

Fees for service doesn't maketh the profession

The law profession has come to the conclusion after many years that charging an hourly rate isn't as clean and transparent as it is perceived to be. In the face of ongoing criticism over the advice industry's reliance on commissions, financial planners are destined to find out the pitfalls of fee for service the hard way. [Matthew Smith](#) reports.

Just in case financial planners were under the false impression that receiving commissions as payment for giving financial advice was the desired method of remuneration, the Australian Securities and Investments Commission (ASIC) came out last month and dispelled that myth.

At the heart of policy statement PS181 - Managing Conflicts of Interest, published on August 30 - the regulator made it clear that 'commission payments' equal 'potential conflict'.

"The need for robust conflict management arrangements is likely to be higher where a licensee relies heavily on commis-

sion-based remuneration," PS181 stated.

To its credit, the Financial Planning Association - under continued pressure from consumer associations and Labor Party policy - has maintained its stance that advice businesses should feel free to employ any method of remuneration as long as that payment is fully disclosed.

The aftermath of the regulator's secret shopper report from March 2002 brought the strongest calls to date for the Government to legislate-away commissions altogether. For those who believe the alternative to commission-based remuneration has to be better for the reputation and professionalism of

financial advisers, comments made by NSW Chief Justice Jim Spigelman added a new dimension to the debate, when he called for an end to the "tyranny of the billable hour" in the law profession - as has been well reported in law industry magazines and the mainstream press in recent weeks.

Spigelman's comments sparked the NSW Government to establish an inquiry into lawyers' fees and overcharging that is currently in progress.

According to reports, Spigelman argued that time-based billing is inconsistent, lacks transparency and objectivity, fails to properly assess the value of work and rewards

inefficient workers.

Some planners who charge a fee for service have worn it as a badge of honour and possibly some practitioners out there feel that running a fee-only business entitles them to look down on those complicit with trailing commission payments. Possibly, who's to say?

It would be wise though for the industry to learn from another area that has been through the remuneration debate many times before creating a stigma that makes clients hate planners because a funds manager pays them.

NSW Attorney-General Bob Debus backed Spigelman's concerns in the first part of the inquiry by saying that lawyers could feel under pressure to enter as many hours as possible to meet billing targets.

Financial services lawyer Peter Bobbin said ASIC is being "myopic" in the way it has addressed conflicts of risk management in its policy statement.

"Managing conflicts has raised the commissions debate because it has become the belief of the industry that commissions create a conflict and that only fee for service and hourly rates are acceptable. A point that has been enforced by the regulator," Bobbin said.

"The problem with the ASIC approach is its concentration on remuneration as a potential cause of conflict. I'm saying businesses have to work out what suits them and their business and then address conflicts as they arise."

PS181 rises out of the obligations of Section 9121aa of the Corporations Act that requires licensees and representatives to

be able to 'conceptualise' management of conflicts that may arise. The legislation that relates to conflict management commences on January 1, 2005.

According to ASIC, conflicts of interest are circumstances where "some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representatives".

According to the legislation - in the context of conflict management - licensees are obliged to have "adequate arrangements" for the management of conflicts that may arise during the provision of services.

In terms of conflict in relation to remuneration, ASIC says licensees (and reps) need to ensure they operate "efficiently, honestly and fairly" and that they have conflict management arrangements in place. According to ASIC, this could mean:

- if a product provider pays a higher rate of commission to a financial adviser for achieving certain volumes of sales, ASIC would expect disclosure to be part of how the licensee manages that conflict;
- licensees should avoid remuneration structures where advisers are paid exclusively by commission (for example, no salary or other remuneration is paid); and
- trustees taking fees based on funds under management should consider how to ensure they address any tendency to act other than in the best interests of their clients.

PS181 showed that ASIC has taken a

CONTROLLING CONFLICTS OF INTEREST

Depending on the circumstances and the nature of any given conflict, it may be appropriate to:

- (a) disclose the conflict of interest to the relevant client(s);
- (b) allocate another representative to provide the service to the particular client;
- (c) decline to provide services to the particular client; or
- (d) initiate internal or external disciplinary action (e.g. referring the matter to a professional body or regulator) where warranted.

negative view on planners remunerated by way of commissions, according to Bobbin.

"It's very wrong for ASIC to make a statement that commissions lead to a potential conflict," he said.

As a result, he said, planners are likely to be unprepared for the full scope of Section 9121aa of the Corporations Act and he has created a series of conflict management training courses designed for planners to undertake risk analysis and implement risk management for a range of potential conflicts of interest.

While the law profession is now finding that fee for service may be an inefficient method of charging for advice, the inquiry suggested alternative ways of remuneration. If being paid by product providers is considered undesirable, it's up to the industry to decide on a new model that does work. ■■■