

## In House Lawyers and the Code of Conduct

In house lawyers will have welcomed the outcome of a recent House of Lords' debate on whether they should hold a practising certificate (Gazette 104/11 15.03.07, p. 3) as the Minister, Baroness Ashton, said:

"Provided no reserved activity is involved, I do not see why we should treat persons who may once have qualified as a lawyer any differently from any other person who may provide general advice to their employer."

For once a foray into the law which HM Government has got right! The Minister's reply came in response to a Solicitors' Regulation Authority (SRA) inspired attempt to insert a requirement in the Legal Services Bill that would have obliged all solicitors providing any legal services to hold a practising certificate (PC) .

At present the law and the position under the professional rules are identical: only a solicitor may undertake legal work that is assigned to solicitors (the reserved activities). That appears trite but the SRA made a spirited attempt recently to discipline 2 in house lawyers for not holding a PC where neither was undertaking reserved activities. Fortunately we were able to demonstrate to the Adjudicator that the SRA had got the law wrong in both of those cases.

The SRA referred one client to the Adjudicator because she had:

- I) A job with the job title "lawyer"; and,
- II) Undertook work the nature of which was restricted to solicitors. That is to say to those persons who have been admitted as solicitors, have their names on the Roll and held a current practising certificate.

The recommended sentence was a reprimand.

The restricted activities are a closed group and none of the work our client undertook fell within that group. Potter, J. in the decision of Piper Double Glazing Limited v DC Contracts (1992) Limited [1994] 1 AER 177, 186 held that "...the words "acting as a solicitor" are limited to the doing of acts which only a solicitor may perform and/or doing of acts by a person pretending or holding himself out to be a solicitor. Such acts are not to be confused with the doing of acts of a kind commonly done by solicitors, but which involve no representation that the actor is acting as such".

Despite their recent reverse in the House of Lords, the SRA have quietly taken care to ensure the position under their new, “transparent” Code of Conduct (in force 01.07.07) is the complete opposite of the position in Piper and as explained by Baroness Ashton. From 1 July anyone involved in legal practice must hold a PC (see rule 20.02(2)). “Involved in legal practice” includes the provision of other services such as are provided by solicitors (rule 20.02(3)). There are exemptions, for example, if you are a solicitor to certain public authorities or Government departments (s. 88 of the Solicitors Act, 1974) or if your title is qualified by the words “non-practising”. Guidance note 55 does state the law accurately but of course the Code takes priority over the Guidance.

Because the professional rules have the force of statute (Swain v The Law Society) the effect is to overrule Piper. Some cynics have suggested that this is rather a neat way to dramatically increase the income from PCs thereby funding yet more regulation and consultations on regulation by the SRA; I leave that for others to judge.

Those in house lawyers currently without a practising certificate but giving legal advice should urgently take advice as to whether they need to obtain a PC or whether they can take advantage of the exemptions which are available under the Code.

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