

## When is a Solicitor not a Solicitor? A dilemma for local government lawyers

Local government lawyers may find themselves liable to regulatory sanction and criminal conviction as a result of cut backs if their practising certificates are not renewed and they remain held out as undertaking lawyer-like services by, for example, by using the job title "legal officer".

Rule 20 of the Code of Conduct (the Code) significantly extends the type of work for which a solicitor needs to hold a practising certificate (PC). The Code makes it mandatory to hold a PC if a person is held out as a solicitor (or as a lawyer or similar e.g. legal officer) and undertakes "business or lawyer-like services". Unfortunately those terms are not defined nor is there any guidance as to their meaning.

Rule 20 therefore provides that activities which are specifically excepted from reserved activities under the Legal Services Act, 2007 (such as preparing an agreement which is not a deed) are not activities for which one needs a PC.

The reserved legal activities include: preparing reserved instruments (deeds), conducting litigation, administering estates and appearing as an advocate.

In a pre-Code case the Law Society (as the SRA was then known) recommended that a woman solicitor be reprimanded for practising as a solicitor whilst uncertificated where: she was employed in the Legal Department of a London local authority, her job description was "lawyer", she would attend employment tribunals instructing Counsel, any letters written by her would be sent under the name of her supervising manager who was a solicitor holding a practicing certificate, no communication (internal or external) referred to her as a solicitor or by name save for showing the initials of her name as part of the reference of the communication, she did not have contact with members of the public in the sense of giving advice and legal advice was however given on employment related matters to the various departments of her employer authority who were described as her clients.

Prior to joining the local authority she had not worked in any capacity she then became employed as a locum working on short term fixed contracts. Although she had asked her authority to pay for a practising certificate they were reluctant to do so given the cut backs and the fact that the relevant manager held a full certificate. Her contract was renewed several times and by the time matters had come to a head there had been a total period of several months of practising, said the Law Society, uncertificated.

The Regulation arm of the Law Society referred the issue to the Adjudicator because the employee had: a role with the job title “lawyer” and 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 and a costs penalty.

However reserved legal activities are a closed group and none of the work she undertook fell within that group. Furthermore a description as lawyer or similar was irrelevant under the pre-Code position.

Submissions to that effect led the Adjudicator to dismiss the complaint. This was a most helpful clarification of the position of many solicitors working in local government without a PC.

Under the Code the position is far from clear. The concept of “other services” has yet to be defined and the Code is in conflict with the Legal Services Act, 2007. Any solicitor in local government with the job title “lawyer” or “legal adviser” without a practising certificate faces regulatory sanction and a criminal conviction for practising whilst uncertificated. The cut backs may lead to a far higher price being paid in the end since their employers may be liable for exposing employees to such compliance risks.

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