



Craig Robb
Policy Manager
Legal Services Board
By email: craig.robbs@legalservicesboard.org.uk

8 Dormer Place
Leamington Spa
Warwickshire
CV32 5AE

DX: 292321 Leamington Spa 4
UK: 0870 606 2555
Int: + 44 (0)1527 504450
F: + 44 (0)1926 439725
www.sra.org.uk

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Dear Craig

Additional submission on rules to be made under s51 LSA 2007

The SRA has seen the Supplementary Submission of the Bar Standards Board and agrees with it. The core point of their submission caused us to reassess whether all the current regulatory activities of the SRA fall within the scope of the permitted purposes set out in the LSB draft rules, and we too believe that the scope needs widening to ensure that there can be no question that all our proper regulatory activities can be funded from Practising Fees. We have discussed this letter with Russell Wallman at the Law Society who has confirmed that he agrees with the points made in this letter.

As with the BSB, the SRA has regulatory reach over all solicitors, whether or not they have a practising certificate. The LSA concept of authorised person is something of a new concept, although based on provisions of the Courts and Legal Services Act. All solicitors with practising certificates are authorised persons, but some who do not have a pc are also authorised, for example because they are exempt from the requirement to hold a pc (government lawyers).

Some solicitors who do not have practising certificates nevertheless stay on the Roll and provide non reserved legal services through a non-regulated firm or as paralegals in an in-house legal department. Many parts of the Code of Conduct and other regulations will not apply to them, but we do still have regulatory reach as if they were, for example, to commit a criminal offence, we would take action to remove them from the Roll. We believe that qualified solicitors who are on the Roll, but with no pc might be seen as falling in the category of "those wishing to become such (authorised) persons", but we would not want there to be any doubt.

We also regulate (under statutory powers amended by the LSA) many who are not authorised persons as individuals (and indeed are not lawyers) but who are "managers or employees" in recognised bodies or employees of recognised sole practitioners. As a recognised body is an authorised person we think it is possible that the cost of an investigation into its activities that results in disciplinary/regulatory action being taken by the SRA (or the SDT) against a non lawyer manager or employee could be seen as part of the regulation of an authorised person (ie the recognised body), but would not want there to be any doubt. We think there may be

more doubt in relation to the regulation of an employee of a recognised sole practitioner.

Finally we, as many other regulators, see as an important part of our consumer and public protection role the “policing of the perimeter”. We do investigate and take action against non solicitors who pretend to be solicitors (a rising trend in our mortgage fraud work is the “identity theft” of firms of solicitors), and solicitors who are practising in breach of the requirements to have practising certificates or recognition (or indemnity insurance etc). We believe that Registered Foreign Lawyers are authorised persons under the LSA, but the MoJ's lawyers have cast doubt on this. RFLs normally work in recognised bodies that are authorised persons. However we do have the power to take RFLs off the register in relation to activities outside of legal practice.

This is important consumer protection work which we are sure should be funded by practising fees. While the drafting of this Act made it necessary to come up with a term that could be referred to a number of different kinds of lawyers, and it was logical to use that term in s51, we believe it has unintentionally narrowed the scope of regulatory activities in these respects.

We have not suggested an amendment to the draft rules as the problem may affect others and the right solution might not be a revision dealing specifically with solicitors or barristers, but a more broad terminology. We are however very happy to discuss the best drafting solution.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', written in a cursive style.

Antony Townsend
Chief Executive, SRA