Setting up a Paralegal Business/Law Firm

Disclaimer

Please note the information contained in this Practice Note 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 is subject to constant review by government and the courts.

Introduction

This Practice Note relates to setting up a paralegal business/law firm. What we mean by this is any non-lawyer individual or organisation offering legal services on a commercial basis to the public or to business (or to whoever), regardless of the business vehicle used (sole trader/practitioner; partnership; limited company, limited liability partnership, etc.). For the remainder of this Practice Note we will refer to such businesses as 'paralegal law firms' regardless of their actual legal nature (partnership, LLP etc.).

A defining element of a paralegal law firm is that it is run by non-lawyers (i.e. people who are not one of the eight groups of lawyers regulated under the Legal Services Act 2007 ("the Act"): solicitors; barristers; trade mark agents; law costs draughtsmen; legal executives; notaries; licensed conveyancers and patent agents or registered European or foreign lawyers).

Paralegal law firms are not regulated by the Solicitors Regulation Authority or other regulator itself regulated under the Act. However, Paralegals are now voluntary regulated by the Professional Paralegal Register (PPR).

The information in here also applies by and large to not-for-profit paralegal entities.

Definition

The term "paralegal" is a default, catch-all term used to describe a wide variety of non-lawyers who do legal work. A Paralegal is anyone who does legal work who is not regulated under the Legal Services Act 2007.

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. The services are unregulated and therefore must never consist of any of the Reserved Activities (See Practice Note 1)

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.

It is vital that any such business do not hold themselves out to be solicitors. Holding out also includes 'giving the impression' of being a solicitor and therefore such businesses must make it very clear that they are Paralegals. 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.

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. We suspect this opposition will arise when paralegal law firms start becoming more widely known about. Similarly, a great many members of the public still equate the terms "lawyer" and "law firm" with solicitors.

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 that falls short of this definition runs the risk of looking dishonest. Such an impression is likely to lose firms more clients than use of the term "lawyer" will gain.

Incorporation Checklist

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. We recommend that Paralegal businesses join the PPR and become regulated under this voluntary scheme. This will enable Paralegals to hold Paralegal Practising Certificates issued by the overarching regulator for the unregulated legal services market.

- Get your senior staff legally qualified in some way - the Institute of Paralegals can provide training or give advice on what qualifications would be useful.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:

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.

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.

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.

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:

Personal injury, including work-related injury, disease or disability Criminal injuries compensation Industrial Injuries, Disablement Benefit, Employment Housing disrepair Financial products and services (check with the OISC for any further activities added)

“Services” in this context means:

Advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;

Advising a claimant or potential claimant in relation to his claim or cause of action;

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);

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;

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.

Legal Aid

No one can make a claim for payment for legal work done under the legal aid scheme run by the Legal Services Commission unless they are already covered by a legal aid contract with the Commission.

The Commission has a variety of conditions which it imposes on all practitioners doing legal aid work. These are only relevant if you work for an organisation providing services and the legal aid scheme.

One example is that no paralegals undertaking police station representation work on a case funded under the legal aid scheme will be reimbursed for their time/expenses unless they first have due accreditation.

For more information on the Commission's requirements for legal practitioners, visit the Commission's website at www.legalservices.gov.uk.

Financial Services Work

The prohibitions contained in the Financial Services and Markets Act 2000 are not specific to paralegals -the Act is applicable to everyone and anyone offering financial advice and services. However, the Act is particularly relevant to legal advisers because they can very easily fall within its provisions. When offering legal advice which has a financial dimension - even if only peripherally.

As a starting point to see if you need to be registered (or to ensure that you avoid giving advice on areas that require you to be registered) please visit the Financial Services Authority website at http://www.fsa.gov.uk/pages/Doing/Do/index.shtml

Reserved Activities

So far, this Practice Note has dealt with activities which paralegals can do provided they act with caution and, where necessary, after registration. However, there are six activities which paralegal law firms (and, in some cases, paralegals working in solicitors' firms) are prohibited by law from doing. The six activities are more fully set out in the Institute's Practice Note 1 on Reserved Activities.

In summary, however, paralegals working for paralegal law firms or themselves (i.e. paralegal sole practitioners) should take great care not to do, offer to do or even impliedly offer to do ("We will help you with all your legal problems - no cases turned away") any of the following:

- Represent clients in court hearings (tribunals are usually okay)
- Conduct litigation on behalf of clients
- Prepare legal instruments (i.e. certain documents) and/or lodge them relating to the transfer or charge of land
- Prepare trust deeds disposing of capital
- Prepare papers seeking or opposing a grant of probate or a grant of letters of administration
- Administer oaths or statutory declarations

General Requirements

The usual statutory obligations imposed on businesses generally relating to such issues as data protection, VAT registration, anti-money laundering provisions, and Health & Safety compliance all apply in the normal way to paralegal law firms with no additional obligations (although if holding or dealing with client or third-party monies, then care has to be taken to avoid suspicions of inadvertent money-laundering).