

Advisers push risk back onto portfolio sellers

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<https://www.moneymanagement.com.au/news/financial-planning/advisers-push-risk-back-portfolio-sellers>

Financial advisers looking to buy portfolios now have the upper hand in demanding more stringent warranties following the Royal Commission, new education standards, and dealer groups closing their planning arms, according to The Fold Legal.

In an analysis, the law firm's senior associate Katie Johnston said that financial advice portfolio buyers were now empowered to limit their exposure and risk to changes to remuneration and poor advice.

"One way they're doing this is by imposing more stringent warranties and indemnities in their portfolio transfer agreement," Johnston said.

"They are conducting a more extensive due diligence process and asking for better warranties than they have for similar transactions in the past."

She noted that buyers wanted more certainty around the payment of any professional indemnity claims, especially since many advisers were leaving dealer groups that were shutting down their financial planning operations entirely.

Johnston said portfolio buyers now expected warranties to cover conduct in servicing clients, remuneration, and records.

"To mitigate their risks, buyers are also asking sellers to give personal (owner/director) guarantees for these types of warranties," she said.

This was to push risk exposure back onto the seller as much as possible for poor advisory and compliance practices, Johnston said.

"[This allows] the buyer to reduce the purchase price for any adverse impact on recurring revenue and retention of the acquired client base," she said.

"This isn't entirely unreasonable given the seller is the one who 'knows' the clients, the business and its risks."

Johnston noted that advisers selling their portfolios could still limit their exposure and risk by:

- Capping the amount the buyer would seek for a warranty breach;
- Capping the time period to make a warranty claim;
- Setting a minimum loss threshold so that the buyer would suffer an individual loss or an aggregate amount before they could make a warranty claim; and
- Setting the process for how buyers could make a warranty claim.

However, Johnston said indemnities were gaining favour with buyers and they needed to have certainty about their rights to claim against the seller and the seller's financial resources to meet indemnity and warranty liability.