



## **Regulatory Briefing Sheet #1**

### **Prohibition on Providing Reserved Activity Services**

#### 1. Who We Are

This Briefing Sheet produced by the [Institute of Paralegals](http://www.theOP.org). We are the oldest incorporated professional body for paralegals in the whole of the United Kingdom. A not-for-profit organisation, we are recognised by the UK government. The Institute is your professional home if you are a paralegal, aspiring paralegal, law student or paralegal law firm whether based in the UK, Hong Kong or internationally. We set the competency standards for paralegals and legal secretaries, issue legal qualifications and work with government, e.g. to promote apprenticeships to the legal profession. Please visit [www.theOP.org](http://www.theOP.org) for more information.

#### 2. Other Regulatory Briefing Sheets

Other Regulatory Briefing Sheets available are:

- a) Regulatory Briefing Sheet #2 – Setting up a Paralegal Business/Law Firm
- b) Regulatory Briefing Sheet #3 – Joining the Paralegal Profession
- c) Regulatory Briefing Sheet # 4 - Table of Rights of Audience

#### 3. Disclaimer

Please note the information contained in this Regulatory Briefing Sheet is for initial guidance only. Please do not take any actions based upon what we have written without first making your own enquiries. Please take this seriously. The situation described below is fast changing and can vary from context to context and court to court. For example, some courts are very strict on paralegal rights of audience, others significantly more relaxed. The generalised overview we give here may not always be applicable in your particular circumstances – the fog of confusion over paralegal rights is quite dense in many parts of the country, and thus decisions of judges and the like are not always consistent or reliable!

#### 4. Introduction

There are six types of legal activities which, by virtue of the [Legal Services Act 2007](#) (“the Act”), can only be done by one or more of the eight groups of lawyers regulated under the Act: [solicitors](#); [barristers](#); [trade mark agents](#); [law costs draughtsmen](#); [legal executives](#); [notaries](#); [licensed conveyancers](#) and [patent agents](#) (“the Group of Eight”).

It is therefore an offence for anyone else to offer these six types of legal service.

Some of the six are restricted to individual practitioners alone - e.g., an individual solicitor administering an oath. Others can be done by paralegals where they are working for an authorised member of the Group of Eight, e.g. a paralegal working for a solicitors' firm can actively handle a court case (although with limited rights of audience) even though the conduct of litigation is reserved to solicitors because in that situation the solicitors' firm itself has the conduct of the litigation and the paralegal is merely acting as an employee or agent.

#### 5. Paralegals and Paralegal Law Firms

This Regulatory Briefing Sheet #1 relates to paralegals working in one of two capacities:

- a) As an employee or authorised agent for a Group of Eight firm or a litigant in person (e.g. as a paralegal working in a company's debt recovery department where the paralegal is acting on behalf of the company).
- b) As an independent sole practitioner or as a commercial entity offering legal services to the public or other businesses without the involvement of a Group of Eight lawyer (together a "Paralegal Law Firm")

#### 6. Other Prohibitions

There are other prohibitions on paralegals in addition to the reserved activities work, e.g.:

- a) Giving immigration and asylum advice and assistance unless registered with the [Office of the Immigration Services Commissioner](#), or exempt from having to be so registered;
- b) Undertaking any of the [activities](#) in the [practice areas](#) covered by the [Compensation Act 2006](#) unless registered with the Claims Management regulations division of the [Ministry of Justice](#), or exempt from having to be so registered (NB: the legislation is intended to regulate the activities of claims management companies, but is so widely drafted that it captures many Paralegal Law Firms too);
- c) Undertaking police station representation work on a case funded under the [legal aid scheme](#) without having [due accreditation](#);
- d) Providing or advising on financial services.

This Briefing Sheet relates solely to the six areas designated as reserved activities under the Act.

