SIFA
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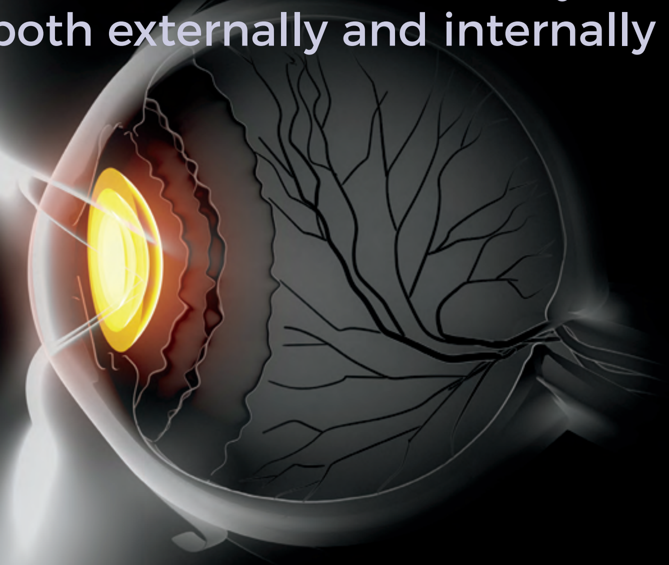
News & Views

ISSUE 5 • WINTER

X-RAY VISION

With regulatory pressures and industry changes firmly on the horizon we look at the issues that could affect your business - both externally and internally



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Extending the senior managers and certification regime to all FCA firms

DATES FOR YOUR DIARY

SIFA Conference 2018
June 7/8th Whittlebury Hall

SIFA

WELCOME

...to another issue of SIFA News & Views.

I know it's hard to believe that it is autumn, in fact late autumn. It's not just the mild weather, the year has gone really quickly because so much is happening – especially in the word of regulation. We're on the cusp of the biggest change to UK financial services regulation since RDR as MiFID II comes in from 3rd January 2018. There are still many 'unknowns' about exactly how some aspects will work, especially around the circumstances in which LEIs may be required by advisory firms.

The FCA's consultation on the widening of the Senior Managers & Certification Regime from the banking sector into the wider world of investment advisers has just ended. If these proposals are introduced there will be wide ranging consequences for nearly all advice firms.

And, in case you were beginning to think that all changes are aimed at the advice profession alone, we have the GDPR (General Data Protection Regulation) coming through in May 2018 – not aimed at us especially as it applies to all UK businesses, but definitely having an impact on us.

A very busy time.

We've issued bulletins on the above during the year and covered them as part of the last round of Informa meetings, but we've made sure that this edition of News & Views delivers the most up to date news on all of them. And Susie Bolton, Associate Director of Compliance Services, has also provided an insight to the implications of the Criminal Finances Act 2017 for the advice process. If you have any queries then please do let us know and we'll do our best to provide more clarification.

As well as these regulatory issues, there is other news which impacts on our particular sector. In this edition you will find details of what solicitors need to know about financial services, and how SIFA is helping to make sure that they obtain this valuable knowledge, we've also got articles on trusts and the attractions of VCTs and a host of other pertinent issues – as they used to say, 'I never knew there was so much in it'.

I hope you enjoy reading this edition.

Cheers,
David Ingram

David Ingram
Managing Director
SIFA

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By Susie Bolton
Associate Director of Compliance Services
SIFA

Criminal Finances Act 2017

Up until recently, facilitating the criminal evasion of tax was an offence only attributable to individuals.

However, thanks to the Criminal Finances Act 2017 - which became law in April 2017 and took effect on 30th September 2017 – companies and partnerships can now be held accountable for failing to prevent the criminal facilitation of tax evasion by one of their representatives.

The Act is an amendment to the Proceeds of Crime Act 2002. Guidance issued by HMRC on 1st September suggests that the amendment was driven largely by offshore tax evasion; it also, however, evolved from the difficulty of bringing multi-national companies to account, given the inclination of senior management to protect the corporate entity from prosecution by maintaining a distance between the board, and criminal acts perpetrated by individuals.

It is no secret that there are numerous individuals going to extreme lengths to hide their taxable income.

To achieve this successfully, they invariably adopt the services of professionals within financial institutions, who in turn aid them in committing tax evasion offences by using their professional expertise to take advantage of loopholes - perhaps by operating out of jurisdictions that do not recognise tax evasion as a criminal offence.

The bill has not created any new individual offences - what constitutes the criminal act of tax evasion has not changed. It should be emphasised that firms are not responsible for the crimes of their clients, nor for the misuse of products and services that are provided to customers in good faith without knowledge that they were to be used for the purposes of tax evasion. The Act does, however, now make it possible to assign criminal liability to the firm where the offences occurred, if facilitated by the firm's representative and where it failed to take appropriate measures to prevent it.

The two new corporate criminal offences are;

1. Failure of a relevant corporate body to prevent the facilitation of UK tax evasion by an associated person; and
2. Failure of a relevant corporate body to prevent the facilitation of non-UK tax evasion by an associated person

For a firm to be held liable, each of the following three stages or criteria must be met;

- There has been criminal tax evasion by a taxpayer under existing law
- There was criminal facilitation of the offence by a representative of the firm
- The firm failed to prevent its representative from committing the criminal act outlined above

The potential impact of a successful prosecution - aside from the inevitable reputational damage - include an unlimited fine, and possible ancillary sanctions such as confiscation or a serious crime prevention order. Naturally, the authorisation of a regulated firm would also be at risk.

If all of this sounds familiar, it bears a striking resemblance to the requirements introduced by the Bribery Act 2010, and the corporate offence of failure to prevent bribery. Just as firms were expected to introduce anti-bribery and corruption policies and controls when that legislation became law in 2011, they are now obliged to establish similar controls around the facilitation of tax evasion.

In practical terms, just as new procedures were developed relative to the prevention of bribery and corruption in 2011, firms are now expected to devise a similar stance to guard against the facilitation of criminal tax evasion.

HMRC has published steps as to the best way to go about this in its guidance paper, such as reviewing current practices and procedures to minimise risks, and to establish a means of training and monitoring staff at junior and senior levels.

The ultimate aim of taking these steps is to develop your "**Reasonable Prevention Procedures**". If you can demonstrate that you have put in place processes and assessments to identify and mitigate against tax evasion facilitation, you will have a worthy defence against prosecution for the corporate offences under the Act (similar to the "adequate procedures defence" contained under Section 7 of The Bribery Act 2010, in relation to anti-bribery and corruption).

"...COMPANIES AND PARTNERSHIPS CAN NOW BE HELD ACCOUNTABLE FOR FAILING TO PREVENT...TAX EVASION BY ONE OF THEIR REPRESENTATIVE..."

So, what constitutes Reasonable Prevention Procedures?

The primary focus is on conducting a risk assessment, but the foundation of the procedures will be a methodical assessment of the extent to which the organisation is exposed to its representatives criminally facilitating tax evasion. HMRC has specified six guiding principles to help firms devise documented procedures and hence an appropriate defence:

1. Carry out and document a **risk assessment** to identify the risks of facilitation
2. Devise and implement **procedures** which are proportionate to the risks identified
3. Perform **due diligence** assessments of staff, third parties and clients in proportion to the risks that they pose to the business
4. Ensure that there is a **senior level** commitment within the organisation to prevent the facilitation of tax evasion
5. **Communicate with and adequately train** staff to ensure procedures are understood
6. Ensure regular ongoing **monitoring and review** of risks and procedures

"...CLOSE COMPLIANCE DOES NOT MEAN IMMUNITY, PARTICULARLY IF YOU FAIL TO IDENTIFY AND ADDRESS RISKS..."

Firms are at liberty to devise their own approach and adopt procedures without necessarily adhering strictly to these guidelines; they are just as likely to be deemed acceptable, provided the relevant risks are identified and dealt with accordingly. Equally, close compliance does not mean immunity, particularly if you fail to identify and address risks which are specific to your business.

It should be noted that the Act has also created a host of other provisions, including granting the power to relevant agencies (typically The National Crime Agency, Crown Prosecution Service, Financial Conduct Authority, Serious Fraud Office and HMRC) to apply for and serve "Unexplained Wealth Orders" on individuals suspected of a serious crime, which requires them to explain the source of their wealth. It also introduces provisions to permit the proceeds of crime to be seized by appropriate authorities; powers to investigate suspected money laundering or terrorist financing; and new orders to require someone to disclose information they may have on money laundering.

HMRC guidance on the Criminal Finance Act 2017 – which can be accessed on the www.gov.uk website – provides further details, examples and factsheets, and additional information on reasonable prevention procedures.

Taking a LEI-D back approach; MIFID II and legal entity identifiers

As I'm sure you're all aware, the Markets in Financial Instruments Directive II (MiFID II) comes into force next year, with one of its key objectives being market transparency. The arrival of MiFID II will see a new section added to the FCA Handbook, which refers to the requirement to make transaction reports to the FCA with regards to certain financial instruments. The reports have to be completed for all clients and, where the client is not a natural person (i.e. an individual), confirmation of their Legal Entity Identifier (LEI) will be required. These forms will also need to confirm the LEI of the investment firm, or firms, involved in the transmission and/or execution of the order for that financial instrument.

This change is intended to serve as a useful tool for the regulatory authorities in monitoring trading activity and detecting market abuse, however, this requirement seems to be creating some uncertainty and confusion amongst advisers, which I hope to allay with this article.

Whilst I don't believe many advice firms will be affected, all firms should read this article carefully to understand the potential implications.

So, what is a Legal Entity Identifier (LEI)?

An LEI is a unique identifier for a client which is a legal entity or structure.

Which clients need a Legal Entity Identifier (LEI)?

Most commonly clients of an advice firm, these will include:

- Companies (public and private)
- Charities
- Trusts (but not bare trusts)

A natural person (including sole traders and partnerships) does not require an LEI as their national insurance number will identify their involvement in the purchase of a financial instrument.

What types of financial instruments need to be reported?

The range of instruments is extensive but other than more complex instruments, such as derivatives, options, futures, warrants, bonds, swaps, etc. the most common instruments likely to apply include:

- Shares (in listed or unlisted companies) traded on a regulated market
- Investment trusts
- Exchange traded funds

Perhaps more importantly, it should be noted that not all MiFID financial instruments are included, as the transaction reporting rules do not apply to units in a collective investment scheme (as the client does not hold the underlying instrument under their title). Therefore, an LEI is not required for a legal entity investing solely in collective investment schemes i.e. ISAs, OEICs or General Investment Accounts. For the avoidance of doubt, investment bonds and insured pension schemes are not covered by these requirements as they are not MiFID instruments.

"A NATURAL PERSON (INCLUDING SOLE TRADERS AND PARTNERSHIPS) DOES NOT REQUIRE A LEI AS THEIR NATIONAL INSURANCE NUMBER WILL IDENTIFY THEIR INVOLVEMENT IN THE PURCHASE OF A FINANCIAL INSTRUMENT."

