



The Law Society

SRA Consultation on independent financial advice
Law Society response
September 2012



SRA Consultation on independent financial advice

This response has been prepared by the Law Society, the representative body for more than 140,000 solicitors in England and Wales. The Law Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to comment on the SRA's Consultation on independent financial advice. In short, we favour Option 1 of the three proposals as it preserves the requirement for independent advice which has historically been a key tenet of the profession and remains as such, enshrined as an overarching principle of the Handbook.

The alternate options tabled (2 and 3) would seem to us to present a clear risk to both the independence of the profession and the independence of advice available to clients.

1. Do you have any comments to make about the suggested change of terminology and removal of references to independent intermediaries and to packaged products and replacement with language arising from the FSA's Retail Distribution Review in terms of authorised advice and retail investment products?

On the basis that the Financial Services Authority (FSA) has changed its terminology and extended the remit of its definitions, we agree that the SRA Code of Conduct (the Code) needs to be amended to reflect that fact.

2. Which of the three options do you prefer in respect of chapter 6 of the SRA Code of Conduct?

While we note that Option 1 is the most prescriptive of those proposed in the context of an outcomes focussed regulatory approach, we would nevertheless favour it over options 2 or 3 on the basis that it unequivocally preserves the requirement for independent advice. We contend that this is an appropriate and proportionate regulatory response to an area of work where solicitors are referring clients for the purposes of obtaining products and services from a third party where there may be a considerable lack of sophistication on the part of purchaser. It also serves to minimise the potential risk to solicitors' indemnity insurance cover from claims arising from alleged poor advice or by dint of any referral.

Notwithstanding the continuing requirement to achieve, in particular, Outcome 6.1, the non mandatory nature of indicative behaviours allows, as is the intent of outcomes focussed regulation, for an element of individual flexibility over the manner and mechanisms through which outcomes are achieved. We do not consider that such flexibility is appropriate in these circumstances. Whilst we acknowledge that the principles have general applicability that does not, in our view, constitute an

acceptable argument against the maintenance of a specific outcome that keeps the requirement for independent advice. Therefore, we would reject Option 2

We are also opposed to Option 3, as it requires clients and solicitors to make informed choices about referrals when neither party is necessarily best placed to make such decisions. In reality, in most cases, the obligation will be firmly on the solicitor to advise as to the best course of action from the information available whether or not they are sufficiently equipped to do so. This presents a risk to both parties that are unnecessary given the other options available.

3. Do you have any comments on the possible impact of these options in terms of effects on legal firms and protection of clients' interests?

As indicated above, we would contend that options 2 and 3, though clearly in line with the SRA's general approach to regulatory flexibility and individual professional responsibility, bring with them disproportionate risks to both solicitors and clients.

The maintenance of a requirement to ensure that clients are referred to third parties who will provide genuinely independent advice seems to us to be a sensible approach which provides necessary protection to both client and solicitor.

We are unclear as to the nature of the problem that SRA is looking to resolve in proposing to liberalise this aspect of the Code. For example, there is, notwithstanding the SRA's commentary on the potential repercussions of the FSA's Retail Distribution Review, no significant evidence put forward of a current or future lack of client provision in this area caused by the requirement for independence, not is there any suggestion of a trend of inadequate or negligent advice from independent advisers. Whilst we understand the SRA's motivation in seeking to keep its terminology in line with the FSA's in this area, an accompanying liberalisation of the current regime does not appear to be required or indeed beneficial.

The alternative proposition is to open up the market for referrals by solicitors to providers with an agenda that is predicated on self interest and tied arrangements rather than a transparent market wide assessment. This cannot be in the best interests of clients. It also presents clear risks to solicitors where such advice leads to client detriment.

4. Do you have any comments on the costs and benefits of the options as identified in the cost-benefit analysis?

As the cost-benefit analysis has not been published, we can offer no comment. We would however be interested in seeing such analysis when it becomes available.

5. Do you have any other comments to make on these proposals?

No comment.