

Unlocking the potential

Focusing on financial and investment advice is the key to solicitors' practice development, says *Ian Muirhead*

The Legal Services Act is causing many solicitors to consider their competitive position. The Act is therefore fulfilling its purpose of "promoting competition in the provision of services... such as are provided by authorised persons". However, research suggests that most of the services that solicitors provide fall outside the scope of the reserved activities and could already be undertaken by non-lawyers.

Body language

True to type, solicitors are tending to react defensively, by seeking safety in numbers and grouping together in an effort to achieve marketing clout. Brand names are being created, sometimes with the franchise model in mind, but, whereas commercial franchises start with a standard business proposition which can be replicated and distinguished at consumer level by a consistent brand identity, the firms which make up the new solicitor groupings often have little in common beyond the fact they provide some sort of legal service.

The preoccupation with branding is an understandable response to Tesco law, but for most solicitors it is not Tesco that represents the real threat. Tesco and its ilk are in the volume market, where their systems, marketing intelligence, efficiency and critical mass are all-important. Solicitors are not equipped to compete in this market. Whereas Tesco knows exactly who its customers are, where they live, how they spend their money, and what are their likes and dislikes, solicitors generally lack even an up-to-date client database, while business management is regarded as an unwelcome chore. Even the small minority of firms which have achieved Lexcel accreditation have fallen down on management, the most notable recent example being Halliwells.

Solicitors' unique selling proposition is not their ability to run or even participate in conveyor-belt businesses. It is their knowledge and the respect in which they are held as professionals. This suggests that, rather than trying to take on Tesco and the other me-too lawyers

entering the market, solicitors should be moving up-market and seeking to regain the coveted role of trusted adviser.

Wider picture

The new SRA Code of Conduct opens with the statement: "Those involved in providing legal advice and representation have long held the role of trusted adviser." However, the code then proceeds repeatedly to refer to solicitors' responsibility in relation to "matters", thus drawing attention to one of the fundamental flaws in solicitors' business models, namely the over-dependence on transactional business and their lack of interest in clients' wider affairs.

What the SRA and many solicitors seem to fail to appreciate is that the role of trusted adviser is based on relationships, and that matters arise out of relationships. A trusted adviser is one who is able to look outside the box of their own professional specialisation and to act as the co-ordinator of clients' affairs generally.



Clients do not understand, nor are they interested in, the traditional demarcations between the professions and this, of course, is the scene which has been set by the Legal Services Act, namely the brave new world of multi-disciplinary practice. The better response to the Act, therefore, is not to retreat into the solicitor silo, but to grasp the opportunity to offer a more comprehensive and attractive service which will permit on-going relationships with clients.

The professional discipline which both complements legal work and provides the basis for continuing client contact is fee-based financial advice (the emphasis being on the provision of advice for a fee as opposed to the sale of products for commission). Significantly, following the liberalisation of the legal profession in Australia some years ago, the 'legal plus financial' combination was one of two models that emerged, the other being 'legal plus estate agency' (which has also proved immensely successful in Scotland).

Money matters

The synergy between legal and financial advice is compelling. Money matters pervade clients' personal and business affairs, and financial and investment advice complements legal advice in areas such as trusts and estate, older clients, matrimonial and personal injury. Financial advisers are required by their regulator to collect and maintain up-to-date comprehensive information about their clients, and their back office systems revolve around client databases. Involvement in financial advice, therefore, enables solicitors to reduce their dependence on transactions and to develop on-going relations with their clients.

Solicitors have been notably reluctant in the past to engage with financial advisers, partly out of concerns about their ethics, but mainly out of a reluctance to become involved in non-mainstream activities.

So what has changed? Essentially, the barbarians are now at the gates. Solicitors are about to experience real competition for legal services.



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There are three ways in which solicitors can engage with financial advisers – in-house; via arm's-length referrals; and via joint ventures. The in-house model provides the optimum synergy and is shown to best advantage by Scottish firms such as Turcan Connell, which is comprised of 75 per cent solicitors and 25 per cent financial planners and asset managers, with an associated trust company in Guernsey. However, this model requires equality of status between the legal and financial partners and disciplined business management, both of which factors are alien to many English solicitors.

The in-house model has until now enjoyed major regulatory advantages, in that solicitor firms which are dual-authorized by the Law Society and the Financial Services Authority have been exempted from the FSA's costly compensation scheme and capital adequacy requirements. However, the SRA has announced that these benefits will be denied to all firms which convert to LDP and ABS status. Consequently, there is likely to be little impetus for growth in the already severely depleted population of authorised professional firms.

Arm's length

Referring clients to financial advisers on an arm's-length basis has been viewed by many solicitors as a one-way street from which they derive little benefit; and it is certainly the case that the SRA is now looking critically at remuneration received by solicitors for making client referrals, if this cannot be justified in fee terms. The overriding requirement is that referrals may only be made to financial

advisers who are independent – a rule against which the multi-tied product provider St James's Place has consistently railed and which led it to register an unsuccessful plea with the SRA to abandon the restriction.

The most effective referral relationships are based on due diligence vetting and the formal appointment of a panel of IFA firms based on business specialisations, in accordance with Lexcel-approved practice. Panels should be agreed by firms' management and be subject to periodic review to ensure quality standards.

Joint ventures are increasingly popular and have the advantage that the solicitor participants are able to delegate responsibility for FSA compliance and for the management of the business to their IFA colleagues. The joint enterprise, whether the vehicle be a limited company or an LLP, will typically be recorded with the FSA as an appointed representative of the IFA firm, which will charge its management expenses against the income received, leaving a percentage available as dividend or profit share to the respective participants. The vital point in keeping on the right side of the SRA is that these solicitors' separate businesses should work on a fee basis, and account to clients for any commissions received.

If the aspiration to trusted adviser status is to be achieved, financial and investment advice is the key to solicitors' practice development. ■

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