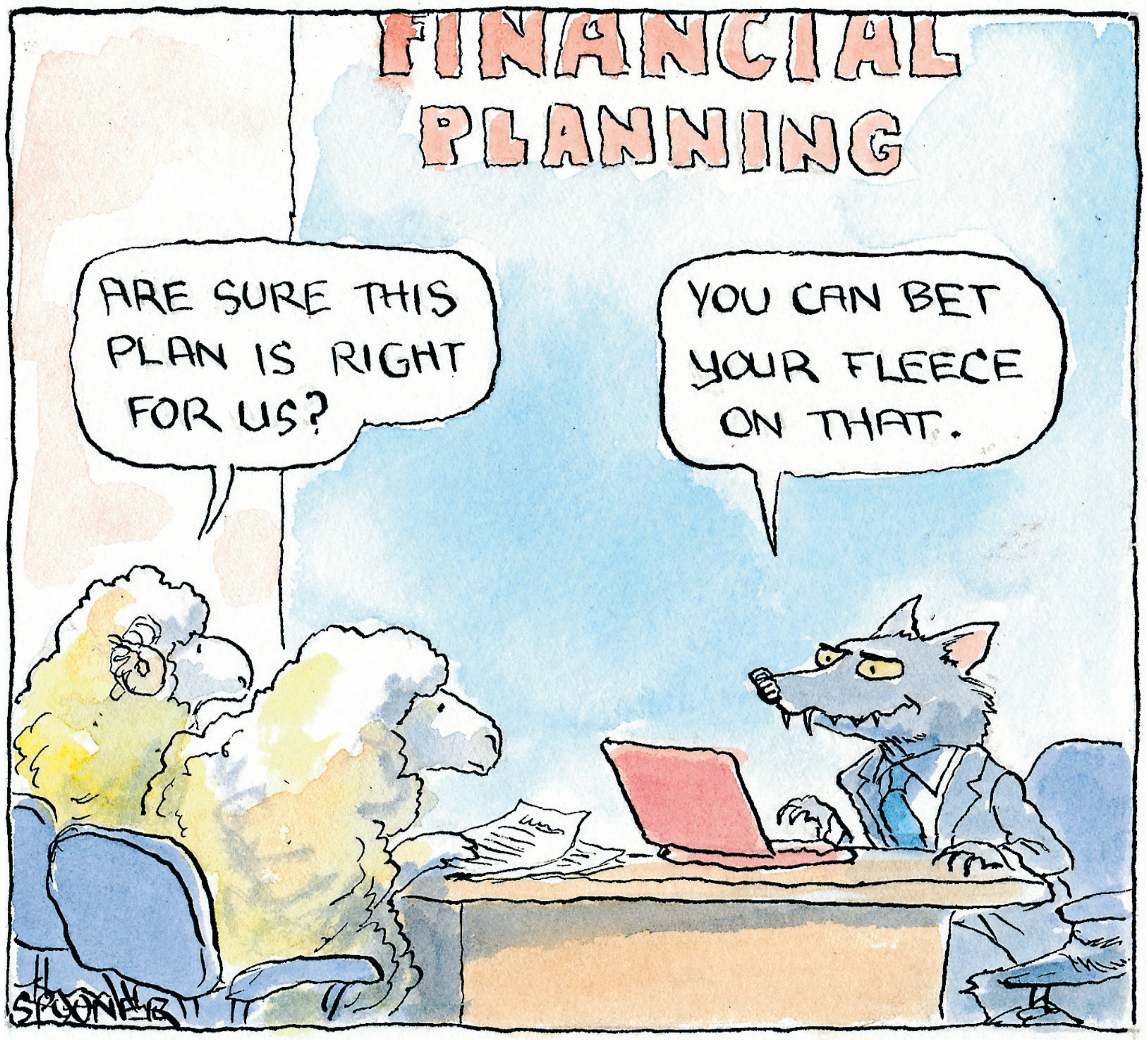
All dressed up in red tape

NOEL WHITTAKER

A financial adviser should act in their client's best interests, apparently.



