Sifa is campaigning for the retention of prohibition against solicitor referrals to non-independent advisers

Maintaining independence

Ian Muirhead

Guidance issued by the Solicitors Regulation Authority in July 2009 makes clear that when solicitors refer clients to financial advisers, such referrals must be confined to independent financial advisers. The guidance reads: "The SRA is aware that some law firms have been approached by multi-tied and tied advisers seeking to enter into restrictive arrangements to provide financial services to the law firms' clients. 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 underlying principles have been carried forward in the solicitors' code of conduct 2011, principle 1.3 of which states: "You must not allow your independence to be compromised", while principle 1.4 reads: "You must act in the best interests of each client". However, the July 2009 guidance on client referrals is under review in the light of the revised stance of the FSA on independence, and the board of the SRA is due to meet on 4 July to decide whether the guidance should be carried forward.

The FSA's re-definition of independence, which will be operative from 1 January 2013 as a result of the retail distribution review, will place greater emphasis on the need for independent advisers to be able to advise clients on a comprehensive range of retail investment products, and this has given rise to concerns that some IFAs might relinquish independent status in favour of the alternative, which the FSA now refers to as restricted advice. This has provided the cue for some national financial services sales organisations, which are currently excluded from solicitors' referrals, to suggest that there may be insufficient IFAs to service solicitors' needs after 1 January 2013.

Such fears – or hopes, as far as the multi-ties are concerned – have now been largely allayed. The FSA issued a guidance consultation 12/3 in February to provide reassurance in relation to the 'whole of market' requirement. At the April 2012 Solicitors for Independent Financial Advice conference an FSA official stated that the City watchdog's expectation was that the great majority of IFAs would remain independent. This chimed with the comment by ex-FSA director David Severn in the April 2012 edition of Money Management magazine. He said that "although described as new there is much that is similar to the existing standards on independence. It is therefore difficult to understand those who claim that the standards will be difficult to meet."

Current predictions are that at least 80 per cent of IFAs will remain independent.

Prohibition

The firms which have a vested interest in the restricted advice model, and will doubtless argue for an end to the current prohibition, are the national firms and groupings which are able to secure increased profit margins through the volume deals they are able to arrange with product providers. They are essentially sales organisations, and the advice of their salesmen is conflicted by the financial imperative to sell product. An example of the way in which clients can be disadvantaged by this business model, and solicitors themselves have been seriously disadvantaged, is Equitable Life.

Independence is a core tenet of the legal profession, and the only apparent reason why the SRA might consider abandoning the requirement is that the Association of Private Client Investment Managers and Stockbrokers has argued that its members, most of whom advise principally on and arrange securities portfolios, might wish on occasion to include in their portfolios retail investment products on which they are not qualified to advise. However there would seem to be no good reason why anyone who advises on such products should not be required to obtain the same qualification and be subject to the same whole of market requirement as the IFAs for whom these products are the principal investment media. It is of course likely that some multi-tied product providers are lurking among the Apcims membership.

The FSA has taken the view that, in the interests of consumers, a distinction needs to be made between advice that is independent and advice that is influenced by third-party relationships. It would be highly ironic if the SRA, the supposed guardian of solicitors' professional standards, was to ignore the distinction. It would open the door to the profession becoming a tool of the product providers, who might even buy law firms as a respectable cover for the sale of their products, with likely serious consequences for the solicitors' compensation fund. It would also represent a sad rebuff to the many IFAs who have remodelled their business proposition on a fee-based professional basis so as to be able to work with solicitors, complementing and enhancing solicitors' own client services as the profession moves into the multi-disciplinary era.

IFAs are urged to write to the chairman of the board of the SRA registering their support for the retention of the prohibition against solicitor referrals to non-independents. Please write to: Charles Plant, chairman, Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch B98 0TD.

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