

## Establishing a Paralegal Law Firm Points for Consideration

### 1. Background

Paralegal law firms are a relatively new phenomenon: but a popular one.

At the end of the 1990s there were very few indeed. However as realisation of the extent to which legal services have been deregulated has grown (along with the general need for legal services) so paralegal law firms have multiplied.

We estimate that as at October 2009 there are between 6,000 – 7,000 paralegal law firms (compared to 10,100 solicitors' firms). We estimate the rate of growth at between 15% and 20% per year.

### 2. Definition

The term "paralegal" is a default, catch-all term used to describe a wide variety of non-lawyers who do legal work.

Similarly, "paralegal law firm" is a default, catch-all term used to describe commercial entities (including sole traders) who offer legal services to the public or business. Many paralegal law firms therefore do not describe themselves as such. Some describe themselves as paralegal advisory firms, others as legal consultancies, legal advisors etc.

### 3. Use of the Terms "Lawyer" and "Law Firm"

Use of these terms is not regulated by law in the same way that, for example, use of the term "solicitor" is protected under the Solicitors Act 1974.

However we anticipate at some point opposition from some or all of the eight groups of legal practitioners defined as lawyers under the Legal Services Act 2007 (solicitors, barristers, notaries, legal executives, law costs draftsmen, trade mark agents, licensed conveyancers and patent agents). We suspect this opposition will arise when paralegal law firms start becoming more widely known of.

Similarly, a great many members of the public still equate the terms "lawyer" and "law firm" with solicitors. Anyone starting up a paralegal law firm needs to protect themselves by making it very clear, preferably in writing, upon taking instructions from a client that the client is aware that they are dealing with paralegals

and not solicitors. Failure to do so would leave the paralegal law firm open to potential complaint from clients.

Our view is that using the term "law firm" is an acceptable plain-English description of the services offered. However individuals should think very carefully before calling themselves lawyers. Not only for the reasons given above, but because clients need to have trust in their legal advisers. If the client's definition of "a lawyer" is someone who has taken exams and joined a profession recognised by statute then a paralegal who falls short of this definition runs the risk of looking dishonest. Such an impression is like to lose firms more clients than use of the term "lawyer" will gain!

#### 4. Incorporation Check List

With two exceptions, paralegal law firms are not regulated any differently to other ordinary commercial ventures. For example, there is no implied obligation to have professional indemnity insurance.

Therefore when choosing an appropriate business vehicle (partnership, limited company, limited liability partnership etc.) The usual issues of control, risk management, market perception and growth strategy apply.

Based upon the long experience of solicitors running legal practices, we recommend that, where appropriate, paralegal law firms consider the following. None of these suggestions are required by law:

- Get professional indemnity insurance. There is no case law on paralegal law firms being sued. However there must be a good chance that they will be held to a higher standard by the courts than other business service providers/advisors to the public, and penalised more severely for transgression. This is because there is over 200 years of case law relating to solicitors, saying that the law is special and high standards must apply to it. It's not clear that this "extra burden" of heightened competency/professional service will be imposed upon paralegal law firms the way it has been imposed upon solicitors and other lawyers, but there must be a good chance that some paralegal law firms will be considered sufficiently akin to solicitors firms in the service they offer that the principles relating to solicitors will be extended to them.
- Get your senior staff legally qualified in some way - with the Institute of Paralegals or the Institute of Legal Executives for example. Experience with other paralegal law firms is that in situations where personal advice is being given (as opposed to merely a process being followed) clients expect qualified practitioners to be advising them, and are worried if they perceive the advisor to be a lay person like them.
- Have a detailed client engagement letter setting out all the relevant terms of doing business with your client. There are two reasons for this:
  - (a) Clients still benchmark most legal services against the obligation/services offered by a solicitor. Solicitors operate under a large number of regulatory requirements (e.g. the obligation to keep client files free of charge for at least seven years). Paralegal law firms run the risk of a serious mismatch between unvoiced client expectations based upon what a solicitor would do, and the service actually being offered. As mentioned above, it is not entirely certain which party the court would side with if a matter became litigious. Paralegal law firms should note however that the courts have consistently held that in a relationship between a professional and a layperson the onus is on the professional to take preventative steps to avoid obvious areas of misunderstanding and confusion.

(b) It makes good business sense even if the client is not benchmarking against the service a solicitor would provide. The provision of services have proven to be a very fertile ground for mismatched expectations between clients and providers

- For the same reasons as above, have a client close-out letter detailing where matters stand.
- Have some form of continuing professional development programme for your staff. The quickest way for any client to demonstrate possible negligence on the part of the paralegal law firm is to ask a simple question: *“The law can change - literally from week to week. You are providing legal services based upon that ever-changing law. What formal systems do you have in place to monitor relevant changes and to ensure that your staff keep their practice knowledge up-to-date?”*
- Make sure the client is completely clear how, and for what, they will be billed. If you are charging, (like solicitors) on the basis of time spent, then be aware that the whole topic is a minefield. Charging on the basis of time spent can mean many different things:
  - All time spent working substantively on the matter, regardless of how productive it was
  - Only productive time spent working substantively on the matter
  - All time spent on the matter even if not working – e.g. arriving unavoidably early for a meeting and charging for the one or two hours’ wait because you can’t do anything else with the time – see also travel time, research, internal file administration, lunch with the client etc
  - Any of the above, but only if the matter is concluded successfully
  - Any of the above, regardless of how the matter ends (e.g. company acquisition does not go ahead) or fails (debt not recovered)
  - Automatic discount if the underlying deal falls through for any reason
- If you are handling client money, think seriously about ring-fencing it from your company’s own money.
- Have a formal internal complaints procedure - clients expect it.

