Expert Feed

SOA myths and mistakes

BY IAN MCDERMOTT | FRIDAY, 9 APR 2021 8:23AM

It should be such an easy thing to do - after all, it's what financial advisers get paid to do. i.e. provide their advice to c record) of advice.

But year after year, despite the increasing professionalism of the industry, the regulator keeps finding that SOAs, for t regulatory requirements. Remember ASIC's *Report 562* from 2018 (i.e. many years after FOFA was introduced) that meet regulatory requirements?

Unfortunately, with our staff having reviewed thousands of SOAs/ROAs over the last 20 years, including as independ are similar to ASIC's. That is, as a whole SOAs still do not, overall, measure up. Disappointingly, despite numerous re continue to see many familiar mistakes.

So, how do you make sure your advice documents don't fall into the 75% of documents ASIC says don't meet regula mistakes we canvas below will go a long way to helping.

COMMON SOA MISTAKES

And the solution is ... always a product

In the post-FOFA world, the laws are written so that financial products are only one of the options advisers should co *best interests safe harbour. This provides that "if, in considering the subject matter of the advice sought, it would be r product" ... then you are required to investigate and assess financial products that may achieve the client's needs an solutions other than financial products may be relevant to clients' needs and objectives.]*

Products are typically front and centre of most SOAs. Yet, when you read many SOAs as an independent third party, didn't you consider strategic advice; why didn't you address cashflow issues; why is there no evidence of helping with client's circumstances tells you it's a major issue; why not address savings?

The best SOAs identify these needs and objectives and prioritise them where appropriate. Financial products are rec these are the most important priority.

Unfortunately, many SOAs read as if an adviser has reached for their grab-bag of products without seriously or deepl circumstances, needs and objectives. Such SOAs leave you wondering whether the adviser was more motivated in r investment/super-platform because they know they can collect their fees from it than whether it was what the client re

As a general observation, some of the best advice we see is where advisers sell the value in their services to their cli fees directly. Such advice may or may not include financial products initially.

Poor justifications/tailoring

Many SOAs/client files do not identify a client's specific, measurable and attainable personal goals. Objectives are ex comfortably) and are so generic they could apply to just about anyone.

The best SOAs and advice files demonstrate in-depth questioning and discussions about a client's specific goals. Th measured and the advice is tailored to helping achieve each of those goals and objectives. The advice will be very cl (and how any ongoing services if relevant) will help them achieve those specific, measurable goals. Such advice files tailored to the client's individual circumstances. Not a cookie-cutter insight.

Generic explanations for moving a client from existing platform 'because the new platform has 160+ investment optio platform' hold no weight when, for example, the client has simple needs, there was no comparative analysis of the pe recommended products, no basis for any claims that 'we think the new funds will outperform your existing funds' and managed funds were recommended in any case. Advice reviewers become rightfully suspicious where the recommen the only material discernible difference between the 2 platforms is that the adviser can be paid their fees from the rec can't from the existing platform.

Over-reliance on templated text

Allied to the above issue, too many SOAs rely on mainly templated text and do not show enough evidence of an inve client's specific needs. The resulting advice looks generic and second rate.

While there is clearly some room for templated text (e.g. re prescribed disclosures), the client's circumstances, needs advice and recommendations on how to achieve those outcomes should be clearly tailored to the individual.

The best SOAs focus on the 'why'. That is, they clearly show the rationale for their recommendations and demonstrat help the clients achieve their clearly defined goals.

Ongoing fee assumption

Many clients have uncomplicated arrangements and simple needs. Some do not have much wealth. Yet, there is a co 'ongoing fee arrangements' as a standard go-to offering regardless of whether the client's circumstances suggest suc for the client.

The best SOAs summarise the client's situation and needs and offer service accordingly. Sometimes this means ong appropriate. Other times, one-off advice is appropriate.

Of course, if you provide point-in-time one-off advice this does not mean you can't keep in contact with the client and advice as required. CRM systems allow for regular communication with clients. Quite often, providing ad hoc advice a clients with simple needs money compared with ongoing fee arrangements yet still help ensure they can meet their g

File notes? What file notes?

We get it, advisers know their clients like they know their friends and family. Unfortunately though, unless you can sh such and such a discussion with the client or undertook specific research and comparisons than for the purposes of t

So, your complete advice file needs to be up to scratch, not just your SOA. Yet, many advice files still contain only sc

AFCA has numerous examples of matters where comprehensive, contemporaneous file notes have saved an advise professional, every relevant client conversation, meeting, action should be documented on file. For financial advisers consideration of the client's requirements and the client-focused rationale for your actions is vital.

