Responses to Consultation on the future of independent financial advice

In July 2012 the SRA issued a consultation on independent financial advice. It was necessary to review the SRA's position on the provision of independent advice both because of the Financial Services Authority's Retail Distribution Review and as part of a more general review of SRA Handbook requirements. The SRA sought a view on the options and the potential impact of the changes.

The Options

Option 1 to keep Outcome (6.3) but to alter the language to remove reference to "independent intermediary" and to replace it with wording to reflect the terminology contained in the FSA's Retail Distribution Review;

Option 2 to remove Outcome (6.3) from the Code, and to add a new Indicative Behaviour (6.3) which describes referral to an independent adviser;

Option 3 to amend Outcome (6.3) so that clients are in a position to make informed decisions about referrals in respect of investment advice.

The Questions

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?

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

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?

4. As we did not publish a cost-benefit analysis as part of the consultation process Q4 was to be disregarded on this occasion.

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

I. Responses - Financial Sector

A Attributed Responses

1. SIFA

Q1: No, we do not have any comments on the suggested change in the SRA Code of Conduct to bring the terminology used in the SRA Code of Conduct into line with that being adopted by the FSA. This change is unavoidable.

Q2: Of the three options, our clear preference would be for Option 1, because this is the only Option which preserves the requirement for independent advice,

which has for long been a core principle for the solicitors' profession. We note that the first reason given in para 13 of the Consultation paper for not adopting Option 1 is that "*many firms which are currently described as independent… may not be able to label their advice as independent because they will not, for example, advise on a sufficiently broad product range*" (and therefore, implicitly, there will in future be a dearth of independent advice). This assumption is in fact wrong, the FSA having specifically moved in its Guidance Consultation 12/3 of February 2012 to reassure firms that business specialisation need not be a bar to independent status. So, in the mistaken hope of accommodating what the FSA expects to be the few IFAs who may opt for restricted status, the SRA will be opening the floodgates and inviting every tied salesperson in the financial services industry to regard the legal profession as their next big sales opportunity.

Option 2 proposes replacing the mandatory Outcome that clients should be referred to independent advisers with a non-mandatory Indicative Behaviour suggesting independent advice as a possible approach. This softening of regulation would enable tied salespeople to persuade solicitors that the provision could safely be ignored.

Option 3 proposes that Outcome 6.3 should be amended so as to enable clients to make informed choices about referrals, so that "*the lawyer and the client would work out whether an independent or restricted adviser would be the best choice*". The reality, however, is that neither solicitors nor their clients are equipped to undertake effective due diligence on financial advisers, and the Equitable Life debacle demonstrates that they are likely to succumb all too easily to the blandishments of the tied salesperson who, when and if identified as such, will quickly turn round the argument to "*You have to prove that your client is better off with independent advice*".

In his editorial of 5 July 2012 the Editor of the Law Society's Gazette reported having asked SRA on what grounds it could ever be in a client's best interests to be referred to a restricted adviser, and receiving the response that "*with the changes in the financial market and the current issues with the definition of independent adviser, there is a possibility that an adviser will not be classed as independent, but be able to provide the client with the choice of financial options relevant to the issue, the same as an IFA, but be more available or cheaper*". This suggests strongly that the SRA's thinking is based on highly suspect unsubstantiated assumptions. Where is the evidence that restricted advice could be more "available" or cheaper than independent advice?

On the same day, a Gazette reporter blogged "*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 wilfully ignoring any product that does not line their own pocket. That's not freedom, that's a legitimised cartel*".

Q3: The impact of Options 2 and 3 on law firms would be to make them prey to every tied or multi-tied product salesperson in the land, with serious detrimental consequences for the Solicitors Compensation Fund, which by reason of solicitors' involvement in the client referral process, would be subject to the same massive claims as are currently afflicting the Financial Services Compensation Scheme. In our view it would also lead to a significant rise in the number of financial services-related claims against solicitors for negligence, either because of bad advice that solicitors have themselves offered or because of self-interested advice from tied sales people to whom solicitors

have referred their clients. This in turn would have the effect of raising Professional Indemnity premiums for all. At the same time, the reputation of the profession would suffer from involvement with these least reputable elements in the financial services market.

Q4: Our only comment on the cost benefit analysis prepared by Economic Insight is that the variant of Option 3 on which that organisation commented was not carried forward into the SRA board paper and the SRA Consultation. This would have made independent advice a preferred Outcome for the purposes of OFR, which would have made it our preferred Option.

Q5: Although the proposals consider the position under Principle 4 of the SRA Code of Conduct, they totally ignore Principle 3, which reads: "*You must not allow your independence to be compromised*" In option 2, we are told that Outcomes 6.1 and 6.2 are intended to support the overarching SRA Principles "*including the requirement to act in each client's best interests (Principle 4)*", yet there is no reference to Principle 3. The guidance to Rule 9 of the 2007 Code of Conduct states in relation to referrals to third parties: "*You must do nothing in respect of such referrals which would compromise your independence or ability to act or advise in the best interests of your clients*". The Consultation paper throws this away without even acknowledging it. By referring clients to tied advisers solicitors necessarily compromise their own independence. The significance of the abandonment of the profession's commitment to conflict-free advice would go far beyond the present Consultation and would necessitate extensive re-writing of the SRA Code of Conduct.

We can sympathise with the SRA's dilemma in being presented with the need to attempt to reconcile the FSA's botched attempt to re-define the word independence as meaning something other than what all consumers know it to mean, and what it has always meant and still means in every other context in the legal profession, namely avoiding the conflict of interest which arises from being subject to the influence of a third party. We would have hoped, however, that the SRA would have found it possible to avoid repeating the FSA's absurd Alice-in-Wonderland suggestion that pretending that a word means something other than what everyone knows it to mean will assist in providing clarity to consumers. To state that the alternative to being independent is to be restricted is like saying that the alternative to being tall is to be thin.

Having recorded above the FSA's stated expectation that few IFAs are likely to elect to become restricted, it is in fact the SRA which by its decision on this issue will determine the future of the retail financial services market if it signals that in its view independence is a list cause. This would indeed be ironic for the body which might have been expected to be the guardian of professional standards.

2. The Association of Professional Financial Advisers (formerly AIFA)

Q1: AIFA supports the proposed amendments to the terminology as outlined in the consultation paper.

"Independent intermediary" is not a generally used or understood term and post-RDR, those that are currently independent intermediaries will be described as either independent or restricted. We therefore agree that it is appropriate to reflect this terminology in the SRA

Handbook. Similarly the FSA has introduced the term 'retail investment product', which is wider than 'packaged products', and it is therefore appropriate to update the SRA Handbook to reflect this new terminology.

Q2: AIFA believes that the FSA's definition of 'Independent' (and therefore 'Restricted') is unhelpful as it does not meet a common sense understanding of the term. What is important is that consumers understand the basis on which advice is being given and are content. Those that will fall into the "restricted" definition will include a wide range of advice firms acting in the clients' interest (as their agent) which are able to meet customers' requirements.

AIFA supports Option 3 as outlined in the consultation paper. AIFA agrees that it is in the best interests of the client for their legal adviser to explain the options available, the implications of those options and to come to an agreed decision with the client based on their particular requirements. AIFA also supports the proposal that the nature of any relationship between the law firm and the financial adviser should be explained clearly to the client.

Q3: No comment.

Q5: No further comments.

3. The Chartered Insurance Institute

The CII supports the Solicitors Regulation Authority's efforts to update the wording of its Code of Conduct's references to referrals to financial advisers to reflect the changes brought about by the FSA Retail Distribution Review.

We believe the overall outcomes-based approach of the SRA Code of Conduct is vital to promoting public trust and confidence. In relation to referring clients to financial advisers, this principle is best preserved when referrals are made in a manner that is most appropriate to the client's needs. For this reason, our preferred choice is Option 3, albeit with some important observations:

- Independent not always the most appropriate option: we were concerned by the other options that involve only referring customers to independent advisers. While this may have been appropriate in pre-RDR regulation, there may be cases under the new rules in which a restricted adviser may be more appropriate to the customer's needs.

- Quality of advice should be key to referral: referral should be made based on the quality of the advice the firm is capable of giving – indicated mainly by the professionalism and qualification levels of its staff – rather than simply its independent/restricted status.

- Due diligence needed: despite the importance of transparency and disclosure involved in this option, customers often still rely heavily on referrals given to them. So the SRA must also ensure that solicitors take a robust approach in assessing the due diligence of the referral, and that solicitors are able to evidence their perception that the referral was in the client's best interests.

Q1: We support changing the wording of Outcome 6.3 of the Code. The term "independent intermediary" is no longer a regulatory term as defined in the FSA Handbook. The Code must reflect the current regulatory situation, including the revised terminology for authorised advice in retail investment products that take effect from 31 December 2012.

Q2: Our preferred is Option 3 albeit with modifications. As explained above, we support an approach that allows solicitors to exercise their best judgment on the customer's situation and make a referral to either an independent or restricted adviser. This approach must also come with due diligence safeguards to ensure that appropriate disclosures on the relationship with the referee firm are made; and the rationale for the solicitor's judgment is properly evidenced. See our answer to the next question.

Q3: As explained above, we support an approach that allows solicitors to exercise their best judgment on the customer's situation and make a referral to either an independent or restricted adviser. This approach must also come with due diligence safeguards to ensure that appropriate disclosures on the relationship with the referee firm are made; and the rationale for the solicitor's judgment is properly evidenced.

Moreover, we think the customer's interests are best served by the quality of the advice given and the integrity of the adviser to give unbiased and sound advice, not simply whether the advice firm holds itself out as independent or restricted. These are factors based not just on the relationship with product providers but most importantly on the understanding of the market and the professional standards of the adviser.

Option 1: to keep Outcome (6.3) but to alter the language to remove reference to "independent intermediary" and replace it with wording to reflect the terminology contained in the FSA's Retail Distribution Review.

Replacing "independent intermediary" with "independent adviser" to suit the new terminology would be too prescriptive in that it would only refer customers to firms that meet the higher threshold for independent advice. It would bar referrals to firms that specialise in particular parts of the market, which may be appropriate to a customer's needs in certain circumstances. For example, if the customer clearly needs advice on pensions, and the solicitor knows of a specific adviser who specialises in this field. However the adviser might no longer be able to hold itself out as independent under the new rules, therefore referral would not be able to take place.

Option 2: Remove Outcome 6.3 from the Code, and add a new Indicative Behaviour 6.3 which describes referral to an independent adviser. This would be too subjective and therefore difficult to implement and monitor in practice. How would this Indicative Behaviour be assessed? Moreover, it still does not acknowledge that in some circumstances, referral to an independent adviser might not always be in the client's best interests.

Option 3: Amend Outcome 6.3 so that clients are in a position to make informed decisions about referrals in respect of investment advice. This is our preferred option, albeit with a modification. Solicitors would then be able to refer clients to either independent or restricted advisers depending on their assessment of the client's circumstances. However we think that in addition to transparency and disclosure, the SRA must also ensure that solicitors take a robust approach in assessing the due diligence of the referral, and that solicitors are able to evidence their perception that the referral was in the client's best interests. The reason is that despite disclosure, consumers still tend to rely heavily on the advice given to them by professionals, so there have to be safeguards in place to ensure that the referral was based on a genuine assessment of the client's needs and be in their best interests.

Q5: No. Please see our overall views set out in the preceding section of this response.

4. The Goodman Partnership

Q1: No.

Q2: Option 1.

Q3: Why would any solicitor want to have to make a decision as to whether referring his or her client to a non-independent adviser would not potentially be in their client's best interest? When could it possibly be in a client's best interests to be referred to someone who is not independent?

Under options 2 and 3 I can envisage solicitors being pursued by tied advisers who do not work on a fee basis and whose advice would be affected or tainted even by the incentives being offered by the organisations they represent. Look at what happened with Equitable Life - why can't we all learn from that bitter experience?!

Without question independent advisers have the fewest complaints and therefore the lowest drain on the Financial Services Compensation Fund. I can envisage referrals to product salespeople having a disastrous effect on the Solicitors Compensation Fund with increased costs. I also believe that there would be negligence claims from clients that would argue that they should have been referred to an independent adviser by the solicitor. PI premiums are already expensive but could go through the roof as a result of pursuing options 2 or 3.

I believe that many vulnerable and elderly people who trust their solicitors would feel very let down if they are referred to a tied adviser who advises them inappropriately.

Q4: The analysis referred to a variation of Option 3 which was omitted from the Consultation Paper - referring clients to IFAs tends to show that required outcomes had been achieved. The phrase if it isn't broken then don't fix it comes to mind.

Q5: The SRA has not appreciated or taken into account the FSA Guidance Consultation 12/3 of 27 Feb 2012 when stating their reasons why Option 3 would be the preferred option.

I believe that if Option 3 is chosen, this could have a disastrous effect on the retail financial services market as many advisers will give up their independence. This can only have a negative effect on the standard of advice given to the public. One only has to look at all the fines and complaints about tied advisers compared to those made against IFAs to appreciate that clients are more likely to be better served by independent advisers.

5. Clive Barwell - Towergate Financial (North) Limited

Q1: No; it makes sense to bring the terminology into line with the post-RDR FSA world.

Q2: Option 1.

Q3: I have been in Financial Planning for 40-years; I am a Trust & Estate Practitioner (former long-standing Chair of the Yorkshire Branch of the Society of Trust & Estate Practitioners), A Fellow of the Chartered Institute for Securities & Investments, a Certified Financial Planner and an accredited member of the Society of Later Life Advisers. Consequently, I believe that I am uniquely experienced and qualified to comment upon the issues raised here.

Not a day goes by without me learning something new about financial planning - done properly financial planning is an extraordinarily complex skill, dealing as it does with every conceivable aspect of a Client's financial welfare. Other than the odd dual-qualified Solicitor, very few of the Solicitors I have met in over 40-years have a detailed understanding of what financial planning is really all about. Certainly, the General Public - the Clients of Solicitors - are generally pretty clueless and, more often than not, I am having to start a review at a very basic level and work-up to more complex areas.

Consequently, in my opinion, the reference in Option 3 to "be placed in a well-informed position to be able to make an informed choice" is based on erroneous assumptions that the Solicitor and their Client have enough knowledge about financial planning to be adequately "informed". Whilst, generally, Solicitors are better informed than the Clients, it is not a sufficiently in-depth knowledge to be able to fully differentiate between good, bad or indifferent offerings.

There are two aspects to Restricted Advice that need to be considered. Firstly, there is the limited range of advice available from some Restricted Advisers, often dictated by their product offering. Secondly, there is the fact that products and services from a single or limited range of Providers is going to be on offer.

In the first case, how does the Solicitor, or his Client, know that advice is only needed in those limited areas? In my experience, financial planning is akin to all the working parts of an old-fashioned wind-up clock - it doesn't matter how well-made one cog is, if it doesn't engage properly with the next cog, the clock doesn't run. Only an Independent Financial Adviser can see how all the parts fit together and make sure they are well-oiled and working in unison.

In the second case, surely we are asking the Solicitor to make a value judgement on the limited range of products available from the Restricted Adviser? By definition, if the Solicitor is making a third party referral they are not dual authorised, but aren't they effectively giving regulated financial advice by endorsing one limited range of products/services. The debacle with Equitable Life demonstrates the dangers of professionals, including Solicitors, being taken-in by the marketing ploys of a particular tied agent.

Q4: As a number of IFA businesses rely heavily on referrals from Solicitors or other professionals, an SRA decision to adopt anything other than the status quo could have a lasting imact upon the shape of financial advice in the UK. Many IFAs may abandon their independent label in favour of a restricted label in view of the potential cost-savings on offer.

Q5: Any move away from the status quo seems to fly in the face of Principle 3 of the Solicitors Code of Conduct, which states: "You must not allow your independence to be compromised".

6. Neil Hewitt - Scrutton Bland

Q1: I have no specific comments on this issue as, with any review, you would expect an element of change of terminology and it seems sensible to bring SRA terminology in line with that of the FSA following RDR.

Q2: My preference is for Option 1. This is the only option which will ensure Solicitors' clients will continue to be referred to completely impartial, independent, financial advisers and therefore ensuring solicitors themselves remain completely impartial and independent.

Q3: I do not understand how solicitors would not compromise their independence or be acting in their clients' best interests if options 2 or 3 were to be implemented. Their Code of Conduct actually states that they should not compromise their independence and yet referring clients to a tied or restricted adviser would seem to be in direct conflict with that Code of Conduct. Furthermore, solicitors must provide advice that is in the best interests of their clients, which can only be achieved by referring their clients to an independent financial adviser, who has access to the whole marketplace at all times. Referring a client to a tied or restricted adviser will limit that client's access to the whole market and therefore their choice, and therefore risk the client losing the opportunity to have access to a solution that may be better for them.

Historically, many solicitors have, and still do have, difficulty in differentiating between independent financial advisers and tied sales-people, the RDR has gone some way to providing greater clarity here and yet the proposals under options 2 and 3 will only serve to muddy the water further and I would fear that many solicitors will, through the sales presentations of tied sales forces, believe they are still dealing with independent advisers, when they are not. It is always important to remember that a tied sales-force are working as an agent for the company they represent, rather than for the individual client and will frequently be incentivised by the companies for whom they act as agents, which provides completely the wrong motivation for providing advice and can result in tarnishing the reputation not only of financial services, but also of any solicitors that refer their clients to them. It is certain that opting for options 2 and 3 will open the floodgates for all tied sales-forces and restricted advisers to begin marketing solicitors firms and history shows us that such marketing will be extremely slick and persuasive. This will not only inundate solicitors with approaches from tied sales-forces but run the risk, should the solicitors not fully appreciate the status of that adviser; i.e. that they are tied or restricted rather than independent; resulting in them referring clients to a non-independent adviser erroneously. We have witnessed the impact of this, with disastrous results, in the past mainly with Equitable Life and currently with St James Place, who are still working closely with many solicitors who believe them to be independent when they are not.

As mentioned above solicitors, who are intelligent, bright people, have been susceptible to the slick marketing of direct sales-forces in the past, it is therefore a concern that solicitors' clients will be even more vulnerable to such a sales approach, especially when they have relied upon the guidance of their solicitor, who has referred them to a tied sales-person. It is frequently the most vulnerable clients who will rely most on guidance from their solicitors, such as the elderly, infirm and less sophisticated clients who, I believe, will be most at risk of unsuitable financial advice when exposed to direct sales forces.

Q4: My only concern here is that the final consultation paper seems to have overlooked the comment referred to in the Cost Benefit Analysis produced by Economic Insight that "referring clients to independent financial advisers would tend to show that the required outcomes have been achieved".

Q5: A significant risk of adopting options 2 or 3 is that many existing independent financial advisers will no longer see a benefit in remaining independent and will opt for the easier option of becoming tied or restricted. This is already evidenced in on-line discussion groups. This will further reduce the choice for all clients, not only those of solicitors. This is again at odds with the solicitors Code of Conduct to maintain independence and provide guidance that is in the best interests of their clients.

It is worrying that the SRA consultation paper states that they are basing their preference on their understanding that many firms currently described as independent may not be able to continue to be independent post RDR. This statement is firstly incorrect, as it contradicts the FSA guidance consultation 12/3 which specifically permits advisers specialising in a specific area to maintain their independence, providing they make this clear to their clients.

Irrespective of this incorrect interpretation, I would have thought that the SRA would welcome the new FSA RDR definition of independence as the above statement demonstrates that there are currently many advisers masquerading as being independent when they are in fact not. This has been difficult, if not impossible, for solicitors to recognise and the new RDR definitions will address this. Using Option 3, it would seem to me that the SRA is compromising their and their member's own independence to enable them to continue to deal with the lesser, non independent, sales-forces, rather than the emphasis being placed on those financial advisers to step up to the mark and meet the requirements to remain independent at the bar set by the FSA. This bar is achievable for financial advisers and, if endorsed by the SRA, advisers will endeavour to attain this status, as they will recognise the value to their business of maintaining links with the legal profession. Those advisers that cannot or will not achieve this status should surely be considered by the SRA as not being of sufficient quality for their members to refer their clients to. If the bar was set too low, for example with Option 3, I fear that many advisers will choose the easier option, therefore reducing the standards of advice available to clients.

Some may ask the question "Why is the SRA so keen to support an argument for referrals to lesser non-independent advisers, rather than setting a standard (independence) for all advisers to aspire to for the greater good of their members' clients".

7. FB Wealth Management Limited

Q1: No.

Q2: Option 1.

Q3: If either Option 2 or 3 is chosen, then this will have a profound impact upon a solicitors ability to not allow its independence to be compromised when making financial services referrals.

Furthermore how can Options 2 or 3 ever be in a clients best interest, when compared with Option 1

A solicitor acts for his/her client, but by referring to a non independent adviser for financial advice under Option 2 or 3, the financial adviser would be representing his/her employer/trading company. This would create a potential conflict of interest as the adviser is bound not to be able to provide the very best solution that would otherwise be available via an independent financial adviser.

Restricted advice is exactly that, restricted. I simply cannot understand why you would want to endorse a member of your authority to recommend to their clients that any form of restricted advice is acceptable, when independent advice is and will remain an option.

Looking back over recent years, it has mainly been tied or restricted sales forces where most of the widespread misselling scandals have occurred due to pressures being placed on advisers from the top of large organisations to make product sales regardless of whether it is in the clients best interests. Do you really want to open up solicitors to this world? Indeed many solicitors have made a living out of representing the clients who have been on the receiving end of such bad practice.

As a consequence of the above, Solicitors will have an increased reputational risk if they are allowed to refer to restricted advisers.

