

On the money

Money matters pervade many areas of legal work, and private client solicitors who can coordinate their clients' financial affairs are well positioned to capitalise on the opportunities presented by the Legal Services Act, according to **Stuart Bushell**

The Legal Services Act 2007 (LSA) is prompting an increasing number of solicitors to consider ways of enhancing their client offering, and one area of practice development that is attracting renewed attention is financial services. Firms looking to provide access to financial advice for their clients can do so in a number of different ways, outlined below.

THE IN-HOUSE DEPARTMENT

In principle, this model provides the means of putting a solicitor back at the centre of clients' affairs, and more than 1,000 firms became authorised under the Financial Services Act of 1986. However, in many cases, the solicitors failed to involve themselves sufficiently in their firms' financial services activity to appreciate its relevance to their legal work; so, when the Financial Services Authority (FSA) assumed responsibility for financial services regulation in place of the Law Society in 2001, most solicitors threw in the towel. Consequently, there are now fewer than 50 firms in England and Wales providing regulated financial advice.

Two firms which, against the trend, have made a conspicuous success of integrating legal and financial services have a strong presence among high net-worth clients. Edinburgh-based Turcan Connell, which also has a London office, has adopted what amounts to a legal disciplinary practice (LDP) model (even though the Scottish Legal Services Bill makes no reference to the concept), with a 25% non-lawyer element made up of financial planners and asset managers. The firm has rebranded itself as a 'family office', thus positioning itself to take advantage of the declining popularity of private banks and, at the same time, overcome the negative perception of the solicitor brand as being confined to transactional work.

Similarly, Newcastle-based Dickinson Dees has rebranded its private client practice as a wealth management service. It employs eight advisers, who are already qualified to a standard which the FSA will not require until after 2012. Partner David Dale, who heads up this practice, explains: "Our decision to integrate the legal and financial disciplines means we can provide a comprehensive service

remunerated by commission, and would share this commission with the solicitor. Such arrangements invited suspicions of inappropriate motivation. They are now, happily, being frowned on by the regulators, with the result that solicitors are increasingly arranging referrals with a view to ensuring that their clients receive the best available advice, which will reflect well on the solicitors as referrers. The potential

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combining sophisticated financial and investment advice with creative legal and tax solutions."

An alternative to hiring an independent financial adviser (IFA) is to share office space with an external IFA firm. Provided that the area occupied by the IFA is clearly differentiated and that client files are not shared, the Solicitors Regulation Authority would have no objection to such an arrangement. However, it currently draws the line at law firms becoming appointed representatives of IFA firms.

REFERRALS

The lack of appetite for the integrated legal / financial business model suggests that most solicitors will continue – at least for the time being – to confine their involvement in financial services to referral relationships with authorised third-party financial advisers.

Referrals have, in the past, been based on the assumption that the IFA would be

for reciprocal business referrals may also be a factor.

To assist solicitors to identify fee-based IFAs with whom they can work to mutual advantage, Solicitors Independent Financial Advice (SIFA) has established an online directory of such advisers (www.sifa-directory.info), which has been endorsed by the Law Society and is accessible via the Society's website. The directory site also provides access to compliance and consultancy helplines, training events, handbooks and marketing material.

The directory has just two search criteria – business specialisation and location. The specialisations correspond to those of solicitors – for example, investment for trusts; cashflow planning for personal injury trusts; advice to older clients; or family work involving pensions, financial provision and protection. SIFA can also, without charge, assist law firms to create panels of IFA firms with complementary technical specialisations.

A good example of the type of IFA firms with which solicitors are choosing to deal is Albert Goodman Financial Planning, which is accountancy-based and operates from several offices in the West Country. The firm's directors hold regular seminars for solicitors and, in order to facilitate business relations, its advisers are organised into teams whose technical expertise complements that of the solicitors with whom they work. Further demonstrating the firm's affinity with the profession, one of the directors designed Resolution's exam for financial neutrals, and another is a member of the Society of Trust and Estate Practitioners and wrote the SIFA handbook *Financial Solutions for Estate Planning*.

