Solicitors Regulation Authority (SRA)

Legal Services Act: New forms of practice and regulation

A response by the Association of Personal Injury Lawyers

April 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

Roger Bolt – Former APIL Treasurer
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Introduction

APIL welcomes the opportunity to response to the SRA's series of consultations on new forms of practice and regulation, following the enactment of the Legal Services Act.

APIL represents the interests of personal injury claimants and there are a number of regulatory issues relating to the new forms of practice which are of potential concern to us. With the exception of paper seven (information requirements) our comments are general, rather than relating to specific questions in specific papers. We therefore feel it is appropriate to submit this one consultation response which covers the issues of concern to us across the various consultation papers issued thus far.

Our primary concern is for the protection of clients. Issues of independence of solicitors and the need for solicitors to act in the client's best interests will be of particular significance once alternative business structures are allowed, but are also of relevance given that, once appropriate regulation is in place, non-lawyers will be able to have a minority stake in legal firms.

It is also important that all organisations regulated by the SRA have to abide by the same rules. To apply different standards to different business structures would potentially give one SRA regulated firm a commercial advantage over another. Finally, the SRA must ensure that its approach is realistic and proportionate.

Independence and acting in the client's best interests

The movement towards non-lawyer ownership of legal firms, beginning with 25 per cent ownership which will be allowed once suitable regulation is put in place, presents a threat to the independence of solicitors and their ability to act in the client's best interests.

There are two obvious situations in relation to personal injury law where the move to non-lawyer ownership of firms could cause particular problems.

The first is part ownership of a firm by a liability insurer. The SRA will no doubt be aware of the current wide-spread practice of third party capture where the defendant's insurer seeks to prevent the claimant from obtaining independent legal representation by settling the claim direct or persuading the claimant to allow it to instruct solicitors for him. There is a risk of a conflict of interests between the solicitor and client in this situation as the firm may be dependent on the insurer for business and thus not want the client's claim to cost the insurer too much in terms of compensation, disbursements or his own costs. This practice could get worse if insurers can have an interest in a solicitor's firm.

The second situation is part ownership of a firm by a legal expenses insurer. There is often a close relationship between such insurers and some of their panel solicitors, with the latter receiving a significant proportion of work from the insurer. We understand that some panel firms even share office buildings with the legal expenses insurer which provides the firms with most of their business. Again, there is a significant, albeit different, risk of a conflict of interest arising as the solicitor may lose business if his actions on behalf of the client cost the legal expenses insurer too much in terms of fees or disbursements. This risk will also increase if legal expenses insurers are allowed to invest in solicitors' firms.

The risk to clients in these situations is akin to that which currently exists with in-house lawyers, which is explicitly acknowledged by the Solicitors Practice Rules. Rule 13.01 about in-house lawyers re-emphasises the duties that all solicitors have to act in the best interests of their client and to comply with rule 3 regarding conflict of interests. We hope that in regulating bodies with an element of outside ownership the SRA gives particular consideration to these rules.

Related to this issue is employees of legal expenses insurers acting for their insured and we welcome the proposed retention of rule 13.06 (2)(a) which prevents such solicitors acting in personal injury claims.

APIL therefore believes the conduct rules are well drafted and does not object to the proposed changes. The move towards ownership of solicitors by non-lawyers, including companies with shareholders is, however, a move away from the independence of solicitors and whether clients' interests are protected will depend on proper enforcement of these rules. We therefore ask the SRA to be particularly alert to the risks we have highlighted when it starts to regulate firms which may have non-lawyer owners.

Consultation paper seven – information requirements

We recognise that the SRA will have to gather a certain amount of information to be an effective regulator. We believe, for example, that it is imperative that the SRA gathers details of ownership and influences on firms in order to be able to determine whether or not the owner's interests could potentially conflict with the client's.

We are, however, concerned about the extent of information that the SRA is asking for. Some of the categories of information seem particularly amorphous and the amount of information asked for may well place an excessive burden on firms. There is a level at which intrusion into and control over law firms is not justified and could serve as a deterrent to legitimate and desirable business enterprise. Furthermore, the information may be of an extremely sensitive commercial nature and recent events do not inspire confidence about the security of confidential information collected by central agencies. Perhaps of most concern of all is that some of the requested information may offer the SRA no assistance in helping protect clients.

Take, for example, the proposed category of financial stability. What is sufficient to show stability: accounts, bank statements, contracts, details of loans and overdraft arrangements? What if a firm's position changes significantly in the course of a year? The cost of employing staff to analyse such detailed information will be substantial. Who will pay for this? And how will having this information help the SRA ensure the protection of client money, which should be kept entirely separately from a firm's assets in any event?

These concerns lead us to believe that the value of information the SRA proposes to collect should be reconsidered and the amount and type of documentation appropriately revised.