By selecting Option 1 you will be helping to creatre an environment where unbiased & unrestricted advice can remain at the heart of your profession. This clearly has to be in everyone's best interets. Either of the alternatives 2 or 3 would simply water down the quality of advice being given.

Q4: The cost-benefit analysis produced by Economic Insight and circulated with the papers for the SRA board meeting on 4 July 2012 referred to a variant of Option 3 which has been omitted from the Consultation paper – namely that referring clients to independent financial advisers would tend to show that the required outcomes had been achieved. This would have been preferable to the current proposed option.

The cost-benefit analysis produced by Economic Insight and circulated with the papers for the SRA board meeting on 4 July 2012 referred to a variant of Option 3 which has been omitted from the Consultation paper – namely that referring clients to independent financial advisers would tend to show that the required outcomes had been achieved. This would have been preferable to the current proposed option.

Q5: The proposed preference for Option 3 seems to have been taken without full consideration of all of the facts outlined by the FSA under its guidance paper 12/3, which clearly allows independent advisers to remain independent even where they operate as specialists in certain sectors.

Despite the SRA's view that “many firms which are currently described as independent…. may not be able to label their advice as independent because they will not, for example, advise on a sufficiently broad product range”. this is simply not true. The majority of firms who are currently described as being independent will be able to remain independent post RDR. Those who become restricted will be doing so by choice for commercial reasons not regulatory reasons.

Many firms of independent financial advisers have built their business model around working with the clients of solicitors. By opting for Option 3 it could be the start of the end of independent advice as these firms may simply consider it no longer worthwhile maintaining their independent status. Any action that could result in their being fewer IFA's cannot possibly be in the public's best interest. It is for this reason why the FSA have provided clarity around its definition of Independence.

8. Neil Mitchell – Andrew Dickinson Limited

Q1: The terminology should reflect the FSA language as the FSA are the lead regulator for the provision of financial advice.

Q2: Option 1.

Q3: Option 3 seems fraught with difficulty, how will Solicitor firms make descisions on the suitability of advisory firms post RDR and will they then charge clients for recommendations possibly leaving themselves open to negligence claims for those cases where the advice proves to be unsuitable.

Q5: The use of the word 'independent' has been missused over the years by many advisers causing confusion for consumers, the Retail Distribution Review will do little to alieviate this confusion.

As an example many intermediaries who are restricted under the present FSA definitions, will say that they offer independence of investment or they have independence where they can invest. This will continue after RDR.

It is clear that the FSA's proposals do not go far enough in promoting the benefits of independent financial advice.

The provision of independent advice is clearly one that is free from commission or product provider influence - where restricted advice is given then this cannot be free from influence.

9. Lovewell Blake Financial Planning Limited

Q1: Some changes were inevitable to bring the SRA's terminology into line with the terminology of RDR. Thus the answer to this question must be an emphatic "No".

Q2: It is blindingly obvious that only Option 1 preserves the principle of referrals being confined to independent financial advisers. So those who favour maintaining the status quo will wish to state their preference for option 1.

Q3: If options 2 or 3 were to be pursued:

(i) Principle 3 of the Solicitors Code of Conduct states to the Solicitor "You must not allow your independence to be compromised." This is impossible to reconcile with options 2 or 3 and does not appear to be part of the SRA's considerations.

(ii) Under option 3, when could it possibly be in the clients' best interests to be referred to a non-independent source of advice?

(iii) Solicitors would be deluged by approaches by tied sales people, which they will not welcome. There is evidence that one at least of the major tied organisations has well advanced plans for a national marketing

campaign. Not too surprising that it is St James Place either. There have been many complaints about their methods of advice.

(iv) These tied salespeople are incentivised they the companies they work for to sell products and their advice is therefore entirely tainted by self interest.

(v) Many of these salespeople are self-employed and therefore beyond the effective control of the companies for whom they work for.

(vi) If tied salespeople persuaded solicitors to refer clients to them, the reputation of the profession would suffer from the provision of tainted advice. You have been warned!

(vii) By contrast, all independent financial advisers will work on a fee basis, like solicitors, and their business is to provide advice, not to sell products. They therefore share a professional culture, which makes them much more suitable to work alongside solicitors.

(viii) Bancassurers will try and link their loans to law firms with the sale of their products and law firms could become sales outlets for the the providers of financial products.

(ix) The experience of Equitable Life demonstrates that solicitors are easy prey for plausible salespeople.

(x) The Financial Services Compensation Fund is currently being swamped by claims, and solicitors' involvement with product salespeople would give rise to similar claims on the Solicitors' Compension Fund for which solicitors would bear the cost. This involvement would also be likely to increase claims against firms of solicitors for negligent advice, leading to an increase in Professional Indemnity premiums demanded by insurers.

(xi) During the 1980s and 90s the Law Society set up Solicitors' Financial Services in order to give solicitors access to third party financial services advice. When solicitor's clients claimed compensation for endowment mis-selling from Sedgwick, the IFA firm recommended by Solicitors' Financial Services, the solicitors who had made the referrals were held to be liable.

(xii) It is the most vulnerable clients, particularly elderly persons who rely on solicitors for support and guidance, who will be the most at danger from inappropriate financial advice from tied salespeople.

Q4: The cost-benefit analysis produced by Economic Insight and circulated with the papers for the SRA board meeting on 4 July 2012 referred to a variant of Option 3 which has been omitted from the Consultation paper – namely that referring clients to independent financial advisers would tend to show that the required outcomes had been achieved. This would have been preferable to the current proposed option.

Q5: (i) The Consultation Paper states as the first reason for Option 3 being the preferred option of the SRA that “many firms which are currently described as independent…. may not be able to label their advice as independent because they will not, for example, advise on a sufficiently

broad product range". This statement is ridiculous and at odds with the FSA Guidance Consultation 12/3 of 27 February 2012, which specifically permits advisers who specialise to retain their independent label provided that they make the nature of their specialisation clear to their clients. It would appear that the SRA's failure to appreciate the impact of GC 12/3 has caused it to base its conclusions on a false assumption.

(ii) The SRA's decision is likely to be the deciding factor in the future shape of the retail financial services market. If the SRA abandons the principle of independence, a number of financial advisers will consider it not worthwhile maintaining their independent status.

10. APCIMs

Q1: We would refer you to our covering letter. Many of the investment services provided by our member firm's following a referral from solicitors are outside the scope of the RDR.

Q2: We are supportive of Option 3. It would enable sufficient flexibility to allow a discussion in the context of the service being offered to the client having regard to the issues we have raised in our covering letter where the service may be outside the scope of the RDR. Options 1 and 2 – would not encompass investment services outside the scope of the RDR. In certain cases the term 'independent' can be misleading. For example, there is no requirement on an independent adviser to inform a client whether or not they consider financial instruments that are not retail investment products such as most stocks, shares and bonds.

Q3: Our view is that option 3 provides the best protection for clients' interests as the focus in ensuring clients are in a position to make informed decisions about referrals in respect of investments advice. As we have mentioned in our covering letter, simply adopting the labels 'independent' and 'restricted' as defined in RDR rules would not necessarily lead to the best outcome for the client since the labels only refer to personal recommendations on retail investment products.

Q4: No comment.

Q5: We would refer you to our covering letter.

11. Cane Cohen Ltd

Q1: The FSA is pushing through changes under its Retail Distribution Review, so it would seem the SRA have no choice other than to adopt FSA terminology.

Q2: Option 1.

Q3: If the SRA adopted options 2 or 3:

Does not the Solicitors Code of Conduct state "You must not allow your independence to be compromised." How does the SRA square this with Option 2 or 3?

How would it ever be in a client's best interests to be referred to a non-independent adviser?

Tied sales people will be banging on solicitors' doors in droves if the SRA force through option 2 or 3. This will help solicitors and their clients how exactly?

Solicitors recommending advisers selling in-house products on commission will suffer reputational damage.

Independent financial advisers working with solicitors generally do so on a fee charging basis and they generally look to provide paid for advice rather than sales of products. Why would a solicitor want to work with any other?

Equitable Life? Have the SRA taken that into consideration? X link their loans to law firms with the sale of their products and law firms could become sales outlets for the providers of financial products.

I can hear the banks cheering that they will be allowed in to work solicitors as unpaid sales people.

Will not solicitors find claims against them for recommending tied sales agents when things go wrong? "My solicitor recommended this tied agent and therefore the tied product. It is his fault".

Q4: Did the SRA not omit a variation of Option 2 in the analysis from the consultation paper? Was that because it showed referrals to IFAs generally produced the best results and would have weakened the SRA argument in pushing through the result it wants?

Q5: If the SRA forces through an option other than option 1 it will be responsible for inflicing huge damage on the advisory landscape as IFAs will give up their independence thinking it no longer valued by the legal profession and not worth the trouble and expense. The consumer will lose out.

The SRA wants to force through option 3, giving five points why it favours this option:

It supports OFR because it is not prescriptive.

'Act interests of our client' is that not want solicitors are supposed to do? How would it ever be in a client's best interests to take financial advice from someone who is not fully independent and who is therefore by definition in a worse poistion to give advice than someone who is.

It would allow restricted advisers to be recommended by solicitors.

See above. Does it really make sense to tell clients "I could refer to you someone who is completely independent and who can give you advice on a full range of financial solutions available, or to a 'restricted adviser', who because of the way he does business, does not have that freedom. Which would you prefer?

The FSA has an abysmal record of offering protection to consumers from misconduct by the providers of financial services. Why should we have any confidence in the regime proposed for 'restricted advisers'?

It means the lawyer must ensure that client understands the implications of a particular decision.

What? Solicitors are not authorised to give financial advice, and placing them in a position where they are supposed to weigh up indepndent advice against restricted advice would be a minefield for them. They will just stop referring to anyone rather than take the risk.

It ensures that the client is involved in the decision-making process.

This makes no sense. A solicitor recommendation taking independent advice. By giving that good advice3 a solicitor is not depriving a clien tof choice.

It removes restrictions on consumer choice.

What are the restrictions the SRA beieve exist?

12. AEGON

Q1: We agree with the changes in terminology.

Q2: AEGON agrees with the SRA's preferred option. We believe solicitors and other professional introducers should be given greater discretion over the type of adviser firm they introduce their clients to. Many will have current arrangements to introduce clients to a particular firm which is currently classed as independent. Many such firms may decide that their client base does not require them to extend their activities to cover the wider range of retail investment products which will be a requirement of the new definition of independence come 31.12.12. If the SRA were to restrict introductions to the new definition of independence, this would mean introductions would have to stop being made to that firm, even though they may be operating in exactly the same way and providing the same level of professional advice as previously.

We understand the SRA's proposal is to give the solicitor the flexibility to determine after discussion with their client what's in their client's best interest. If the client's interests are likely to be equally well served by two firms, one of which meets the future independent definition and one which doesn't, we believe it is only right that the solicitor and client can decide which to introduce to.

Many of the FSA RDR changes apply equally to independent and restricted firms. Professionalism standards will be no different between categories of firm, the same minimum qualifications apply and all firms are subject to Adviser Charging. Both independent and restricted advisers are also subject to client best interest and suitability rules. It is inappropriate to pre-suppose that the quality of advice a client will receive will necessarily or always be higher just because a firm has an independent label.

There will be some circumstances where client's interests can only be protected by introducing to an independent firm. This will be where their needs are complex or where they would benefit from the wider consideration of solutions outside the packaged products regime.

It's important to distinguish between the current 'tied' category and the future 'restricted' label, which will take many forms. Some restricted advisers will continue to consider packaged products from across the whole market. Others will operate a 'panel' of preferred providers (but note this remain possible for independent advisers too). Some, but not all, will enter contractual 'tied' arrangements with a limited number of providers. There will also be firms who

are tied to a single provider. There will be a further category of 'vertically integrated firms' such as bancassurers where the adviser is employed by the product provider.

Because of this wide variety of models within the 'restricted' category, we believe it is the nature (or extent) of the restriction, and the implications this may have on appropriateness for a particular client, which is key. We would expect the the nature and extent of the restriction to be discussed with clients before any introduction is made. We would also expect that under the SRA proposals, the greater the restrictions, the less likely it is that solicitors will introduce to that firm.

We believe the approach the SRA prefers is most likely to deliver good customer outcomes without introducing unnecessary distortions in to the market for financial advice.

Q3: We see no reason why the preferred option should put clients' interests at risk. A more 'restrictive' approach, limiting introductions to the new definition of 'independent' could actually create greater issues for legal firms and possible damage to consumer interests if it meant solicitors had to discontinue effective introductory relationships and develop new ones. There is also uncertainty over how many adviser firms will retain 'independence'. If there is a sharp reduction, this causes further issues of supply which could be particularly problematic in geographical locations which already have a limited supply of adviser firms.

Q4: No.

Q5: The RDR aims to enhance the professionalism of all financial advisers. With this in mind, it would seem counter-intuitive for any professional body to decide to place greater limitations on the adviser firms its members could introduce clients to.

Before finalising an approach, it may be important to note that there will be some firms which offer both independent and restricted advice. Such firms cannot hold themselves out as being independent, so will become 'restricted', but may offer independent advice to clients who would benefit from this.

13. Alexander Forbes Consultants & Actuaries

Q1: Alexander Forbes Consultants & Actuaries Limited (AFCA) is the UK subsidiary of a global corporate consultancy and financial services advisory business, providing advice, to both corporate and individual clients. Recently, and in advance of the Retail Distribution Review (RDR) we have reviewed whether all of our advice areas will remain independent post RDR with consideration being given to potentially conducting some activities on a multi tie/restricted model.

The outcome is that whilst the majority of our business propositions will meet the new independent standard (i.e. Investment Consulting, Defined Contribution pension, Defined Benefit pension schemes and The Annuity Bureau, which is whole of market with a fee), our financial planning/wealth management business will effectively offer restricted advice as their core offering with an independent offering for those clients who require such a service. Therefore, once this change takes place we will not be able to describe ourselves as a firm, as Independent Financial Advisers.

Q2: Option 3.

Q3: Taking the above into consideration it is of great importance to AFCA that SRA regulated firms will still be able to refer retail and corporate business to advisory firms who offer a whole of market with a fee service for the business being referred.

In our view, and contrary to the above, a continuation of the current rules (i.e.; SRA member firms can only refer to wholly independent businesses) is not likely to add anything materially of value to the client – and would in our case mean that we would not be able to continue working with legal firms simply due to the fact a small part of our business was not independent, albeit that the majority of our business would be independent.

Our view is that the proposed relaxation of the "independent" requirement would be beneficial for clients, as a wider choice would be available in terms of services and products particularly the options that clients would have as far as paying for such would be concerned, either explicit fee or a product based levy i.e.; adviser charging.

In summary, any clients dealing through our restricted wealth management arm could take advantage of an additional truly independent service upon request – in our view therefore this range of options for clients would improve the menu of choice where clients could select the product/service they require and the basis of paying for it.

Our position is that the proposed rule relaxation should be adopted and not a return to the current regime of wholly "independent" only.

Q5: No.

14. David Severn Consulting

1. This response is made on my own behalf and it is not confidential. In the interests of transparency I set out in the next paragraph a number of matters concerning my background and experience of which the SRA may wish to take account in considering my comments.

2. Until the end of 2004 I was head of investment business policy at the FSA and I occupied similar positions with the FSA's predecessors going back to 1988. I was therefore closely involved with matters concerning the "polarisation" of investment advice in the 1980s and 1990s and it was my department at the FSA which in the 2000s carried out the review of polarisation and changed the rules to allow advisers then tied to a single product provider to in future sell the investment products of more than one provider. In 2005 I was briefly Director General of the Association of Independent Financial Advisers, but I should make clear that I dissociate myself from any representation that organisation makes to the current consultation. Finally, I am currently a NED of IFA Centre but this response does not represent the views of that body although clearly my comments, like those of IFA Centre, are supportive of independent financial advice as best meeting the needs of consumers.

3. There is a good deal of industry propaganda about the alleged difficulty for investment advisers remaining independent after implementation of the Retail Distribution Review (RDR) but in my opinion it is often generated by those who want to justify their commercial decision to restrict their service in future rather than from any genuine regard for the interests of existing or future clients.

4. I found paragraph 4 of the SRA's consultation very odd in appearing to claim that clarity of status disclosure is a key and a new outcome of the RDR. That is simply not correct. In the 1990s my department devised and introduced as a regulatory requirement the so called "Buyers' Guide" the specific purpose of which was to make clear to consumers the difference between independent and tied advice. Clarity of status was also a key issue with the review of the polarisation rules and to meet the new needs my department introduced an initial disclosure document, branded "Key Facts", which, among other things, required restricted advisers to explain the range and scope of their limited advice. Those requirements are still extant and all the FSA's new RDR rules do is provide continuity with those previous initiatives. The key difference in status now, and it does not change one bit after implementation of the RDR, is that investment advisers are either independent or they are restricted. It is therefore only necessary for solicitors, after implementation of the RDR, to satisfy themselves that an investment firm is holding itself out as independent to be able to refer clients to such investment firms. The difficulty for consumers and for their professional advisers, such as solicitors and accountants, will be with the restricted group of investment advisers. This group will include those who advise on (or perhaps "sell" might be a more apt description) the products of just one provider through to those who cover a number of providers. This does unfortunately create the scope for such restricted advisers to muddy the waters over the status of their advice. In my opinion a failing of the FSA and its predecessors has been to adequately monitor and take action against firms that mislead consumers over their status. (I stand to be corrected but I cannot recall a single instance where the FSA or its predecessors have taken disciplinary action against a firm on the grounds either that it has falsely claimed independent status or because a restricted firm has obfuscated the restricted nature of its advice. It is to be hoped that the new Financial Conduct Authority will be more proactive and rigorous in monitoring that the status disclosed by a firm accords with the firm's business model.)

5. Some of the changes being brought in by the FSA have no bearing at all on whether a firm is independent or restricted after implementation of the RDR. The new qualification level expected of advisers, the arrangements for CPD, and the necessity for individual adviser to obtain a certificate of professional standing from a professional body are neutral. These changes are a crucial part of the RDR and should have no bearing at all on the SRA's rules concerning referrals as the changes are the same for all investment advisers.

6.1. It is regarding its comments in paragraph 5 of the consultation, concerning the scope of investments to be considered by independent advisers, that the SRA seems to have allowed itself to be misled by those in the investment industry who are against the direction being taken by the FSA.

6.2. The FSA's Glossary definition of "packaged products" covers:

- a life policy
- a unit in a *regulated collective investment scheme*
- a stakeholder pension scheme
- a personal pension scheme
- an interest in an investment trust savings scheme.

6.3. The FSA's definition of Retail Investment Product is to be found in its Policy Statement PS10/6 Appendix 1 of which includes the Made Handbook text. Retail Investment Product means:

- a life policy
- a unit {*so by dropping the reference to regulated schemes this now brings in UCIS}*
- a stakeholder pension scheme
- a personal pension scheme
- an interest in an investment trust savings scheme
- a security in an investment trust
- any other designated investment that offers exposure etc
- a structured capital-at-risk product.

6.4. A comparison of the two lists indicates that they are almost identical and where differences exist it seems to me absurd for an investment firm to take the stand that it necessitates a change away from independent status. In particular, I have commented to the FSA, most recently in my response to its Guidance Consultation on Suitability, that it was a mistake on its part to include UCIS within the definition of Retail Investment Products. The FSA has now accepted that point and has published a consultation paper proposing a prohibition on the promotion of UCIS to retail clients. Regarding the other differences between the two definitions I set out my observations below.

6.5. My first observation is about investment trusts. Given that IFAs are already meant to be giving consideration to investment trust savings schemes I think it would be bizarre for any adviser to claim that it is an imposition for the FSA to extend the scope of independence to include a security in the same investment trust outside of a savings scheme.

6.6. My second observation is on structured capital-at-risk products. On the basis of the extensive coverage given to these in the intermediary press over recent years it is obvious that many IFAs already advise on these. The new FSA definition therefore does no more than recognise what is already a common market practice.

6.7. My third observation is on "any other designated investment" which simply reflects the fact that product innovation does not stand still and the FSA is simply safeguarding itself against a regulatory gap because some provider has managed to invent a product that legally does not fall into the description of regulated scheme, life policy etc. At present it is difficult to conceive of any investment which would fall outside the existing legal structures and should any such packaged investment be invented in future I would expect it to be subject to the full rigour of the regulator's approach to scrutinising new product developments and quite probably subject to guidance from the regulator on how advisory firms should treat the new product. I therefore see no reason why the inclusion of this item in the definition of retail investment product should be a genuine cause for investment firms to give up independent status.

7. Aside from the change in the list of products on which an independent adviser is expected to advise the SRA also seems to be attaching far too much importance to the wording "provide unbiased and unrestricted advice based on a comprehensive and a fair analysis of the relevant market". This in fact reflects the substance of the requirements that have always applied to firms giving

independent investment advice, all that has really changed is the expression of those requirements to provide convergence with the language used in the relevant EU Directive.

8. In my opinion the SRA has allowed itself to be hoodwinked by those who claim that rules would not accord with an outcome focused approach. This argument seems to parrot what has been said over the years about principles based or prescriptive rules based regulation by the FSA. The fact is that there is a false dichotomy here. Any regulator should be prepared to use the tools that best meet the needs of a particular case. A regulator should not abandon the use of one tool simply so that it can slavishly adhere to a general approach in its regulatory style. In the present case there is a key client protection issue at stake. Clients of solicitors need to be referred to investment firms that will give unbiased advice that is not contingent on making product sales and which gives access not only to a broad range of investment solutions but also to the best solution for the client, not one that is constrained by the fact that the investment firm deals with only a restricted range of investment products or a limited number of product providers. Accordingly, the SRA should adopt Option 1 so that clients continue to be referred to investment firms that are independent.

