RESERVED LEGAL ACTIVITIES WHO CAN DO WHAT?

By Jayne Willetts | Solicitor Advocate and Partner, Townshends LLP Birmingham

On 6 October 2011 solicitors will be permitted to practise within Alternative Business Structures ("ABSs"). This is likely to result in a heavy regulatory burden on solicitors to supervise the non-solicitors within the ABS. The rationale for this is to maintain both order and discipline within the profession and public confidence. However the distinction between solicitors and non solicitors is already blurred.

Are there any monopolies or near monopolies left to solicitors? The Legal Services Act 2007 sets out the definition of reserved legal activities. It is a criminal offence to carry out a reserved legal activity and the offence attracts a 12 month maximum sentence on summary conviction or a 2 year sentence on indictment.

There are six reserved legal activities – the exercise of a right of audience; the conduct of litigation; reserved instrument activities; probate activities; notarial activities; and the administration of oaths. These activities can only be carried out by authorised persons or exempt persons as defined by the Act. Authorised persons are those persons authorised to carry on the activity by a relevant approved regulator as set out in Schedule 4. Our relevant approved regulator is the Law Society through its regulatory arm the Solicitors Regulation Authority.

Schedule 4 of the Act makes interesting reading. For anyone considering an ABS I would commend this Schedule to you. There are eight approved regulators. All of them are able to authorise persons to administer oaths. The solicitors' profession no longer has any monopolies. Barristers and solicitors can conduct exactly the same activities – no difference whatsoever. If you wish to exercise a right of audience you can do so as a solicitor; barrister; legal executive; patent attorney; trade mark attorney or a law costs draftsman. All of those who can exercise a right of audience can also conduct litigation with the exception of legal executives who are not yet authorised but are lobbying hard.

Reserved instrument activities otherwise known as conveyancing is confined to solicitors, barristers, licensed conveyancers; patent attorneys and trade mark attorneys. In the future an investor in an ABS may decide that it will be cheaper and easier for a conveyancing solicitor to re-qualify as a licensed conveyancer.

In short we are in danger of becoming a profession with nothing to differentiate us from the many others now authorised to deliver the very same legal services. What will mark us out in the future? Will our professional title still mean something in this confused new world? If a solicitor is disciplined by the Solicitors Disciplinary Tribunal does he then re-qualify as a licensed conveyancer and carry on in business? Quality not quantity may be the key but overregulation will turn potential entrants away from the profession. It is a difficult balance. These are questions that must be addressed by the Law Society in the forthcoming months during the consultation on outcomes focused regulation and the regulation of ABSs.

Jayne Willetts
Professional Regulation Team
Townshends LLP