## 5. Registration Requirements

Anyone not specifically exempted (e.g. solicitors) must first be registered with the Office of the Immigration Services Commissioner before they undertake any immigration related work. Failure to be registered is an offence.

For more details see [www.oisc.gov.uk](http://www.oisc.gov.uk).

Under the Compensation Act 2006, anyone who is not specifically exempted (e.g. solicitors) must first be registered with the Ministry of Justice (claims management division) before they undertake any services relating to claims in the following areas:

- (a) Personal injury, including work-related injury, disease or disability;
- (b) Criminal injuries compensation;
- (c) Industrial Injuries Disablement Benefit;

- (d) Employment;
- (e) Housing disrepair;
- (f) Financial products and services.

“Services” in this context means:

- (a) Advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;
- (b) Advising a claimant or potential claimant in relation to his claim or cause of action;
- (c) referring details of a claim or claimant, or a cause of action or potential claimant, to another person, including a person having the right to conduct litigation (but not if it is not undertaken for or in expectation of a fee, gain or reward);
- (d) Investigating, or commissioning the investigation of, the circumstances, merits or foundation of a claim, with a view to the use of the results in pursuing the claim;
- (e) Representation of a claimant (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made).

The Compensation Act 2006 is designed to regulate the activity of claims management companies - historically the "ambulance chasers" who would drum-up business for solicitors' firms. The claims management business is much more sophisticated nowadays. However the Act was drafted so widely that it catches many paralegal law firms who have nothing whatsoever to do with claims management activities.

It is an offence to undertake any of the above services in any of the said areas without first being registered.

For more information please visit [www.claimsregulation.gov.uk](http://www.claimsregulation.gov.uk).

## 6. Reserved Activities

Section 5 above relates to activities which paralegal law firms can do, but in respect of which they have to be registered.

There are six activities which paralegal law firms are prohibited by law from doing. The six activities are called "reserved activities". The only people allowed to do them are solicitors and (in a few of the cases) some of the other groups of lawyers recognised under the Legal Services Act 2007.

Paralegal law firms are not allowed by law to do the following types of work:

- I. Have rights of audience before the courts<sup>1</sup>;
- II. Represent parties engaged in litigation<sup>2</sup>;
- III. The preparation of instruments and the lodging of documents relating to the transfer or charge of land<sup>3</sup>;
- IV. The preparation of trust deeds disposing of capital;
- V. The preparation of papers on which to found or oppose a grant of probate or a grant of letters of administration<sup>4</sup>;

## VI. The administration of oaths and statutory declarations.

### Notes

<sup>1</sup> *Rights of audience means the right to stand up and speak on the behalf of the client in court. Paralegal law firms however have rights of audience in almost all tribunals.*

<sup>2</sup> *Representing parties engaged in litigation means being their agent for the purposes of the litigation: having the paralegal law firm's name on the court record, having the right to require the opposing party to deal with them instead of the client direct etc. Please note that for paralegal law firms covered by the Compensation Act 2006 there is an even wider prohibition on becoming involved in litigation, even in the early pre-court stages.*

<sup>3</sup> *Prohibition on lodging documents relating to the transfer of land. This is often incorrectly described as a prohibition on doing conveyancing. Solicitors and licensed conveyancers do not have a monopoly on conveyancing. The prohibition relates purely to certain stages in the conveyancing process. Paralegal law firms are at liberty to conduct those other steps.*

<sup>4</sup> *Prohibition on lodging documents relating to probate - as point 3 above for conveyancing.*

*NB: points 1 and 2 are not always honoured - quite a few paralegal law firms conduct litigation even if the legal basis for their actions are uncertain*

## 7. General Requirements

The usual requirements on business relating to such issues as data protection, VAT registration, anti-money-laundering provisions, and Health & Safety compliance all still continue to apply.

## 8. Directors/Officeholders

There are no particular "fit and proper person" requirements relating to directors or officers of paralegal law firms (although the personal standing of controlling individuals may be taken into account by the Office of the Immigration Services Commissioner or Ministry of Justice as part of the registration processes they operate).

## 9. Conclusion

For the most part the deregulation of legal services has been a success. However things are fluid, for example the Legal Services Board is now debating the merits of possibly regulating the activities of paralegal will writers.

*End*

James O'Connell  
Head of Policy

### *Disclaimer:*

*The information contained in this briefing note is for intended as an introductory, background briefing only. Before setting up a paralegal law firm or otherwise acting on the information contained in this document you should seek proper legal advice and this undertake necessary research y*

Institute of Paralegals, 6 Graphite Square, Vauxhall Walk, London, SE11 5EE, United Kingdom, Tel: 020 7587 3917