9. Cost benefit. As a former regulator I am surprised that the SRA has not itself attempted a high-level CBA. The purpose of high-level CBAs is to help inform decisions about the choice to be made among competing options but the SRA has expressed a preference for one option without any assessment of costs, benefits and dis-benefits. As the SRA's preference stands (Option 3) it appears to have selected the option that could involve most cost for firms of solicitors combined with the greatest risk of dis-benefits not only to consumers but also to the firms of solicitors. The dis-benefits for consumers would arise where they are referred to restricted investment firms which even assuming they provide suitable advice will have access to a more restricted choice of investment solutions, so clients may end up with sub-optimal investment solutions. Moreover I would hypothesise, based on 25 years experience of the retail investment sector, that clients referred to restricted firms will suffer a greater risk of mis-selling (because such firms are more likely to be dependent on adviser charging based on deductions from the clients' investments and so there the investment firms remuneration is contingent on being able to make a product sale) and even when sold suitable products may get no ongoing advice, or only a token ongoing service (because restricted investment firms will probably want to find some way of levying an ongoing adviser charge from consumers while keeping to a minimum the effort they have to expend in reviewing a client's situation and investments). The dis-benefit for firms of solicitors is the reputational damage they could suffer by referring clients to investment firms that are not independent and provide clients with an inferior service. The costs arise from the process the SRA describes in relation to Option 3. Assuming solicitors perform the process with the appropriate degree of due diligence it seems to involve a considerable amount of research on the part of a firm of solicitors in determining the precise nature of the limitations under which restricted advice firms operate, satisfying itself that these restrictions can be reconciled with the interests of clients, and explaining the nature of the limitations and their consequences to clients. These costs and difficulties could be avoided if the SRA chose Option1.

10. If the SRA should decide to proceed with Option 3 I would urge it to amend the Option so that clients are not presented with Hobson's Choice. That is, solicitors should be obliged to suggest more than one investment firm to a client and at least one firm recommended should be an independent one.

11. The SRA is silent on the transition to the RDR. Existing clients of solicitors may have been referred in the past to investment firms that are independent now but after implementation of the RDR may become restricted. Clients, however, may assume that a recommendation previously given by a firm of solicitors is still valid. Is there any expectation on the part of the SRA that firms of solicitors should contact clients to alert them to the possible change in status of investment firms that have been recommended in the past?

15. Barton Financial Planning Ltd

Q1: No comment.

Q2: Option 3.

Q3: No comment.

Q5: Option 3 is a very sensible approach and offers solicitors and clients the freedom to make an informed decision and mirrors the approach being taken by the ICAE.

16. Ideal Financial Planning Ltd

Q1: It is inevitable that some reference to the change in terminology would need to be made in order to bring in line the definitions used by both the FSA and SRA.

Q2: I believe that in order to maintain customer confidence and offer the best level of protection to consumers Option 1 should be maintained. The talk "on the ground" is that a relaxing of the rules will allow some of the big tied firms to canvass heavily and offer inducements to solicitors in order to "buy" the introduction. If the SRA are happy for firms to take this commercial nature then fine, but i strongly object to the move being dressed up as a better option for both solicitors and customers and being hidden behind regulatory changes. I feel it is impossible to see how a client can be better off by being referred to a restricted adviser over an independent adviser.

Q3: If options 2 or 3 were to be pursued:

(i) Principle 3 of the Solicitors Code of Conduct states to the solicitor "You must not allow your independence to be compromised." This is difficult to reconcile with options 2 or 3 and does not appear to be part of the SRA's considerations.

(ii) Solicitors would be deluged with approaches by tied sales people, which they would not welcome. There is evidence that one at least of the major tied sales organisations has well advanced plans for a national marketing campaign.

(iii) These tied salespeople are incentivised by the companies they work for to sell product and their advice is therefore tainted by self-interest.

(iv) Many of these salespeople are self-employed and therefore beyond the effective control of the companies for whom they work.

(v) If tied salespeople persuaded solicitors to refer clients to them, the reputation of the profession would suffer from the provision of tainted advice.

(vi) By contrast, most independent financial advisers work on a fee basis, like solicitors, and their business is to provide advice, not to sell products. They therefore share a professional culture, which makes them much more suitable bedfellows for solicitors.

(vii) Bancassurers will try to link their loans to law firms with the sale of their products and law firms could become sales outlets for the providers of financial products.

(viii) The experience of Equitable Life demonstrates that solicitors are easy prey for plausible salespeople.

(ix) The Financial Services Compensation Fund is currently being swamped by claims, and solicitors' involvement with product salespeople would give rise to similar claims on the Solicitors' Compensation Fund for which solicitors would bear the cost. This involvement would also be likely to increase claims against firms of solicitors for negligent advice, leading to an increase in Professional Indemnity premiums demanded by insurers.

(x) During the 1980's and 90's the Law Society set up Solicitors' Financial Services in order to give solicitors access to third party financial services advice. When solicitors' clients claimed compensation for endowment mis-selling from Sedgwicks, the IFA firm recommended by Solicitors' Financial Services, the solicitors who had made the referrals were held to be liable.

(xii) It is the most vulnerable clients, particularly elderly persons who rely on solicitors for support and guidance, who will be most at danger from inappropriate financial advice from tied salespeople.

Q5: In my view it is quite clear that an Independent adviser is an agent for the client and a restricted/tied adviser is an agent of the company whose products they sell. It is also quite clear that consumers understand the difference between "Independent" advice and "Restricted".

There is a clear conflict of interest between a restricted adviser and the firm whose products they sell. Only this week the FSA has highlighted the obscene "sales incentives" operated by these tied companies.

It is wrong for the SRA to suggest that solicitors can select the "best" restricted firm. This is tantamount to a personal recommendation and is a situation solicitors should not be put in the fear that a number of firms described as Independent will no longer be able to do so after 1/1/13 has not come to fruition. It is now clear that 90% of IFA's will remain Independent post-RDR, and most (80%+) current advisers will remain authorised to give Advice. It could be higher. So there will be no shortage of Independent Advice available

17. IFS (Professional Connections) Ltd

Q1: No.

Q2: 1.

Q3: Yes. Over the years, we have seen breaches of the current rule, where legal firms have referred to non independent intermediaries - Equitable Life & St James Place are two names that spring to mind. This has led to poor outcomes for Clients.

By giving Solicitors the option of choosing the 'Best' Restricted firm, the SRA is asking Solicitors to make a form of financial recommendation and moreover carry out sufficient due diligence to be confident and comfortable that the restricted firms limited product / service offering is appropriate for their client. This will mean greater responsibility in the form of more involved due diligence for the legal firm and with it comes more business risk.

I do not believe this is their role.

Q4: Yes. The option of choosing a "Best" Restricted firm will be time consuming. More onerous due diligence will need to be carried out, and repeated frequently. This will be costly and heighten a firms risk exposure

It is difficult to see how a recommendation to an adviser with restricted choice instead of an independent, whole of market choice will be beneficial to a client

Q5: Yes. Most people understand the difference between Independent and Restricted. The FSA's consumer awareness campaign will further educate members of the public. The 'changes' and 'confusion' that the SRA states exist is marginal at best. All the legal firms and Solicitors I know have an excellent understanding of who and what type of firm they can refer to.

The much publicised significant reduction in IFA numbers is unlikley to happen. It is pretty clear that 90% of IFA's will remain Independent post-RDR, and most (80%+) current advisers will remain authorised to give Advice. It could be higher. The shortage of Independent Advice available that has been alluded to in the press is not going to happen.

Legal firms will continue to have access to and will be very well served by the IFA community.

In conclusion, we can see no regulatory or administrative reasons why the SRA ought to weaken the existing level of consumer protection and at the same time increase the burden of responsibility and risk for legal firms.

We do not think that it should be allowed or encouraged.

18. Fortitude Financial Planning Ltd

Q1: A change of terminology that provides greater consistency should lead to greater clarity.

Q2: Option 1.

Q3: There is significant evidence that historic breaches of the current rule have led to poor outcomes for Clients (e.g. referrals to Equitable). There is also much anecdotal evidence in respect of referrals to other tied or multi-tied organisations.

Q4: The selection of a suitable “restricted” adviser is likely to require extensive due diligence to be undertaken and recorded in order to satisfy compliance requirements - moreso that that required for an Independent Financial Adviser.

Q5: ‘Restricted Advice’ will cover a very broad church and it will be difficult to differentiate between:

- a better qualified adviser and a better qualified ‘salesperson’.
- a firm that is, essentially, independent but does not quite satisfy the requirements of that definition and a firm that is too all intents and purposes a tied agent. Both firms will be restricted.

It can been argued that, in selecting an appropriate “restricted” firm, solicitors will be making a form of financial recommendation; is this their role?

While it is true that the Retail Distribution Review is "intended to create the situation where the difference between independent and restricted advice is more clearly stated and clients will be well informed about the different types of advice which they will receive and that the choice will be well informed" very few practitioners believe that this outcome will be achieved. The reality is that the water will be muddied and very few clients (or indeed solicitors) will be able to make an informed choice.
It is becoming apparent that the vast majority of existing IFA's will remain Independent post-RDR, therefore there will be no shortage of “independent” advice available.

Any change to the existing rules carries a significant risk of weakening consumer protection and there is no good reason (regulatory or administrative) why such an outcome should be allowed.

19. Financial Services Consumer Panel

Q1: We think it is a given that the relevant sections of the SRA Handbook must be compliant with the requirements of the Retail Distribution Review, including revising the terminology used to describe advice services and retail investment products. We support the proposed changes.

Q2: We prefer option three as being the most appropriate way forward. We support consumer choice and think it entirely right that the client should be provided with sufficient information to make a decision on the type of advice service that would meet his/her needs, rather than automatically being referred to an independent financial adviser. This is particularly important given the potential cost of independent financial advice and the availability of possibly more appropriate and cost-effective advice services, such as restricted advice. Under the RDR independent advisers and restricted advisers are required to meet the same levels of professionalism in the quality of the service they provide and wider considerations, such as ethical behaviour. Where a product is recommended, the suitability requirements also apply. Consequently regulated advice which is restricted in scope should not be considered automatically as ‘second best’ for the client. It may well be an entirely appropriate option for clients who, for example, know which financial product they need but require help with specific choices, or where specialist advice is required.

The consultation paper refers to the need for the member firm to provide the client with enough information (including the payment of referral fees or other

incentives) to make a decision on the service that would best suit their needs. This is the key to the success of option three. If incorrect, inadequate or insufficient information is provided there is a significant risk that the client will be 'steered' in the wrong direction, particularly if there is some kind of undisclosed business relationship between the SRA member and the financial adviser. We urge the SRA to mitigate this risk by putting in place prescriptive requirements for recording the referral process, which include copies of the documentation provided to the client, a record of information provided verbally and a note of the reasons for referring to a restricted or independent adviser. This is an important area where effectiveness and compliance with SRA requirements should be monitored closely. SRA members failing to meet their obligations should be identified and brought to book swiftly.

No doubt the SRA will liaise with the FSA on the content and presentation of financial services information to the client.

Q3: We are not in a position to respond to this question.

Q5: We have no other comments.

20. Page Russell Ltd

Q1: As a firm which is directly regulated by the FSA and which plans to retain its independent status post-Retail Distribution Review, Page Russell support the simple substitution of the current "independent intermediary" and "packaged products" terms with language from the FSA's Retail Distribution Review. No more is needed. There is no need to widen up access to restricted firms.

Q2: Option 1.

Q3: Option 3 appears to ask the solicitor to involve themselves in the financial recommendation.

If solicitors are able to refer to a restricted adviser they will need to understand the nature of the adviser's restriction. For example, is the adviser restrcited because they only respresent St James's Place or because they only do investment manangement, or because they have a limited panel of in house funds, or because they have decided to use only one platform to the exclusion of others?

Then the solicitor wil need to understand the impliciations of this information and determine if it is relevant to the client. But, for example, is the solicitor refers their client to a firm which does not advise on pensions, in effect advising the client that pensions are not important? And is the solicitor competent, or authorised, to make that kind of judgement and give that kind of advice (and carry the liability if they are subsequently judged to be wrong)?

Q4: What cost-benefits analysis? There does not appear to be one.

Q5: Opting for Option 1 will not restrict consumer choice in the manner suggested.

In February the FSA issued detailed guidance on how firms can retain their independence status post-RDR. This has drastically reduced the number of currently independent firms who are thinking about restricting themselves. (Page Russell is one firm which has decided to remain independent as a result

of the FSA's clarification). Various estimates put the number of independent advisers staying independent at between 80 and 90%.

It is the restricted end of the market that is contracting at a pace. Several banks and insurance companies have shut down their advice arms in the run up to the implementation of the Retail Distribution Review.

Do not confuse fewer firms, with fewer advisers. There is a general trend within the financial advice sectors for the numbers of firms to shrink as it becomes more difficult for the smaller firms to remain profitable. The RDR reforms are only a part of this trend. However, it is the firms that are exiting the sector not the advisers. The advisers are banding together to form larger firms which can support the fixed costs of being a regulated business.

Finally, Page Russell believe it is the firm's best interest for the SRA to opt for Option 3, because this would influence a sizeable number of currently independent firms to restrict. This in turn would put a premium our firm's independent service. However, the firm believes Option 3 is not in the best interests of the clients and therefore we recommend you opt for Option 1.

21. IFA Centre

1. We support the proposal to update the Code with terminology which more accurately mirrors the current regulatory definitions. NB: Independence is judged at firm and recommendation level. The revised terminology must therefore distinguish your intent clearly between firms and advisers (in some cases an adviser may offer both types of advice within the same firm: para 21 below refers).

2. We support Option 1, that the current requirement for referral to Independent firms is maintained, and set out below why we consider that the rationale for any change is flawed.

3. We consider that relaxing the current requirement to refer clients to Independent advisers will lead to consumer detriment. We set out below the forms that Restricted business models might take and why we consider it will be impractical for the referring (unauthorised) professional to undertake meaningful and appropriate due diligence and meaningfully match a firm’s capabilities to the needs of the client.

4. We comment below on the Cost Benefit Analysis even though this question has been removed from later versions of the consultation, and question why the most costly option for lawyers, clients and the SRA itself seems preferable to maintaining the current clear position.

5. Whilst there is clearly a suggestion in some quarters that a prescriptive requirement to refer clients to other similarly Independent firms could be seen to be constricting the professional’s independence (Principle 3), we argue that professionals who value their own independence should place as similar value on the Independence of the financial adviser.

Response

6. At para (4) in the consultation it is stated that the FSA seeks to improve the services which client received from providers authorised by the FSA. The RDR is the acronym employed for the Retail Distribution Review, which addresses

the FSA's concerns regarding the distribution of retail investment products, not provision of products, nor provision or distribution of wholesale investments, nor products not subject to the rules as set out.

7. At para (5) in the consultation it is stated that the FSA has changed the definition of giving independent advice and that a "broader range of products" must be considered. Regarding the question of the definition of Independence, the FSA's current definition of Independent Advice (COBS 6.2.15) is

   "A firm must not hold itself out to a client as acting independently unless it intends to:

   (a) provide personal recommendations to that client on packaged products from the whole market (or the whole of a sector of the market); and

   (b) offers the client the opportunity of paying a fee for the provision of such advice."

8. The new rules provide clarification where 'a sector of the market' would lead to classification as a Restricted adviser, and where 'a sector of the market' would permit continued classification as an Independent adviser (see discussion on Relevant Markets at COBS 6.2A.4 G(2) and COBS 6.2A 11-13G and FSA guidance referring in these cases to trustee investments, ethical investments, Sharia-compliant advice and at retirement advice).

9. The definition of the packaged product, or retail investment product, is not an exhaustive list of products on which advisers must advise. It cannot be so, otherwise this would over-ride the primacy of client suitability in making investment recommendations. Rather, it sets out products, advice on which is subject to the Conduct of Business rules (COBS).

10. It is indeed the case, as set out in (11) that the definitions of packaged product (and now Retail Investment Product) employed in the SRA code and glossary are out of date. However, correction of this statement of affairs should be a straightforward matter. Please find below a table which highlights the differences between the current definition of Retail Investment Product and the definition to be implemented on 31 December (with examples of products on which advice may be rendered which are not included within this definition).

11. From this it may be observed that the differences are not as significant as some claim. Even the "catch-all" clause (g) simply covers the eventuality that new products which have yet to be designed or marketed will, if they meet this definition, be subject to the new Conduct of Business rules (without which new products could be sold by less qualified advisers able to receive commission on the sales).

What's included...		What's not included...
(***the changes to this rule are in italics***)		Structured Deposits
a)	a life policy	Cash
b)	a unit	Debt Management
c)	a stakeholder pension scheme	National Savings
d)	a personal pension scheme	Securities: individual shares
e)	an interest in an investment trust savings scheme	Derivatives: individual contracts
f)	***a security in an investment trust***	Physical assets: gold, wine, stamps
g)	***any other designated investment which offers exposure to underlying financial assets, in a packaged form which modifies that exposure when compared with a direct holding in the financial asset***	Mortgage advice Non-investment insurance Discretionary services Execution only
h)	a structured capital-at-risk product	

12. Adviser firms, Independent or not, already consider (and are reasonably expected to consider) client advice solutions which are outside these parameters. Furthermore, if the differences are not so great, then it is unclear to us how, or why, firms would cease to maintain their Independent status, other than for commercial or practical reasons (i.e. cheaper or easier).
In this context it is clear, as stated at para (5) in the consultation, that the FSA's primary concern is indeed to ensure that firms claiming to offer Independent advice are indeed "*free from any restrictions that could affect the firm's ability to recommend whatever is best for the client*".

13. In this context it is clear, as stated at para (5) in the consultation, that the FSA's primary concern is indeed to ensure that firms claiming to offer Independent advice are indeed "free from any restrictions that could affect the firm's ability to recommend whatever is best for the client".

14. It is also relevant to note that FSA guidance has made clear that it is not acceptable for Restricted firms to advise clients to effect the "least unsuitable" option from their available range. The very existence of this guidance implies a real risk of such an outcome, whether deliberate or not (e.g. a Restricted adviser with expertise in a limited range of products or funds may not be aware of other, potentially more suitable, options more appropriate to their client's requirements).

15. At para (11) it is stated that the term "Independent Intermediary" is confusing. I understand that in the guidance on the meaning of this phrase issued in 2009 it is clarified that this term would have the same meaning as the FSA's definition of Independent adviser, presumably as set out above, which does not seem to be particularly confusing. It therefore seems unlikely that providing such updated clarification would be especially burdensome.

16. It is asserted that Outcome 6.3 of the SRA Code of Conduct ("If a client is likely to need advice on investments ... you refer them only to an independent intermediary") pre-empts the solicitor's own judgement, and that this requirement somehow subverts the principle of "outcomes focused regulation". We argue that the FSA itself has made clear that outcomes focused regulation

has not always been successful. We are warned that the future regulatory landscape will be more proactive and intrusive, especially in the light of the continued failure by firms of all types to focus on consumer outcomes. Some would argue that the entire RDR exercise sounds a death knell for outcomes-focused regulation as the FSA increasingly prescribes status descriptions, disclosure documentation, adviser charging rules, commission payment regulations and so on.

17. Additionally we have concerns about the question of "the solicitor's own judgement". If requiring referral to an Independent adviser pre-empts the solicitor's judgement then this implies that a solicitor might wish to exercise his or her own judgement and refer a client to a different (presumably Restricted) adviser.

18. The term Restricted adviser will incorporate the current regulatory definitions of tied adviser and multi-tied adviser, as well as newly incorporating advisers who only consider a sector of the market, e.g. investments only.

19. The Restricted descriptor will cover a multitude of business models from "nearly independent" (i.e. the Restriction that the firm applies is of so little relevance to the vast majority of current or potential clients that it is of no practical material consequence), through "multi-tied" (recommending the products of a range of pre-selected providers in various market segments) to "tied to the products of one provider"(i.e. Prudential or St James Place where the only retail investment products available to clients are those of the principal firm).

20. We question whether lawyers have the time, inclination or expertise to undertake appropriate due diligence on Restricted firms, to accurately understand the nature of their proposition and the detail of their Restrictions, and then to determine whether the stated restrictions are of relevance to the client concerned.

21. Lawyers also need to be aware that a firm, which may previously have offered only Independent advice, may post 31.12.2012 offer a range of client propositions and may offer both Restricted AND Independent advice. Such propositions are likely to be distinguished by costs, level of service and client segmentation (typically less wealthy clients being offered the Restricted service). It is therefore important to be clear that while a firm may not hold itself out to be Independent (i.e. if it offers both propositions), there could be advisers who deliver Independent advice working within that firm.

22. Additionally, networks will be the principal FSA authorised firm for a potentially large number of Appointed Representatives. The largest networks plan to provide their member firms with a Restricted proposition, and the lawyer should take care to understand whether a network Appointed Representative is offering Independent or Restricted advice (or both), and what the nature of any Restrictions might be and their effect on clients.

23. Furthermore, if a solicitor is not authorised to provide financial advice, and if a solicitor has an over-arching obligation, as for other professionals, to act within the bounds of their own professional competence, then we are genuinely unclear as to how a solicitor is in a position to make a judgement about whether a firm, or the advice an adviser could offer, might appropriately meet the needs of the client concerned.

24. n fact, we go further and echo the ICAEW concern in this matter. Where a referral is made to a firm which is not Independent, or an adviser unable to offer Independent advice, the professional must be confident that the referral to that Restricted firm or adviser does not of itself amount to investment advice. For example, a stockbroker may offer a Restricted service, confining itself to advice on investments and not advising clients on pensions or life policies (i.e. annuities & investment-based insurance including investment bonds). In "exercising his judgement" and referring the client to that particular firm, has the solicitor in effect advised the client that pensions and life policies are not relevant to that client.

