

# FINANCIAL SERVICES AND INSURANCE ADVICE IN LEGAL PRACTICE



**The ability of firms to provide financial advice to their clients and to recommend that they obtain insurance to address an identified risk**

**is an important but often overlooked aspect of law firm compliance requirements. Little wonder, some may say, as the provisions involved are some of the most complex and obscure rules and regulations that apply to the profession but they do nonetheless commonly feature in SRA inspection visits and, as ever, ignorance will not provide a defence. writes Jayne Willetts, Solicitor Advocate with Jayne Willetts & Co.**

The starting point for getting to grips with this topic is the Financial Services and Markets Act 2000 ('FSMA') which made it an offence to provide financial advice unless the adviser was properly authorised to do so, and also subject to appropriate regulation. Solicitors' firms are not authorised to provide direct financial advice to their clients, but most firms are authorised to provide ancillary financial advice when it is incidental to mainstream legal services. Good examples would be advice from a family lawyer in relation to the split of assets within financial proceedings or negotiations; a probate lawyer taking steps to claim and then distribute the deceased's investments; or commercial negotiations in relation to shareholder disputes or other corporate reconstructions.

In relation to all such activities, solicitors' firms will be permitted to act by virtue of an exemption to the usual requirement for FCA authorisation through being an 'exempt professional firm' or 'EPF'. This authorisation is provided through nominations from the SRA to the FCA through its records of firms' activities. The full range of the types of services that law firms can lawfully undertake is set out in the SRA Financial Services (Scope) Rules and the controls on how they do so will be found in the

closely linked Financial Services (Conduct of Business) Rules – both now forming part of the Standards and Regulations in revised formats.

The regime also extends beyond 'regulated financial services activity', in the revised terminology of the SRA Standards and Regulations, to the provision of insurance advice. Insurance distribution is widely defined as being the process of "advising, arranging, acting as an agent or assisting in the administration and performance of a contract of insurance" under Article 2.1 of the Insurance Distribution Directive 2016/97.

This will therefore cover recommendations to obtain insurance for after-the-event legal costs, conveyancing issues such as chancel repairs or building regulations problems, and so on. The degree of involvement needed to trigger the need to comply with these provisions is low and applies even if the lawyer merely introduces the client to an insurance broker in order that they can obtain such a policy on the client's behalf.

This latter point is a common cause of confusion: simply referring a client on to an insurance broker might seem to fall under one of the exemptions under the Regulated Activities Order 2001 on which the SRA rules are based, but the exemptions are qualified so it is preferable to ensure that you are registered as an EPF in any event especially as it costs nothing to do so.

To check whether your firm does appear in the EPF register, you should go to the FCA website and click on the 'search the register' function. If you do not appear there you should then check on the SRA website to see whether you need to be by consulting <https://www.sra.org.uk/solicitors/firm-based-authorisation/notify-financial-services/>.

Most firms will need to be registered and if needed that part of the SRA website will take them through the application process. Once the firm is duly registered it will then need to limit its activities to those permitted

by the SRA's Scope Rules and will need to provide relevant information on its status to its clients as required by the Conduct of Business Rules, usually through its terms of business. Failure to include the required wording in client care documentation is a common non-compliance reported by the SRA on compliance audits and does need to be taken seriously as it means that the firm will not simply be in breach of the SRA's requirements but will also be committing a criminal offence under FSMA. The required 'status disclosure' wording will be found in Rule 2 of the Conduct of Business Rules. Firms should check at the very least that they now refer to insurance distribution and no longer mediation.

The wording does tend to sound rather repetitive when set out in terms of business documentation, but it is mandatory to provide the required information in the required format. Rule 2.1 outlines what must be covered in relation to financial advice but then sets out the actual wording required on insurance distribution at rule 2.2. Perhaps most importantly of all, whenever a policy is to be obtained for or recommended to the client they must also first be served with a 'demands and needs statement'.

This could be a simple letter or email or it might be by way of pro forma, but either way it will need to provide a summary of what is known about the client, why the need for insurance arises and how the policy will meet the client's requirements and be suitable for them. It will also be necessary to inform the client if it is making its recommendation on the basis of a personal recommendation and, if so, whether it has undertaken a 'fair and personal analysis' of the market.

A number of other requirements apply, most of which should be satisfied by running files in accordance with normal best practice, but one final point to note is that to be fully compliant some element of in-house training will be expected on this topic, on which see rule 20.1 in the new SRA Financial Services (Conduct of Business) Rules 2019 requiring all 'relevant employees' (and so presumably partners as well) to have the 'appropriate knowledge and ability in order to complete their tasks and perform duties adequately'. In addition, firms must ensure that all involved in insurance distribution activities are of good repute i.e. a clean criminal record and not having previously been declared bankrupt.

This is yet another topic to add to the long list of compliance requirements but it is something that may attract more interest in the future from the regulator – so is worth swotting up on.

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law firm compliance advice and training

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