#### 7. The Reserved Activities

The six forms of legal activity identified in the Act which are reserved are:

The conduct of litigation  
The exercise of a right of audience in the courts  
Reserved instrument activities  
Probate activities  
Notarial services  
Administration of oaths

#### 8. Common Misconception

As you will see below, a number of the reserved activities are highly technical, their definitions in the Act simply referring to older statutes which themselves are not especially illuminating. Perhaps not surprisingly therefore, people often use a short-hand way to describe reserved activities which is not always wholly accurate.

In particular:

- a) The reserved instrument activities are often referred to as a conveyancing monopoly; and
- b) The probate activities are often referred to as a probate monopoly

Arguably neither is actually the case since both reservations refer only to specific elements of conveyancing/probate work, not the entirety of such transactions. It may therefore be possible for paralegals to offer elements of conveyancing/probate services and still not transgress reserved activities. The uncertainty lies in how the Solicitors Regulation Authority (i.e. the enforcement regulator) would interpret such partial involvement.

Looking at each reserved activity in turn:

### 8.1. Right to Conduct Litigation

(Not to be confused with the right of audience - see below)

The right to conduct litigation is a reserved activity by virtue of [section 12 \(1\) \(b\)](#) of the Act.

The right to conduct litigation is the right to start and defend proceedings before any court in England and Wales, together with ancillary functions thereto (e.g. seeking the right on behalf of a client to intercede in somebody else's case). For the full legal definition see [paragraph 4 of schedule 2](#) of the Act.

Litigants in person always have the right to conduct litigation in their own name, whereas barristers do not currently have the right to conduct litigation.

Paralegals not working for a solicitors' firm (or another Group of Eight lawyer authorised to conduct particular types of litigation, e.g. trade mark agents handling certain types of trademark case, or law costs draughtsman handling taxation cases) have no right to be listed in the court record as conducting litigation behalf of a client. However, some courts enforce that prohibition more keenly than others, so practice can vary geographically.

Generally speaking paralegals representing clients do so with the client entering his, her or its name on the court record as a litigant in person.

The right to conduct litigation relates solely to the actual conduct of court actions. Subject to any other prohibition (principally but not exclusively the Compensation Act 2006 if relevant), Paralegal Law Firms are free to advise/assist clients before and after litigation, and during it too (to the extent that such advice and assistance does not include having conduct of the litigation).

N.B.: it is common for Paralegal Law Firms to be assisting/advising litigants in person. This is allowed. Practical differences may be encountered however. When a solicitors' firm (or other authorised Group of Eight lawyer) is "on the record" as representing a litigant then certain things are implied; e.g. that the firm speaks for and has absolute authority to bind the client and that service of documents on the firm constitutes good service on the litigant. These implied terms are not automatically present where a Paralegal Law Firm is acting for a litigant in person (or, indeed, has managed to become agent of record on the court record). A cautious opponent may therefore seek proof of the Paralegal Law Firm's authority to speak on behalf of its client, to bind the client, and that service on the Paralegal Law Firm constitutes good service on the client, etc. Typically they may request a power of attorney clearly authorising the same).

The right of a successful client to recoup the cost of the Paralegal Law Firm's expenses by way of an award of costs is something of a grey area.

### 8.2. Rights of Audience

(Not to be confused with the right to conduct litigation - see above)

Rights of audience is a reserved activity by virtue of [section 12 \(1\) \(a\)](#) of the Act.

The right of audience means the right to appear before (and address if required) a court, including the right to call and examine witnesses. As above see [paragraph 3 of schedule 2](#) of the Act for the legal definition.

Litigants in person and barristers have unlimited rights of audience. Solicitors have limited rights of audience and Solicitor Advocates have enhanced rights of audience.

Paralegal Law Firms and paralegals working for solicitors' firms have rights of audience in tribunals and small claims courts (in the sense that anyone can represent a party in such cases - is a general right that includes paralegals, rather than a dedicated right specifically for paralegals).