25. We support Option 1. In considering the three options for change set out in the Consultation, Option 1 refers somewhat negatively to the "prescriptive" element of the current outcome. We have no concern with "prescription" if the outcome is that the obligation remains such that solicitors are required to refer clients to an advisory firm which retains its ability to recommend "whatever is best for the client" (your para (5)).

26. Of course, it will be argued that firms other than Independent firms may, in certain circumstances, be able to offer advice, albeit from their limited range, which is at least as good as that offered by an Independent firm. This is not our contention. Our contention is that it is not obvious to us how a legal professional, not authorised to engage in financial services, is in a position to make that judgement, in advance, prior to the referral, on behalf of the client who is to be referred.

27. We reject Option 3, the objective of which is that clients are in a position to "make informed decisions about referrals ... the lawyer and the client would work out whether an Independent or Restricted adviser would be the best choice ..."When a client asks for a referral to a third party, the very fact of making such a request typically means that the client does not feel in a position to make an informed decision and is therefore placing reliance on the opinion of their professional adviser. Some solicitors may have education, training or background (or even personal interest in financial matters) sufficient that a referral can be made in an informed way, but we do not consider that this is sufficiently likely or widespread to justify the adoption of Outcome 3, with its associated risks.

28. We offer no opinion on Option 2 in the absence of suggested "redrawn indicative behaviours".

29. The SRA Code requires lawyers to "behave in a way that maintains the trust the public places in [them]" (Principle 6). If a referral to a third party is sought or given, the client is placing trust in the recommendation made. What will be the regulatory consequences if that trust subsequently turns out to be misplaced and the referral later turns out to have provided sub-optimal advice? Continuing the current (prescriptive) approach, places the entire responsibility for suitable whole of market financial advice, squarely on the shoulders of the professional financial adviser and minimises the risk that the client's trust in their legal adviser subsequently turns out to be misplaced.

Cost Benefit Analysis

30. We regret that reference to the Cost Benefit Analysis and the associated question has been removed. We would nevertheless like to make some

comments on the paper prepared by Economic Insight as we feel that some of its conclusions have influenced the direction of the final consultation document.

31. When considering the "counter-factual" (what happens now), not all referrals where clients require investment advice are currently made to Independent financial advisers. Recommendations are made to stockbrokers and other discretionary wealth managers, and are also made to multi-tied and tied firms.

32. We assume that lawyers do not make such referrals on the basis of personal, commercial or financial benefit to the lawyer or his firm as this would create a clear potential conflict of interest which is addressed elsewhere in the code.

33. We therefore conclude that referrals to firms other than Independent intermediaries must be being made because of a misunderstanding of the nature of the advice to be given to the client. If such a misunderstanding can exist now, when the rules are perfectly clear, if a little out of date in their terminology, we predict that similar misunderstandings will occur in the future. Such misunderstandings are in fact more likely to occur with the adoption of a more flexible approach which permits consideration of other alternative advice propositions.

34. If the starting point for the current requirement to refer clients to Independent advisers arises from an understanding of the client's best interests, then we argue that even if the number of Independent advisers reduces post 2012, this should not affect a decision in principle to continue a course of action which has client's best interests at its heart.

35. Our assertion is that Independent advice is best for clients as it facilitates totally unrestricted advice driven by their needs and requirements. As such, concern for client best interests should (continue to) require referral to Independent firm and Independent advisers.

36. Furthermore, the SRA should be aware that a number of firms are postponing their decisions on whether to offer Restricted advice propositions until the conclusion of this consultation exercise. If the SRA decides to permit a more flexible approach, a number of advice firms will decide to move away from Independence and launch Restricted advice propositions. The SRA's own decision will thus influence the market shape (and size) which it is attempting to predict in its analysis.

37. Finally, in supporting Option 3 the SRA is supporting the option likely to be the most expensive for lawyers and clients (para 4 CBA), as well as the most demanding (and therefore in the long run we presume most costly) for the SRA too (para 3.2.3 CBA).

38. A review of a range of research undertaken by a variety of companies and organisations demonstrates the importance that the consumer places on Independent advice :

    38.1. Financial Services Trust Index research undertaken at the University of Nottingham observes that the trust ratings for brokers who are independent are significantly higher than for brokers who are in some form tied to particular providers.

"This is a pattern that is consistent with the results observed in previous surveys and provides some indication that consumers recognise the potential benefits of working with IFAs." (Ennew: May 2009)

38.2. ABI research (Q.4 2010) indicated that although respondents had used an IFA for financial advice in the preceding year less regularly than friends, family, moneysavingexpert.com, banks or building societies, IFAs offered the advice that was trusted the most.

38.3. Research on behalf of CII undertaken in May 2011 by NMG indicated that for actual users of advice, the independent status of their adviser was nearly twice as important to them as whether their adviser was chartered or not (although research undertaken with Skandia a year later reached the opposite conclusion).

38.4. FSA consumer research (February 2012) said 61% of those who had sought advice from an IFA were very confident that the advice was appropriate to their circumstances.

38.5. Skandia research (April 2012) noted that independent financial advisers continue to be the most trusted source of third party advice for high earners.

39. Consumers repeatedly indicate, over a prolonged period, that they want Independent advice.

39.1. The scope of advice was important: the wider the scope, the more likely advisers were to be seen as independent and offer unbiased advice.

"If he (the adviser] only offered a certain amount of products from certain firms, it's biased because that's the only one he offers, there might be other firms outside his list that are better" [FSA 2008]

39.2. In 2009, further FSA research stated "Almost all [respondents] felt that the distinction between the two types of advice would be a key factor in making a decision on what advice to use and almost all rejected non-independent advice, mainly because they would like advice across the whole market.

"Why would you go to (a non-independent adviser] when you can go to somebody who will search the whole market?"

Conclusion

40. Lawyers are professional advisers of considerable standing. In common with all professional advisers, their subject matter is complex and clients place high levels of trust in the person, the firm and in the professional advice they give. It must be the case that when a referral to a third party is made that the client places a similar degree of trust in that advice, as much as any other advice rendered by the professional.

41. The regulatory landscape and terminology will change on 31 December 2012. However, the fundamental rationale behind the existing requirement to refer clients requiring investment advice to Independent intermediaries, able to offer Independent advice "*free from any restrictions that could affect the firm's ability*

to recommend whatever is best for the client", remains unchanged.

42. IFA Centre has argued since its foundation that the requirements for Independent advisers in the future are not materially different from those which apply now. In fact, some of the more onerous aspects of the new rules which are more likely to affect advice firms (including the higher qualification requirement and the requirement to implement adviser charging) apply universally to all firm types, regardless of their decisions regarding Independent or Restricted.

43. Much of the SRA Code focuses on the intellectual, practical and commercial independence of the professional. It is freedom from commercial conflicts that most frequently sets professional advisers apart from others. Whilst there is clearly a suggestion in some quarters that a prescriptive requirement to refer clients to other similarly Independent firms could be seen to be constricting the professional's independence (Principle 3), we argue that professionals who value their own independence should place as similar value on the Independence of the financial adviser. If independence is a thing to be prized in legal advice then it is a nonsense to argue that it is somehow less prized, less significant, less valuable, less worth preserving in financial advice.

B Anonymous Responses

22.

Q1: No.

Q2: Option 1.

Q3: Only option 1 provides full protection for the public to ensure that they receive fair and impartial advice rather than being sold products by a company salesman. I fail to see any situation where client would be better served by not being referred to an Independent Adviser.

Q4: I have insufficient information to comment.

Q5: The SRA's preference for option 3 appear to be based on a fundamental misunderstanding of the proposed regulations and significant weighting appears to have been placed on the misconception that 'specialist Independent Financial Advisers who currently receive referrals from solicitors may no longer be able to meet the definition of independent because they do not advise on the full range of advice areas.' This is wrong.

Lets say an IFA is specialist in pension transfers on divorce. That adviser will remain independent as long as the advice that is provided in that area takes into account all of the products from all providers available to the client. Just because they do not provide advice on say, Trust Investments, does not mean that they are not independent in the same way that a solicitor who specialises in employment law is still regarded as a solicitor and bound by the rules of the SRA even though they may not offer conveyancing services. As long as the client is aware of the specialism (probably the reason they have been referred!!) and the specialist has a mechanism to identify any other areas which may need advice and to refer the client on then the criteria for 'Independence' has been met. FSA Guidance Consultation 12/3 clarifies this.

If option 3 were to be adopted then you have the farcical situation whereby a highly specialised pension transfer specialist who can provide bespoke

independent advice form the whole market to the client would be ignored and the client sent to a tied salesperson who will sell them their employers product under the guise of 'advice' based on the fact that they would also be prepared to sell them some life insurance and a mortgage with some PPI.

Has nothing been learnt from the Sedgewicks and Equitable Life debacle. Whenever you put a salesperson in an advisers outfit and offer them greater incentive for one outcome over another then you will have a miss-selling scandal every time. The difference is that the solicitor will also be culpable and claims will fall firmly on the Solicitors Compensation Fund. If you have any doubts about this, turn on the TV an look at all of the financial ambulance chaser adverts and firms like these that have popped up recently http://www.divorcelifeline.co.uk.

I am surprised that you have even deemed this worthy of consultation as option one is the only ethical way forward. If I have a client who needs a Trust or LPA drafting I will turn to my list of Solicitors and make an appropriate referral to the one who specialises in the clients needs, safe in the knowledge that the solicitor is bound by SRA rules to act with integrity and fairness to my client. I would not send them to one of those 'sit in your house till 10 o'clock and sell you hundreds of pounds worth of Trusts and POA's prepared by someone who is not a solicitor' companies.

I do this because I want to ensure that my clients are treated with respect and are provided with an ethical, impartial and unbiased service that is not tainted by the odour of product sales. I would hope that you would reciprocate this principle.

23.
When I joined the financial services industry as a tied agent of an insurance company 30 years ago I was always very frustrated that solicitors only did business with IFA's. But it was a fact then that tied (now restricted agents) were agents of their companies, while IFA's had a legal obligation to act as agents of their clients. This law of agency is unchanged today and fundamental to the restricted vs. independent debate - yet seems to have been overlooked by just about everyone.

I have now been an IFA for 18 years we have some great solicitor contacts and regular obtain referrals from them. What I cannot understand is why the solicitor's own regulatory body would consider the ***retrograde*** step of allowing solicitors to place business with advisers who were anything other than independent and who were not agents of their clients.

There are approximately 5,000 IFA firms and over 22,000 IFAs currently authorised the numbers are unlikely to change substantially at the end of 2012 so there will be no shortage of independent advisers. I do not understand what possible consumer advantage could be gained by allowing tied/ restricted advisers access to solicitors clients?

Apart from these points, I 100% support the submission from Ian Muirhead at SIFA.

24.
In reference to the initial consolation by the SRA - I was very surprised to read that the current preference is to allow solicitors to refer to tied/restricted advisers from 31/12/2012.

I cannot comprehend how direct referrals from Lawyers to restricted financial advisers could be in your client's best interests? Indeed I anticipate future litigation from clients who have been steered by Lawyers into receiving advice from restricted advisers, whom the Lawyer may also have a vested interest, when there where were superior alternatives available on the open market.

Surely an arm's length referral to an Independent Financial Adviser provides the advantages of 'best advice' for the solicitor's clients as well as absolving the solicitor of any potential conflict of interest.

With the recession, the advent of 'Tesco law' and lobbing from St. James Place, perhaps the current ethical professional stance is no longer affordable?

25.
I would urge you to retain at all costs the prohibition against Solicitors from referring to non-independent financial advisors.

There are many reasons for this, but the most compelling is that an independent financial advisor acts in the same way as a Lawyer, namely he acts for the client and in his clients best interests. A non-independent financial advisor is acting in the interests of himself, the company he works for, or in the case of a 'multi – tie' the group of companies he represents.

We are aware of repeated efforts by St James Place particularly, to muddy the waters and to present their offerings to both clients and Solicitors as independent, when clearly they are not and they have as an organisation successfully acted in their own interest for some years. It is our concern that if a clear message is not sent out by the Solicitors Regulatory Authority, these issues will escalate.

I am able to provide on request articles that lend some weight to these views, such as the case of A J Field, Solicitor struck off for dealings with a non-independent organisation, who clearly successfully obtained referrals from a Solicitor (expressly against the current rules and this is not an isolated incident) and confirmation that only 1% of all complaints to the Financial Ombudsman Service (FOS) are in relation to independent financial advisors, which clearly means that 99% are from the other organisations that currently you prohibit Solicitors from using. Based on this information, why would the SRA want to expose Solicitors and their clients to anyone other than independent financial advisors? Could the Solicitors compensation scheme cope with the claims and possible FSA sanctions that the Banks have recently been hit with? I worked in house at a top 150 Law Firm for many years and I know from experience that Solicitors already struggle to differentiate between IFA's on their expert lists, you are risking adding to this headache for them without any apparent benefit for Solicitors or their clients.

Clearly I have a vested interest in your decision. If the Solicitors Regulatory Authority decides not to retain the prohibition against Solicitors referring to non-independent financial advisors, then it is a fact that some independent financial advisors will lose out to the non-independents, however, whilst the 1% of IFA complaints to the FOS will reduce, the overall complaint count will sky rocket - guaranteed. You are at a crucial point in the road map for the future of the relationship between Solicitors and Financial Advisors, the decision you make will either benefit your members and their clients, or it will result in them reaping the same misery as has been suffered by millions of clients of the Banks and other tied organisations who apparently happily miss-sell on a gargantuan basis, as part of their usual business process. The choice is yours and you will be judged based on the decision you make.

26.

Q1: No - there were some changes that were inevitable to bring the SRA's terminology into line with the terminology of RDR.

Q2: I prefer Option 1 as this preserves the principle of only being able to make referrals to true Independent Financial Advisers. I wish there to be equality in where referrals are made and Option 1 provides this.

Q3: If options 2 or 3 were to be pursued then the following points will need to be seriously considered:

(i) Principle 3 of the Solicitors Code of Conduct states to the solicitor "You must not allow your independence to be compromised. "This is difficult to reconcile with options 2 or 3 and does not appear to be part of the SRA's considerations.

(ii) Under option 3, when could it possibly be in the clients' best interests to be referred to non-independent sources of advice?

(iii) Solicitors would find themselves besieged with approaches by tied sales people, which they would not welcome. There is already evidence that at least one of the major tied sales organisations has well advanced plans for a national marketing campaign.

(iv) By their very nature, these tied salespeople are incentivised by the companies they work for to sell product and their advice is therefore tainted by self-interest. This naturally cannot be in the best interests of the clients they act for nor for the Solicitor firm that has made the referral.

(v) Many of these salespeople are self-employed and therefore beyond the effective control of the companies for whom they work.

(vi) If tied salespeople persuaded solicitors to refer clients to them, the reputation of the profession would suffer from the provision of tainted advice.

(vii) By contrast, most independent financial advisers such as ourselves work on a fee basis, as do Solicitors, and their business is to provide advice, not to sell products. They therefore share a professional culture, which makes them much more suitable bedfellows for Solicitors.

(viii) The experience of Equitable Life demonstrates that solicitors are easy prey for plausible salespeople.

(ix) The Financial Services Compensation Fund is currently being swamped by claims, and solicitors' involvement with product salespeople would give rise to similar claims on the Solicitors' Compensation Fund for which solicitors would bear the cost. This involvement would also be likely to increase claims against firms of solicitors for negligent advice, leading to an increase in Professional Indemnity premiums demanded by insurers.

(x) It is the most vulnerable clients, particularly elderly persons who rely on solicitors for support and guidance, who will be most at danger from inappropriate financial advice from tied salespeople.

Q4: The cost-benefit analysis produced by Economic Insight and circulated with the papers for the SRA board meeting on 4 July 2012 referred to a variant of Option 3 which has been omitted from the Consultation paper – namely that referring clients to independent financial advisers would tend to show that the required outcomes had been achieved. T his would have been preferable to the current proposed option.

Q5:

(i) The Consultation Paper states as the first reason for Option 3 being the preferred option of the SRA that "many firms which are currently described as independent…. may not be able to label their advice as independent because they will not, for example, advise on a sufficiently broad product range".

This statement is at odds with the FSA Guidance Consultation 12/3 of 27 February 2012, which specifically permits advisers who specialise to retain their independent label provided that they make the nature of their specialisation clear to their clients. It would appear that the SRA's failure to appreciate the impact of GC 12/3 has caused it to base its conclusions on a false assumption.

(ii) The SRA's decision is likely to be the deciding factor in the future shape of the retail financial services market. If the SRA abandons the principle of independence, a number of financial advisers will consider it not worthwhile maintaining their independent status.

27.

Q2: Our recommendation is that the SRA Option 3 is the most sensible and will give Solicitors more protection because of the involvement of the client in the selection criteria and also mean greater access of advice for the client. However, I believe further guidance on the Due Diligence required to be completed on a firm should be made available

Q5: There are a number of considerations the SRA need to be aware of before making an informed decision;

1. The IFA market will change fundamentally post RDR but most IFAs do not fully appreciate how significant a change RDR will bring. The impact will be delayed but over the next 24 months the number of IFAs will reduce dramatically once they fully understand the impact. This will leave a limited number of IFAs in the market place.

2. Independent Advice is not necessarily better Advice. All advisers post RDR have to meet a minimum standard of qualifications and the same number of CPD study hours.

3. Most of IFA firms we represent are choosing the Restricted route because they do not wish to expose their firms or clients to the greater Risks that Independent Advice creates. Restricted Advisers can remove high risk products from their selection criteria, Independents cant. The new definition of Retail Investment Product will increase the cost base for those firms that are Independent because they have to have the capability to research complex financial structures. It is likely to also have an impact on the cost and availability of Professional Indemnity Insurance for IFAS leaving them more vulnerable as a business.

4. The IFA sector is currently under significant financial pressure and do to the collapse of a significant number of Investment Funds (mainly derivative based and UCIS) used by IFAs, this has had 2 financial implications, firstly the removal or increase in PI premiums and secondly the pursuit of the losses by the FSCS from the advisory firms who gave the advice. This according to the FSA has left 800 firms Financially Vulnerable. The additional increase in regulatory related costs and fall in commissions has led to a constant stream of IFA firms collapsing, the latest 2 being the Honister network (a 700 strong advisory network) and Blake Independent (an 80 strong advisory firm). Many clients have lost their savings or have no one to advise them as a consequence of the issues I have raised in this paragraph.

5. From our extensive research, most referrals Solicitors make are Investment related, primarily as a result of a Trust or distribution from an estate after a clients Death, therefore the quality of the IFAs Investment Proposition is absolutely key to the quality of the advice a client will receive. The difference between good and bad firms is enormous (from our experience both as external consultants and from our findings when we complete Due Diligence on the Vender) and the FSA are equally concerned and published a number of warning letters to the industry and published detailed Guidance on how to develop a n Investment proposition.

6. A solicitor needs to consider a great deal more than whether the Adviser is Independent or Restricted if they make a referral, they need to be assured that the Advisory Firm has a robust Investment proposition and the required skills, structure and back office processes and that the firm has limited exposure to the high risk products and the firm is financially viable. If the firm offers Restricted advice, that any limitations do not affect the quality of the Investment Advice and therefore you would need to have whole of market access to OIECs as a minimum.

28.
Regarding the proposal by the SRA to consider allowing its members to deal with restricted financial advisers rather than independents, I wish to make my feelings clear in this matter.

The proposal to permit the use of restricted cannot be supported for a number of reasons

It is generally believed within the financial planning profession that those who are not able to make the grade as independents will see operating as restricted to be the softer option. They are likely to have the support and close supervision that is not necessary for the independent to operate. In turn this will have an adverse effect on the quality of financial planning advice as they are likely to be product centric rather based on broad financial planning using fee work

The bank assurers will leverage their huge client databases in much the same way as other retailers are expected to under the LSA that has given concern to the spectre of “Tesco Law”. If the SRA persist in the proposal they will create a double whammy for their members, they will be struggling in a changed market contending with “Tesco Law” and will be approached by the bank assurers and other well-known tied advisers called “partners” to allow access to their client banks.

The result will be an unregulated market where the services to clients will be managed to the lowest common denominator and the clients will suffer as a consequence.

I urge you to vote against the use of restricted advisers.

29.

Q1: I agree that the term “independent intermediary” could lead to confusion and that it conflicts with the new definition post 1st January 2012 of an Independent Financial Adviser. I do however wonder whether the SRA is using a ‘sledgehammer to crack a nut’ with its proposed changes, when it seems to me that the guidance that has been in place since July 2009 would largely continue to meet the objective that it was intended to achieve going forward.

Q2: In an ideal world I have no specific preference for any of the three options proposed by the SRA, however, realistically, the only viable option of the three options set out in the consultation is Option 3. I do however feel it should be amended.

I feel it is important to explain how I see things from my position as an IFA currently, working predominantly with solicitors. Going forward, I think it is far from certain how many existing IFAs will continue to be IFAs. The reality is that many firms who purport currently to be Independent Financial Advisers are in fact already ‘Restricted’ under the new definition and whether they choose to remain independent or formally become restricted in the future will depend largely upon how heavily the FSA polices this issue. Many IFA firms that I've spoken to have already indicated that if they are made to jump through hoops of fire in order to satisfy the true definition of independence then they will simply become restricted, because it won’t change anything that they currently do.

Another major hurdle, which is as yet unknown, is the effect the new changes will have on IFA firms’ PI insurances. If the PI insurers take the view that the new rules place a greater risk on IFA firms, the increased fees might make the option of remaining independent financially unviable. We have yet to see how PI firms will deal with this.

