

# Should solicitors be allowed to make referrals to restricted financial advisers?

No

Such a move would undermine a fundamental tenet of the legal profession and endanger its reputation



IAN MUIRHEAD, DIRECTOR, SOLICITORS FOR INDEPENDENT FINANCIAL ADVICE

The SRA has proposed plans to relax rules which currently force solicitors to refer clients to IFAs for investment advice. It argues that the current restriction is incompatible with outcomes-focused regulation and that it may sometimes be in the interests of clients to receive restricted advice.

## Fundamental tenet

The following reasons are suggested for the retention of the prohibition.

1. Independence is a fundamental tenet of the legal profession, being founded on the principle of avoiding the conflict of interests which might arise from solicitors being subject to the influence of third parties. It is arguable that, when solicitors are compared with other providers of legal services, independence should be their defining characteristic.
2. SRA principle 3 requires that solicitors must not allow their independence to be compromised. It would be inconsistent with this provision for solicitors to be permitted to recommend that their clients should seek advice from financial advisers who are not independent. Strangely, no reference to principle 3 is made in the SRA consultation paper.
3. SRA guidance of July 2009 stated: "Firms must always act in the best interests of their clients. This means that they must refer clients to independent financial advisers for investment advice." The SRA is now

proposing to deny this proposition.

As the *Law Society Gazette* said: "In what possible regard will it be to the client's advantage to be referred to an adviser with an ulterior motive? An adviser, lest we forget, who benefits from willfully ignoring any product that does not line their own pocket."

4. Mis-selling by advisers employed by banks and other financial institutions is rife, not least because the salespeople are incentivised to sell their employers' products and their ability to act in their clients' best interests is necessarily compromised. A blogger on the *Gazette* web site wrote in August: "The next thing that will happen is that people will have tie ups with the likes of Barclays. Elderly widows will be stitched up with every unsuitable product imaginable."

## Limited scope

5. As the Equitable Life debacle demonstrated, diversification of investments is essential to the reduction of risk, and tied and multi-tied advisers are unable to provide diversification beyond the products of the companies they represent.
6. Equitable Life also demonstrated that solicitors are easily misled by financial advisers. In the 2011 case of *Solicitors Regulation Authority v Andrew John Field*, a solicitor was struck off the Roll after being persuaded by a 'partner' of a 'wealth management' firm to

invest £2.5m of a client's money in the firm's own products and to accept a personal loan.

7. Abandonment of the prohibition against referring clients to tied and multi-tied advisers could lead to ABSs being established in which law firms effectively become sales offices for the providers of financial products. Yet, according to SRA Mediawatch, Norwich solicitor Godfrey Morgan of GMS law was asked to remove himself from the Roll of solicitors for selling insurance policies provided by his own insurance company.
8. Permitting solicitors to refer clients to financial product salespeople would expose the Solicitors Compensation Fund to the same crippling scale of compensation claims as is currently afflicting the Financial Services Compensation Scheme.
9. When solicitors' clients claimed for losses arising from the mis-selling of endowment policies by Sedgwicks, the complaints were referred back to the solicitors, who were obliged to shoulder the financial responsibility.
10. Permitting solicitors to deal with tied and multi-tied financial advisers would not only endanger the reputation of the profession, but would also heighten the risk attaching to the role of Compliance Officer for Legal Practice, on whom the responsibility for due diligence would fall. ■