SRA WAIVERS:

INNOVATION OR JUMPING THE GUN?

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Much has been written recently about the SRA granting waivers to firms ahead of changes to the rules. Hands have been thrown up in horror at the fact that the SRA appears to have sidestepped the rules before the changes have been approved by its own regulator, the Legal Services Board.

This relevance of this debate may have passed you by as you deal with the daily demands of practice but is it important?

It is important on two levels. First, as a regulator, should the SRA be permitted to ignore its own rules? And secondly, does this more tolerant approach foreshadowing changes due to come into force early next year mean that there are more opportunities for firms and individual solicitors to develop new business models?

The SRA, and before that the Law Society, has had power to waive most of its rules for many decades. Historically, this power has been exercised with extreme caution and in truly exceptional circumstances. One example is Rule 15.5 of the SRA Practice Framework Rules 2011 ("PFR") which requires a firm's registered office to be a practising address. Where a practising address is also a home address, practitioners have applied for this rule to be waived to avoid risk to them and their families. Another example is Rule 4 of the PFR which prevents in-house solicitors acting for anyone other than their employer and its associated companies. Waivers have been granted for in-house solicitors to act for companies just outside the group but closely connected to it.

One can see from these two examples the logic in granting waivers where anomalies occur. However, the SRA in its zeal for opening up competition has jumped the gun and permitted waivers in circumstances which appear to be far from exceptional. The waivers have been granted as part of the SRA's Innovate initiative https://www.sra.org.uk/solicitors/innovate/sra-innovate.page which is committed to "helping current providers of legal services develop their businesses in new ways and to supporting new types of organisations who are thinking of delivering legal services for the first time". The first waiver under the banner of SRA Innovate was granted in October 2017 to Rocket Lawyer, an established American brand, but now expanding into the UK which provides online and telephone access to legal documents and advice for families and businesses. The general manager Mark Edwards explained that *"This is a technology firm, not a law firm. That requires solicitors who are passionate about technology and who want to automate the provision of legal advice."*

When the story broke in the legal press in May that the SRA was granting waivers ahead of the rule changes, the Law Society accused the SRA of relaxing the rules on practising from unregulated firms without proper scrutiny. The SRA defended itself stating that *"We will only grant waivers where there is clear evidence that they are in the public interest, and that users of legal services are protected."* The SRA was also keen to stress that "Our changes will also make it easier for solicitors and firms to do business – giving them more choice about how and where they work"

What is clear from the above is that the SRA decides what is and what is not in the public interest. It is particularly keen on new business models which it considers can provide "affordable" legal services. The decision making can appear subjective and demonstrates the very real difficulty in curtailing the SRA's strategy of transforming the way in which we have traditionally practised.

So, what are the structural changes?

Some changes are already in force, most significantly the amendment made to the separate business provisions which allows firms to offer legal services through a separate business, although rule 4 PFR still prevents solicitors being employed by an unregulated business from providing legal services to the public. This is, however, the rule which was waived for the Rocket Lawyer's solicitors to allow them to provide legal services to the public so looked at from one perspective it could be said that the SRA is giving commercial providers of legal services an unfair advantage.

For the future, there are two significant changes to business models which are likely to be in force from April 2019.

Solicitors in non-authorised firms

Regulated firms will be able to deliver unreserved legal activities from separate unregulated firms, with exceptions for immigration, financial services and claims management work, employing solicitors to do so. Solicitors practising in unregulated firms will only need to abide by the new individual Code of Conduct for solicitors. They will not be required to pay into the Compensation Fund nor hold professional indemnity insurance. They will not, however, be able to hold client money in their own name.

Freelance solicitors

Sole or freelance solicitors will be permitted to act outside the protections of a recognised sole practice to deliver reserved and non- reserved services. They will be required to maintain PII cover for both reserved and non-reserved work though will not be required to comply with the SRA's minimum terms and conditions for PII. They must have three years practising experience prior to delivering reserved legal work as a freelancer. They will not be able to hold client money or employ people.

Should the profession be embracing or rejecting these changes? Whilst to those of us who have been in practice for many years, these developments appear daunting and guaranteed to cause confusion for the general public, they cannot be ignored. Nothing stays the same so whether drafting a firm's business plan or considering individual careers these changes need to be borne in mind.

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