I do not believe that those firms who derive the majority of their business from family law related work (or indeed any other areas of the law) are in any way immune from all this. What is important for IFAs is that they act in the best interest of their clients and meet the needs and objectives of those clients. In the vast majority of cases this will mean that 95% plus of existing IFAs will be able to carry on doing precisely what they are currently doing with clients, but on a restricted basis. It should not be forgotten that restricted advisers can still offer whole of market advice in all product areas even if restricted. It will generally only be specific product types such as hedge funds, unregulated schemes and structured products where most IFAs choose to opt out.

This is where I believe the options suggested by the SRA are somewhat deficient. If the SRA wanted to maintain the status quo then it could continue to require solicitors to recommend only those advisers who continue to offer a ‘ whole of market' approach, whether this be from an independent or restricted standpoint. I believe this would involve little change from the current guidance. Whilst new guidance clearly has to be published by the SRA prior to 1st January 2012, it is difficult to do this without understanding the true fallout that

is likely to occur in the Independent Financial Adviser market throughout 2013 and beyond as the FSA enforces (or not) this issue. And I do not believe that any IFA firm is currently in a position to predict this.

My conclusion is, therefore, that the sensible way forward for the SRA and the firms it regulates, is to issue guidance in line with option three, but to recommend that advisory firms who are recommended, offer clients whole of market advice in the specific area(s) that advice is required.

Not to continue with the ideological aim of achieving whole of market advice, even in a restricted world, would be to risk solicitors referring firms that offered such a restricted proposition, that the client's best interests were put at risk. I refer here to those firms who are currently tied to one product provider, or one investment solution, but who post 1 January 2012 will be in exactly the same category of restricted advisers as those current IFAs who choose only to opt out of offering, say, hedge funds because of the potential risk these might pose to their clients financial security.

Q3: See above

Q4: I have no comments on the costs and benefits of the options as I have not been able to formulate or find a cost-benefit analysis. I cannot see how solicitors are materially affected if they continue to recommend whole of market advisers, be they restricted or independent.

Q5: In 2006 Resolution launched a scheme by which IFAs who specialise in the area of family law related work could become an accredited specialist in this specific area, in the same way that family lawyers can gain specialist accreditations in family law related work. Originally 105 IFAs were accredited and their details were made available to Resolution lawyers as IFAs who had demonstrated a certain level of competence in this area. I was one of the IFAs who became accredited in 2006 and since then I have sat on the accreditation committee at Resolution. Over the last few months we have all had to apply for reaccreditation and the SRA may be surprised to hear that currently only approximately 30 IFAs have reapplied for accreditation. In 99% of cases those individuals who have chosen not to reapply have done so because they did not meet the strict guidelines required under the current rules, and mainly the number of hours worked in this field each year.

Although this response is written in a personal capacity, I am of the view that many of those IFAs who have been successful in reapplying for accreditation may become restricted advisers in due course, especially if the FSA decides to heavily police the new rules.

It is important to me and the future of the scheme that these IFAs continue to be available to work with family lawyers, whether they remain IFAs in the medium to long term or become restricted. It must be emphasised however that all of these individuals (and this scheme is on an individual rather than a firm basis) offer a comprehensive whole of market, fee-based service to the clients who instruct them. In addition, we will often take our instructions from the lawyers themselves, providing a fee based service to them too, which does not involve regulated products unless we act for them in a personal capacity. By continuing with ‘IFAs only’ would potentially deprive these lawyers of a huge knowledge base around the country, in this very important and specific area.

Finally I would urge the SRA to be conscious of those high charging, heavily restricted advisers, who will see this as a glorious ‘sales opportunity’ to make inroads into a market that they have to this point been precluded. The comparison between these salesmen and the highly qualified and experienced, fee charging individuals I previously refer to could not be more stark.

30.

Q1: No comment.

Q2: We believe option 3 would be the most approriate option for the SRA to adopt. The reason for this is that it focuses on the right ouctome for clients. When the RDR is implemented we believe that many firms, including ourselves, would have to describe our services as 'restricted'. Being 'restricted' does not necessarily mean that advice is not offered on a fair and balanced analysis of the market in which it operates but due to the fact that it is limited by the number of retail investment products that is offered. By limiting clients of solicitors to advisers who only provide 'independent' advice will result in less choice for the consumer and not necessarily the right outcome for the client. We believe that firms that will be classified as 'independent' would be more of a general practitioner rather than a specialist. Clients may have a particular financial need which requires a firm of a specialist nature such as where the client requires exposure to direct securities, in this instance a specialist wealth manager may serve the clients needs better than an 'independent' financial adviser.

Q3: No comment.

Q4: No comment.

Q5: No comment.

31.

I do not believe that Solicitors should be able to refer to a Restricted Adviser because this will reduce choice for their clients and possibly lead to bad outcomes for their clients.

We have seen historic breaches of the current rule - referrals to Equitable Life and others - that have led to poor outcomes for Clients.

By allowing Solicitors to choose the 'Best' Restricted firm, Solicitors are being asked to make a form of Financial recommendation; and we do not believe this is their role.

The 'changes' and 'confusion' that the SRA states exist is marginal at best. Most people understand the difference between Independent and Restricted, and the changes to the breadth of products required is very small.

Despite much assertion to the contrary, it is now clear that around 90% of IFAs will remain Independent post-RDR, and most (80%+) current advisers will remain authorised to give Advice. It could be higher. So there will be no shortage of Independent Advice available.

Taken together, we can see no regulatory or administrative reasons why such a weakening of consumer protection should be allowed or encouraged.

This is starting to look like a commercial opportunity dressed up as a Regulatory requirement. If commercial needs are in fact driving this, then the SRA should say so. Please do what is in the very best interests of clients; that cannot be allowing solicitors to recommend Restricted Advice, by definition.

32.
I strongly believe Option 1 is the best way to ensure the best outcomes for consumers.

Option 3 requires lawyers to determine on behalf of a client which type of firm to choose from, which surely is a form of financial recommendation, which is not what lawyers are trained or authorized to do.

Whilst not every independent adviser is 'better' than every restricted adviser, the outcome for a client when working with a professional independent advisory firm is, I strongly believe, likely to be better. The decision making process and depth and breadth of a professional, independent adviser is more than likely superior.

The transparency of costs with an independent adviser, who is not remunerated/ required to sell a product but to advise, in a fiduciary sense, the client whilst being able to draw from the widest range of options (including doing nothing) is far superior to a restricted adviser.

Restricted adviser where it is clear that is the best option for the client, whether that be because of complexity of need or cost, etc. We all know the opposite is not true now, even though a tied adviser is required to if he/she does not have a 'suitable product' so it is even less likely this will happen if the SRA rules are changed.

Either way, this is a decision best made by advisers and not lawyers.

If the pushing of a relaxation in SRA guidance is in any way commercially motivated this is highly unsatisfactory in you playing your part to ensure the best outcomes for consumers.

33.
I believe the SRA should not change its approach to solicitors being only able to refer to independent financial advisers. I have made the choice for my firm to remain independent because I believe that client's interests are best served in this way.

My reason for making this observation is simple. A restricted adviser does not have the same choice as an independent adviser. By referring a client to a restricted adviser, the solicitor will be making an investment decision on behalf of their client (for example by referring a client to a restricted adviser who deals with one pension provider instead of a different restricted adviser who deals with a different pensions provider. It is not the role of solicitors to be making investment decisions, and they should therefore only be allowed to refer to independent financial advisers.

34.
Q1: We believe it is essential that the terminology and language used by the SRA is consistent with that used by the FSA, otherwise confusion will occur in the understanding of both the Solicitor and their client. As the FSA language becomes part of every day use in this market, any differences in the approach adopted by the Solicitors' profession will simply increase this confusion.

The labels themselves, 'independent' and 'restricted' say nothing about the quality of the adviser or the level of resources and experience available to them, or indeed the level of capital supporting their business. Hence, they are unhelpful as a method of selecting an adviser.

Similarly, terms like 'packaged product' mean little, if anything, to a client. The new regime and the new language make it clear that all advisers meet the same standard of qualification. Some advisers will choose to specialise, others will be independent and others still will choose to restrict their advice to a market sector or subset. In all cases though, the adviser is obliged to act in the best interest of their client and comply with the relevant FSA Conduct of Business rules ensuring that the product recommended is suitable for the client etc.

Q2: We prefer Option 3 as we strongly believe that Solicitors, acting as professionals, know their clients and understand their requirements and are best placed to judge what constitutes the most appropriate approach for their clients, rather than being constrained to a particular type of financial adviser which may or may not be in the best interest of the client.

A Solicitor will only refer their client to another professional adviser if they believe they will be able to provide a level of service to their client that reflects the Solicitor's own high standard of professionalism, skill and objectivity. The confidence expressed by the Solicitor making a referral will reflect both the level of experience and knowledge of the adviser, as well as their reputation and standing in the community and the reputation and standing of their firm.

We are convinced that giving the Solicitor this responsibility is consistent with their professional duty of care to ensure their client's best interests come first.

Q3: We believe the proposed changes - if Option 3 is adopted - will greatly improve the protection afforded to clients' interests. It provides clear guidance as to the Solicitor's role and responsibility and removes the current restrictions which, in any event, do not always work in the interest of the client.

The current rules in no way guarantee good or appropriate advice. Many independent advisers belong to a business model which is poorly capitalised and simply does not have the strength in depth - in terms of people and technical knowledge - for their business to be able to provide the quality and longevity of advice to clients. This means that there is often little or no succession planning, with the client being left without an adviser when the individual looking after them comes to retire or moves firms. Many also lack the specialist knowledge and/or resources necessary to enable them to carry out appropriate due diligence on products or investments which inevitably puts the solicitors' clients' interests at risk. Problems with products such as Arch Cru, MF Global and Life Settlements are avoidable and should have been avoided by the firms who advised on them. At X we did avoid them. The independent financial advisers involved with these firms and products simply were either not suitably qualified for the task in hand or lacked the necessary resources and expertise.

In recent weeks we have also seen IFA businesses, such as Honister going into liquidation. As a result, clients don't know whether their IFA will be able to continue to advise them or whether they will have to look elsewhere for support and advice.

Overall, we strongly believe that Option 3 provides a far more tailored solution for the client's interests and greatly increases the likelihood that the best interests of the client will be served. We welcome the requirement for clear advice to be provided to the client on exactly what they can expect from the financial adviser rather than simply referring them to an adviser with a certain label.

Q4: We have no comments on this question.

Q5: Our additional comments are set out in our covering letter and repeated below. In today's complex markets, many advice firms, no matter how committed to the best interests of their clients, simply do not have the financial resources to enable them to carry out the level of due diligence required by their clients. In addition, many adviser firms in the UK lack the depth of resources needed to ensure clients will continue to be looked after as individuals retire and/or move on, i.e. there is rarely any form of succession planning.

Like all advice firms, X has a regulatory obligation to act in the best interests of our clients and again, like all advice firms, our advisers are remunerated by an adviser charging fee agreed by the client. Importantly, and uniquely, the advice of all our advisers is guaranteed by X, a FTSE 250 company capitalised at £1.7bn.

We are a restricted adviser in terms of the post RDR regulatory structure. However, we search the whole market to enable clients to benefit from the services of independent investment managers chosen from both the UK and abroad, choosing managers from around the globe, through the St. James's Place Approach to Investment Management.

We also provide whole of market advice across Life and General Insurance, mortgages, SIPPs/SSASs, VCT, EISs, annuities, employee benefits etc - using independent providers from the whole of the UK market.

We have the financial strength and significant in-house technical resources, including actuaries, accountants, solicitors and trust specialists, enabling us to carry out robust and thorough due diligence, before appointing a firm to one of our panels. We are quite prepared to say 'No' and reject firms or products: we have never dealt with Life Settlement products, Arch Cru, MF Global or any of the other recent problem areas that have caused clients of IFAs such grief. We do not use complex structured products, nor do we use with profits plans.

We guarantee the advice provided by our advisers, the X when dealing with clients.

We welcome the consultation and fully support the proposed outcomes-based approach and the intention of the preferred approach (Option 3) listed in the consultation paper.

The proposed changes would require the solicitor to place the client at the heart of the decision-making process by clearly explaining the type of adviser that they are referring their client to, their own links with the adviser and any other pertinent information.

We support this approach. It combines full transparency with a clear focus on the best interests of the client, rather than a more narrow focus on the type of advisor which, incidentally, is no guarantee of good advice as we have seen with the recent problems of the IFA community.

We believe that Option 3 provides a solution that is more tailored to the client's interests and greatly increases the likelihood that the best interests of the client will be served. We welcome the requirement for clear advice to be provided to the client which sets out exactly what they can expect from the financial adviser rather than simply referring them to an adviser with a certain label. We would be very happy to work with SRA and industry colleagues in shaping this.

35.

There have been abuses before, and allowing Solicitors to use Restricted Advisers would just considerably make things worse for the public.

It is bad enough that the oversimplification of "all fees good, all commission bad" has been allowed to happen, and de-polarisation, without yet more reasons for people to be misled.

Please choose option one of your three options: Solicitors should only deal with Independent Financial Advisers.

In the old world of life and pension companies supporting IFA's whom acted as agents of clients as their distribution arm, and if unit trusts were bought directly from companies they just absorbed the commission, people knew they were better off with an IFA wherein the rich subsidised the poor. Now on the whole we are to only serve "high net worth asset individuals" and the "ultra high net worth asset individuals", with VATable fees, those just below the mythical "middle England" do not readily have the disposable income to pay for fees. Yes, protection products are "sold not bought", but no, without the full chapter and verse on the various products and reasons why within the context of overall financial planning why subject the people down the income chain to possible abuse?

You may rightly accuse me of being cynical, but I have seen many changes since I started in Financial services in 1983, and many of them have not been for the better in terms of long term thinking for X prosperity.

36.

I favour Option 1. The benefits of independent advice, particularly when it comes to investment, are clear. For example, over the past five year period the average UK All Companies OEIC/Unit Trust has delivered a rather feeble return of 6.4%. The best fund has returned 74.9% and three of the funds that we use in our client portfolios have returned 68.3%, 52% and 33%. The worst fund has lost 38.7%. Amongst the worst performers are funds from household names like Aviva, Henderson and Standard Life. Of course, simply referring a client to an independent adviser is not enough. The solicitor, as part of his/her duty of care to their client, needs to ensure that the adviser is appropriately qualified too.

Despite the current rules, there have been many cases where solicitors have referred clients to St James' Place (SJP). You should know that SJP does not have any passive investment funds and to the best of my knowledge (I had a meeting with them a couple of months ago) has no plans to introduce any. As actively managed funds are more expensive than passives, a solicitor referring a client to SJP will be restricting their choice and increasing the costs to their clients, whereas in my firm,

for example, we offer a choice of passive funds, active funds and a mixture of both. I doubt the ability of the average solicitor to be able to explain the pros and cons of each to a client so that they can then make an informed choice, ruling out Option 3.

One of the benefits of the Retail Distribution Review is that in order to be described as independent in future, advisers will have to consider all of the investment possibilities when advising a client. Surely that is what any solicitor should want for their client?

37.

1. We support the proposal to update the Code with terminology which more accurately mirrors the current regulatory definitions. NB: Independence is judged at firm and recommendation level. The revised terminology must therefore distinguish your intent clearly between firms and advisers (in some cases an adviser may offer both types of advice within the same firm: para 21 below refers).

2. We support Option 1, that the current requirement for referral to Independent firms is maintained, and set out below why we consider that the rationale for any change is flawed.

3. We consider that relaxing the current requirement to refer clients to Independent advisers will lead to consumer detriment. We set out below the forms that Restricted business models might take and why we consider it will be impractical for the referring (unauthorised) professional to undertake meaningful and appropriate due diligence and meaningfully match a firm's capabilities to the needs of the client.

4. We comment below on the Cost Benefit Analysis even though this question has been removed from later versions of the consultation, and question why the most costly option for lawyers, clients and the SRA itself seems preferable to maintaining the current clear position.

5. Whilst there is clearly a suggestion in some quarters that a prescriptive requirement to refer clients to other similarly Independent firms could be seen to be constricting the professional's independence (Principle 3), we argue that professionals who value their own independence should place as similar value on the Independence of the financial adviser.

Response

6. At para (4) in the consultation it is stated that the FSA seeks to improve the services which client received from providers authorised by the FSA. The RDR is the acronym employed for the Retail Distribution Review, which addresses the FSA's concerns regarding the distribution of retail investment products, not provision of products, nor provision or distribution of wholesale investments, nor products not subject to the rules as set out.

7. At para (5) in the consultation it is stated that the FSA has changed the definition of giving independent advice and that a "broader range of products" must be considered. Regarding the question of the definition of Independence, the FSA's current definition of Independent Advice (COBS 6.2.15) is "A firm must not hold itself out to a client as acting independently unless it intends to:

    (a) provide personal recommendations to that client on packaged products from the whole market (or the whole of a sector of the market); and

(b) offers the client the opportunity of paying a fee for the provision of such advice."

8. The new rules provide clarification where 'a sector of the market' would lead to classification as a Restricted adviser, and where 'a sector of the market' would permit continued classification as an Independent adviser (see discussion on Relevant Markets at COBS 6.2A.4 G(2) and COBS 6.2A 11-13G and FSA guidance referring in these cases to trustee investments, ethical investments, Sharia-compliant advice and at retirement advice).

9. The definition of the packaged product, or retail investment product, is not an exhaustive list of products on which advisers must advise. It cannot be so, otherwise this would over-ride the primacy of client suitability in making investment recommendations. Rather, it sets out products, advice on which is subject to the Conduct of Business rules (COBS).

10. It is indeed the case, as set out in (11) that the definitions of packaged product (and now Retail Investment Product) employed in the SRA code and Glossary are out of date. However, correction of this statement of affairs should be a straightforward matter.

11. It may be observed that the differences are not as significant as some claim. Even the "catch-all" clause (g) simply covers the eventuality that new products which have yet to be designed or marketed will, if they meet this definition, be subject to the new Conduct of Business rules (without which new products could be sold by less qualified advisers able to receive commission on the sales).

12. Adviser firms, Independent or not, already consider (and are reasonably expected to consider) client advice solutions which are outside these parameters. Furthermore, if the differences are not so great, then it is unclear to us how, or why, firms would cease to maintain their Independent status, other than for commercial or practical reasons (i.e. cheaper or easier).

13. In this context it is clear, as stated at para (5) in the consultation, that the FSA's primary concern is indeed to ensure that firms claiming to offer Independent advice are indeed "free from any restrictions that could affect the firm's ability to recommend whatever is best for the client".

14. It is also relevant to note that FSA guidance has made clear that it is not acceptable for Restricted firms to advise clients to effect the "least unsuitable" option from their available range. The very existence of this guidance implies a real risk of such an outcome, whether deliberate or not (e.g. a Restricted adviser with expertise in a limited range of products or funds may not be aware of other, potentially more suitable, options more appropriate to their client's requirements).

15. At para (11) it is stated that the term "Independent Intermediary" is confusing. I understand that in the guidance on the meaning of this phrase issued in 2009 it is clarified that this term would have the same meaning as the FSA's definition of Independent adviser, presumably as set out above, which does not seem to be particularly confusing. It therefore seems unlikely that providing such updated clarification would be especially burdensome.

16. It is asserted that Outcome 6.3 of the SRA Code of Conduct ("If a client is likely to need advice on investments … you refer them only to an independent intermediary") pre-empts the solicitor's own judgement, and that this requirement somehow subverts the principle of "outcomes focused regulation". We argue that the FSA itself has made clear that outcomes focused regulation has not always been successful. We are warned that the future regulatory landscape will be more proactive and intrusive, especially in the light of the continued failure by firms of all types to focus on consumer outcomes. Some would argue that the entire RDR exercise sounds a death knell for outcomes-focused regulation as the FSA increasingly prescribes status descriptions, disclosure documentation, adviser charging rules, commission payment regulations and so on.

17. Additionally we have concerns about the question of "the solicitor's own judgement". If requiring referral to an Independent adviser pre-empts the solicitor's judgement then this implies that a solicitor might wish to exercise his or her own judgement and refer a client to a different (presumably Restricted) adviser.

18. The term Restricted adviser will incorporate the current regulatory definitions of tied adviser and multi-tied adviser, as well as newly incorporating advisers who only consider a sector of the market, e.g. investments only.

19. The Restricted descriptor will cover a multitude of business models from "nearly independent" (i.e. the Restriction that the firm applies is of so little relevance to the vast majority of current or potential clients that it is of no practical material consequence), through "multi-tied" (recommending the products of a range of preselected providers in various market segments) to "tied to the products of one provider"(i.e. Prudential or St James Place where the only retail investment products available to clients are those of the principal firm).

20. We question whether lawyers have the time, inclination or expertise to undertake appropriate due diligence on Restricted firms, to accurately understand the nature of their proposition and the detail of their Restrictions, and then to determine whether the stated restrictions are of relevance to the client concerned.

21. Lawyers also need to be aware that a firm, which may previously have offered only Independent advice, may post 31.12.2012 offer a range of client propositions and may offer both Restricted and Independent advice. Such propositions are likely to be distinguished by costs, level of service and client segmentation (typically less wealthy clients being offered the Restricted service). It is therefore important to be clear that while a firm may not hold itself out to be Independent (i.e. if it offers both propositions), there could be advisers who deliver Independent advice working within that firm.

22. Additionally, networks will be the principal FSA authorised firm for a potentially large number of Appointed Representatives. The largest networks plan to provide their member firms with a Restricted proposition, and the lawyer should take care to understand whether a network Appointed Representative is offering Independent or Restricted advice (or both), and what the nature of any Restrictions might be and their effect on clients.

