

Collaborating Efficiently (and not forgetting compliantly) for the best client outcomes

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Albert Goodman Webinar 27/01/21

Agenda to cover the following...

- A quick refresh on the 2016-19 reforms
- The background and the impact on solicitor and financial adviser relationships
- Referrals best practice
- Significance of the Dual Codes and the process
- Support from AG and SIFA Pro

SRA's Looking to the Future Programme

- A reminder of why in their words....
- **We want to make**
- Our rules focus on what matters – high professional standards
- It easier for the public to access legal services
- It easier for solicitors and firms to do business

Why are SRA making changes... 4 Reasons

- Too many people and small businesses struggle to access legal services, with only **one in ten people** using a solicitor or barrister when they have a legal problem
- A key reason for this is the **lack of information** about legal services, which makes it hard for people to make **informed decisions** and weakens competition within the marketplace

Why SRA making changes... 4 Reasons

- Our Handbook (2012) - which sets the standards we expect solicitors and firms to meet and the rules they should follow - is more than 400 pages long. It is complex and costly to keep up to date and to apply
- Pages and pages of rules hinder rather than help compliance. It drives firms' costs up - costs which are passed on to the users of legal services - rather than promoting good practice and consumer protection

Simpler = Better

- The new Standards & Regulations set out the standards the SRA EXPECTS solicitors and firms to meet and the rules they should follow.
- *“Pages of complex bureaucracy do not benefit anybody. Our new approach rightly puts the onus on professional judgements and ethics.”*
- **Paul Philip, SRA Chief Executive**

Simpler = Better

- **2012 SRA Regulatory Handbook** – Written by FSA guru and full of indicative behaviours and outcomes. All waffle and not enough genuine guidance
- **2019 Standards and Regulations** – Removed everything that was unnecessary and retained only what was important. Succinct and to the point and crucial introduction of ‘Firm Code of Conduct

Working with financial planning professionals

- There is frequently a need for complimentary financial advice that arises from legal work
- Have solicitors always acted holistically when identifying such needs?
- Do the SRA changes recognise the issue and encourage professional referral?

Problems with the old referral rules...

- Referrals under the spotlight.....
- Old Rules
- Rule 6.1 – When recommending a client seeks advice from a 3rd party it must be in the best interests of the client
- Rule 6.3 – The Client must be in a position to make an informed decision on how or whether to proceed

Problems with the old referral rules...

- Whilst in SIFA Professional's view 6.1 made Solicitor due diligence on preferred financial advisory partner referees obvious best practice and 6.3 suggested that the due diligence should be made available to the client – ***This was not always the case.***
- In theory COLP should have had responsibility BUT no enforcement by SRA. Plus existing code addresses individual solicitors NOT firms

The Salvation is in the new regime...

- The new Standards & Regulations and codes of conduct therein, for the first time include provisions for firms rather than just individual solicitors
- Rules 5.1-5.3 cover the rules on referrals but the critical point with new rules are the 7 Core Principles
- Also using the spirit of the new rules too determine best practice for the FIRM

It's all about Principle 7

You act.....

- **'In the best interests of each client'**
- "Remember acting in the best interests of each client is a general obligation so not needed to be repeated specifically for referral."

Crispin Passmore, SRA Exec 21/12/18

Best Interests have to be demonstrated

- **Why – ‘Informed Consent’**
- SRA rules and rhetoric adamant they expect to see a client’s informed consent to a referral to a ‘Separate business’ and ‘Best interests’ to an unconnected third party.