Does my firm require an LEI?

Investment firms that are a counterparty to the transaction (those who transmit and/or execute orders) will also need an LEI. This will include those firms which carry out discretionary portfolio services but not discretion solely within collective investment funds (see below).

This will not however include firms that only provide advice and facilitate the client's instructions.

Whilst the majority of advice firms will not require an LEI, one will be required if the purchase of a financial instrument listed above is made under your company name.

What action should you take?

If you have a client that is a company, trust or charity, they will require an LEI where you recommend one of the financial instruments listed above. Failure to hold an LEI will mean they will not be eligible to complete the transaction. You should therefore identify any clients that will be affected by the forthcoming requirement. On informing them, you may also wish to support them with the application process. You can find further details on this within the section below.

Should you refer any client that may require an LEI to a discretionary investment firm (DIF), you should seek clarification from that DIF to ascertain their position on carrying out transactions in financial instruments that will require your client to hold an LEI. Again, you may wish to assist your client in the application process.

In both the above scenarios you should consider the suitability of the recommendation of certain financial instruments based on the additional cost of holding an LEI (see section below).

This requirement applies from the 3rd of January 2018 onwards.

How to obtain an LEI

A LEI can be obtained directly from the London Stock Exchange (LSE) for an initial fee of £115 plus VAT, with an annual renewal fee of £70 plus VAT.

The LSE has issued a step-by-step guide to requesting an LEI, which can be accessed on its website (www.londonstockexchange.com)

LEI update

In recent weeks it has become apparent that there may, in fact, be circumstances where an LEI may be required for an IFA firm; and that is where there is an arrangement between a DFM and an IFA on an “Agent as Client” basis. To date only one DFM has actively written to IFAs to request an LEI, the clients for which it acts in a discretionary capacity, but it is unlikely that this is an isolated style of agreement. On an “agent as client” basis, the DFM views the IFA firm as the client, and thus as a corporate entity it will require an LEI in order for the DFM to execute trades on its behalf. We urge you to revisit your arrangements with any external DFMs, to establish the type of agreement which is in place, and whether or not you are likely to need to apply for an LEI accordingly.

By David Ingram
Managing Director
SIFA

Individual Accountability:
Extending the senior managers & certification regime to all FCA firms

The consultation on this important set of proposals ended on 3rd November. We will now have to wait for the FCA to wade through the responses before we get a Policy Statement and final rules, probably around Q2 of 2018.

That the SM&CR will be extended to all FCA regulated investment firms is not in doubt, this is a legal requirement based on amendments to the FSMA made in May 2016.

The consultation (CP17/25) has been merely around some of the detail around the extension.

It is unlikely that there will have been much disagreement about proposals to make senior managers within regulated firms both responsible for their areas of control within a firm and potentially accountable when things go badly. This is the purpose of the 'Senior Managers Regime' within these proposals.

The proposed 'Certification Regime' is more likely to have been challenged. Under this regime, more responsibility will be placed on the regulated firm to ensure that people in certain roles are suitable for them – both on an initial appointment and annually thereafter. One consequence of this is that the FCA will no longer publish details of all approved individuals. This could be seen as reducing customer protection as:

- consumers will not be able to check authorised status on the FCA's website
- firms recruiting new advisers will have to take even more care over referencing
- advisers may be 'certified' through more than one firm – without any firm necessarily knowing about the others. Whilst dual authorisation is possible at the moment, the FCA register means that firms can check the status of their advisers.

The third element of the SMCR is 'Conduct Rules' and, again, this seems unlikely to provoke much dissent.

Senior Managers Regime

The FCA has identified, for this purpose, 3 types of firm.

'Limited Scope'

These are, broadly, firms which are currently 'limited scope' under the Approved Persons regime.

'Core Firms'

The vast majority of investment firms regulated by the FCA alone.

Firms requiring an 'enhanced regime'

A small number of firms (FCA estimate this at fewer than 1% of firms they regulate) whose 'size, complexity and potential impact on consumers' warrant greater regulatory attention.

In this article we are concentrating on 'core firms'

The proposals

The most senior people performing key roles in the firm will need FCA approval before starting their roles. This is pretty similar to the existing Approved Persons requirements.

The main change proposed here is that every 'Senior Manager' will need to have a 'Statement of Responsibilities' that, clearly, sets out exactly what functions they are responsible and accountable for.

FCA will be consulting on template statements, and how they should be submitted to them, later in the year.

Senior Managers

The FCA Handbook will set out the 'Senior Management Functions', anyone carrying them out will be a 'Senior Manager' and therefore subject to the new regime even if they are not currently Approved Persons.

The consultation paper sets out the senior management functions for all 'Core' and 'Enhanced' firms:

Governing Functions	
SMF 9	Chair
SMF 1	Chief Executive
SMF 3	Executive Director
SMF 27	Partner

Required Functions	
SMF 16	Compliance Oversight
SMF 17	Money Laundering Reporting Officer

As with the Approved Persons Regime, only the governing functions appropriate to individual firms will be required – along with the compliance and MLRO posts. Where an individual has more than one function, the Statement of Responsibility can be merged.

All senior managers will have a duty of responsibility so that, if a firm breaches an FCA requirement, the senior manager responsible for the relevant area of the firm could be held accountable if they didn't take 'reasonable steps' to prevent/stop that breach. Action may be taken against the individual senior manager, or the firm, or both.

Responsibilities

The FCA proposes that firms will have a number of 'Prescribed Responsibilities' (PR) that must each be allocated to a senior manager within each firm. The relevant senior manager is the most senior person responsible for that PR. The Senior Manager must have sufficient authority and an appropriate level of knowledge and competence to take the responsibility.

Examples of PRs, of which there are 7 currently proposed, would include:

- Performance by the firm of its obligations under the Senior Managers Regime – including implementation and oversight (PR1)
- Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime (PR4)
- Responsibility for ensuring that the firm's governing body is informed of its legal and regulatory responsibilities (PR6)

In general, there should be a single senior manager for each PR (one senior manager may have more than one PR) but there may be some exceptions.

Partnerships

The consultation paper proposes that, in general, all partners in a partnership will be considered to be senior managers since all are likely to have influence over the way the firm is run – this reflects the current position under the Approved Persons Regime.

Grandfathering

It is not intended that existing Approved Persons holding senior management positions should have to seek approval under the new rules and there will be a further consultation on how they will be transitioned into the new regime.

Appointed Representatives

The consultation does not impact on individuals or Approved Persons of AR firms. There will be a separate consultation on this issue. Of course, senior management of principal firms remain fully responsible for ensuring that AR firms comply with FCA rules.

Certification Regime

A whole new set of definitions was proposed in the consultation paper. The FCA believes these are required in order to achieve their objective of placing greater responsibility on firms to ensure that relevant 'employees' are fit and proper to do their job. The firm must issue these 'employees' with a certificate stating that they are 'fit and proper' to carry out a certification function and stating what that function is.

The proposals widen the range of 'employees' who need to meet these criteria while at the same time removing any requirement for FCA to approve them. This is probably the most contentious aspect of the SM&CR.

This regime applies to people who perform certain functions, known as 'Certification Functions' (CF) but are not 'Senior Managers'. A CF is defined, in the amended FSMA, as a function 'that requires the person performing it to be involved in one or more of the firm's affairs, so far as relating to a regulated activity, and those aspects involve, or might involve, a risk of significant harm to the firm or any of its customers'. Fortunately, this is made (slightly) clearer by FCA in a table showing the functions which it considers meet this definition, an adapted version of which, just showing the most relevant functions, is shown below:

Obviously, not all firms require all of these functions.

The significant management function seems likely to bring people into the Certification Regime who are not currently subject to the Approved Persons regime. These are people responsible for 'significant business units' and, while it is for firms to decide which business units are 'significant', the FCA is proposing some guidelines for firms to consider:

- the size and significance of the firm's business in the UK
- the risk profile of the unit
- the unit's use of the firm's capital
- the unit's contribution to the firm's profit and loss account
- the number of employees, certification functions or senior managers in the unit
- the number of customers in the unit.

It is, for example, possible that a paraplanning unit or marketing department would be deemed 'significant'

There are firms where advisers are supervised by individuals not currently subject to the Approved Persons Regime, it would seem likely that these individuals would be considered to have a Certified Function.

FCA Approval

The onus for deeming a Certification Function holder to be 'fit and proper' will rest entirely with the firm, the FCA will not approve these individuals and there will be no central register of those holding CFs. This has been highlighted as having the potential to reduce customer protection as firms will have no guidance from the FCA as to the past history of any applicant. Nor will consumers have a central register to which they can refer to confirm an individual's status and disciplinary history.

Certification Function	Overview
Significant Management Function (based on current CF29)	Someone with 'significant responsibility for a significant business unit'. – People below Senior Managers who are responsible for business units that, on account of their size nature or impact are considered 'significant' by the firm.
Proprietary traders (also based on CF29)	These individuals perform functions that would have been Significant Influence Functions under the Approved Persons Regime.
CASS oversight functions (current CF10a)	These individuals perform functions that would have been Significant Influence Functions under the Approved Persons Regime.
Functions subject to qualification requirements	Including, inter alia, mortgage advisers, retail investment advisers, and pension transfer specialists. The FCA Training & Competence Handbook contains a full list.
The client dealing function	An extension from the current CF30. This will apply to any person dealing with clients, including retail and professional clients and eligible counterparties. This will cover people who • advise on investments (other than a non-investment insurance contract) and perform other related functions, such as dealing and arranging • deal, as principal or agent, and arrange (bring about) deals and investments with this • act in the capacity of an investment manager and all functions connected with this • act as a bidder's representative
Anyone who supervises or manages a Certified Function (directly or indirectly), but isn't a Senior Manager	This is intended to ensure that people who supervise certified 'employees' are held to the same standard of accountability. It will also establish a clear chain of accountability between a junior certified 'employee' and the relevant Senior Manager

The FCA stated that some preliminary concerns were raised 'about the fact that people performing Certification Functions will not appear on a public register'. Unfortunately, they seem to have missed the point of 'central' and, while inviting feedback on the issue have phrased their question on this (Q9) as 'Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?' This suggests that the FCA has decided that it will not be maintaining its register despite the concerns that have been raised.

"THE MAIN CHANGE PROPOSED IS THAT EVERY 'SENIOR MANAGER' WILL NEED TO HAVE A 'STATEMENT OF RESPONSIBILITIES' THAT SETS OUT EXACTLY WHAT THEY ARE RESPONSIBLE AND ACCOUNTABLE FOR."

Employees

The Consultation Paper defines 'employees' as 'anyone who personally provides, or is under an obligation to provide, services to the firm in question under an arrangement made between the firm and the person providing the services or another person, and is subject to (or to the right of) supervision, direction or control by the firm as to the manner in which those services are provided'.

Therefore, self-employed advisers are included in the definition.