THE JOINT VENTURE

Rather than abandon financial services altogether, a few law firms hived off their in-house financial services departments into separate companies, which are managed by financial advisers, but in which the solicitors retain a financial interest. An example is 35 Finance of Cambridge, which began life as the financial planning department of Barr Ellison Solicitors and has now also taken over the financial planning department of Kenneth Bush solicitors in King's Lynn. Managing director Jeremy Davis explains the corporate structure as follows: "Our model is based on class shares, which are currently owned by our two associated law firms, but will allow us to establish similar relationships with one or more additional firms of solicitors by issuing further classes of shares. This approach has the advantage that we can develop our own brand and a uniform way of working, while at the same providing a service that is tailored to the needs of the firms of solicitors with which we work."

A more widespread model is the joint venture (JV) formed between a law firm and an existing firm of financial advisers. An early example was Kester Cunningham John Financial Planning, which is jointly owned by accountants Price Bailey and solicitors Kester Cunningham John, both of Cambridge, and was the first to take advantage of the concession in the Code of Conduct 2007 which permits a solicitors' separate business to bear a similar name to that of the participating law firm.

The managing director of the firm, Paul Russell, was also one of the first IFAs to be accredited by Resolution as a financial

neutral in divorce cases. He comments: "A joint venture has been the right path for us. To set up a completely new financial planning department in a law firm would normally take considerable time, effort and resource. We have been able to build on the expertise of an established IFA practice by buying services from them, such as back office support and compliance. This, in turn, has allowed us to focus on client-facing work."

When compared with a referral relationship between firms, the JV model has two main advantages: it creates a greater sense of commitment on the part of the solicitors than an unconnected client referral relationship would; and it enables them to avoid the issue of commission by receiving remuneration in the form of dividend. Under the solicitors' separate business rules, solicitors must declare their financial interest when referring clients to a separate business in which they are involved, and must point out that the statutory protections available to solicitors' clients do not apply. However, provided that the JV operates on a fee basis and accounts to its clients for any commissions received, in the same way as a law firm, there is no need for the solicitors to account to their clients for dividends received from this or any other type of separate business.

For FSA purposes, the JV will be regarded as an appointed representative of the IFA firm, which will be responsible for the JV's regulatory compliance. The solicitor participants are therefore relieved of responsibility to the FSA. The IFA firm will also manage the JV and will levy a management charge, typically around 60% to 70% of the income of the JV, with the balance being available for distribution as dividend. DWF LLP has produced precedent JV documentation for use by SIFA member firms.

One of the issues with JVs is the question of whether it will always be in clients' best interests for solicitors to refer them to a particular IFA firm – namely, the JV. One way of solving this is for the JV to establish sub-relationships with other IFAs who possess qualifications or expertise which the JV may lack. Alternatively, IFA firms with different specialisations could join forces within the JV.

Another issue with JVs is that of whether investment for controlled trusts should be referred to a JV, and whether deputies of the Court of Protection should

use the services of a JV in which they have an interest. In such cases, the preferred answer is that the referral should not be made to the JV, though there would, of course, be no problem referring to the parent IFA firm instead.

THE MULTIPLE JOINT VENTURE

A limitation on the commercial potential of the standard JV arrangement is that being associated with a particular law firm is likely to inhibit any attempt by the JV to cultivate relations with other law firms. It would, of course, be possible for an IFA firm to establish individual JVs with several law firms and, indeed, some have done this. However, such arrangements are administratively burdensome, and firms that operate through more than five JVs are regarded by the FSA as networks and attract more demanding capital adequacy requirements.

An example of the multiple JV is the group of Professional Financial Centres (PFCs), which share not only branding, but also business processes and technical expertise. PFCs will typically have two classes of shares: owner shares, held by the IFA principals and the professional firms which established the centre; and 'B' shares, the dividends of which reward the solicitors who use the centre. Six such centres have, to date, been established around the country, and two of these are managed by solicitors – Kirsten Dalton in Thames Valley and Tony Deacon in Cornwall. Dalton comments: "The firms we work with are reassured that they are dealing with a like-minded professional firm, which enables them both to enhance their own client relationships through offering an additional service, and to benefit financially or through opportunities for reciprocal business."

THE FUTURE

One of the challenges presented to solicitors by the LSA is to reduce dependence on transactional business and to establish the basis for on-going client relationships. Fee-based financial planning revolves around such relationships and provides a natural complement to the work of the private client lawyer. ■

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