- **Due Diligence – Critical**
- *“Hard to see how you can act on best interest without due diligence on who you refer to.”*

Crispin Passmore, SRA Exec 21/12/18

Due Diligence leads to Informed Consent

- 2020 hopefully we will see greater acknowledgement of this best practice
- Crispin Passmore, was a driving force behind the new approach and he spoke to the SIFA Conference in June 2018
- His view then on the present and past....
- *“Deciding who to refer to might be based on personal choice of pre-existing relationships”*

New Rules anticipate a more measured ‘Firm’ approach

- The SRA elaborated on the expected new approach to referrals in 2019 at the SIFA Conference:
- *“We expect referring **firms** to have a better understanding of the organisations they refer to.”*
- *“Referrals will need to be based on a more measured approach aiming to benefit the client.”*
- The Message is clear, hence the new Dual Codes

Two Codes

- “*The Code for Solicitors describes the ‘standards of professionalism’ expected by the SRA, whereas the Code for Firms describes the expected ‘standards and business controls’*
- *The structure of these new Codes make more explicit the approach of the SRA, which is to focus on the behaviour of individuals and the systems and culture of firms”*
- Partner – Kingsley Napley Solicitors

Is the referral in the client's best interest?

Things to consider...

- Referrals to a third party should be based on a measured approach aiming to benefit the client
- Law firms should maintain their independence – can you justify referring clients to the same 3rd party
- Law firms should have a good understanding of 3rd party they refer to – for example, do they need to be and are they regulated, can they provide the advice/services needed

Referrals of business

What's required...

- If referring to a ‘separate business’ the law firm will need the client’s informed consent
- Informed consent – not defined (could be in writing or a recorded call). It’s up to firms to make sure the client understands the basis of the referral and consents

Is the referral in the client's best interest?

- Clients should understand and agree to what is happening
- Why? To protect client confidentiality and if there is a movement of client money
- Does the client have the capacity to give instructions/agree to the referral or are they otherwise vulnerable?



Best Interests and Integrity

- Can Solicitors ignore need for identified complimentary advice? (frequently asked question)
- SRA say NO and I asked them directly!
- “If you have identified the need for financial advice as a result of legal work undertaken and don’t make a referral how can you be acting with ‘integrity and in the client’s best interests?’
- *SRA 21/08 – Jatinder Loyal SRA*

The Firm Code of Conduct is Key!!

- **Compliance and business systems 2.1**
- **You have effective governance structures, arrangements, systems and controls in place that ensure:**
 - (a) you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you
 - (b) your managers and employees comply with the SRA's regulatory arrangements which apply to them;

The Firm Code of Conduct is Key!!

- **Compliance and business systems 2.1**
- **You have effective governance structures, arrangements, systems and controls in place that ensure:**
- (c) your managers and interest holders and those you employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements by you or your managers or employees;
- (d) your compliance officers are able to discharge their duties under paragraphs 9.1

Reminder of Significance of Firm Code

- **9.1 If you are a COLP you must take all reasonable steps to:**
 - (a) ensure compliance with the terms and conditions of your firm's authorisation.
 - (b) ensure compliance by your firm and its managers, employees or interest holders with the SRA's regulatory arrangements which apply to them;
 - (c) ensure that your firm's managers and interest holders and those they employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements.

So, have you finalised your process?

- Decide criteria for due diligence
- Review existing referees
- Conduct research
- Finalise selected partners based on expertise and specialisms to match client needs
- Ensure all staff are aware of the process
- Make due diligence and informed consent precedents available
- Support from Albert Goodman?

Support from SIFA Pro & AG

- Prepared due diligence
- SRA checked informed consent wordings
- Client marketing and educational material
- Monthly webinars for CPD
- Law Society endorsed directory and articles
- Approved business precedents

A Reminder of the objective of referrals..

It should be to provide joined-up legal and financial advice:

- Complementing and enhancing solicitors' services
- Enabling Solicitors to maintain contact with clients
- Providing the **holistic service advocated by the SRA**

A Reminder of the objective of referrals..

It should be to provide joined-up legal and financial advice:

- CLIENTS DON'T THINK IN SILOS SO WHY DO WE OFFER THEM SOLUTIONS IN SILOS?
- It is why SIFA Professional have worked for 28 years to encourage collaboration
- Who is in the client's 'Trusted Adviser' team and who is in yours?

SRA Watch – Expansion of Transparency

- A quick revisit on why Transparency - price of certain core services and on protections of dealing with an SRA-regulated firm

- Part of 2016-19 Consumer driven changes
- SRA taking it extremely seriously
- Google Society
- How to embrace and benefit from Transparency – Next time

Thank you