Fit and Proper

It is proposed that firms will be required to take responsibility for their staff being fit and proper to undertake their jobs. FSMA (as amended) requires firms to ensure that anyone carrying out a Senior Management or Certification Function is fit and proper to carry out their role. The FCA now proposes that Non-Executive Directors fall within this regime.

Firms must carry out the fit and proper test on appointment and at least annually thereafter.

No changes are proposed to the current qualification, T&C and personal characteristics requirements.

Evidence requirements

The Consultation Paper proposed new evidence requirements for firms to collect when assessing candidates for senior management roles, Certification Functions or non executive directors (even where the NED is not a senior manager).

Broadly, when appointing senior managers or NEDs, the firm will be required to undertake criminal records checks as part of the application process when submitting the application for approval to FCA. Firms will therefore need to register with the DBS and its equivalents in Scotland and Northern Ireland or, in the case of smaller firms, use an umbrella organisation as an intermediary.

It is for firms to decide whether to undertake criminal records checks for Certification Functions, the FCA does not intend mandating such checks for these roles, even for financial advisers.

Firms will be required to obtain regulatory references from past employers of all senior management, Certified Function and NED candidates.

The proposed new rules require firms to:

- request a reference from all previous employers in the past 6 years for applicants for these roles
- share information between firms in a standard format
- disclose certain information going back 6 years, including results of disciplinary action arising from breaches of the conduct rules (see below) and any findings that the 'employee' was not 'fit and proper'
- disclose any other information relevant to assessing whether a candidate is fit and proper – including the number of upheld complaints – covering the last 6 years (no time limit in the case of serious misconduct). Decisions as to relevance will need to be taken by firms on a case by case basis
- retain records of disciplinary and fit and proper findings going back 6 years
- not enter into arrangements that conflict with their disclosure obligations (eg non-disclosure agreements)
- to update regulatory references if new, significant, information emerges.

A senior manager must be responsible for the firm's regulatory obligations (PR 1 and PR 2).

Firms will not need to revisit disciplinary actions which took place before these rules come into force.

All of the above needs to be balanced with the firm's common law duties and relevant legislation including those relating to the rehabilitation of offenders and spent convictions.

Conduct Rules

The proposals here are far reaching and potentially onerous for firms.

The FCA's Code of Practice for Approved Persons describes the conduct required of individuals currently approved by the FCA. The amended FSMA gave the FCA new powers to write conduct rules to be applied to all 'employees' within a firm – not just Approved Persons.

The proposed conduct rules are intended to ensure a single set of standards across the market. The fact that the conduct rules would apply to individuals directly is expected to help shape the culture etc of firms as a whole in a way which supports FCA objectives.

The fact that the FCA can take enforcement action against any 'employee' to whom the conduct rules apply is expected to deter individuals from taking actions which could damage the firm or its clients or damage the financial market.

There will be two tiers of conduct rules which will apply to all firms:

	First Tier - Individual Conduct Rules
1	You must act with integrity
2	You must act with due care, skill and diligence
3	You must be open and cooperative with the FCA, the PRA and other regulators
4	You must pay due regard to the interests of customers and treat them fairly
5	You must observe proper standards of market conduct

	Second Tier - Senior Management Conduct Rules
SC1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
SC2	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system
SC3	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of your responsibilities effectively
SC4	You must disclose appropriately any information of which the FCA or PRA would reasonable expect notice

The consultation paper proposes applying the conduct rules to both regulated and unregulated financial services activities, including non-advising activities. The FCA feel that restricting the application of the conduct rules to regulated activities would be too narrow but these proposals do not go as far as the rules for banking firms.

The proposal is for the rules to apply to:

- all Senior Managers
- all Certified Functions
- all NEDs who are not Senior Managers (SC4 would apply to NEDs)
- all other employees other than ancillary staff.

Section 7.14 of the consultation paper set out a, non exhaustive, list of ancillary roles considered to be out of scope for the conduct rules including receptionists, switchboard operators, security guards, cleaners, IT support etc.

"WHILST THE CONDUCT RULES PROPOSALS ARE FAR-REACHING AND POTENTIALLY ONEROUS, THEY ARE INTENDED TO ENSURE A SINGLE SET OF STANDARDS ACROSS THE MARKET."

Training and notification requirements

The amended FSMA requires firms to make individuals subject to the conduct rules aware that this is the case and to train them in how the rules apply to them.

FSMA now also requires firms to notify FCA when disciplinary action has been taken against a person for 'any reason specified' by them. FCA proposes to require notification of disciplinary action only if that action was because of breaches of the conduct rules.

For senior managers firms will be required to notify FCA within 7 business days of the firm becoming aware of the matter. For other individuals, FCA proposes an annual report. Further consultation will take place on the format of this reporting later in the year.

The requirement to report these breaches to FCA for individuals other than senior managers would enable FCA to take enforcement action against them.

We can now only wait and see exactly which of these proposals are carried through to final rules and what, if any, amendments are made to them. In the main, they are positive and should help to enhance further the reputation of the UK's financial services sector.

SIFA

By Ian Muirhead
Chairman
SIFA

The professional services market of the future – and SIFA's role

When SIFA was launched, in February 1992, solicitors' roles in the professional services market seemed secure. The Law Society was the sole regulator, barristers were not permitted to offer their services direct to the public and solicitors were the de facto monopolists in the retail market for legal services.

Few solicitors considered looking outside the legal silo, though a few pioneering firms, mindful of the phenomenal success of the Solicitors Property Centres in Scotland, followed their example by setting up their own estate agency arms. However, most English solicitors lacked the entrepreneurial impetus of their Scottish counterparts and disdained involvement in the tacky world of estate agency. The Edinburgh Solicitors Property Centre conducted a series of expensive roadshows to promote an English variant of its own successful precedent, but to no avail. English solicitors were content to remain in their own comfort zone.

Some of the larger Scottish law firms, propelled not only by their spirit of enterprise but also by an obligingly permissive Scottish Law Society, had also entered the field of investment by providing stockbroking and discretionary fund management services, while smaller firms had expanded their estate agency involvement by offering mortgage, insurance and packaged investment services.

In England, there was little interest in financial services, which many regarded with some justification as being too "salesy" for their liking, but in 1992 two organisations were set up to support the development of financial services in the solicitor profession: ASIM, the Association of Solicitor Investment Managers, to assist firms to become involved in in-house stockbroking activities; and SIFA, Solicitors Independent Financial Advice, to assist firms to develop business in packaged investment products. Both subsequently received the blessing of the Law Society.

The seed had been sown, but in both cases the non-solicitors charged with developing these fledgling businesses found it difficult to work under the control of solicitors who for the most part regarded them as an incidental source of additional income rather than an integral part of their business offering. Consequently, most in-house financial services departments either hived-off into separate units or closed down, prompted also by the demands of the FSA, which had replaced the Law Societies both north and south of the border as the regulator of solicitors' financial services.

"IN THE FAST-CHANGING WORLD OF PROFESSIONAL SERVICES, IFAS ARE ABLE AT LAST TO TAKE THEIR PLACE AT THE TOP TABLE – ASSISTED AND SUPPORTED BY SIFA"

Now, in consequence of the Legal Services Act, solicitors' role in the world has changed dramatically. The profession has been dragged into the 21st century. Solicitors' monopoly has gone and all and sundry professional and commercial organisations are offering legal services. Solicitors are suffering from the complacency which afflicts all monopolists.

The shortcomings of their traditional transaction-based business model are becoming apparent, as also are the consequences of their reluctance to take a wider view of their clients' professional need and their lack of management systems and controls. What other professional body than the Law Society could have been so frustrated by its members' shortcomings as to report in the introduction to its Financial Stability Toolkit, 2015: "The SRA's report on financial stability said its engagement with firms found poor financial management that ranged from "naïve to reckless"

Solicitors' current regulator, the Solicitors' Regulation Authority, is alert to the dangers. It is thinking the unthinkable by proposing that solicitors should be permitted to provide some legal services on an unregulated basis and is encouraging solicitors to take an holistic view of their clients' needs by joining hands with other professionals such as accountants, financial advisers and surveyors. In consequence, financial services have become respectable in many solicitors' eyes, assisted in no small part by the greatly increased level of qualification achieved by many advisers.

So, the multi-disciplinary world is here. But not immediately in the way which might have been expected. Most of the running which has been made in creating the Alternative Business Structures permitted by the Legal Services Act has involved large commercial organisations, such as the Co-op, trade unions and insurance companies, tacking transactional legal services onto their existing business offerings. There are as yet few examples of different professions combining.

The chartered accountants are set to change this situation. Currently, almost 400 ICAEW member firms have been authorised by their professional body, which is one of the new legal regulators, to provide Probate services, and the Institute is now planning to extend its remit to cover all legal services. The over-arching legal regulator, the Legal Services Board, has predicted that in future small businesses will be more likely to seek legal advice from accountants than from solicitors.

The major advantage enjoyed by accountants in the newly competitive world for legal services is that they are essentially business people and they are pragmatic. Solicitors, by their training and instinct, are risk-averse. They tend to see the down-side in any situation rather than the opportunity, which often makes them poor business leaders.

"THE LEGAL SERVICES BOARD HAS PREDICTED THAT IN FUTURE, SMALL BUSINESSES WILL BE MORE LIKELY TO SEEK LEGAL ADVICE FROM ACCOUNTANTS THAN FROM SOLICITORS."

However, here too, change is on the way. Traditionally, the aspiration of most newly-qualified solicitors was to become a partner in a law firm, and ultimately this would mean that they would be owners, managers and practitioners in the business. It is now becoming accepted that this is not tenable. The three roles are increasingly being re-allocated.

As a result of the flexibility created by the Legal Services Act, external shareholders in law firms are becoming more common; and many of the larger firms have appointed chartered accountants as managers. Solicitors, in consequence, are being cast in the role of technical experts.

In parallel with these developments, the solicitor brand is succumbing to change. Traditionally it has identified both firms and individuals, but a growing number of firms are choosing to describe themselves by reference to the wider generic of "lawyers", which places them on a par with their non-solicitor competitors. This may be attributed in part to the fact that, in many law firms, members of the Chartered Institute of Legal Executives play an important role alongside solicitors. Or it may reflect a wish to avoid the stuffy and unapproachable image from which many law firms suffer.

What is clear is that in a world in which legal services are being offered by a wide range of disparate organisations, the solicitor brand commands respect when applied to individuals, in the same way as, for example, chartered accountants or chartered financial planners.

The overriding conclusion is that success in the multi-professional world of the future will come to those organisations which have relationship-based businesses and effective management systems and controls. Accountancy practices tick both boxes, but so also do financial planning businesses, a small handful of which have already employed solicitors. Others may hopefully be helped by SIFA's initiative to encourage Law Schools to make known to their students the job opportunities for paraplanners and financial advisers.

