# NEW MODELS OF PRACTICE: FREELANCE SOLICITORS

Written by Jayne Willetts, Solictor Advocate at Jayne Willetts & Co Solicitors

**Against the odds, the SRA proposal for "sole solicitors" to act outside the protections of a recognised sole practice is to come into effect in 2019. Freelance solicitors as they have become known will not be subject to entity regulation and will be able to deliver legal services direct to the public.**

This innovation which removes some of the protections that clients benefit from if they use a regulated firm was loudly condemned during the consultation process by the Law Society and the profession and the Legal Services Consumer Panel who responded: "The Panel cannot support these proposals because the reduction in consumer protection is tilted too far against consumers, without any quantifiable benefits. There is a lack of robust cost-benefit analysis which must accompany such a seismic shift in regulatory policy and reductions in consumer protection". These and other very vocal objections were ignored by the Legal Services Board and the change will be introduced later this year – now likely to be late summer 2019.

Guidance will be published at some point by the SRA but what we know now is that a freelance solicitor who has been qualified for more than three years will be able to provide reserved legal services to the public. Those who are qualified less than three years will be allowed to provide non-reserved services to the public. It has been predicted that this new model of practice will be particularly attractive to the newly qualified i.e. those with the least experience.

One of the key issues is that a regulated firm must have professional indemnity insurance equivalent to the SRA's Minimum Terms & Conditions ("MTC"), whereas the freelance solicitor would not need to purchase insurance to the same level. Freelancers will however be required to hold "adequate and appropriate" insurance. The SRA has not yet provided any guidance on what is meant by "adequate & appropriate".

The apprehensions of the insurance industry are summarised by James Frost of the JLT Legal Practices Group: "This represents a significant risk to protecting the public (not to mention the risk to the solicitor themselves) as of course there are no rules governing the quality of the policy wording. Insurers are free to offer cover on whatever wording they choose which could be significantly less extensive than the cover provided under the current minimum terms. This means that a claim brought against a freelance solicitor could be declined where the same insurer covering a regulated firm would have provided cover"

An additional problem relates to run-off cover when firms close or merge. Insurers of regulated firms are obliged to provide run-off cover under the SRA MTC but this will not apply to insurers not subject to the MTC. This lacuna will create an obvious issue for clients but also for freelancers who might want to return to a more traditional method of practice at a later date. Clients will however have access to the Compensation Fund but the SRA has no data on how such claims are likely to affect the Fund.

Freelancers will be entitled to hold limited categories of client money in their own name. However, this will be restricted to monies for the freelancer's own fees and unpaid disbursements such as counsel's fees. Freelancers will not be permitted to hold client funds such as for the proceeds of sale on conveyancing.

On a practical level, there is much to consider in relation to running the freelance office. It is recognised that the freelancer will be governed by the Code for Individuals rather than the Code for Firms and that it is only the latter that has a requirement for systems & procedures to be in place for managing a firm. However, just because a solicitor is freelance does not exempt him from the usual methods of best practice. The freelancer will need to keep proper records of work undertaken for clients – either in hard copy or electronically. Arrangements will need to be made for archiving the files. Freelancers will not escape the need for adequate IT systems with cyber security. Clients, the courts, and other solicitors are entitled to expect the office to be manned during office hours and for phone calls and emails to be attended to. Clients will require a practising address open to the public where they can meet their solicitor. Unless it is a very small practice, the freelancer will need to operate as if he practised as a regulated entity. Insurers and clients will expect this as a minimum standard even if the SRA does not insist upon it.

A freelancer will not be permitted to employ any staff if he is providing reserved legal services to the public but there will be no such restriction if he is providing non-reserved legal services – Rule 10.2 (b) (iii) Authorisation Rules for Individuals. So, a freelancer will not even be able to employ a non-fee earner to assist with administration and secretarial work if his practice includes reserved work. However, if the practice consists of non-reserved work he can employ both support staff and fee earners.

And what about the hapless clients? A new term has been coined to describe the problem – "Consumer Confusion". There will be so many different models of practice that the client will have very little chance to understand the protections that are or are not available to them. The freelancer will need to communicate with clients so that they understand their regulatory positon before engagement, particularly in relation to insurance. However, it is not reasonable or realistic to expect clients to understand the difference between a recognised sole practice and a freelancer.

At present, there are more questions than answers in relation to this new model of practice. We can only hope that there is some sensible guidance from the SRA before clients and young solicitors have their fingers burnt by this radical hot potato.