FINANCIAL loss is nothing new. In fact, Edinburgh in Scotland has a Library of Mistakes which contains more than 6000 volumes that chronicle a whole litany of financial misfortunes. There is even a copy of the front page of a Chicago newspaper dated July 14, 1928, announcing that "Ponzi will not reveal his secrets".

What is new is the growing tendency for governments to believe you can protect consumers by simply increasing layers of red tape. At best, it gives investors false feelings of confidence. At worst it creates mountains of non-productive paperwork.

The current goings-on in Canberra, which revolve around the much publicised FoFA (Future of Financial Advice) rules, are a case in point. Following the collapse of institutions such as Trio, Westpoint, Opes Prime, Storm and a range of agricultural schemes, there were cries that something needed to be done to prevent such losses happening in the future.

Labor took up the challenge and after appropriate investigation, introduced the FoFA rules in April 2010.

Following representations from the financial planning industry and as part of their program of eliminating red tape, the Coalition attempted to wind back part of the FoFA "reforms". The changes appeared to be on track until a last-minute change of heart by senators Jacqui Lambie and Ricky Muir took us back to square one.

A major stumbling block has been the requirement that the financial adviser must act in the "best interests" of their clients. At first glance it would seem to be stating the obvious because one could reasonably expect that your lawyer, doctor, dentist and every other person you dealt with would have an obligation to act in your best interests. But, my legal advisers tell me, this is not strictly the case.

People who contract with you owe a "duty of care" – if they fail to fulfil this duty an action can be taken for negligence.

The problem with "best interest" is that it is so vague that it opens up a whole new area of law. The FoFA laws already require the adviser to provide appropriate advice, warn the client if the advice is based on incomplete or inaccurate information and to prioritise the client's interests. Surely that is enough.

In an attempt to get around the inherent problems of defining "best interest", the laws allow compliance with this duty to be demonstrated by a seven-stage process to be known as the "safe harbour" provisions.

To be protected by the safe harbour provisions, the adviser must tick a string of boxes which include identifying the objectives of the client, making additional inquiries if the information provided by the client appears incomplete, conduct a reasonable investigation into the financial products that might achieve the client's objectives and base all judgments on the client's relevant circumstances.

But that was not enough. They added another provision requiring the adviser to act in the client's best interest. Yes, we are back to square one. For an adviser to prove they acted in the client's best interests, they have to prove they acted in their best interest! As a barrister friend said: "You could drive a truck through it."

Back to the real world. The two most recent large financial disasters have been the failure of Banksia in Victoria and Wickham Securities in Queensland. The new FoFA rules would not have done a thing to save their investors; the institutions were raising funds direct from the public.

The reality is that all the red tape in the world can't offer investors protection from loss. Financial education coupled with an understanding of risk and reward remains the key ingredient.

Noel Whittaker is the author of *Making Money Made Simple* and numerous other books on personal finance. His advice is general in nature and readers should seek their own professional advice before making any decisions. Email noelwhit@gmail.com.

Q Can you explain what you mean by paying your mortgage fortnightly? I currently transfer half the repayment every fortnight and the bank takes out the monthly repayment. Should I arrange for my bank to take out a fortnightly amount?

A If you are paying $2000 a month and move to $1000 a fortnight, you'll find yourself paying an extra $2000 a year without feeling it, as there are 26 fortnights but only 12 calendar months in a year. The easiest way is to ask the bank to take it out fortnightly. An alternative is to accumulate all your spare money in an offset account.

Q My wife and I are in our mid 70s, and have $380,000 in shares – all the shares are in dividend reinvestment plans. Our total taxable income, including the age pension, is $48,000. Should we sell some shares each year or opt out of dividend reinvestment plans?

A If you are receiving the aged pension, I would have thought you would be paying very little tax, if any, thanks to the combination of the Senior Australian Pensioner Offset and the franking credits from the shares. As you need to redeem investments to live on, I believe the best option would be to opt out of the dividend reinvestment plans as this would give you maximum flexibility. If your situation changes, you could always go back into the market and buy shares.

Beware of buying forgiveness for neglecting family

By **CHRISTINE LONG**

IT'S December and Christmas is hurtling towards us. There are presents to buy; party outfits to try; and festive food and drink to hunt and gather.

