



NEW MODELS OF PRACTICE: SOLICITORS IN UNREGULATED ENTITIES

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The new SRA Standards and Regulations which come into force later this year will permit solicitors employed by unregulated entities to provide legal services to the public.

The only proviso being that they cannot provide reserved legal services in this way as the Legal Services Act 2007 requires that these must always be provided through a regulated firm. Further, if they are going to provide immigration, claims management or financial services this must be through an appropriately regulated entity.

Strong representations from both the Law Society and others that this form of practice, as with freelance solicitors, would create confusion for the public and lessen essential public protections were ultimately overruled by the SRA and the Legal Services Board (LSB). Their view was that the potential for increased access to justice and greater competition for legal services outweighed the risk of confusion over regulatory protections. In approving the changes, the LSB decided that the risks would be adequately dealt with in the new rules requiring solicitors employed in this way to explain to their clients the limits of the regulatory protection available. More specifically, the rules will require that they must explain:

- their insurance arrangements and make clear they are not covered by the SRA Minimum Terms & Conditions ("MTC");
- that their clients are not eligible to apply to the Compensation Fund; and
- which activities will be carried out by them as a solicitor, ensuring that their employer is not held out as SRA regulated.

Additionally, these solicitors will not be able to hold client money and must ensure that the clients understand all the regulatory protections available to them.

The extent to which the clients, who will often be unsophisticated, understand all this remains to be seen. The implications of this change are huge. In practical terms, it means that, when the new rules come into effect later this year, solicitors will be able to be employed by any commercial organisation to provide legal services to its customers. To give a simple example, unregulated will writing companies will be able to employ solicitors to advise clients generally and prepare wills for them. Insurers, banks, supermarkets and many others will doubtless be pondering their options. For individual solicitors, the change gives new employment opportunities but these may well carry hidden dangers simply because they will be a regulated individual operating in an unregulated firm. The commercial pressures on them to operate unethically could be quite considerable. For some firms, the change will undoubtedly lead to greater competition so they will need to develop a strategy to meet this challenge.

One appealing option is that of offering all, or most, non-reserved legal services through a separate business employing solicitors to do the work or supervise it. The attraction of this option is that no regulation fee will need to be paid, there will be no need to obtain insurance from a participating insurer under the MTC and the business can operate free without SRA interference, subject to the requirements placed on the individual solicitors employed within it explained above.

It is not, however, an option entirely without strings attached. First, the regulated firm will need to be aware of the new standards governing referrals to a separate business which require the client's informed consent and the SRA has current guidance which warns that "actions by a separate business may lead to you being in breach of the SRA rules, especially where you have an element of control over the separate business or actively participate in it."

This suggests some regulation through the back door. If the separate business was badly

run and provided a poor service to clients, for example, it is not hard to envisage the SRA alleging the partners of the regulated firm have breached the Principle concerning trust and confidence in the solicitors' profession, especially where referrals were being made to the separate business.

The other option for those firms that do not want to go down the separate business route, is to trade very clearly and loudly on the fact that they are fully regulated and that clients who instruct them get all the protections which go with SRA regulation. These are not just insurance and Compensation Fund protection, but the assurance that the firm is well managed, has an approved COLP and COFA and has effective policies, systems and procedures in place to cover important issues such as client confidentiality and conflicts of interest. Some clients will undoubtedly continue to want this security.

The extent to which this argument will win support with the public at large, however, remains to be seen. As has been amply demonstrated by the online market for insurance, cost tends to be the key motivation when people are faced with a confusing array of products. It is only when things go wrong that they look more closely at what they were buying.

It is anticipated that the SRA will issue guidance in the near future to cover the practice of "freelance" solicitors and in-house solicitors providing legal services to the public because of the associated risks to the public. Given these risks, the SRA has given assurances to the LSB that it will conduct two evaluations to look at the beneficial impacts and to identify any unintended or detrimental impacts of the changes. These evaluations will be carried out in 2020 and 2022.

Whatever the outcome, it seems unlikely that the genie will be capable of being put back in the bottle.