However, bearing in mind that most IFA firms are small compared with solicitor firms, there is limited scope for IFAs to create Alternative Business Structures and acquire law firms, though they may take on individual solicitors. So other forms of relationship are likely to continue to prevail. In the past, joint ventures have often failed to achieve their objectives because it proved impossible to get all the members of the law firm pulling in the same direction, and the continued absence of any requirement in the new SRA Code of Conduct means that this is likely to remain a major stumbling-block.

Consequently, client referrals are likely to remain the main form of interaction between financial advisers and solicitors, and in this respect the new draft SRA Code of Conduct, which is expected to come into force in the Autumn of 2018, should be helpful. It requires for the first time that client referrals must be backed-up by written agreements, the clear intention being that these should be firm-to-firm agreements governing all referrals by individual practitioners.

Catalyst, the on-line client referral system which includes 12 SIFA document precedents for use by solicitors, should also assist in creating a solid communications platform between advisers and solicitors, enabling solicitors to be kept in touch with their clients' financial affairs and providing a regulatory audit trail.

"...SUCCESS IN THE MULTI-PROFESSIONAL WORLD OF THE FUTURE WILL COME TO THOSE ORGANISATIONS WHICH HAVE RELATIONSHIP-BASED BUSINESSES..."

The SRA's new CPD regime (now re-named "continuing competence") is more flexible than the previous hours-based regime and provides the opportunity for IFAs to address solicitors' lack of familiarity with the key financial services issues affecting their legal work. In this respect SIFA is developing an initiative which will commence in November and will equip member firms to provide training to solicitors in eight of the main areas of cross-over between legal and financial advice. This will be supported by the range of SIFA client booklets and marketing material which bring these issues to the attention of clients.

Bringing SIFA's services to the attention of solicitors involves articles in the legal press and promotion through the Law Society's web site, where solicitors can identify SIFA member IFAs through the Law Society endorsed Directory and can read SIFA ads and contributions to the Society's member circulars. SRA regulation is always a concern for solicitors, and here again SIFA is able to help both members and their professional connections.

Change represents opportunity, and the changes currently taking place in the professional services market will enable IFAs for the first time to take their place at the top table – assisted and supported by SIFA.

SIFA
PART OF THE SIMPLYBIZ GROUP

By Colin Mitchell
Head of Pensions Proposition Royal London Intermediary

Putting more power in your hands

The new Royal London Pension Review Service

Strong relationships don't just happen by accident. They take time, commitment and effort.

When we spoke to a number of advisers last year, it was no surprise to hear regular reviews were at the heart of their ability to forge deeper connections with their clients.

It's a chance to catch up. A dedicated checkpoint to have a meaningful conversation around the performance of their plan. To reassess their client's current needs and future aspirations. And to showcase the value of their services.

But as with all things worthwhile, regular reviews can also be hard work.

The problems with client reviews

The advisers we spoke to told us the main issues they face with being able to offer ongoing client reviews boil down to two things – time and compliance.

To prepare for a client review, you'll probably be familiar with trying to source all sorts of facts and figures. You'll then work to package and present these in a way your clients can understand. All this can eat up a massive chunk of time.

Then there's the nagging fear that whatever service your provide falls foul of the regulator.

Introducing our new Review Service

In July, we launched our new Review Service – a support service that saves you time, is easy to use and helps to keep you on track with your compliance requirements.

This service builds upon our longstanding history of developing support tools for advisers and customers in the pensions market.

Good client outcomes are in everyone's interest. Our new Review Service provides advisers with an easier and more efficient review process, allowing them to concentrate their efforts on what really matters – adding 'real' value for their clients with advice on their current pension and their potential options and choices, which can now be quite complex.

How the Review Service can help

Our Review Service is designed to put more power in your hands. In just a few simple steps, you can create quality, visual reports to show your clients exactly how their retirement savings are doing – and what their future could look like.

Pick a style to suit you

The service produces reports packed full of impressive visuals – giving your hard work the graphic polish it deserves, while letting your clients see how you're keeping an eye on their money.

- **Client report** you can create a personalised report that encourages your client to engage with their plan, using colourful graphics and jargon free language. And, explain your professional fees and the plan charges in a way your client will understand.
- **Summary report** this one page summary shows a snapshot of your client's plan and includes the key points from the full client report.
- **Adviser report** a detailed report for you which backs up all the facts and figures in the client report, supporting your compliance requirements.

If you'd like to find out more about Review Service, speak to your usual Royal London Sales contact or visit adviser.royallondon.com/reviewservice.

Back in the GDPR...

There is currently very little that we know with any certainty about what to expect from the UK's Brexit negotiations. Hard or soft? Single market or free trade area? Bad deal or no deal? At the moment, there are an awful lot of questions about our upcoming divorce from the European Union, with very few answers available. In fact, I imagine that the Brexit lawyers are currently daydreaming of the halcyon days of handling actual divorce cases when all they had to worry about was who got custody of the dog and Aunt Edith's crockery set!

However, in financial services we do have a certain advantage in some areas as there are a number of pieces of European legislation heading our way that we do know for sure will be implemented in the next few years. These include MiFID II, the Packaged Retail and Insurance-based Investment Products (PRIIPs), the Insurance Distribution Directive (IDD) and, the issue predominantly in the spotlight in recent months, General Data Protection Regulation (GDPR).

GDPR is not a financial services specific piece of legislation, it will apply to every business operating in the UK, including advisory firms, in the same way as the existing Data Protection Act. If you have not yet begun to prepare for the date by which you must be compliant with GDPR, the 25th of May 2018, I would urge you to consider what action you need to take as soon as possible. Whilst many of the requirements are based upon common-sense practices which you are likely to already have in place, there are also some requirements around operations and documentation of processes which will be brand new to the majority of firms.

So, what will be the biggest issues that advisers need to consider?

- Formal processes must be put in place to ensure the quality of data. It makes sense for business, as well as data security reasons, to ensure that the data you hold is as accurate as possible. However, GDPR asks that 'every reasonable step' is taken to ensure the accuracy of data held and that inaccurate data is erased or rectified without delay.
- You will be liable for ensuring that your entire supply chain adheres to GDPR requirements. When purchasing and sharing data (for example, if you pass data to a third party to conduct a mailing), you are responsible for undertaking due diligence to ensure that every part of your supply chain meets the GDPR rules.
- The rules are more stringent regarding data subject consent. The existing Data Protection Act does state that consent to use their details must be given by the data subject, however, the GDPR will put a higher burden upon establishing the validity of the data and the data

The Information Commissioner's Office has issued a twelve step plan for businesses to take now in preparation to be GDPR compliant before the 25th of May 2018.

1. **Awareness:** You should make sure that decision makers and key people in your organisation are aware that the law is changing to the GDPR. They need to appreciate the impact this is likely to have.
2. **Information you hold:** You should document what personal data you hold, where it came from and who you share it with. You may need to organise an information audit.
3. **Communicating privacy information:** You should review your current privacy notices and put a plan in place for making any necessary changes in time for GDPR implementation.
4. **Individuals' rights:** You should check your procedures to ensure they cover all the rights individuals have, including how you would delete personal data or provide data electronically and in a commonly used format.
5. **Subject access requests:** You should update your procedures and plan how you will handle requests within the new timescales and provide any additional information.
6. **Lawful basis for processing personal data:** You should identify the lawful basis for your processing activity in the GDPR, document it and update your privacy notice to explain it.
7. **Consent:** You should review how you seek, record and manage consent and whether you need to make any changes. Refresh existing consents now if they don't meet the GDPR standard.
8. **Data breaches:** You should make sure you have the right procedures in place to detect, report and investigate a personal data breach.
9. **Children:** You should start thinking now about whether you need to put systems in place to verify

subject must be fully informed of their right to withdraw consent to use their details.
- The Information Commissioner's Office (ICO) must be informed if a data breach occurs. Again, not a big change here for most firms, as it is already recommended that any serious breaches should be reported. The GDPR will make this mandatory, and introduce a new process and timeframes.

So far, so straightforward? Well, one of the rules which might be more problematic for more problematic for advisers is that client information must be completely deleted from your records, rather than just archived, if the client makes that request. On first glance, that seems perfectly reasonable; nobody should have the right to hang onto your personal data if you don't want them to have it. However, in an increasingly litigious society, with some complaints received by advisers dating back many years, how can you defend yourself against claims if you have deleted the details of the client and the case?

At the moment it seems like a catch-22; how can you observe the rules of the GDPR without leaving your business vulnerable to false claims, or even those which are made in good faith but would be easy to answer if you had access to the relevant case details?

Luckily, the Information Commissioner's Office has inserted a few small, but very powerful, words into its summary document which suggest that it might understand that this will be a complex rule for some types of business to observe; that data need not be erased upon consumer request if there is a "lawful basis" for it be retained. Please do remain mindful, however, that you may be called upon to provide transparent and comprehensive justification of this 'lawful basis', either by a client or by the regulator, so needs to form part of your preparation.

So, although the FCA is yet to issue any formal guidance, it is highly unlikely that it will deviate greatly from the framework set out by the ICO so it would be fruitless, and ultimately more time consuming, to defer your GDPR preparations. Just think, it could be worse; you could be a Brexit negotiator!

The ICO has provided a useful checklist to help firms ensure they are fully compliant with the requirements of GDPR, you can find it on its website at www.ico.org.uk

individuals' ages and to obtain parental or guardian consent for any data processing activity.

10. **Data Protection by Design and Data Protection Impact Assessments:** You should familiarise yourself now with the ICO's code of practice on Privacy Impact Assessments as well as the latest guidance from the Article 29 Working Party, and work out how and when to implement them in your organisation.
11. **Data Protection Officers:** You should designate someone to take responsibility for data protection compliance and assess where this role will sit within your organisation's structure and governance arrangements. You should consider whether you are required to formally designate a Data Protection Officer.
12. **International:** If your organisation operates in more than one EU member state (i.e. you carry out cross-border processing), you should determine your lead data protection supervisory authority. Article 29 Working Party guidelines will help you do this.

Members in the news

Steve Mackie

Steve Mackie, Director at North Laine Financial Management Ltd in Brighton is a Chartered Financial Planner and Fellow of the Personal Finance Society. Steve and his co-Director, Nick Gorton, have a number of successful AR joint venture relationships with law firms in the South East. The firm has had impressively strong growth in both client numbers and funds under management since its standing start in 2004 as one of the region's first fee-based financial planning firms. Steve has recently joined SOLLA as an associate member. He aims to achieve full member status in the new year as part of his ongoing development to better serve the firm's predominantly older, medium to high net worth private clients.

Caroline Anstee

"Financial education is key to future wealth", so feels Caroline Anstee, Managing Director of Anstee & Co Ltd. In an article by Amanda Newman-Smith for Money Marketing published on the 29th September Caroline was quoted as saying: "Everyone should have financial education. It's one of life's basic skills but nobody recognises how important it is. There are two things everyone should learn: how to look after money and how to cook. Nobody can live without money or eating." Kettering based Anstee & Co continues to grow having just opened its fourth office in Snow Hill Birmingham.