23. Furthermore, if a solicitor is not authorised to provide financial advice, and if a solicitor has an over-arching obligation, as for other professionals, to act within the bounds of their own professional competence, then we are genuinely unclear as to how a solicitor is in a position to make a judgement about whether a firm, or the advice an adviser could offer, might appropriately meet the needs of the client concerned.

24. In fact, we go further and echo the ICAEW concern in this matter. Where a referral is made to a firm which is not Independent, or an adviser unable to offer Independent advice, the professional must be confident that the referral to that Restricted firm or adviser does not of itself amount to investment advice. For example, a stockbroker may offer a Restricted service, confining itself to advice on investments and not advising clients on pensions or life policies (i.e. annuities & investment-based insurance including investment bonds). In "exercising his judgement" and referring the client to that particular firm, has the solicitor in effect advised the client that pensions and life policies are not relevant to that client.

25. We support Option 1. In considering the three options for change set out in the Consultation, Option 1 refers somewhat negatively to the "prescriptive" element of the current outcome. We have no concern with "prescription" if the outcome is that the obligation remains such that solicitors are required to refer clients to an advisory firm which retains its ability to recommend "whatever is best for the client" (your para (5)).

26. Of course, it will be argued that firms other than Independent firms may, in certain circumstances, be able to offer advice, albeit from their limited range, which is at least as good as that offered by an Independent firm. This is not our contention. Our contention is that it is not obvious to us how a legal professional, not authorised to engage in financial services, is in a position to make that judgement, in advance, prior to the referral, on behalf of the client who is to be referred.

27. We reject Option 3, the objective of which is that clients are in a position to "make informed decisions about referrals … the lawyer and the client would work out whether an Independent or Restricted adviser would be the best choice …". When a client asks for a referral to a third party, the very fact of making such a request typically means that the client does not feel in a position to make an informed decision and is therefore placing reliance on the opinion of their professional adviser. Some solicitors may have education, training or background (or even personal interest in financial matters) sufficient that a referral can be made in an informed way, but we do not consider that this is sufficiently likely or widespread to justify the adoption of Outcome 3, with its associated risks.

28. We offer no opinion on Option 2 in the absence of suggested "redrawn indicative behaviours".

29. The SRA Code requires lawyers to "behave in a way that maintains the trust the public places in [them]" (Principle 6). If a referral to a third party is sought or given, the client is placing trust in the recommendation made. What will be the regulatory consequences if that trust subsequently turns out to be misplaced and the referral later turns out to have provided sub-optimal advice? Continuing the current (prescriptive) approach, places the entire responsibility for suitable whole of market financial advice, squarely on the shoulders of the professional

financial adviser and minimises the risk that the client's trust in their legal adviser subsequently turns out to be misplaced.

Cost Benefit Analysis

30. We regret that reference to the Cost Benefit Analysis and the associated question has been removed. We would nevertheless like to make some comments on the paper prepared by Economic Insight as we feel that some of its conclusions have influenced the direction of the final consultation document.

31. When considering the "counter-factual" (what happens now), not all referrals where clients require investment advice are currently made to Independent financial advisers. Recommendations are made to stockbrokers and other discretionary wealth managers, and are also made to multi-tied and tied firms.

32. We assume that lawyers do not make such referrals on the basis of personal, commercial or financial benefit to the lawyer or his firm as this would create a clear potential conflict of interest which is addressed elsewhere in the code.

33. We therefore conclude that referrals to firms other than Independent intermediaries must be being made because of a misunderstanding of the nature of the advice to be given to the client. If such a misunderstanding can exist now, when the rules are perfectly clear, if a little out of date in their terminology, we predict that similar misunderstandings will occur in the future. Such misunderstandings are in fact more likely to occur with the adoption of a more flexible approach which permits consideration of other alternative advice propositions.

34. If the starting point for the current requirement to refer clients to Independent advisers arises from an understanding of the client's best interests, then we argue that even if the number of Independent advisers reduces post 2012, this should not affect a decision in principle to continue a course of action which has client's best interests at its heart.

35. Our assertion is that Independent advice is best for clients as it facilitates totally unrestricted advice driven by their needs and requirements. As such, concern for client best interests should (continue to) require referral to Independent firm and Independent advisers.

36. Furthermore, the SRA should be aware that a number of firms are postponing their decisions on whether to offer Restricted advice propositions until the conclusion of this consultation exercise. If the SRA decides to permit a more flexible approach, a number of advice firms will decide to move away from Independence and launch Restricted advice propositions. The SRA's own decision will thus influence the market shape (and size) which it is attempting to predict in its analysis.

37. Finally, in supporting Option 3 the SRA is supporting the option likely to be the most expensive for lawyers and clients (para 4 CBA), as well as the most demanding (and therefore in the long run we presume most costly) for the SRA too (para 3.2.3 CBA).

38. A review of a range of research undertaken by a variety of companies and organisations demonstrates the importance that the consumer places on Independent advice:

38.1. Financial Services Trust Index research undertaken at the University of Nottingham observes that the trust ratings for brokers who are independent are significantly higher than for brokers who are in some form tied to particular providers.

"This is a pattern that is consistent with the results observed in previous surveys and provides some indication that consumers recognise the potential benefits of working with IFAs." (Ennew : May 2009).

38.2. ABI research (Q.4 2010) indicated that although respondents had used an IFA for financial advice in the preceding year less regularly than friends, family, moneysavingexpert.com, banks or building societies, IFAs offered the advice that was trusted the most.

38.3. Research on behalf of CII undertaken in May 2011 by NMG indicated that for actual users of advice, the independent status of their adviser was nearly twice as important to them as whether their adviser was chartered or not (although research undertaken with Skandia a year later reached the opposite conclusion).

38.4. FSA consumer research (February 2012) said 61% of those who had sought advice from an IFA were very confident that the advice was appropriate to their circumstances.

38.5. Skandia research (April 2012) noted that independent financial advisers continue to be the most trusted source of third party advice for high earners.

39. Consumers repeatedly indicate, over a prolonged period, that they want Independent advice.

39.1. The scope of advice was important: the wider the scope, the more likely advisers were to be seen as independent and offer unbiased advice. "If he [the adviser] only offered a certain amount of products from certain firms, it's biased because that's the only one he offers, there might be other firms outside his list that are better" [FSA 2008].

39.2. In 2009, further FSA research stated "Almost all [respondents] felt that the distinction between the two types of advice would be a key factor in making a decision on what advice to use and almost all rejected on independent advice, mainly because they would like advice across the whole market.

"Why would you go to [a non-independent adviser] when you can go to somebody who will search the whole market?"

Conclusion

40. Lawyers are professional advisers of considerable standing. In common with all professional advisers, their subject matter is complex and clients place high levels of trust in the person, the firm and in the professional advice they give. It must be the case that when a referral to a third party is made that the client places a similar degree of trust in that advice, as much as any other advice rendered by the professional.

41. The regulatory landscape and terminology will change on 31 December 2012. However, the fundamental rationale behind the existing requirement to refer

clients requiring investment advice to Independent intermediaries, able to offer Independent advice "free from any restrictions that could affect the firm's ability to recommend whatever is best for the client", remains unchanged.

42. X has argued since its foundation that the requirements for Independent advisers in the future are not materially different from those which apply now. In fact, some of the more onerous aspects of the new rules which are more likely to affect advice firms (including the higher qualification requirement and the requirement to implement adviser charging) apply universally to all firm types, regardless of their decisions regarding Independent or Restricted.

43. Much of the SRA Code focuses on the intellectual, practical and commercial independence of the professional. It is freedom from commercial conflicts that most frequently sets professional advisers apart from others. Whilst there is clearly a suggestion in some quarters that a prescriptive requirement to refer clients to other similarly Independent firms could be seen to be constricting the professional's independence (Principle 3), we argue that professionals who value their own independence should place as similar value on the Independence of the financial adviser. If independence is a thing to be prized in legal advice then it is nonsense to argue that it is somehow less prized, less significant, less valuable, less worth preserving in financial advice.

Thank you for the opportunity to comment on this paper. Our response is not confidential. Please do not hesitate to contact me if you have any questions about the points I raise, or wish to discuss matters further.

38.

Q1: The proposals seem appropriate and are likely to minimise confusion.

Q2: Given SRA's explicit commitment to outcomes-focused regulation, we agree that Option 3 is the proposed approach most likely to engender fully informed decision-making.

In our view, retaining an obligation to refer business only to independent advisers would restrict quite severely the range of firms to which referrals could be made following the implementation of RDR. The adoption of a more neutral stance in the SRA Code would lead lawyers and their clients to give proper weight to considerations that are likely to have a greater bearing on the quality of the service the client is to receive from the investment adviser. This would include carrying out an evaluation of the adviser's due diligence processes on products and research and understanding of investment themes and managers. It also enables lawyers and their clients to consider the range of products that appear to relate to the client's needs. Not all products that are required to be considered in order for an adviser to be called independent are likely to be relevant to all clients.

Of course, if a firm cannot provide access to the types of product that they believe would be more suitable than any in their universe of recommended products, they should let the client know, all firms including X are obliged to do under the FSA's rules.

Q3: We have no comment

Q4: We have no comment

Q5: We have no comment

39.
We advocate that the rule regarding referral to IFAs is maintained in its present form. We are aware of the business strategies being developed by 'networks' and 'national' firms of advisers for 'restricted' advice propositions. Tellingly, none of these refer to the benefit to the client but all major on the reduced cost and compliance burden for the advisory firm and the opportunity for larger profits.

While the FSA's current stance is that both restricted and independent mean the same in terms of duty to the client, one promoter of a restricted proposition told us: 'It will not take us long to work out ways round the FSA rules'. Their intention is to create profit for the adviser above and beyond the disclosed advisory fees. Examples could include a share in an investment management business or shares in profit from non-regulated business.

You will be aware that the Press will be taking a close interest in the application of RDR. As a former financial journalist, I can tell you what I would consider an interesting story: the actual costs of advice and the recommended products and any 'secret profits' generated by restricted advisers to whom solicitors had referred clients. If referrals to restricted advisers are permitted, you can expect to see this type of story in the national Press.

II Responses - Law Firms

A Attributed Responses

40. Wrigley Solicitors LLP

Q1: Within the Private Client Department of Wrigleys Solicitors LLP we act on behalf of many clients who have received funds as a consequence of a catastrophic personal injury. We also act for other clients who are unable to manage their property and financial affairs due to illness or disability.In many cases we are appointed as professional Deputy, Attorney or Trustee for our clients.

Our clients often require investment advice, to ensure that their funds grow to provide for their needs in the future. We work closely with a range of investments firms and advisers, referring individual clients for investment advice and then working alongside the appointed investment adviser, often over many years, to ensure funds are invested and managed in the best interests of the individual client.

We share the concern expressed in the consultation document that many firms that are currently described as independent financial advisers, or independent intermediaries, may not be able to label their advice as independent following the implementation of the FSA's Retail Distribution Review. In particular, we share the concern that some of the firms that we use at present may not advise on a sufficiently broad product range to be able to describe their services as "independent".

We are mindful that our clients often require investments that are relatively stable and cautious, as it is usually important to ensure the preservation the capital value of their portfolio as much as possible. For many clients it would not be appropriate to consider some of the more risky or complex investment

options, albeit that of course each client's requirements need to be assessed on the basis of their own individual circumstances.

We are concerned that in the future we may feel that the most appropriate advisor for a particular client may be categorised as "restricted", even though they are currently classified as "independent".

We are also mindful that our clients are often very reliant upon us, as their legal adviser and representative, to recommend a suitable investment adviser. Our clients are often unable to, or are ill equipped to, obtain their own investment advice without our support and recommendation. Some of our clients would be vulnerable to potential exploitation if they were left to their own devices. Other clients would simply be unable to make any decision at all.

Q2: For the reasons given above, we would be concerned that adopting Option 1, retaining a requirement that referral must be made to an "independent" firm or adviser albeit as defined under the Retail Distribution Review, would disadvantage our clients by limiting the range of investment advisers that they could use.

Therefore, we feel that the adoption of Option 2 would be most appropriate, by adding a new indicative behaviour 6.3, which could describe referrals to an "independent" adviser; the phrase "independent" being defined in the general sense of the word, rather than the definition of an independent adviser as defined by the Retail Distribution Review.

We would submit that the general principles in outcome 6.1 and 6.2, coupled with the overarching SRA principles, allow solicitors to use their professional judgment with regard to referring clients for investment advice (albeit that we would also submit that outcome 6.2 should be subject to amendment, as it is impossible for some of our clients to be "fully informed" of any financial or other interests, due to their disabilities).

We acknowledge that Option 3, as proposed in the consultation, would appear to be an ideal preference for clients who are able to make their own informed decisions about referrals for investment advice, and we would agree with the reasons for this set out in paragraph 13 of the consultation document. However, Option 3 cannot be applied to clients who cannot themselves make informed decisions. Therefore, the adoption of Option 3 in its proposed form would simply give rise to outcomes which could not be achieved for many of our clients.

In considering this matter, it may assist if we set out circumstances in which a solicitor may act on behalf of a client who is unable to make their own informed decisions with regard to the use of investment advisers.

1. Adults or infants who are mentally incapable of managing their own property and affairs.

   Where a person has already lost the mental capacity to make decisions for themselves, the Court of Protection may appoint a Deputy for Property and Affairs.

   A Court of Protection Deputyship order will usually give the Deputy general authority to deal with all elements of a person's finances,

including decisions with regard to investments and the appointment of a suitable investment adviser. The Deputy will then be able to make "informed decisions" on behalf of the incapacitated person with regard to referrals for investment advice.

Other clients may have planed in advance to appoint an Attorney to deal with their property and affairs. This may be under a Lasting Power of Attorney, Enduring Power of Attorney or a General Power of Attorney. Each different form of power has its own rules with regard to its use once a client has lost the capacity to make decisions for themselves, with each having different requirements with regard to registration with the Office of the Public Guardian.

In recent years, many solicitors firms, including Wrigleys Solicitors LLP, have chosen to set up a trust corporation to be appointed as Deputy or Attorney, instead of appointing an individual solicitor on a personal basis. This has many advantages for clients, ensuring continuity and ease of administration if individual members of staff are unable to continue to act. This can be particularly beneficial when a client requires assistance with regard to their financial affairs over many years.

In cases where a client has a family member or friend is appointed as Deputy or Attorney, then the Deputy/ Attorney would be able to make decisions on behalf of the incapable person, and would be able to make an "informed decision" with regard to referrals for investment advice.

However, the matter is not straightforward in the following circumstances:-

a. where the solicitor is personally appointed as Deputy/ Attorney;
b. where the solicitor's firm's trust corporation is appointed as Deputy/ Attorney; or
c. where the individual solicitor, or their firm's trust corporation, is jointly appointed as Deputy/ Attorney with another person (such as a family member or friend).

It may, however, sometimes be possible to engage an individual client to make an "informed decision". The Mental Capacity Act and accompanying Code of Practice provides that even when a Deputy or Attorney is appointed, the client should be encouraged and enabled to participate in decision making as much as possible. It is possible that the client may have a Deputy or Attorney appointed but may, nonetheless, be able to make some or all decisions with regard to investment advice for themselves, albeit often with support. However, as investment decisions are often complicated, at the more complex end of the scale, we would suggest that many clients would not be able to make their own decisions with regard to such matters, despite any support or encouragement from others.

Nonetheless, an individual client may not be able to engage in decision making in any way, including, for example, where they are:

a. physically unable to participate;
b. unwilling to participate;
c. inexperienced or ill-equipped to participate; or

d. absent.

Where an individual client is unable to make a decision for themselves, the Mental Capacity Act provides a framework by which a Deputy or Attorney may make a decision on their behalf. Any decision made for the individual must be in their "best interests". This framework is currently used whenever a Deputy or Attorney decides to refer a client to an investment adviser, and we would submit that it provides a suitable structure to protect a client and their interests wherever a suitable solicitor, or their firm's trust corporation, is appointed as Deputy or Attorney.

To summarise, the key points within the Mental Capacity Act provide that in making a decision on behalf of a mentally incapable person, a Deputy/ Attorney must:

a. consider all the relevant circumstances;
b. permit and encourage the client to participate as fully as possible;
c. ascertain the client's past and present wishes and feelings;
d. ascertain the client's beliefs and values that would be likely to influence his decision if he had capacity;
e. ascertain any other factors that the client would be likely to consider they were able to do so;
f. take into account the views of anyone engaged in caring for the client or interested in their welfare.

In such circumstances, it is then a matter for the solicitor, or trust corporation, to satisfy themselves that their decisions as Deputy/ Attorney are appropriate and in the best interests of their client. In many cases decisions relating to investments will follow a detailed consultation with the client's family members, including scrutiny of the appropriateness of the proposed investment adviser.

In addition, a Deputy will be supervised by the Office of the Public Guardian, to whom an annual return must be submitted, including an account of all key decisions made on behalf of the client. A Deputy is ultimately answerable to the Court of Protection, and may be liable in civil and criminal law if they have not adhered to the principles and the Mental Capacity Act and Codes of Practice.

2. Clients whose funds are held to be administered by a trust. For a variety of reasons, a client may have their funds held within a trust in a range of different circumstances.

Again, in recent years, many solicitors firms, including Wrigleys Solicitors LLP, have chosen to set up a trust corporation to be appointed as a Trustee, instead of appointing an individual solicitor on a personal basis. A trust corporation can be appointed alone as sole trustee, but an individual solicitor cannot act as a sole trustee on their own.

Again, referrals for investment advice are relatively straightforward where the appointed trustees are family members, friends or other individuals, as they can make an "informed decision" on behalf of the trust.

However, the matter is not straightforward in the following circumstances:

a. where two or more solicitors are personally appointed as trustees, without another person being appointed;
b. where the solicitor's firm's trust corporation is appointed as sole trustee; or
c. where an individual solicitor, or their firm's trust corporation, is jointly appointed as trustee with another person (such as a family member or friend).

In some circumstances, a trust may have been set up by a "capable" client, who is named as the sole beneficiary of the trust. This is a common arrangement and, in those circumstances that client can be consulted with in order that they may make an "informed decision" with regard to referrals to investment advisers.

I other circumstances, where a solicitor or their firm's trust corporation is jointly appointed as trustee with another person, it is arguable that the involvement of that other person, as co-trustee, allows sufficient independent scrutiny for the trustees to together make an "informed decision" with regard to referrals to investment advisers.

However, difficulties may arise where the trustees are made up solely of solicitors, or a firm's trust corporation, and where it is not possible to ask the beneficiary to make an informed decision. This may be the case in the following circumstances:

a. where the trust was set up for a mentally incapable beneficiary;
b. where funds were settled into trust by a mentally capable beneficiary, who has subsequently lost capacity;
c. where the funds are held in trust for an infant beneficiary;
d. where there are a number of different beneficiaries, possibly broadly defined. The beneficiaries could include incapable adults, infants or even yet unborn children;
e. where the mentally capable beneficiary may be unable to make an informed decision, for example where they are:

    i. physically unable to participate;
    ii. unwilling to participate;
    iii. inexperienced or ill-equipped to participate; or
    iv. absent.

In such circumstances it is then a matter for the solicitor, or trust corporation, to satisfy themselves that their decisions as trustee are appropriate and in the best interests of their client beneficiary. Professional trustees will be aware of their fiduciary duties, both in statute and common-law, as well as the requirement that they should exercise a reasonable degree of care when acting as a professional trustee. In particular, a trustee is under a common-law duty not to earn unauthorised profits from their office as trustee. These principles would be applicable to a professional trustee's decisions to refer a client beneficiary to an investment advisor for advice.

Q3: These options may have a considerable effect on those solicitors who work with disabled clients, and who act as Deputies, Attorneys or Trustees in a professional capacity.

Referring such clients to appropriate investment advisers is a key element of the work, necessary to ensure a client's financial affairs are properly dealt with and appropriate investment advice is taken. It is therefore important that this work is not hindered by a regulatory requirement that the client should themselves have to make an "informed decision" where they may be unable to make any such decision for themselves.

In light of our above submissions, we would submit that the proposed rules could have an adverse affect upon clients on the basis of their:

1. disability;
2. age (in so far as they relate to infant or elderly clients); and
3. clients who use our services because they are "vulnerable" in some other way, albeit that this wide term does not neatly fall within any particular well-defined group.

Our concern is that disabled, infant, elderly and otherwise vulnerable clients may be adversely affected, in so far as they may:

1. have impeded access to advisors within the investment market which would be available to the general public as a whole;

2. be unable to be referred to any investment adviser by their solicitor representative, in as much as they are themselves unable to make a "informed decisions" with regard to such referrals; and

3. be unable to enjoy the benefit of being referred by their solicitor representative to known, suitable, experienced investment advisers, who may have been "tried and tested" and considered to be wholly appropriate for their particular requirements.

Q4: We would make reference to the points set out above.

Q5: The answer to Question 3, above, is particularly relevant to the Equality Impact Assessment to be undertaken as part of this consultation process.

41. Herbert Smith LLP

Q1: We agree that the current terminology which appears in the Code is out of date and should be harmonised with the terms used by the FSA (and its successors).

Q2: We support option 3. We believe that this is consistent with the overall obligation placed on solicitors to act in the best interests of their clients and ensure an appropriate solution is found to meet the clients' needs.

Q3: We believe that option 3 provides a means by which clients' interests can be served best without imposing a solution which might not always reflect the particular facts and circumstances.

Q4: Whilst this is not an area in which we as a firm tend to become involved, we do act for a range of clients operating in the asset management sector and

anticipate that the solution is likely to be welcomed by both solicitors and financial advisers.

