

The Institute of Paralegals

Setting Standards for Non-Lawyers in the Legal Profession

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Response to "Wider Access, Better Value, Stronger Protection" Discussion Paper

Our biggest comment about the discussion paper is that it is largely based on an incorrect premise. Accordingly, we think that the questions asked and conclusions drawn, although reasonable and logical, are flawed because of the said incorrect premise.

The incorrect premise is that in 2011 alternative business structures ("ABS") will come into play, and that when they do they will potentially have a profound effect on the businesses of the eight groups of lawyers regulated under the Legal Services Act 2007 - because ABS will represent the first time that lawyers will have faced such "non-professional" competition.

The discussion paper looks in detail at the benefits of opening the market in 2011 and what the effect might be on the practices of the said lawyers and, in particular, whether there is a compelling case for creating some sort of level playing field between those practices and emergent ABS entities.

There are four reasons why we think the said premise is incorrect:

- 1) The government's policy of deregulating the provision of legal services has been very successful. Today there are, we estimate, at least 4,000 commercial entities offering legal services direct to the public or business without the involvement of lawyers. Potentially the number could be as high as 6,000. These organisations, paralegal law firms ("PLFs"), are already in stiff competition with solicitors in many areas, but particularly for clients amongst the poorer elements of society and for SME businesses.

We do not see any reference to these PLFs in the discussion paper, even though at current rates of growth there will be more PLFs than there are lawyers' firms by 2011. Competition is already here; it is already hot and it is already affecting business. Solicitors in particular are losing out in quite a few practice areas such as uncontested divorces and probate work.

- 2) The discussion paper fails to identify the major changes taking place within the solicitors' profession. There are already more paralegal fee-earners working in solicitors' firms than assistant, associate and consultant solicitors combined. Within approximately the next seven years the number of paralegal fee-earners in solicitors' firms will outnumber solicitors should the trend continue (and we see no reason for it not to). The implication is that by 2011, many solicitors' firms will already be on the way to becoming quasi-ABS entities themselves. One would not know this from reading the discussion paper.
- 3) PLFs are already 'distorting' the market. By statute PLFs have no rights of audience in court. Yet daily scores of them attend courts and tribunals and represent clients on a commercial basis. The judiciary is turning a collective blind-eye as it realises that to deny rights of audience to the PLFs would be to deny access to justice for many poorer members of the community - it will also cause court business to grind to a halt as overwhelmed litigants-in-person were forced to conduct their own cases against their will.

Paralegal law firms are already becoming active in the criminal justice system as legal aid becomes less accessible - and increasingly subject to means testing. In the last three months alone the Institute has been contacted by Her Majesty's Prison Service, the Crown Prosecution Service, the British Transport Police and two county constabularies for advice upon the status of PLFs representing inmates/the accused. Again, reading the discussion paper one would never know that such market-changing developments were already underway.

- 4) Paralegal law firms are having a disproportionate impact in black and minority ethnic communities. We noticed that a large number of the PLFs that seek Institute corporate membership have principals who are from BME communities. The discussion paper talks about the legal services market as if it is a single homogenous market. It isn't and never has been. This is not acknowledged but the direct implication is that the introduction of ABS will affect some legal businesses in some practice areas, and affect others not at all. Again one would not know this from reading the discussion paper.

Similar points were made when the Board issued its draft 2009/2010 business plan. In that document, the Board inexplicably equated paralegals to HR, training and marketing staff in law firms. As we pointed out at the time we did not know of many marketing staff who were representing clients on a daily basis in court!

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