David Hawes-Gatt

Chevening Financial's Founding Director David Hawes-Gatt was delighted to receive the 2017 national 'Small Business Big Heart' award for their program of community support, taking local pensioners for weekly shopping trips. Chevening specialise in care fee planning, investments and pensions, and has developed relationships with several local care homes over many years. Having qualified STEP and Long Term Care advisers within the business has helped this process.

Anthony Clark

Anthony Clark of Riverfall Financial introduced the firm's inaugural **"Joined-Up-Expertise"** event at Derby's Pride Park stadium in September. With an invited audience of 30 business owners from around the East Midlands, the event focused on the **"parallel planning"** challenge for any business owner of managing their own business's financial and legal challenges as well as their family's finances. Anthony stressed the value of combining the expertise of a financial adviser, a solicitor and an accountant working closely together. He was followed by colleagues from Riverfall, Else Solicitors and Alexanders Accountants, who used a workshop/case study presentation to illustrate the issues. The evening was very well received and further events are planned.

Mark Stone

Mark of Whitechurch Securities Ltd, has 28 years' experience in financial services, the last 16 of which have been at Whitechurch and the last 10 as a director of the company. Mark is a Fellow of the Personal Finance Society and a Pension Transfer Specialist. He heads the team of Whitechurch financial advisers, dedicated to providing high quality advice to their clients. The emphasis when advising a client is to take complicated financial situations and break them down into manageable solutions, thus producing a clear picture of the client's financial position for the present and future years.

By Paul Latham
Managing Director
Octopus Investments

Why investors are finding Venture Capital Trusts increasingly attractive

VCTs were once considered 'niche' investments, but recent events have seen them become increasingly popular, explains Paul Latham of Octopus Investments.

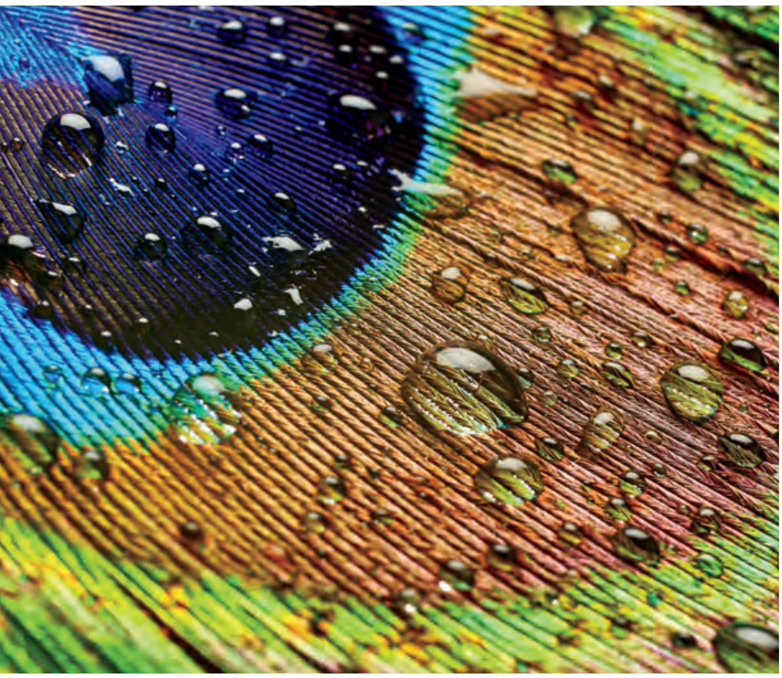
There is a healthy appetite among UK investors for Venture Capital Trusts (VCTs). In the last tax year, an impressive £542 million was raised from investors, an increase of 18% from the previous year and the second-highest VCT fundraising year on record. There's now a total of £3.9 billion invested in the VCT market*.

One of the main reasons why VCTs have gained in popularity is that many high earners, particularly those getting closer to retirement age, are now far more constrained by their pension. Back in 2010, someone with a personal pension could withdraw a maximum of £1.8 million before triggering any additional tax charges. This lifetime allowance has been reduced down the years and now stands at just £1 million. Therefore, anyone who has accumulated a significant pension pot over their lifetime could risk exceeding the lifetime allowance, even if they make only modest future pension contributions.

As a result, more clients are interested in exploring how a VCT could complement their existing pension arrangements. Of course, a VCT, which is a high-risk investment, shouldn't be considered a replacement for pension investments.

Property owners are also feeling the pinch, due to changes in tax legislation. A series of measures – including a 3% stamp duty surcharge on the purchase of buy-to-let properties and second homes and the phased reduction in tax relief on mortgage interest – has made property portfolios much less tax-efficient. Many property-owning clients who were previously paying income tax at the basic rate will likely be pushed into the higher-rate tax bracket, despite their effective income from the property staying the same.

VCTs can help clients who are keen to expand their investment options and are willing to broaden their horizons. Provided investors are comfortable with the high-risk nature of smaller companies, a VCT could add a valuable source of diversification to an investment portfolio.



*Source: The Association of Investment Companies, April 2017

PRE & POST Retirement Planning - Complementary Solutions

By Barry Lynas
Senior Business Development Manager
Blackfinch Investments

With the annual pension contribution limit now at £40,000 – when it was £255,000 only a few years ago – and the lifetime allowance at £1m, there is a clear need among higher earners for supplementary tax-efficient investments through which they can 'top-up' their pensions.

Building the 'Retirement Pot'

EIS and VCTs each have attractive tax planning characteristics which make them good investment options, as both benefit from an income tax rebate equal to 30% of the initial investment. An investor who has reached their maximum pension contribution can continue to utilise these subscription-based tax relief solutions.

While pension investments are largely subject to income tax as they are drawn down, VCT and EIS solutions are not. Whilst VCT and EIS investments must be held for a fixed period to qualify for tax relief, after the holding period investors have a great deal of flexibility and greater access to the investment, compared to pensions.

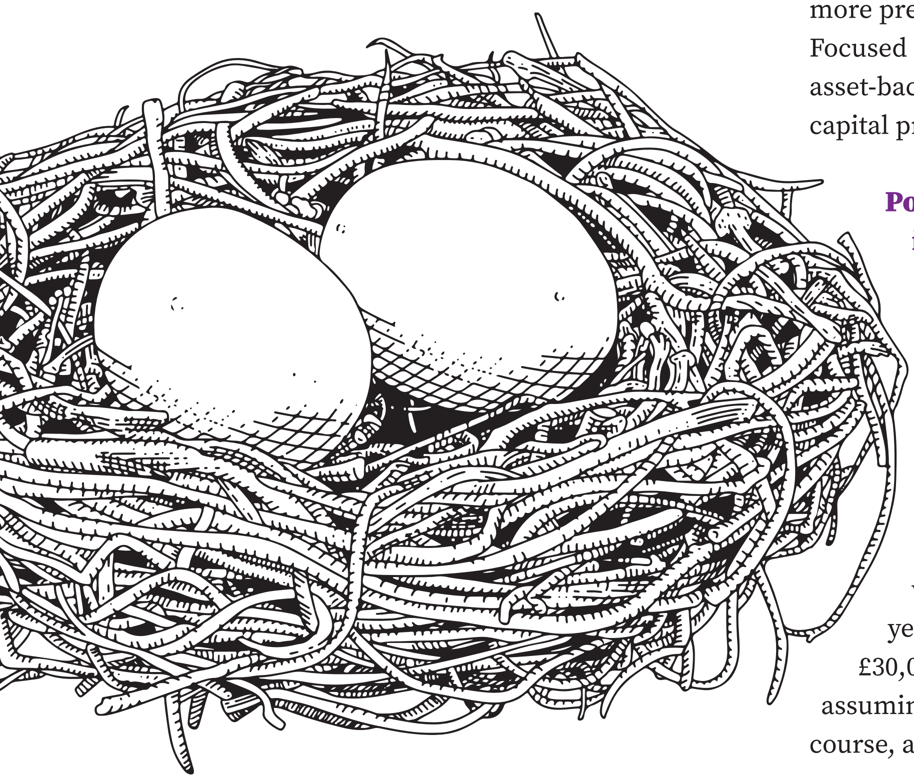
For some investors, the situation deteriorates further where their employer used to give them significant pension contributions but can no longer because the investor has either reached their lifetime limit or have contributions capped at £10,000 per annum. Example: an investor used to receive a contribution to their pension from their company of £50,000 per annum but can now only contribute £10,000 per annum meaning that the investor's remuneration package has decreased. Asking the employer to pay a net £40,000 to the employee would balance their package and they could invest this into an EIS. The investor's net position (after tax relief) would be almost the same as when their employer contributed more pension.

The bulk of VCTs' investment returns are typically paid as tax-free dividends, which is very useful from a retirement income perspective but perhaps not so useful for pre-retirement pot building.

EIS are 100% free of IHT after 2 years, which can have an important role in estate planning alongside pensions and can also benefit from loss relief.

EISs and VCTs can provide portfolio diversification and lower correlation to public markets through exposure to potentially higher growth smaller companies.

