**RESPONSE OF THE BIRMINGHAM LAW SOCIETY TO THE SRA CONSULTATION ON INDEPENDENT FINANCIAL ADVICE – Deadline 10 September**

**Question 1**

**Do you have any comments to make about the suggested change of terminology and removal of reference to independent intermediaries and to packaged products and replacement with language arising from the FSAs Retail Distribution Review in terms of authorised advice and retail investments products?**

**Response**

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.

**Question 2**

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

**Response**

**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.

**Question 3**

**Do you have any comments on the possible impact of these three options in terms of effect on legal firms and protection of clients’ interests?**

**Response**

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.

**Question 4**

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

**Response**

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.

**Question 5**

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

**Response**

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.

**MARY KAYE**

**PRESIDENT OF BIRMINGHAM LAW SOCIETY**