Also, comprehensive file notes help prove the investigations you made and the steps you took in the advice process. best interests safe harbour requirements but also help you to meet your document retention requirements. It's a habi heartache.

Conflicts need managing, not just disclosure

Some advisers seem to think that if they disclose a conflict they have met their obligations. But disclosure by itself is

Look at a classic situation: recommending a higher/lower level of insurance cover than the client currently has. Instea reviewed the client's existing cover, the adviser recommends a new policy that also happens to pay a higher upfront

While there are many legitimate reasons why a new policy may be better, many regulatory requirements (including b replacement requirements, and conflicts management) coalesce to require advisers to clearly demonstrate that they:

- considered whether the client's existing products could also be appropriate;
- undertook a meaningful comparison of products, the client's circumstances and needs. Using generic explana better inclusions and is highly rated' does not cut the mustard. There should be evidence on file about what those the client and how and why that outweighs the inconvenience and risks associated with applying for new insuran
- considered the impact and risks on the client if they have to undergo underwriting; and
- demonstrably based their recommendations on the client's circumstances.

Scope it, scope it good

Scoping remains a big issue. It appears many advisers don't know how to scope properly. E.g. scope is never a prod will be what the client wants you to do with their superannuation. E.g. 'review current superannuation arrangements t chances of meeting your retirement goals [which should be well-articulated and understood] and make any recomme

Similarly, a scope should never include the recommendation. E.g. the scope should never say something like 'consol super fund that is on my APL (and coincidentally allows me to collect my fees from it). The recommendation may wel but what the client is asking for is a review of their current arrangements to identify if they are appropriate or if there i

The other common scoping issue we find is where the scope doesn't align with the content. It is always worthwhile re the SOA to a client.

The disclaimer will save me*

Some advisers seem to think disclaimers will cover them if they haven't made all reasonable inquiries or efforts or oth But this is not the case. Courts very rarely allow disclaimers to disclaim negligent conduct. And trying to rely on a dis regulatory obligations never works.

The most common example we see of this is the misuse of the 'incomplete or inaccurate information' warning require as a bit of a catch-all disclaimer. But this section requires incomplete or inaccurate information warning to be used or that information related to the client's objectives, financial situation or needs is incomplete or inaccurate. And rememl sec 961B(2)(c), requires an adviser to make reasonable inquiries to obtain complete and accurate information "where

information relating to the client's relevant circumstances was incomplete or inaccurate." So, the incomplete or inaccu
used as a disclaimer to excuse a lack of investigation or inquiry by an adviser.

* No it won't!

Of course, it is possible that your licensee has specific requirements that go beyond the legal requirements with any
case, you must follow your licensee's directions and requirements. But our experience is there will always be someth

CONCLUSION

Yes, there is an art to effective SOA writing. They are not the easiest thing to draft. But they are also an adviser's mo
showcase your professionalism, your care and your understanding as much as they can be a roadmap for a client's f
not just treating them as 'something compliance makes me do' can pay dividends for advisers and clients alike.

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3 comments so far

when somethings continue to be found lacking maybe there is too much emphasis on the regulation and not the pu
considers the number of transactions in financial services dealt with/by and by an adviser/office the number of clien
minimal - regulation like political correctness has no finishing line

like it always has been , the real substance of advice is the verbal interaction between client and adviser - lets not f
responsibility in the advice process

GARRY MOORE | 12 APR 2021 11.23AM

One of the challenges in deciphering what to take from surveys such as the one that this commentary is passed, is
75%+ of SoAs 'failed' the expectations of the reviewer.

I suspect that that they must have been substantial shortcomings to rate the mention: and reading through this repo
majority of Advisers are producing substantially non-compliant advice documents. If this is the case, it is not surpris
of the regulations and guidance that have been imposed on the sector.

An interesting statistic when such reports are being produced, would be to know how many advice documents have
reviewed during the twelve month period of their review, how many of those have resulted in sub-standard financial
many complaints have arisen - and been upheld - from that subset of the total adviser population (and the degree t
to judge the sector).

ERIC WALTERS | 12 APR 2021 12.10PM

The author makes some good points but like most lawyers, including those at ASIC, seems to think all clients are w
research, advice, documentation, and implementation that they feel is overkill and inappropriate use of their limited
to keep both regulators and clients happy because they are often approaching this from two different perspectives.
whether the client is better off as a result of the advice. Unfortunately, the compliance driven approach that has bee
because of industry shortcomings in the past means that many people can't be helped because the cost to deliver c
warranted by the issues at hand or the client is unwilling or unable to pay the required fee.

ANDREW RAMSAY | 12 APR 2021 5.24PM