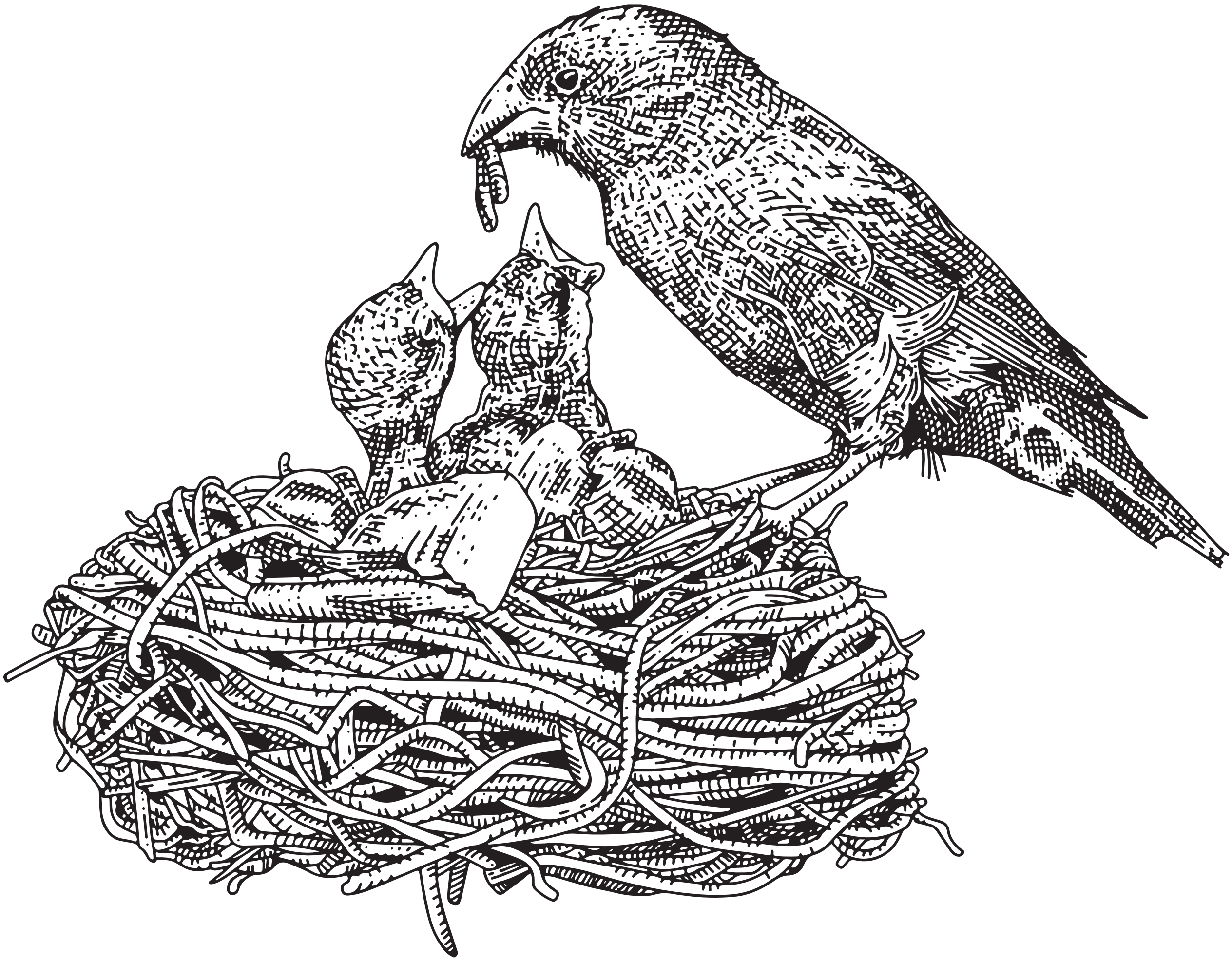
Several providers have launched EIS funds in recent years that invest in qualifying companies that generate more predictable returns such as the Blackfinch Asset Focused EIS Portfolios which allows clients to access asset-backed trading activities that provide a degree of capital preservation and risk mitigation.



Post Retirement – 'The elimination of income tax in retirement'

Consider a retired man with a pension generating an income of £50,000 per annum on which he pays £8,700 of income tax plus further income tax on savings and share dividends resulting in a total tax bill of £9,000. He has investable assets of £150,000.

Investing £30,000 into an EIS will give the investor income tax relief of £9,000. This will wipe out his entire income tax bill for that year. In the following year, he can invest a further £30,000 with the same result and again in year 3 – assuming his income tax bill does not change and, of course, assuming current EIS legislation is unaltered.



"EIS AND VCTS CAN PROVIDE PORTFOLIO DIVERSIFICATION AND LOWER CORRELATION TO PUBLIC MARKETS THROUGH EXPOSURE TO POTENTIALLY HIGHER GROWTH SMALLER COMPANIES"

An EIS can return the investor's capital after it has been held for the 3-year qualifying period. This means the year 1 investment, having reached the 3-year qualifying period by year 4, can, once the fund has been liquidated, be reinvested into another EIS to eliminate the investor's year 4 income tax bill.

Similarly, the year 2 EIS investment can be reinvested in year 5, year 3 into year 6 and so on. It should be noted, however, that there is likely to be a period after the 3 year EIS qualification period while the EIS fund is wound up. Therefore, investors following this approach over an extended period may miss a year as their investment date moves later each tax year.

However, under current legislation, EIS allow investors to reclaim income tax from the previous year as well as the current year; thus, the delay could be addressed through taking this option. Alternatively, investors could view the EIS as a 4-year cycle.

A similar principle can of course apply to VCTs, albeit you are then looking at a 5-year cycle.

VCTs and EISs are the complement of choice for many investors and it is easy to see why. The tax relief alone can provide a reliable return; plus, investors are able to access their money after the tax qualification periods to either reinvest in tax-efficient investments for another round of tax relief, or invest elsewhere.

BLACKFINCH
INVESTMENTS

Call us today on 01684 571 255 to arrange an appointment with one of our team or email enquiries@blackfinch.com for more information.

By Richard Ardron
Marketing Director
The SimplyBiz Group

Advice v technology this time its personal!

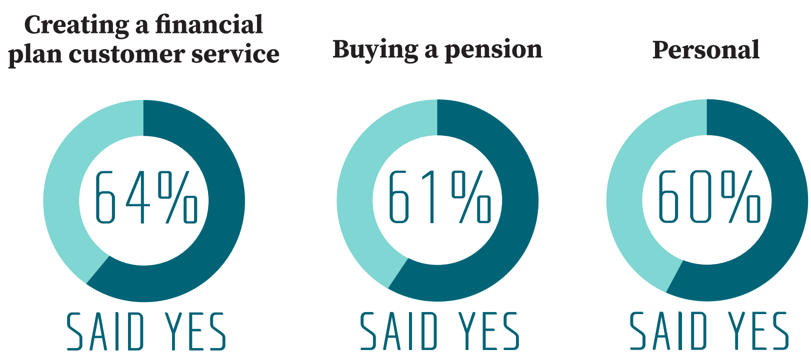
Everything I read these days seems to reaffirm what I've already read and indeed confirms the conclusions I've already reached – consumers don't want machines to replace advice.

So, with that startling revelation out of the way, why is there still a role for digital services in the traditional advice model?

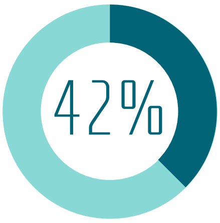
When the term robo-advice first entered our world, it elicited much discussion amongst advisers, providers and the wider world, with most concluding that ***'robots won't replace humans'***.

Whilst it's not quite that clear cut, research does back up the belief that consumers will always want advice when it comes to making important financial decisions.

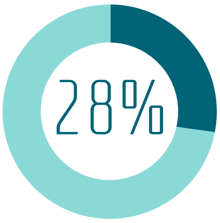
In a recent survey, consumers were asked whether they felt human participation was beneficial when it comes to financial planning...



Further more...



Have no desire for automated financial activities



Happy for a computer programme to give advice, but not make decisions

Source ING International Survey Mobile Banking 2017 - New Technologies report

So – when it comes to making important decisions, it's clear that consumers wish to retain control.

However...

On further investigation, it becomes evident that there is still a place for technology.

"PEOPLE WERE LESS CONVINCED THAT HUMANS WERE NEEDED TO RESEARCH THE MARKET OR TO TRADE STOCKS AND SHARES. JUST UNDER HALF OF THE POPULATION VALUED THE HUMAN TOUCH WITH THESE ACTIVITIES"

Source Legg Mason

Advisers and technology – a match made in heaven?

So, if today's consumer still values the personal touch, where can we harvest technology to bring about some much needed efficiencies and to save time?

Well, looking at what research and actual habit tells us, there is a place for both and they actually complement each other quite nicely.

Consumers do use technology to make every day transactions and this included financial products, what's more, its not always economical to give face to face advice all the time...

Consumers want face to face advice for...

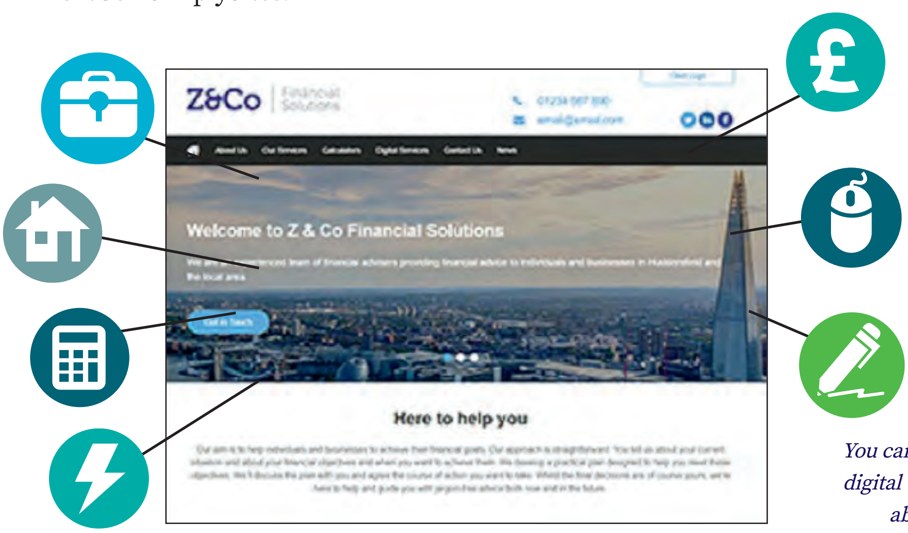
- *Creating a financial plan*
- *Planning for retirement*
- *Reducing the amount of tax paid*
- *Large investments*
- *Buying a house*

Consumers happy to use a website for...

- *Completing some basic information*
- *Risk profiling*
- *Investing in an ISA, or children's ISA*
- *Buying insurance products*
- *Switching energy suppliers*

Introducing NextGen Simplysites

To help firms capitalise on the growing trend amongst consumers to carry out basic financial transactions online, we have created NextGen SimplySites.



Features:

- Log into your portal
- Quote and buy B&C Insurance
- Invest in an ISA
- Complete a risk profile
- Calculate how much you need in retirement
- Quote and buy life cover
- Switch energy supplier

SimplyBiz Group

You can now have a NextGen website built for free and all of our digital tools are included in the £20pcm (plus VAT) packages and above. Visit www.nextgensites.co.uk for more information.

By Ian Muirhead
Chairman
SIFA

What solicitors need to know about financial services

The Solicitors Regulation Authority is encouraging solicitors to take an holistic view of their clients' needs and to work more closely with financial advisers. This necessitates a mutual appreciation of those aspects of financial services which impact most frequently on solicitors' work. With this in mind, SIFA, in conjunction with Aviva, Prudential, Octopus and M&G, has created eight training modules, comprising Powerpoint slides and accompanying text, which are now available on the SIFA Professional protected area of www.sifa.co.uk to enable members to make their own presentations to their professional connections. The eight modules are as follows:

1. Pensions and estate planning

The headline innovation introduced by George Osborne's "pension freedoms" was to remove the necessity for pension funds to be applied on maturity to purchase an annuity, However, equally revolutionary is the tax treatment of the funds released from the pension scheme. If the investor dies before the age of 75, the fund can pass to nominated beneficiaries free of tax; and on death after that age income tax will be payable by the beneficiaries on the benefits received. Most importantly, however the fund will be free of inheritance tax and this benefit can be passed to succeeding generations. This makes pensions one of the principal estate planning tools. It is vital, however, that nominations of beneficiaries or the use of a suitable trust should be reviewed regularly and kept up-to-date.

