LOOKING TO THE FUTURE: THE FREELANCER OPTION

WRITTEN BY JAYNE WILLETTS, SOLICITOR ADVOCATE, JAYNE WILLETTS & CO SOLICITORS.

With the Law Society warning of widespread problems for firms “large and small” unless the Government’s financial support is extended to most solicitors’ firms, thoughts turn to the future and how the profession will manage its way out of the Coronavirus lockdown.

Sadly, it is now clear that many firms will not survive the current crisis and many more will have to cut costs by laying off staff.

Those who find themselves no longer gainfully employed, but who do wish to continue in legal practice, may wish to give serious thought to the option of becoming a freelance solicitor. This new form of practice, which became possible last year as part of the SRA’s Standards and Regulations reforms, may now become more mainstream than anyone predicted at the time as a result of the market volatility that we are all now facing.

THE REGULATORY BACKGROUND

The provisions relating to this new form of practice will be found in the SRA Authorisation of Individuals Regulations from last November.

They introduced what was quite a controversial change at the time by allowing solicitors to practise on their own account without the need to undergo the formal SRA authorisation process so as to become a recognised sole practice.

Those choosing this option will therefore be personally regulated by the SRA, and subject to the Code of Conduct for Individuals, but will not be part of an entity which is duly authorised as such. The relative lack of bureaucracy in becoming a freelancer will offer obvious advantages to those needing to resume paying legal work at short notice.

As to the ongoing advantages, there will be no annual regulatory firm fee to pay and no bulk renewal form to complete. Full compliance with the Indemnity Insurance Rules will not be required but insurance to a level that is “adequate and appropriate” will need to be in place. The freelance solicitor will nonetheless have to have a current practising certificate and so will be required to pay that fee.

The more detailed rules for freelance practice will be found at r.10.2. This permits solicitors to practise on their own account to provide non-reserved and reserved legal services alike without the need for the firm to be recognised.

Those providing reserved legal services, however, are subject to certain conditions, to the effect that they must:

- have practised for a minimum of three years since admission;
- be self-employed and practise in their own name, and not through a trading or service company;
- not employ anyone in connection with the services provided;
- be engaged directly by the client with fees being paid directly to them;
- have a UK practising address;
- have adequate and appropriate indemnity insurance for all of their legal services;
- not hold client money other than when it is permissible to do so in office account under the exemption from normal client account requirements at r.2.2 of the Accounts Rules and the funds are limited to fees and unpaid disbursements on account.

More on all aspects of being a freelancer appear in the SRA’s guidance note on this subject: https://www.sra.org.uk/solicitors/guidance/ethics-guidance/preparing-to-become-a-sole-practitioner-or-an-sra-regulated-independent-solicitor/

What regulatory considerations are there for the freelancer?

Since the freelancer will not be part of an authorised practice, the Code of Conduct for Firms will not apply, nor will the Accounts Rules (as cannot hold client money except as explained above).

Those parts of the Code of Conduct for Individuals that will be particularly important will include most of section 8 dealing with client care, including the complaints handling procedures at paras 8.2 – 8.5 and the need for information as to the regulatory controls that the advisers is subject to. In this regard the freelancer will be “regulated” by the SRA, but not “authorised and regulated” by them, as are firms and recognised sole practices.

The Compensation Fund will be available to their clients and those parts of the Transparency Rules that relate to costs information, complaints and insurance must also be complied with, but not the need to display the “clickable logo” as that is reserved for authorised practices only.

An SRA Freelancer Notification Form must be completed and submitted to the SRA before a solicitor can commence practice under this model and a DBS check might be required if the area of intended practice will encompass regulated work under the Money Laundering Regulations 2017.

There will be those for whom freelance practice will be preferable to the more conventional model but for others it may well come to be a lifeline to continue making a living from legal practice in the changing world that is now unfolding before us.

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Jayne is also a director of Infolegal Ltd www.infolegal.co.uk which provides compliance services to law firms