It's a sure bet that in the next few weeks we'll all be spending a fair chunk of our time at the shops.

And time isn't the only thing we'll be spending.

At a time of year when expectations and emotions are running high, our spending isn't always driven by joy and generosity.

Lots of us grapple with a bunch of difficult emotions during the holiday season. For some, the solution lies in a spot of retail therapy.

Behavioural researcher and strategist Dan Gregory says spending is just like any other method people use to fill an emotional gap in their lives.

Although it's mostly women who like to joke about indulging in retail therapy to reward or treat themselves, men aren't immune.

"Often times that kind of spending is attributed to women but I don't think it's as gender-specific as a lot of us make out," Gregory said. "I think men do that as well."

Emotional spending pops up when he shops for Christmas presents.

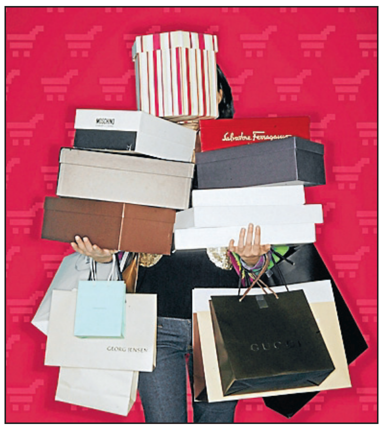
"I am slightly conscious of the fact that I'm very busy and I travel a lot and I don't see family as often as I should and I do potentially buy them off at the end of the year or buy forgiveness," he said.

Gary Mortimer, a senior lecturer at the Queensland University of Technology Business School, is a researcher on shopping behaviour. He says emotional spending can come in a variety of guises.

People may rationalise their spending as a form of compensation, "so they may reward themselves because they have worked hard; they may have got a promotion," he said. There's also "therapeutic shopping".

"If we're in a blue mood we will buy something, or shop, to make ourselves feel better."

An impulse buy, when you spot a 40 per cent off sale, is a form of emotional spending. But impulse buying can also be linked to more than the chance to score a bargain. Mortimer points to "revenge



UNDERLYING MOTIVES: If you tend to shop too much, a deep-seated emotional reason could be why.

buying", where someone snaps up a new dress or a motorcycle or jetski equipment as a two-fingered salute to their partner after a fight or a break-up.

"The other type of shopping that links to emotions is hedonic," he said.

"It's usually around sales time and it's about the thrill of the chase, the waiting outside in the morning, waiting for those doors to open and being the first inside."

At the extreme end of emotional spending is the compulsive shopper.

"Compulsive shoppers at the very far end start to move into hoarding behaviour. They will buy a number of items and sometimes they will leave them in their wardrobes with their tags on not used or kitchen gadgets in boxes not used," Mortimer said.

A compulsive shopper has to buy something every time they shop.

"That is different to other types of shoppers, who may go to a shopping centre but can actually leave empty-handed and not feel like a failure."

So when does emotional spending start to become a serious problem rather than just a nice little pick-me-up?

"If it's causing relationship problems, or causing you to get into debt or miss paying things like rent or school fees, then it's clearly become a problem," Gregory said.

So how do you start to curb emotional spending?

Nicole Heales, principal of Nicole Heales Financial, advocates getting to the root of the problem, particularly if you're overspending.

"Removing yourself from some situations and then trying to work out what triggers you is actually important," she said.

So what can you do to slough off the shackles of emotional spending?

Track your spending: Emotional eaters are often encouraged to keep a diary of what they eat plus when and what they were feeling at the time. A similar exercise with spending can help reveal what's driving you.

Be prepared: Prepare for times when you're likely to feel vulnerable. If you know a bad day at the office or a quiet weekend makes you want to shop, look for alternative ways to boost your sense of well-being or connection.

Set boundaries: Shop with someone who will question whether you really need to buy something.

Change your self-talk: Be conscious of how your self-talk might encourage you to spend: "I deserve this; I've worked hard"; "I can't go to a party in that same dress". Try asking yourself: How will I feel tomorrow if I buy this?