2. Tax constraints on retirement funding: pensions and lifetime ISAs

Lifetime ISAs ('LISAs') were introduced in April 2017 to provide an alternative or additional means of saving for retirement and to assist would-be home owners to accrue sufficient funds to enter the housing market. The tax treatment of personal pensions and LISAs is different. Personal pensions provide tax relief at investors' highest marginal rate on contributions but, apart from the 25% tax-free cash entitlement, the withdrawals are subject to income tax. LISAs, on the other hand, offer tax-exempt returns but contributions are limited to £4,000 p.a., which is topped-up by a government contribution of £1,000. This compares with an annual contribution limit of £40,000 for pensions. Other things being equal, pensions are more likely to be attractive to higher rate taxpayers and LISAs to first time house buyers and the self-employed.

3. Collective investments v on-shore and off-shore investment bonds

Essentially similar investments can be accessed by the two main forms of tax-wrapper, collective investments (unit trusts and open-ended investment companies ('OEICs') and investment bonds. The main difference lies in their tax treatment. The returns from collectives are taxed in the same way as direct investments in securities. Income returns in excess of the dividend allowance (reducing from the current £5,000 to £2000 is April 2018) are taxed at an escalating rate - 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers. Capital gains above £11,100 are subject to 10% capital gains tax.
By contrast, returns on investment bonds, which are technically insurance policies, are subject to tax of circa 20% in the hands of the insurance company and the investor pays tax at their personal rate, though 5% p.a. can be drawn without tax, and tax on maturity can be mitigated by transferring the bond to a lower-rate taxpayer. Offshore bonds have other characteristics.

4. Financial products associated with estate planning

Apart from pensions, one of the principal opportunities for minimising inheritance tax is provided by investments which benefit from Business Relief ('BR') or Agricultural Relief. The key advantage of such investments is that whereas gifts and trust solutions usually take seven years before they become exempt

from IHT, BR investments qualify for exemption from IHT after just two years. Some such investments offer life cover in respect of this two-year period. However, the investments which qualify for BR are relatively high risk.

5. IHT mitigation options and the Residence Nil Rate Band ('RNRB')

The additional nil rate band for home owners came into effect in April 2017 and benefits 'direct descendants' of a deceased who inherit the family home. The RNRB will increase progressively in value until it reaches £175k in 2020/21, by which time the total of the NRB and the RNRB will be the psychologically significant figure of £500,000. However, since RNRB will only be available to direct descendants, nil rate band trusts will have to be reviewed. Also, the allowance is clawed back to the extent that the value of the home exceeds £2 million.

6. Pension freedoms – the impact on estate planning and divorce

The potential availability of pension cash provides additional options for divorcing couples, for example when it comes to funding the purchase of a new home (though it will be vitally important to avoid the trap of releasing large sums in such a way as to trigger an on-going higher tax bill). Transfers from occupational schemes may also need to be considered. These could be advantageous to one party and their dependants and disadvantageous to the other. Divorce may well also necessitate a review of nominations and letters of wishes.

7. Trust investment solutions

Trust investment should be considered at two levels – first the most appropriate 'tax wrapper' and then the underlying investments. The reason for this is that investments held within discretionary trusts are subject to high levels of taxation which can be circumvented by investing through the medium of investment bonds. Investments held within interest in possession trusts and bare trusts, by contrast, are taxed in the same way as they would be if they were held by the beneficiaries as individuals.

8. Investment for charities

The most popular medium for investment by charities is the common investment fund ('CIF'). CIFs are themselves charities and enjoy the same tax status as other charities. Investment bonds do not offer this benefit and are therefore unsuitable for charity investment. In addition, the inclusion of investment bonds in a trust portfolio will result in the loss of tax exemption for other investments. In the same way as with other trusts, charity trustees must take advice if they do not themselves possess the required expertise.

By Stan Russell
Head of Business Development Prudential

Pensions and Divorce in a pensions freedom world

This article is not about the traditional pension and divorce issues but looks at where you can work with solicitors to help their (and your) clients achieve their new objectives and meet their new separate needs after a divorce.

How will they achieve their level of desired income where the pensions need to provide for two sets of outgoings rather than one? Is the asset split fair in terms of capital and income? What about the state pensions? Can we stop deliberate deprivation of pension assets? These are just some of the questions that financial advisers are best placed to answer, particularly the "silver splitters", those about to retire or already retired, and who need to be aware that simply agreeing an equitable asset split is not necessarily the right result for one or other party, if one ends up asset rich but income poor.

Legislation and case law determined over decades helps solicitors and judges alike decide how matrimonial assets should be dealt with. The Matrimonial Causes Act 1973, The Welfare Reform and Pensions Acts 1992 and 1999, The Family Law Scotland Act 1985 and the Pensions Act 1995 are just some of the legislation that can influence how pensions are treated on divorce and whether they are shared or offset or have attachment orders placed against them.

"…SIMPLY AGREEING AN EQUITABLE ASSET SPLIT IS NOT NECESSARILY THE RIGHT RESULT FOR ONE OR OTHER PARTY, IF ONE ENDS UP ASSET RICH BUT INCOME POOR."

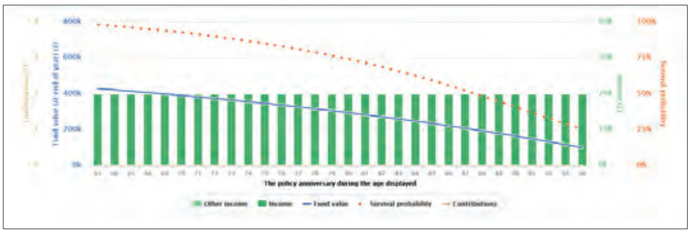
Whilst that does not change with Pensions Freedoms, the new rules will affect both the advice you have given them as a couple (legacy planning) and your future advice as you look to ensure both parties are able to continue to live comfortably in their post-split lives.

Ensuring solicitors understand the income issues will be important in achieving this end. Cash flow modelling can be useful in demonstrating how achievable the desired level of income is and can highlight that whilst each party of the divorce has the same "share" of the assets, that does not necessarily mean the desired income level is either achievable or sustainable over the longer term.

Take our retired couple: Pre divorce they had a £305,000 mortgage free home and were living off a single drawdown pot (his), of £450,000 drawing £20,000 pa for housing (£8,000 pa housing costs), plus £12,000 pa spending and intending to leave a legacy of £100,000.

Post-divorce they need £39,000 pa for two houses, one retaining the matrimonial home and the other renting (UK average of £19,000 pa). If there are limited other assets, then an equitable split would be £377,500 each, but one now has a pension pot of £377,500 and the other £72,500 in pension and the home at £305,000. Fair? Value wise yes, income wise no.

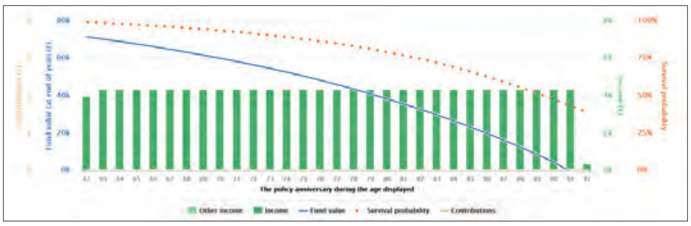
Looking at this on a modeller we can see the pre and post situation:



Pre Divorce: £450,000 fund; £20,000 pa income; £100,000 legacy – 4.61% growth rate

Post-Divorce (him); FV £377,500; £25,000 pa income for him (£19,000 housing costs, £6000 living costs) – 7.3% pa growth rate required

The intended legacy is now of out the window and achieving the £14,000 pa from her fund (£8000 housing plus £6000 living costs), would require 24%+ pa return. Not feasible and so remodelling to show a sustainable income from the £72,500 fund will demonstrate the inequality of income.



Post-Divorce (her); FV £72,500 Growth rate 6.2% Income £4,356 pa

So equal but unequal and something that needs to be addressed.

What about the situation where one party does not have enough credits to achieve a full state pension. Gone are the days of one spouse being able to claim against a former partner's credits on divorce.

An imbalance of £2000 pa in state pensions may require finding £66,667 from the other marriage assets. In the past it was probably not taken into account when assessing assets but really needs to be now.

Adding to the complication you need to consider what happens when one party has a "protected amount" of state pension as calculated on 6th April 2016? How do you value that amount?

Modelling this will help demo the difficulties in satisfying income requirements and how a simple equitable asset split is not always the best answer.

The solicitor brand

By Ian Muirhead
Chairman
SIFA

The Law Society is rightly proud of the fact that the solicitor brand is one of the most widely recognised and respected in the UK.

According to the Society's research, the characteristics associated with the brand are overwhelmingly positive. Solicitors have a reputation for being experts in their field; honest and honourable; client focused; approachable and accessible; for giving value for money; and for adding value to society.

Despite this, some firms of solicitors prefer to brand themselves by reference to the wider generic of 'lawyers', like every other authorised provider of legal services. Why should this be so, when solicitors are primus inter pares? Perhaps they regard the solicitor brand as being unduly restrictive in a world where the Solicitors Regulation Authority is advocating an holistic approach to the provision of professional services, is expecting the Alternative Business Structure to become the standard business model, and is proposing that solicitors should be permitted to practise with non-solicitors in unregulated firms?

Perhaps the firms in question are adopting the 'lawyer' brand in an effort to address the fact that to a large extent solicitors' work lacks consumer appeal, being associated in many minds with the negatives in life – death, divorce, litigation and moving house. The term 'lawyers', by contrast, carries fresh transatlantic overtones.

Whatever the thinking, the view does seem to be developing that the solicitor brand, while admirably distinguishing individuals, is a less appropriate descriptor for firms. The hallmarks of a solicitor identified in the Law Society's research are essentially personal characteristics and say little for the firm as a whole other than that it comprises a group of such individuals.

The fact that many solicitor firms have for long operated as confederations of sole practitioners, sharing a roof and facilities for convenience but working as individuals in silos, stands in the way of corporate decision-making and is an impediment to progress. Only now do we have a draft Code of Conduct a small part of which addresses firms as well as individuals, and arguably this does not go far enough. For example, it is left to individuals to decide on their needs for continuing competence, without regard to the overall objectives of the firm which is likely to be footing the bill; and the accompanying guidance provides only a suggestion that the interests of other members of the firm might be taken into account.

It is little wonder that so many Compliance Officers for Legal Practice are unsure of their roles, and that many solicitors are unable to name their firm's COLP. As ex-Law Society consultant Tracey Calvert commented in Solicitors

Journal in September 2017, "I ask people in training sessions to tell me the identity of their COLP and what the term COFA stands for. I am pleasantly surprised when I get a clear response". The fact is that the role of compliance officer is a corporate role, but the Code of Conduct lacks any requirement for the installation of the management structures which would empower these guardians of compliance. Indeed the concept of compliance itself, as distinct from ethics, is not widely understood.

