

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

**Yes**

The ‘independent’ label is in danger of becoming meaningless as a number of other factors have more bearing on an adviser’s capabilities

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**A**s financial services professionals, we have spent over twenty years drumming into clients, the media and other professionals that ‘independence is best’ and it should come as no surprise that the default perception after 1 January 2013 will still be that independent firms are somehow superior to ‘restricted’ firms.

The reality is far more complex.

#### Narrow range

For background, a firm will be considered ‘restricted’ if it advises on:

- all available options but within a narrow range of ‘retail investment products’; and/or
- a limited range of options from all areas of ‘retail investment products’.

It seems clear that by specialising in a specific area of advice (for example, care-fee planning) good consumer outcomes are no more difficult, and no less likely, to be achieved in the restricted (products) area.

The FSA has gradually watered down its requirements for a firm to be independent, to the extent that the term is now essentially valueless. For example, HSBC subsidiary NHFA Limited was fined £10.5m for fundamentally inappropriate advice to vulnerable clients. The advice was independent, but, among the FSA’s numerous findings was a poor awareness of the requirements of the elderly.

I can see that advice may be superior where advice is restricted (products),

but I am cautious over the restricted (provider) label. This distinction in terminology is mine, and it would be for a referring firm to decide which particular variety of restricted advice was on offer. Restricted (provider) is likely to apply to ‘vertically integrated’ firms, most notably the Bancassurers and product-manufacturing wealth managers.

One of the most bizarre outcomes of the RDR is that such companies will be able to receive commissions and obfuscate product charges through complex product terms – potentially giving them a competitive advantage over independents.

Our target market is wealthy owner-managed businesses, particularly at the stage of divestiture. At this level of wealth, the banks are particularly predatory, and they can still retain the ‘independent’ label while making HNWIs their lawful prey.

#### Due diligence

I anticipate that the SRA’s consultation will conclude that it is up to legal firms to educate clients as to how to choose a professional financial adviser, wealth manager or financial planner, and the SRA will not be prescriptive that independence is the only way. This means legal practices should do significant due diligence to match the right client to the right financial services firm.

Moreover, the right financial planner for the private client team would be

quite different to the family or corporate lawyers – this is a distinction that many legal practices may not have fully grasped.

There are a number of factors that need to be taken into account when deciding on an appropriate adviser to work with, which are more important than their having an ‘independent’ label. These may include: specialist areas of advice of both the firm and the fee-earner, level of qualification and experience, complaints history, PI claims, risk management procedures, and professional body memberships.

Bodies such as SIFA, who I have a great deal of admiration for, have a clear interest in waving the flag for independence; however, the landscape has changed since SIFA was formed in 1992 and their core entry requirement (fee charging and at least one diploma-qualified adviser) becomes the *de minimis* for any firm practising post-2013.

Contemporaneously, the Personal Finance Society (PFS) has set about promoting ‘chartered’ status as the ‘gold standard’ for regulated advice.

I sit somewhere between SIFA and the PFS. I reject the supposition that the independent label reduces the need to do thorough due diligence on a firm, and would suggest that the way to mitigate the risk of poor client outcomes is to ensure that a client is introduced to appropriately experienced firms and well-qualified fee earners, who have the client’s best interests at heart. ■