42. Tanners Soliciors LLP

Q1: It would be helpful to referrers in advising clients (who are seeking guidance as to where to find appropriate financial advice) if the FSA's Retail Distribution review lead to the design of a clear definition and statement, with a standard format, clear to the lay person and in reasonably large print, required as a standard document containing the following:

1. The differences between an independent financial adviser and a restricted adviser including range of products they are able to recommend, qualification and training, professional indemnity cover and complaints mechanisms for clients.

2. The fact that a solicitor referrer can only introduce either type of adviser if they consider it to be in the best interests of their client.

3. The fact that range of product may be important that not necessarily any more important than the quality of the advice and service given and that a client should expect a high quality of both whichever type of adviser is involved.

4. The fact that if the referring solicitor is deriving any financial benefit from the referral they are obliged to disclose it and account for it in full.

Q2: Option three.

Q3: The other options and current position are not satisfactory.We have come across poor service and negligent service amongst both independent financial advisers and tied advisers. In our particulalr experience tied advisers have been more proactive in dealing with problems where they have occurred in order to protect their good name than independent financial advisers who tend to be made up of smaller firms, perhaps lacking the necessary financial strength to put matters right themselves, therefore obliging clients who have been let down to find out themselves (if it even comes to light) that they have been poorly served and then to go through the ombudsman process before matters are rectified.

When suggesting advisers to clients, solicitors need to be able to advise on what they believe their particular client's best interests to be and the recommendation of a particular individual adviser, whether an independent or restricted, is most important in satisfying those interests. It is appreciated that some tied advisers may not perform as well as others but then the solicitors involved should not be recommending them if that is the case. Most solicitors, we would suspect, base their recommendations on seeing how advisers have looked after clients in the round, and how satisfied those clients have been with the performance of the particular adviser, when deciding to make a referral.

Q4: No.We have not studied the cost benefit analysis. Though this is probably not directly relevant, on the basis that clarity, through the provision of a prescribed format of a standard document of the type we have referred to in Question 2, can be provided, there should be savings in costs to the regulators, referrers and advisers ultimately benefiting clients by simplifying the compliance procedure.

Q5: No.

43. Linder Myers LLP

Q1: The Retail Distribution Review ("RDR") is one of the most important regulatory developments for many years. It is prompting both financial advisers and providers to rethink the financial landscape from the point of view of the end consumer.

The term "independent intermediary" is defined in The SRA Handbook Glossary 2012 as an independent financial adviser who is able to advise on investment products from across the whole of the market and offers consumers the option of paying fees.

We consider that altering the language to align it with the FSA's definitions will end the confusion that permeates our dealings with the financial service industry. Independent intermediary is an outdated term that is only used in our handbook, it is certainly not a term used in the financial services industry and post RDR will be meaningless. The distinction between 'independent' and 'restricted' advice provides plenty of opportunity for financial advisers to clearly differentiate their services. There will always be value associated with the independent label, but the 'restricted' label gives scope to offer different types of services to meet different client requirements.
Similarly, the new definition of retail investment products is much wider than the current definition of packaged products but the FSA makes it clear that advisers are not expected to review products that are not available to, or targeted at, UK consumers.

Q2: We have considered the three options outlined in the consultation. We consider Option 3, to amend outcome 6.3 so that clients are in a position to make informed decisions about the referrals in respect of investment advice, to be the most appropriate option.

Part of the philosophy of an outcome focused approach is that prescriptive rules are avoided, if possible, and practitioners must make a judgement reflecting their own clients and the nature of their practice as to how to achieve the required outcome. Solicitors should not be restricted by prescriptive rules. One of the clear benefits of the RDR is that it can ensure a higher minimum standard of professional qualification across the industry. The improved professional standing of all financial advisers should allow the focus to shift away from the status of the adviser to what really matters most for clients; the quality of advice they receive.

The restricted versus independent debate has polarised the financial services industry. Following the RDR, a firm can only be classed as "independent" if it provides advice which is "unbiased and unrestricted, and based on a comprehensive analysis of the relevant market". For other firms there is a "restricted" status. This includes advisers recommending products from a single provider and those offering the whole of market advice on specific areas only.

Historically, there has been an assumption by many in our profession that for advice to be good it has to be independent, or to put it another way, only independent advice can be good. It is a mistake to confuse good financial advice with implementation or product selection. As a profession we need to accept that clients are more interested in the outcome and the cost of getting to

that outcome than whether the advice is independent, restrictive or something else equally meaningless to them.

As a deputy, attorney or a trustee, a solicitor can instruct a tied adviser; acting purely in his capacity as a solicitor he cannot. When the Court appoints a deputy to manage the affairs of a person lacking capacity they only require that financial advice is taken by somebody regulated by the Financial Services Authority to give financial advice. When a trustee is considering the investment of their trust fund the Trustee Act 2000 only requires them to take advice from an appropriate person (Part II Section 5(i)(iv)). Accordingly, in the most common situations where somebody acts a fiduciary, neither the Court nor Parliament has made a distinction between an independent or a tied adviser. They both have the same qualifications, they are both regulated by the same authority and are both subject to the same compliance. An independent adviser could set up as a tied adviser and vice versa without any other requirements concerning training or supervision.

One of the phrases that is often quoted is that independent advisers are able to access the whole of the market, indeed it is part of the definition of 'independent intermediary' referred to above. However, because of the very existence of tied advisers, this is simply incorrect. The “whole of the market” includes those products and services offered by tied advisers and so an "independent" financial adviser can never be in a position to advise on investment products from across the whole of the market. We have had, and continue to have, many clients who have invested with tied advisers and who seem entirely happy with the service they receive and the level of performance of their investments. We are aware that some tied advisers also guarantee their advice, which we know is something that some investors are looking for, particularly having regard to the recent economic climate. If a large number of people, many of whom are commercially aware, have freely chosen to invest with a tied adviser, then it seems odd that this opportunity should not also be available as an option for solicitors when advising clients.

Post RDR it is clear that increasingly the same advice company will provide both independent and restricted advice to different clients. As customer demand prevails together with the practicalities and costs of providing independent advice, there will be a significant shift towards a situation where the majority of advised business is technically classified as restricted. What is most important from a client perspective is that the adviser has researched the market for a product that suits their needs and made a recommendation.

Q3 If Option 3 is accepted we see only positive impacts on legal firms and our clients' interests. Solicitors should not be restricted by a prescriptive rule; we are highly qualified professionals and should be free to make judgements as to what is in the best interests of our clients.

Ensuring that clients understand the service they are agreeing to, both in relation to the initial recommendation and on-going service requirements, is crucial to making different forms of advice work. Most clients do not require access to the whole of the market. They want a well thought through financial plan, which takes best advantage of their tax allowances and gives them an investment solution that matches their individual needs. In reality all advisers will be under the same obligation to demonstrate the appropriateness of their advice and act in the best interests of their clients.

Q5: Should Option 3 be accepted, there needs to be a consequential amendment to the wording in Chapter 12 of the Code of Conduct 2011, where outcome 12.6 says "you are only connected with a permitted separate business which is an appointed representative if it is an appointed representative of an independent financial adviser."

44. Irwin Mitchell LLP

Q1. We agree it is a sensible approach to change the existing terminology of 'independent intermediaries' and 'packaged products' and replace these with the definitions adopted by the FSA following its Retail Distribution Review (RDR). In the interests of providing clarity for the consumers of both legal and financial services, adopting the same terminology as the FSA will assist in avoiding unnecessary confusion amongst clients.

Q2. Subject to what is said below, our preferred outcome to this consultation is Option 3.

Our view is that Option 1 would not provide an appropriate solution to the current situation. Whilst it would assist in providing consistency between the definitions used by the SRA and FSA, we agree that the retention of a prescriptive Outcome is inconsistent with the SRA's outcomes—focused approach to regulation. It does not appear that there is a risk to the achievement of the SRA Principles in this area which is so high as to suggest that a prescriptive approach is necessary, particularly given that in most other areas of SRA-regulated practice a more flexible approach is considered proportionate.

We agree with the SRA's reasoning in respect of Option 2, which echoes our comments above, namely that such an interventionist approach is neither proportionate, nor appropriately risk-based. Whilst the SRA proposes under this option to remove the prescriptive Outcome and replace it with appropriately worded Indicative Behaviours, no suggestions have been included at this stage as to how the redrawn Indicative Behaviours might look. Without a proposed draft, we are unable to comment further on the suitability of this option, save to suggest that any reference to 'independent' and 'restricted' advice be fully explained and if necessary, some additional guidance provided.

Our preference is Option 3 for the reasons identified in the SRA's own Consultation paper at paragraph 12. We agree that this option most closely serves the outcomes-focused approach to regulation and has the potential to provide the greatest flexibility to regulated practices in making/suggesting referrals to financial advisers; for example, the removal of the restriction in respect of referrals to individuals providing 'restricted' advice, particularly where a referral to the 'restricted' adviser serves the client's best interests when their individual circumstances are taken into account. By placing an emphasis upon a decision-making process which engages the client in a discussion concerning their financial services needs, this option, in our view, makes it more likely that the eventual decision reached will be in the best interests of that individual client. It overcomes the limitations of a template, 'one size fits all' approach, which is unable to take account of individual client circumstances.

In favouring this approach we recognise that it will be important for solicitors and their clients to have confidence that an adviser will take into account the client's full financial circumstances where any kind of financial advice is provided. To achieve this, in our view there needs to be greater clarity as to the distinction between 'independent' and 'restricted' advice and the possibility that a 'restricted' adviser could still be regarded as providing 'independent' advice. Without a complete

understanding of the sometimes subtle distinctions in this area, it may be that confusion amongst solicitors and their clients will be increased, rather than reduced, thereby hindering the effectiveness of the changes being proposed by the SRA. It is for this reason that, should the SRA choose to implement Option 3, we would urge them to provide some guidance in this area, preferably in conjunction with the financial adviser community, so as to achieve the required level of clarity regarding what is available to clients under the 'restricted' and 'independent' advice labels. Such an approach will, in our view, assist solicitors in engaging their clients fully in the decision-making process and thereby minimise the risk of clients deferring the decision to their representative.

Q3: As above, our preferred outcome is Option 3. We accept that a requirement to engage a client in a decision about their financial services needs may be viewed as more onerous than a more straightforward requirement to ensure referrals are only made to a particular type of adviser. However, in our view that needs to be balanced against considerations that such an approach reflects current best practice and is likely to best serve the interests of clients.

We would like to highlight one area of possible uncertainty in relation to the impact of Option 3 — that is how the regulatory requirement can be achieved in circumstances where a client declines to engage in the decision-making process with their solicitor and prefers to defer the decision as to the most appropriate source for their financial advice needs to the solicitor themselves.

Such an approach is often indicative of the trust that a client places in their legal representative to make a decision which best serves their interests. It is unclear how this approach would achieve the amended Outcome and we would ask the SRA to consider providing some guidance as to how the regulated community can achieve the outcome where a client chooses not to engage in the decision-making process.

Q4. We note that the cost-benefit analysis attached to the consultation paper was unable to draw any final conclusions owing to a lack of quantitative evidence and we would echo the comments made in the analysis regarding the need for additional work and evidence-gathering concerning the impact of the proposed changes amongst stakeholders. We would welcome a continuation of the SRA's collaborative approach, engaging with the regulated community, financial advisers and the FSA, as the most likely to achieve a regulatory requirement that adequately protects consumers whilst retaining the flexibility to adapt to different client needs.

Q5. Please refer to our responses at questions 1 and 2 above. We welcome the SRA's efforts to ensure its approach seeks to harmonise any inconsistencies between its own definition of 'independent' advice and that of the FSA, so that going forward, there is a greater emphasis upon clarity for the consumers of both legal and financial services.

B Anonymous Responses

45.

Q1: Yes. Although it is probably too late to revert to the previous distinction of "independent advisers" and "tied agents", I am extremely concerned that the suggested change in terminology will have the very opposite effect to that which is intended, not least because of the astonishing definition of "independence" by reference to the range of products sold, rather than to the actual status of the adviser.

As far as the public, and indeed the professions, are concerned, independent" means “free from external influence”. To define "independence" by reference to product range will inevitably create confusion and misunderstanding. To replace "independent" and "tied" (both of which terms are self-explanatory and generally understood) with "independent" and "restricted" (each of which terms now has a very different meaning from that which the public would understand) is a retrograde and very regrettable step. No matter how much literature is produced for (and doubtless left unread by) the public, our clients will continue to interpret "independent" as meaning "free from external influence".

Q2: In my view, both option 2 and option 3 would produce extremely undesirable (and apparently unforeseen) consequences which (most importantly) would be to the detriment of, rather than to the advantage of, the "consumer". Despite the difference in meaning given to the word independent" (as referred to in the answer to question 1 above) those advisers who do qualify as "independent" under the new definition will at least be free from external influence and will be able to advise and act solely and exclusively for the benefit of their client - which I regard (and which I hope that the SRA will regard) as an essential outcome. This essential outcome will be obtainable only under option 1.

Q3: In my view, the adoption of either option 2 or option 3 would open many "cans of worms". For the first time, solicitors would be able to refer clients to an adviser who is not independent - with all the adverse consequences, both for the profession and for clients, that this would entail.

No matter how reassuringly the interpretation of "restricted adviser" is portrayed - no matter how much expertise or specialisation a restricted adviser may claim to have - the fact remains that a restricted adviser will by definition be motivated (and may be remunerated) by third party considerations.

For example, although I know that the following specific points have been put to the SRA by SIFA amongst other organisations, they are all nevertheless both true, justified and highly relevant to the present Consultation. In particular:

(i) There is no doubt that solicitors would be subjected to many more approaches by a wide variety of IFAs and sales organisations who would be more intent on selling products rather than providing independent advice to the consumer.

(ii) All the sales people - and (initially) many of the so-called IFAs - would be remunerated by the companies whose products they would be selling; their advice would therefore be based on self-interest rather than a desire to help the client.

(iii) It is inevitable that at some stage (and probably sooner rather than later!) unsuitable products would be mis-sold to a consumer - perhaps even inadvertently, since many solicitors would not be able to assess the true quality of the advice being offered. Just as happened with claims for the mis-selling of endowment policies, this would certainly open the floodgates to similar claims of mis-selling on the part of solicitors.

(iv) As we know from our experiences with Sedgwicks (who had been specifically recommended by The Law Society to provide financial services for solicitors' clients), the liability for the subsequent mis-selling cases fell on the shoulders of the solicitors, not Sedgwicks.

(v) The experience of claims made to the Financial Services Compensation Fund is a clear indication that it would not be long before a similar (and increasing) amount of claims would be made on the Solicitors Compensation Fund with regard to products which had been mis-sold to clients. From the clients' point of view, they would be better off receiving the right advice to start with, rather than having to undergo the hassle of pursuing even a successful claim against the Solicitors Compensation Fund - and from the solicitor's point of view, the inevitable increase in claims would eventually be reflected in an increase in professional indemnity premiums.

(vi) Many of our clients (and those of all other solicitors firms) are elderly and depend on us to "run their financial lives". These clients are also, by definition, the most vulnerable and there will be a genuine danger of their receiving inappropriate advice in the event of being referred to a restricted adviser. The fact that a very large number of Equitable Life policyholders were members of the legal profession shows how vulnerable solicitors may be to approaches from salesmen.

(vii) There is a real danger that solicitors firms could effectively become little more than a "sales outlet" for a provider of financial products. Financial advisers who are genuinely "independent", have a culture which is much more similar to that of solicitors. Truly independent financial advisers will always be fee-based (like solicitors) and will share the same culture of providing advice, as opposed to selling products.

Nearly all of the above objections are simply illustrations of the fundamental question which was posed in a recent editorial in The Law Society Gazette, but which does not appear ever to have received a satisfactory answer - "On what grounds could it ever be in a client's best interests to be referred to a "restricted adviser?". If it is the case (as I believe) that it could never be in a client's best interests to be referred to a non-independent source of advice, then by definition this means that neither option 2 nor option 3 could ever be in the client's best interests.

Furthermore, the Solicitors Code of Conduct expressly states that a solicitor must not allow his independence to be compromised. I do not see how a solicitor could therefore comply with this professional obligation if the SRA adopts option 2 or option 3.

Overall, I think that the old adage "if it ain't broke, don't fix it" applies fully in this situation; what is wrong with the present system, whereby solicitors may refer clients only to a truly independent adviser? How could it ever be in the client's best interests to be referred to a non-independent adviser?

Q4: I understand that the cost benefit analysis produced to your Board meeting on 4 July confirmed that referring clients to independent financial advisers tended to produce more satisfactory outcomes. Even though recent surveys have shown that there is a limit as to the amount of fees which consumers would be prepared to pay for financial advice, this is not a reason for permitting solicitors to enable clients to be subjected to a sales process which might cost them less in the immediate future, but could cost them much more in the longer term - if and when they were persuaded to buy and unsuitable produce.

Clients, regrettably, would remain free to purchase financial products through a commission-orientated salesman as at present - but Solicitors should surely only be able to recommend those advisers who would act in a way which everyone recognises would be in the client's best interests - namely truly independent advisers.

Q5:

(i) Reverting to my reply to question 1, it would seem that the SRA may not have appreciated the ability of advisers to retain their independent status, even though they may not be able to advise on "whole of market" products; as long as they explain to clients the nature of their specialisation, a specialist adviser can still be "independent".

This therefore undermines the reason for the SRA's apparent preference for option 3 - i.e. that "many firms which are currently described as independent …….. may not be able to label their advice as independent because they will not, for example, advise on a sufficient broad product range". As stated above, that is not quite correct and the consumer would still have access to independent advice by seeking an appropriate specialist - which I therefore construe as another argument in favour of option 1, but not an argument in favour of option 3.

(ii) I am aware (from reading many articles and letters in the financial press) that a substantial number of financial advisers consider that, if options 2 or 3 are permitted, more and more clients will inevitably be referred to restricted advisers, with the result that the number of independent advisers will be substantially diminished. Again, this cannot possibly be in the public interest - nor in the interests of the legal profession whose scope for referrals and recommendations will be either reduced or prejudiced (owing the higher risk element referred to in my replies to question 3).

46.

Q1: No, I understand that it is inevitable that terminology will be brought in line with FSA language, but the Principles of the SRA should not be ignored. The new definition will ensure that an adviser is entirely independent both in terms of the products that they are able to recommend and the ability to search whole of market for those products.

Q2: I feel very strongly that Option 1 is the only acceptable way forward to ensure that solicitors continue to remain independent in accordance with SRA Principle 3 of the code of conduct. The alternative would simply undermine the integrity of the profession. Option 1 can be the only feasible option to ensure that a client's best interests are considered.

Q3: Option 3 requires the solicitor to have further discussions with their client about an area which they are not experienced or have no expertise in. The definition of a Restricted Advice is ‘a personal recommendation to a retail client in relation to a retail investment product which is not independent advice’. With such a broad definition, how can a solicitor be best placed to discuss and agree whether a client should be referred to an Independent Adviser or a Restricted Adviser? Who will be paying the costs of the solicitor having these discussions? The client I expect.

The class of Restricted Advisers will include some very good whole of market advisers. However the class will also include some very bad tied advisers where their advice will not be appropriate and who are still simply aggressive salespeople. By pushing the responsibility on the solicitor to make the decision as to the appropriateness of an Independent or Restricted Adviser for their client, I can only see an increase in the future of claims to the Solicitors' Compensation Scheme for poor advice as inevitably, solicitors will be misinformed by slick tied agents to refer work to them.

Q4: No comment.

Q5: I feel that the SRA has not grasped the implications of allowing solicitors to refer to Restricted Advisers and also that they do not realise that the FSA will permit advisers that specialise in areas of advice to retain the "Independent" label as long as they fully disclose this to their client. The consultation paper states that the first reason for Option 3 is the 'many firms which are currently described as independent because they will not, for example, advise on a sufficiently broad product range meaning that in the absence of the changes suggested under Option 3, the lawyer would be unable to recommend them to their client' obviously contradicts the FSA's statement in their Guidance Consultation 12/ dated 27th February 2012.

Options 2 and 3 makes the issue of referring clients to seek advice more onerous and complex and it is difficult to see that the client will benefit compared with the option of only being able to refer to an adviser that can offer full independence.

Surely it is not the SRA's concern whether some financial advice firms are able to continue to do business with solicitors in the future based on their definition – that is for the firms themselves to deal with and for the FSA to consider. The principles of the SRA code of conduct should be the main concern of the consultation and independence is the only way forward.

It is clear to me that there are many people with vested interests trying to push through such a monumental change in the way that solicitors are able to do business. The clients' best interests should be at the heart of the decision and it is obvious that it can only be Option 1 that provides this by ensuring that clients are referred to quality Independent Advisers.

47.

Q1: No, as this was bound to happen.

Q2: Option 1. Solicitors must put their clients' best interests first so referrals should only be to independent financial advisers.

Q3: How can solicitors comply with our own Code of Conduct if options 2 or 3 are followed? We are quite rightly bound by principles which conflict directly with the concept of referring to non-independent advisers, i.e. client's best interests, independence, acting with integrity and so on. Sales people will be driving the matters under options 1 and 2 and surely with all that has happened in recent years the SRA d not need reminding of the possible consequences where advisers are paid by commission, vulnerable people exposed to "hard sell" or "soft sell" techniques? Sales will be the motivation. How is independence preserved? How is it in a client's bet interests? As solicitors, we must give

independent advice, how can it ever be right that we then refer to non-independent advisers? This goes against all that being a solicitor means.

Q4: The analysis circulated for the SRA board in July referred to a variant of option 3 that referring clients to independent financial advisers would tend to show that the required outcomes had been achieved.

Q5: How can the preferred option 3 be reconciled with the SRA's own guidance that states that independent advisers need to make clear their specialisation? If an adviser sets out their expertise, how does this not compromise independence?