"FIRMS ….MAY NEED TO RE-POSITION AND POSSIBLY TO RE-BRAND THEMSELVES SO AS TO BROADEN THEIR APPEAL"

This situation is in marked contrast to that of the Financial Conduct Authority, which regulates firms and approves individuals. For the FCA, management systems and controls are the be-all and end-all of compliance. Any visit by the FCA to a regulated firm addresses first and foremost the question of whether roles and hierarchy are clearly defined, whether authority is accompanied by accountability, whether processes and procedures are consistent and whether satisfactory audit trails are in place.

As long ago as 2009 Paul Marsh, the then President of the Law Society, wrote in his introduction to the Law Society's handbook Financial Services for Solicitors **"Today we are not just solicitors. We are all business people"**. At that time this statement was based on hope rather than reality, and little has changed over the intervening eight years.

Today, the pressures of competition make the message more compelling, with chartered accountants representing a particular threat. Crowe Clark Whitehill's recent research found that more than 50% of regional solicitors and more than two-thirds of City solicitors regard accountants as 'the overwhelming competitive threat'.

Individual solicitors will continue to benefit from the enhanced status which they enjoy over most other professionals by reason of their qualification. But the firms within which they practise may need to re-position and possibly to re-brand themselves so as to broaden their appeal and retain the loyalty of their clients in the evolving multi-disciplinary market. And in order to be successful, any such initiative must be based on the firm foundation of effective management systems and controls. As the Law Society commented in its 2016 report on the future of the profession: "Business as usual is not an option for many, if indeed any, traditional legal service providers".

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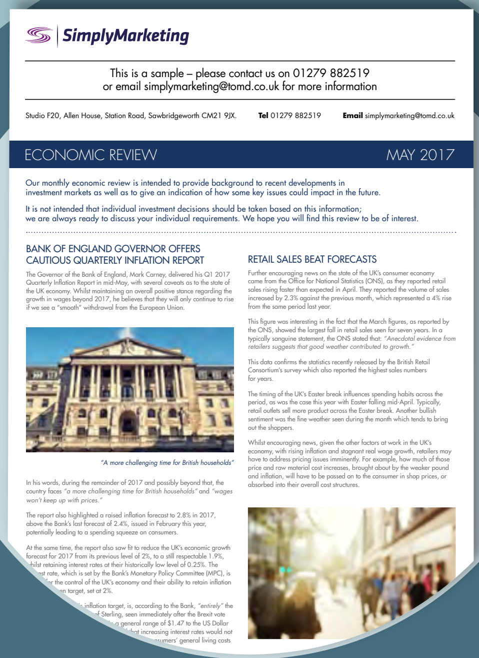

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This is a sample – please contact us on 01279 882519 or email simplymarketing@tomd.co.uk for more information

Studio F20, Allen House, Station Road, Sawbridgeworth CM21 9JX. **Tel** 01279 882519 **Email** simplymarketing@tomd.co.uk

ECONOMIC REVIEW MAY 2017

Our monthly economic review is intended to provide background to recent developments in investment markets as well as to give an indication of how some key issues could impact in the future.

It is not intended that individual investment decisions should be taken based on this information; we are always ready to discuss your individual requirements. We hope you will find this review to be of interest.

BANK OF ENGLAND GOVERNOR OFFERS CAUTIOUS QUARTERLY INFLATION REPORT

RETAIL SALES BEAT FORECASTS

Economic Review

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By Elaine Cruickshank
Tax and Trust Manager
Aegon

Transparency and trusts fulfilling data obligations

We're living in an era where more and more focus is being placed on data gathering and monitoring, with the ultimate goal of providing increased transparency. In this article, we'll look at some recent developments and their impact on trusts.

FATCA and CRS

The Foreign Account Tax Compliance Act (FATCA) was enacted with the aim of information relating to overseas accounts held by US taxpayers being shared with the Internal Revenue Service. Then the Common Reporting Standard (CRS) was developed with the goal of providing an increasing number of tax authorities with greater information on the overseas assets held by their respective tax residents.

> "...TRUSTEES SHOULD BEAR IN MIND THAT THE BURDEN OF COMPLYING WITH THE LEGISLATION..COULD ACTUALLY FALL ON THEM."

A lot of trustees have probably simply dismissed these automatic exchange of information initiatives, as added compliance burdens for the banks, platform providers, and insurance companies to worry about. However, trustees should bear in mind that the burden of complying with the legislation and reporting to the relevant tax authority could actually fall on them. This will be the case, where at least 50% of the trust income comes directly from financial assets and the trust is professionally managed, for example by a professional trustee company.

The Society of Trust and Estate Practitioners has drafted two really useful flowcharts to help trustees ascertain if they have to undertake additional due diligence as a result of the trust's classification:
FATCA: UK trusts under the UK/USA Intergovernmental Agreement (IGA) CRS: UK trusts under the Common Reporting Standard

MiFID II

Turning to the Markets in Financial Instruments Directive II (MiFID II) effective from 3 January 2018. In order for the trustees of most types of trusts (bare trusts being an exception) to trade in MiFID II governed financial instruments, trusts will have to apply for a Legal Entity Identifier (LEI) which has to be renewed annually. This will allow their investment manager to continue acting on their instructions and transacting in MiFID II governed securities on their behalf. The London Stock Exchange can issue these 20 digit LEI numbers, as can other Local Operating Units which have been established for this purpose. The trustees won't usually need to provide a LEI when they're investing directly in collectives, such as unit trusts or OEICs. But, they'll need to supply one if they are investing in certain other types of investments, for example, listed equities, investment trusts and exchange traded funds (ETFs). Every trust applying for a LEI will be provided with a unique code and these codes will be captured in a global data system. This data system will allow all the parties to a financial transaction to be identified anywhere in the world.

Online trusts registration

HM Revenue & Customs (HMRC) is also jumping on the bandwagon. It has withdrawn its paper 41G (Trust) form with effect from the end of April 2017 and replaced this with the Trusts Online Service, available on the gov.uk website. HMRC launched the service with the combined objectives of greater tax transparency and helping to fulfill its obligations under the EU's Fourth Money Laundering Directive. Bare trusts don't have to be registered, but all other trusts with a UK tax consequence do. In other words, this will impact UK

"...DON'T FORGET TO HIGHLIGHT THESE ADDITIONAL COMPLIANCE BURDENS TO YOUR CLIENTS TO MAKE SURE THAT THEY MEET THEIR OBLIGATIONS."

resident trusts and also non-UK resident trusts which suffer UK consequences due to having UK source income or gains from UK sited assets.

The trustees of existing trusts, who had registered their trust with HMRC prior to the introduction of the new online service, will also be required to complete the registration online from Autumn 2017 when the second phase of the online system is launched. The reason being that more details have to be captured on the Trusts Online Service than on the form 41G (Trust).

For new trusts, the registration has to be done by 5 October of the tax year after the trust is set up or when it starts to receive taxable income or incur chargeable gains, if later. Additionally, the onus will be on trustees to ensure that the register is accurate and kept up to date, for example, they'll have to update it each year there's a tax consequence. UK tax consequence in the year means an income tax, capital gains tax, inheritance tax, stamp duty land tax or stamp duty reserve tax liability. The register will ask for:

- details of the trust assets, including address(es) and values, and
- the identity of the settlor, trustees, protector (if any), anyone else exercising control over the trust and the beneficiaries or class of beneficiaries. The information to be captured includes their:
  - names
  - dates of birth
  - national insurance numbers if UK resident and not a minor, and
  - address and passport or ID number for non UK residents, where they don't have a national insurance number.

So next time you're advising clients, especially in relation to setting up a trust or a prospective trustee investment, don't forget to highlight these additional compliance burdens to your trustee clients, to make sure that they meet their obligations.

To find out more, please contact Lucy Carling-Roberts, Strategic Account Manager, Lucy.Carling-Roberts@aegon.com – quoting EC-SIFA

The information in this presentation is based on our understanding of current taxation law and HM Revenue and Customs (HMRC) practice, which may change. The tax treatment depends on the individual circumstances of each client and may be subject to change in future.

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SimplyBiz Group

DB or not DB that is the question

It is now over two years since the single biggest change to pension legislation in recent times and DB transfers have scarcely been out of the headlines, or the FCA's sights, since.

The trade press has covered every conceivable angle of defined benefits over that time, from charging structures to suitability and scams, and everything in between. From a practical sense, pension freedom has created an increasing appetite in DB transfers, which has in turn led to an increase in both regulatory policy and engagement from advisers.

From a regulatory perspective...

For the past twelve months, defined benefit transfers have remained a fixed area of focus for the FCA. The regulator has recently released two papers which you may find of interest. Firstly, in June, it published 'Advising on Pension Transfers', a consultation paper which sought to gather views on a range of potential changes to the DB advisory market. These changes include an amendment to the starting view of all transfers as unsuitable, ensuring that all advice ends with a personal recommendation and changing all GAR related cases to include an option analysis looking at a client's holistic financial circumstances and a pension transfer comparator. There would also be further regulatory guidance and clarity around pension transfer specialists, insistent clients, opt-out and overseas transfers.

This consultation closed on the 28th of September, with guidance expected in early 2018.

And then in early October, the FCA issued a summary detailing its work on Defined Benefit Pension Transfers to date. This paper set out the regulator's key objectives

in the DB market; to assess the way in which clients are currently receiving advice on DB transfers and whether that advice presents risk. Specialist transfer firms who were undertaking cases themselves and those advisers who outsourced transfer business to a specialist were considered by the regulator, and some areas of concern were raised about both situations.

For those introducing business, the FCA stated that sufficient information was not always supplied on the client's case when the business was introduced, specifically information outlining the client's objectives, needs, and personal circumstances. For specialist transfer firms, the FCA was concerned that the default funds were stuck to too often, without consideration of a client's personal needs, and that some firms taking introductions were not sufficiently resourced to process business within reasonable or pre-agreed timeframes.

Of course, these are very brief synopses of both of these important papers, and we would recommend that you take the time to read them in full.

So, what options do you have?

Many firms have a suitably qualified adviser on hand to deal with requests, but many do not – and even those that do, choose not to for various reasons.

So, as demand continues to outstrip supply, we continue to evaluate the market and provide firms with access to outsourced specialist partners, each of them subjected to our rigorous due diligence process.

We now have two such partners, who have provided the following by way of an update:

Update from Creative

"Creative were delighted to partner with the SimplyBiz Group to give reliable and efficient support to advisers and clients in this important business area. We have been extremely pleased with the response we have received from Member and Client Firms so far and we have received excellent feedback from those using our services, in particular the personal nature of the advice given. We have handled over 70 cases so far and look forward to helping even more advisers and clients in the future.

Update from Pensionhelp

'Pensionhelp were delighted to become the latest partner of The SimplyBiz Group last month and enjoyed appearing on the Advice Show to talk all things DB. We have received a tremendous amount of interest from firms and have already completed due diligence on over 50 firms who are now able to and indeed are, referring cases to us. We look forward to working with more firms over the coming weeks.'

As always, the Pension Helpdesk are on hand to answer all your questions.