Arguably paralegals have no rights of audience whatsoever in other courts because the legislation relating to rights of audience does not mention them at all. However, over many decades the convention at least has been widely

established that paralegals working for solicitors' firms and paralegals working as agents for solicitors' firms have additional rights of audience before judges in Chambers in county courts (NB: if a matter is heard 'in chambers' this means the matter is heard in private in the office of the relevant judge/an office in private and not in an open court).

Paralegal Law Firms have no for rights of audience, although often attend county and higher courts as [McKenzie Friends](#) and quite often successfully apply to the court use its inherent jurisdiction to give them a right of audience for that particular hearing only. Such applications are very much dependent upon the attitude of the presiding judge and how strongly or otherwise the other parties' lawyers object!

### 8.3. Reserved Instrument Activities

Reserved instrument activities are a reserved activity by virtue of [section 12 \(1\) \(c\)](#) of the Act.

The following are reserved activities relating to contracts/official documents:

- a) Preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002 (this provision includes contracts for the sale/other disposition of land but not:
  - Short-lease grants under section 54(2) Law of Property Act 1925
  - Wills/other testamentary instruments
  - Agreements not intended to be executed as deeds (save those mentioned above)
  - Letters or powers of attorney
  - Transfers of stock that contain no trust or limitation of the transfer
- b) Making an application or lodging a document for registration under the Land Registration Act 2002
- c) Preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales
- d) Preparing any other instrument relating to court proceedings within England and Wales except where, before the Act came into force, there was no restrictions pertaining to instruments concerning court proceedings

For the full legal definition see [paragraphs 5\(1\) - \(4\) of Schedule 2](#) to the Act.

### 8.4. Probate Activities

Probate activities are a reserved activity by virtue of [section 12 \(1\) \(d\)](#) of the Act.

The following are reserved activities relating to will writing/probate activities:

- a) Preparing any probate papers (i.e. papers used to seek or challenge a grant of probate/letters of administration) for the purposes of the law of England and Wales
- b) Preparing any probate papers (i.e. papers used to seek or challenge a grant of probate/letters of administration) for the purposes of any court proceedings in England and Wales

For the full legal definition see [paragraphs 6 \(1\) & \(2\) of Schedule 2](#) to the Act.

### 8.5. Notarial Activities

Notarial activities are a reserved activity by virtue of [section 12 \(1\) \(e\)](#) of the Act.

Notaries are primarily concerned with the authentication and certification of signatures and documents for use abroad.

They are also authorised to conduct general legal practice (excluding the conduct of court proceedings). They may exercise the powers of a Commissioner for Oaths.

The definition of reserved notarial activities is both technical and slightly circular, being those activities which, immediately before the Act came into force, were customarily carried on by notaries in accordance with the Public Notaries Act 1801 (excluding reserved instrument or probate activities or the administration of oaths). In plainer English reserved notarial activity is the work recognised as usually being done exclusively by notaries, such as preparing and witnessing powers of attorney for use overseas and providing documents to deal with the administration of the estates of people who are abroad.

For the rather unhelpful legal definition see [paragraph 7 of Schedule 2](#) to the Act.

Typically paralegals do not do notarial work either on their own account or as employees. Notarial work is fundamentally the verification and certification of documents for use primarily overseas. Such work tends to be done personally by notaries and not delegated. Further, regardless of any legal prohibition, recipients are typically unwilling to accept the authenticity of such documents unless certified by a recognised notary in the traditional manner.

#### 8.6. The Administration of Oaths

The administration of oaths is a reserved activity by virtue of [section 12 \(1\) \(f\)](#) of the Act.

This reserved activity relates to the exercise of the powers conferred on a commissioner for oaths by the Commissioners for Oaths Acts 1889 and 1891 and section 24 of the Stamp Duties Management Act 1891. A full reading of those acts is required to ascertain the full limits of the reserved activities, however it is generally read as covering the administration (i.e. preparation and witnessing) of oaths and statutory declarations.

For the legal definition see [paragraph 8 of Schedule 2](#) to the Act.

#### 9. Contact Us



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