If true independence is removed, which anything other than option 1, means then this would be a retrograde step. We will see in the future more of the financial problems that are apparent now. All of this would be bad news for clients.

48.
We favour Option 3 for the reasons given by the SRA in their justification for giving provisional support of that option.

49.
Q1: We strongly support the proposal to remove what is in effect a requirement on solicitors, in Outcome 6.3, to refer clients only to "independent financial advisers" as that term is defined under FSA rules, for the following reasons:

We do not believe that the Outcome in its present form is consistent with the model of principles-based, outcomes-focused, regulation that the SRA has previously decided to adopt. It is, in substance, a rule, not an Outcome adviser who does not operate under that label.

We agree that the FSA's Retail Distribution Review is likely to exacerbate this issue, as it is likely to result in fewer "independent" financial advisers as defined under the FSA's Rules. However, we believe the removal of Outcome 6.3 would be justified even in the absence of the RDR.

We believe that current Outcome 6.3 has its basis in (a) a mis-application of the term "independent" in this context, and (b) a misunderstanding about the difference under the FSA's Rules between an "independent" financial adviser and one who does not operate under that label.

The misapplication of the term "independent" has its origins in the previous forms of the Handbook (pre-Principles-based / outcomes-focused regulation), reflected in the preamble to Chapter 6 of the current Handbook, which states "It is important that you retain your independence when recommending third parties to your client and that you act in the client's best interests". The independence of the solicitor is an entirely separate matter from whether the solicitor refers his or her client to an independent financial adviser or any other type of financial adviser, and is already protected by other provisions of the Handbook (for example, Outcome O(1.15) ("you properly account to clients for any financial benefit you receive as a result of your instructions")). There is no correlation between the independence of a solicitor and referrals to an "independent financial adviser", because "independent" in the FSA's rules refers to independence from the providers of investment products, not independence from introducers such as solicitors.

We believe there has also been a misunderstanding about the significance of an "independent" financial adviser, as opposed to any other kind. This has been shown by discussions we have had in the past on this issue with SRA officials. The assumption seems to have been that an "independent financial adviser" under the FSA rules is necessarily a better quality financial adviser than one not carrying that badge. This is simply incorrect. Many IFAs perform an excellent service, but so do many other financial advisers who for various reasons do not meet the FSA's requirements to call themselves "independent", or who may not in the future. To be clear, following the RDR, financial advisers, whether "independent" or not for the purposes of the FSA's Rules, will have to meet exactly the same levels of training and competence. The regulatory obligations around the quality of the advice they are expected to give and the obligations that they must fulfil in order to give that advice are also identical. Any suggestion that a financial adviser who is not "independent" under the FSA's Rules is necessarily second best or less well qualified than one who is "independent" is wrong.

Under the RDR regime, an "independent" financial adviser will not necessarily be required to cover the whole of the investment market, only the "relevant market" (see FSA Finalised Guidance FG12/15, at http://www.fsa.gov.uk/static/pubs/guidance/fg12-15.pdf, sections 2.6 to 2.13). Making a referral to an "independent" financial adviser simply on the basis that they are "independent" in FSA terms is therefore no guarantee that the adviser concerned is able to meet a client's particular investment needs.
We question whether it is appropriate to link the meaning of the SRA's rules to a definition used by another regulator in an entirely different context.
One of the intended outcomes of the FSA's RDR is to make clearer to clients and potential clients of a financial adviser the nature and scope of the service offered by that adviser. It is aimed at ensuring that a potential investor can, without the need for expert guidance, select the most appropriate adviser to meet their needs. If Options 1 or 2 were to be chosen, a client who asks a solicitor for a recommendation would automatically have less freedom of choice in the selection of the adviser than they would have if they made that decision themselves – a decision which the FSA clearly believes that many retail clients are perfectly capable of making themselves. It would seem perverse that, simply by asking a solicitor for a recommendation, a client should significantly narrow his or her options and may not even be aware that that is the outcome.

Q2: For the reasons set out above, we believe that Option 3 is the only tenable option. Neither Option 1 nor Option 2 addresses the significant issues with the current wording of the Handbook that we have set out above, and neither would operate in the best interests of clients.

Q3: We believe it is important for both the SRA and solicitors in practice to recognise that Option 3 is not an easy option. Indeed, it places a greater onus on the solicitor, since they will be required to carry out a proper consideration of what would be in the best interests of the individual client in question, rather than blithely assuming that a referral to an independent financial adviser – any independent financial adviser – is sufficient to achieve the required outcome.

We would dispute assertions by bodies such as SIFA that removal of current Outcome 6.3 would necessarily result in an increase in professional indemnity claims – the implication being that a referral to a non-"independent" financial adviser is necessarily negligent or falls short of the solicitor's duties under the Handbook. We would suggest that, if anything, the reverse is true. The

overriding duty of the solicitor is to act in the best interests of his/her client, and current Outcome 6.3 actually prevents that in certain cases.

However, solicitors will need to ensure that they understand the new regulatory regime and also the nature of the financial adviser they are making a referral to. Financial adviser businesses vary in many ways, not just in terms of whether they are "independent" or (post-RDR) "restricted", and it will be important that solicitors understand whether the adviser they are referring a client to is likely to have the skills and experience needed to meet that client's requirements. Solicitors should also be encouraged to consider other considerations which may be relevant, such as the cost of the service provided, financial strength of the financial adviser and the likelihood that it will be in existence for the long term and be able to provide an ongoing advisory service, if that is what is required. We would encourage the SRA to consider appropriate publicity around any rule change to explain what is expected of solicitors in this regard.

Q5: In our opinion the selection of either Option 1 or Option 2 would leave this part of the Handbook flawed, for the reasons set out above. For that reason, we think that any decision on the part of the SRA to choose Option 1 or 2 could be susceptible to legal challenge. Both Option 1 and 2 entail imposing a restriction on competition and would not be in the best interests of clients. They might therefore be successfully challenged under the administrative law grounds of abuse of power, improper purpose or unreasonableness.

50.
We would like to register our response to Q.2 of the consultation, i.e. which of the three options set out in the consultation is preferred in respect of Chapter 6 of the SRA Code of Conduct. We request that you treat this response as confidential. By way of background, we have one of the largest private client departments in the country advising on tax, estate planning and family law issues for clients typically with very high value and complex affairs. Our clients often have the need for specialist investment and pensions advice.

We understand that after 31 December 2012, the number of advisors that will be "independent" and not "restricted" will be very small indeed.

We feel that only being able to recommend independent advisors will be unduly restrictive and not in our clients' best interests. For example, there are certain specialist services that our clients sometimes require – e.g. specific pension reports and advice in a family law context, or advice on sophisticated international investment strategies, that many independent advisors will not be able to provide. Being obliged to refer to only independent advisors might therefore lead to the client not having access to the specialist advice that they need.

A further consideration is that we are often aware of the kind of advisor that our clients will get on well with (in terms of perhaps personality or approach) and that that will be a very important consideration for them in who they choose. Again such a referral might not be possible if we can only refer to independent advisors.
Our view is that our clients will be best served by us being able to recommend financial advisors to them from the full spectrum of advisors, but working with the client to ensure they make an informed decision.

We therefore support option 3 as set out in the consultation and welcome the extra layers of transparency and information for the client that will go with this approach.

51.

Q1: No.

Q2: Option 1.

Q3:

a. Both Solicitors and Independent Financial Advisers, as defined by long standing FSA guidance, have in my opinion a duty maintain an impartial stance and should not allow their position to be compromised by outside sales or product led influences.

b. Many independent advisers have already moved towards a greater level of qualification requirement (Certified/Chartered) than the new minimums required under the RDR. This is a trend we expect to see continue with a corresponding greater public awareness of the seemingly low requirements currently in force.

c. Many firms in b are already working on a client fee basis, rather than relying on commissions from product sales, a point which solicitors involved with previous endowment business and other such product led initiatives will be aware.

d. Both Solicitors and Independent Financial Advisers are or will be paid for by the client, without being influenced by the sales campaigns of third parties – note the FSA comment on sales incentives of last week.

Q4: I would expect that the clients best interests and lower costs for both them and Solicitors to be met from option 1. In addition the analysis does not seem to take into account the time required for Solicitor firms to research restricted advisers.

Q5: There is considerable comment from various quarters, arguably with their own vested interests, of the perceived difficulties in firms retaining their independent status, which is at odds with FSA guidance that firms will be able to both specialise and remain independent.

We firmly believe that maintaining our independent status will not be the onerous task hinted at by some and will continue to be a vital part of our business and continuing service to clients.

52.

Q1: We support the proposal to remove the requirement on solicitors, in Outcome 6.3, to refer clients only to "independent financial advisers" as that term is defined under FSA rules, for the following reasons:

1. We think that the Outcome in its present form is inconsistent with the model of principles-based, outcomes-focused regulation.

2. Outcome 6.3 appears to conflict with the duty of the solicitor to consider the needs of the client and act in that client's best interests. This is because Outcome 6.3 effectively requires the solicitor to refer a client to an IFA even if the solicitor thinks that in the circumstances it would be preferable to recommend a financial adviser who operates in a different way and has possibly has access to a wider range of funds and products.

3. It is still possible for a solicitor to fulfil the relevant Principles by adopting a different approach from current Outcome 6.3.

4. The RDR aims to ensure that all financial advisers will meet the same levels of training and competence. Therefore once the RDR takes place, it makes sense for solicitors to be open to refer work to a wider spectrum of financial planners. It also seems that clients would be unfairly prejudiced if by asking a solicitor for a recommendation, the client significantly narrows their options and may not even be aware that that is happening.

Q2: For the reasons set out above, we believe that Option 3 is the only suitable option.

Q3: None save for the comments made above. We believe Option 3 would better serve clients' interests by widening the solicitor's options and enabling them to match the right adviser with each particular client's needs.

Q4 No.

Q5: No.

53. Having considered the consultation paper, xx supports Option 3 for the following reasons:

1. Option 3 is the preferred option as it: (1) Involves the client in the important decision over who should be responsible for managing their investments; and (2) Increases transparency over this decision. Option 3 also allows the client to ask pertinent questions and meet with a broad range of advisers to ensure they find the one most suitable to their needs.

2. The FSA's independence rule in COBS 6.2A.3R relates solely to the provision of advice on a narrow range of investments, namely, Retail Investment Products (RIPs). Investment management firms typically provide advice and discretionary services utilising a much broader range of investments including equities and bonds. As a consequence of the FSA's rules incorporating a narrow range of investments only, most investment managers are likely to be deemed as providing 'restricted' advice. Investment managers typically devise bespoke investment portfolios only after undertaking an extensive examination of the client's needs, objectives and risk appetite. In the event that solicitors are only permitted to recommend their clients to advisers who provide 'independent' advice (Option 1), then many investment managers who are capable of building investment portfolios from a broad range of investments (RIPs and non-RIPs) will immediately be excluded, to the possible detriment of the client.
3. Regulations surrounding the definition of 'independence status' of firms remain in flux. The EC is currently reviewing the Markets in Financial Instruments Directive (MiFID II) and early drafts of the revised directive indicate that a European definition of independence will be introduced which is not identical to the FSA's definition under the RDR. As a result, any changes made to the SRA rules now may have to be consulted on again in the near to medium term.

4. The FSA is currently undergoing a significant structural reform. It will be superseded by the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA) in April 2013. Any reference to the FSA in the rules

revision will most likely have to be replaced by references to the FCA and PRA rules. It is therefore preferable to have SRA Rules that do not make any reference to another regulatory authority (or their specific rules).

III Responses - Other Stakeholders

A Attributed Responses

54. The Law Society of England and Wales

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.

Q1: 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.

Q2: 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 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.

Not withstanding 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 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.

Q3: 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, not withstanding 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.

Q4: 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.

Q5: No comment.

55. Birmingham Law Society

Q1: No, consistency in language with the FSA is welcome for clarity and compliance. The language needs to be brought up to date in line with the FSA terminology.

It is very clear that advice from an IFA will fall into the two categories of restricted and authorised advice.

The FSA terminology of "retailed investment product" has a wider definition than "packaged products" and so covers a wider scope of advice.

Q2: Option 1 is preferred for the following reasons:

1. This uses the language consistent with the FSA and SRA provisions.

2. We would suggest a proposed amendment to amend the first sentence of Rule 6 (3) to provide:

   "The Code provides that if a client is likely to need advice on investments they must be advised to seek independent financial advice".

   This is important for the following reasons:

(a) This is a mandatory requirement and is therefore clear and unequivocal for both the solicitor and the client. If the client chooses not to do so after having been advised in writing to do so by the solicitor then that is a risk that the client takes and the solicitor is not in breach of the Code.

(b) This does not place an onus upon the solicitor to provide the names of suitable IFAs. The solicitor is thus not obliged by the Code to advise upon suitable IFAs unless he or she wishes to do so and is sufficiently experienced in this area to provide the information. This protects both the solicitor and the client from a professional negligence risk.

(c) The solicitor is not under an obligation under the Code to advise. There are cost consequences of providing this advice, which Solicitors cannot charge for.

It would be helpful to have a "de minimis" rule which provides that transactions falling below a certain sum are exempt from the rule.

Q3: Option 1 - Please see comments in response 2

Option 2 - The proposal of a non-mandatory indicative behaviour to demonstrate that a Solicitor has acted in the best interests of their client is too vague. The scope for non-compliance and confusion for both solicitor and client is too great.

There is no consistency in terminology between the SRA and the FSA. This option may cause greater confusion.

Option 3- This option causes the most concern to the Consultation Committee of Birmingham Law Society.

To put the obligation upon a solicitor to potentially provide unpaid advice upon an IFA's specialist areas of expertise causes an obvious risk to both the client and the solicitor in equal measure.

It assumes that a solicitor has a level of knowledge and expertise which not all solicitors will possess.

If a solicitor is expert in financial services and advises the client upon an IFA's specialism this is an entirely different remit.

The rule should impose an obligation upon the solicitor to refer the Client to an IFA rather than an independent intermediary.

Q4: There is not a cost benefit analysis rationale within the paper. If this is made available we will comment accordingly. It is an important area as the option recommended for acceptance by the SRA places an obligation upon the solicitor to provide unpaid advice to a client, upon the need for and the choice of, a financial adviser, or risk of being in breach of the Code. The cost implications for the profession needs more consideration. The cost of the suggestion of Birmingham Law Society contained in the response to question 2 is de minimis.

Q5: It would be helpful to have a “de minimis” rule to state that claims below a sum are exempt from the rule. Firms should hold a register to identify compliance when referring a client for independent financial advice.

B Anonymous Responses

56.

Q1: The Retail Distribution Review is undoubtedly the most significant change in the UK Financial Advice profession in recent years. In the long-term it will contribute to a more respected profession with a clear and transparent remuneration process that places financial advice on a similar standing to other professions.

As well as increasing professionalism within the industry and moving to a transparent fee-based service rather than commission; firms providing investment advice to retail clients will need to describe these services as either ‘independent’ or ‘restricted’ from the end of 2012. Advisers disclosing their services as independent will need to prove that they are making a personal recommendation to their clients which are:

(a) based on a comprehensive and fair analysis of the relevant market; and

(b) unbiased and unrestricted.

Currently, many IFAs insist that they will remain independent post-RDR (our last survey of 355 IFAs in June 2012 shows that over 78% of respondents intend to be independent). However, there is growing consensus that the economics of providing advice and the breath of investment research that will be required to provide an independent service will be overly onerous, and the majority of advisers will default to a restricted advice propositions.

Source	Projected % Market Restricted	Projected Date
Zurich	50%	2015
Future Thinking	66%	2014
Deloitte	30%	2013
Towers Watson	40%	2013

Table 1: Projections of post-RDR restricted financial advice market.

Privately, many industry commentators are predicting a much larger swing towards restricted as the reality of the independent requirements become more obvious to advisers.

With such a swing towards restricted advice, any unnecessary restrictions on professional referrals from solicitors is likely to result in a significant limitation in the number of independent advisory firms; which in turn may prevent clients being able visit an adviser due to geographical limitations or the costs of independent advice maybe prohibitive for many. The SRA's review of it's current policy is timely and appropriate given the scale of changes that are on the horizon.

Q2: Option 3 (to amend Outcome 6.3 so that clients are in a position to make an informed decisions about referrals in respect of investment advice), is the most pragmatic and realistic option to amend the SRA Code of Conduct. In context of the post-RDR marketplace, the other 2 options significantly restrict SRA members' ability to provide a full advice service proposition to their clients.

Whatever the outcome of this review, legal firms who conduct referral business will need to ensure that the knowledge of the firm to which they are referring clients to is up to date. Disclosing the advisory firms proposition as 'independent' may confuse clients and in turn could lead to regulatory recourse against both parties. Legal firms should also be clear on the client proposition, whether the firms segments it's service proposition by client needs and also the level of qualifications or specialisms that the firm may offer (such as Chartered status, Pension Transfer permissions, or access to stockbroking or estate planning experts).

Q3: Restricted Advice is still 'best advice' and does not reduce the quality of advice or reassurance provided to the client by FOS or FSCS. Although Aviva has no specific commercial interest in the growth of restricted advice, we do believe that the benefits of restricted advice needs to be highlighted:

Clients: A restricted offering could provide a more efficient and focused advice process, with only certain products and providers being assessed. For customers, who do not want to spend long with an adviser, this could prove an opportunity to service them in a way they prefer. The focused nature of this process should reduce the cost of advice, bringing an additional benefit to the customer.

By restricting an offering to fewer providers, the adviser will be able to build a deeper knowledge both of the firms and their products. Accordingly, customer information and understanding could improve as a result.

Restricting the referals of legal firms' clients to a smaller number of financial advisory firms reduces the options to clients and could either enhance the current consumer apathy towards savings or lead to tax disadvantages or inadequate financial and life protection.

Legal firms: Legal firms who are restricted to refering only to independent firms (under the RDR definition) may find a significantly smaller market to refer to. This leads to a less comprehensive service proposition to their clients, potential client detriment, as well as a reduced income from referal fees.

Financial Advisory firms: The first benefit is the reduced risk from no longer having to provide evidence that they are truly independent. The onus will be on independent advisers to prove their independence, not on restricted advisers to prove their restriction. This has led to independence being deemed the more challenging option by the industry compared to what is considered to be the safer option of restricted advice.

Restricted advice can be offered without significantly changing existing business models. In disclosing their services as 'independent' post-RDR will require advisers to have the capability to advise on products that currently many advisers will not need to assess: VCTs, EISs, ETFs to name a few. Whilst panels may exclude these, an independent adviser would still need to be able to advise off panel, when required.

Q4: No comments.

Q5: We concur with your preference to support outcome-focused regulation by ensuring that clients are in a position to make informed decisions about referals in respect of financial advice. In summary, the SRA and it's members should consider the following in this consultation:

1) The RDR makes the provision of independent advice more challenging and costly. We believe that this will force more of the market to provide restricted advice (either entirely restricted or a 'multi-model' proposition of both independent or restricted advice depending on their clients' needs or profile). This move significantly restricts the market for professional referals if those referals are predicated on the firm's independence status.

2) Professional Connections remain an important proportion of financial advisers' new business (32% - JP Morgan, 2012).

3) Restricted Advice is still regulated and 'best advice', it is not a poorer relation to independent advice. In some cases, restricted advice can be more appropriate to customer needs.

4) Independant and Restricted advice definitions are subject to regular reviews by National and European regulators and industry bodies, refering to a common definition would be confusing and transitory by nature.

5) Although not a recommendation at this stage, we are seeing a significant increase in the number of individuals and firms obtaining Chartered Status, as opposed to pursuing independence. As this has a greater affinity with other professions, we are expect this to become a future differentiator for both customer acquisitions and referals.

57.
We have no specific points to make in response - we anticipate that those firms in our geographical area who provide investment advice to their clients will respond direct with their own observations and comments on the proposals.

For our part it seems that the proposals (1) are a sensible way of correcting the identified inconsistencies and (2) that their implementation should reduce the prospect of misunderstanding and/or confusion in the future.

Many of us, who have been around a while, are sadly used to seeing self-interest in the care, quality and price of service-provision outweigh the best interests of the client. “Restricted adviser” is a lower cost option for people, that is why they are choosing to go that way. They do not have to consider all possible product types or sources, which may be suitable for the client. They can construct panels of providers, where the providers are decently representative of the whole market but could also just be wholly-controlled representatives of one, single company.

That company may have poor quality and expensive products but the adviser may be a close friend or family-member of the recommending Solicitor – or have another way of demonstrating their appreciation for the referrals. Unless Solicitors are mandated only to refer to Independent Advisers, the risk is great that you will have some members (because there are always some) benefitting themselves or their

connections at the very material expense of clients. Getting your rules right should make clear that this is not an option.

58.

Q1: Yes. We have been debating this subject for years and I believe that solicitors should protect their clients by referring them only to wholly independent advisers who will act in the clients' interests rather than “sell” them products. We have been encouraging the better qualification of financial advisers and also solicitors in the area of finance.

Q2: I prefer whichever one gets away from the hard sales/white socks bond floggers. St James Place are a particular example (they were previously Allied Dunbar known in the trade as Allied Crowbar). They charge high commission and their “partners” have variable reputations.

Q3: Yes. We need to get away from solicitors receiving “kick backs”. They should be referring to truly independent advisor who will look after the best interests of their clients and not sell “products”.

Yes. We need to get away from solicitors receiving “kick backs”. They should be referring to truly independent advisor who will look after the best interests of their clients and not sell “products”.

Q4: The charging of inappropriate and excessive commission will have to go.

Q5: Why are we still debating an issue which should have been resolved years ago? It is becoming rather tiresome.