

OPPORTUNITY KNOCKS OR FREEDOM AT A PRICE?



What does the new 'gig economy' freelancer model mean for you and your law firm? Paul Bennett of Bennett Briegal LLP looks at some of the key opportunities and challenges.

Just as you get instant coffee, filter coffee and barista-made coffee, the public will soon have a range of solicitors to choose from, from freelancers (instant) to more expensive and sophisticated options. For established law firms, the introduction of freelance solicitors is a seismic change which faces us from 25 November 2019.

The new model gives employees and partners an option which is easier to launch than a traditional law firm and the opportunity to be totally flexible, and free from the shackles of partnership. Solicitors will find the new model appealing from a work-life perspective, and if they can see 'their' clients wanting to follow them it could be compellingly easy for them to switch from traditional practice models to the freelance model (which the SRA call an SRA-regulated independent solicitor).

The option of becoming a freelance solicitor makes it cheaper, easier and more straightforward to set up and practise alone than ever before. There is no process which will take months to get a new firm authorised. If someone wants to become a freelancer, they simply buy insurance, notify the SRA and ensure they have a letter of engagement and

terms of business which meet the notification requirements from the SRA perspective. It is a simple model. The key questions are:

- Have I notified the SRA?
- Do I have "adequate and appropriate" professional indemnity insurance?
- Do I have a terms of business and an engagement letter which sets out the restrictions on me and the impact on clients?

These questions are minor hurdles for those wanting to set up in this way, but they are one off barriers and low barriers to entry to the market. The most significant barrier is the fact that freelancers cannot hold money in a client account (they can hold their own fees and funds for disbursements in a business account, but this cannot be a client account).

For freelancers, there two other key challenges: the notification obligations are onerous because the insurance is different; and they are sole traders so have unlimited liability. This means that the terms of business and insurance must do their job effectively for that personal liability could go horribly wrong.

THE RETENTION CHALLENGE FOR FIRMS

I spent much of this summer preparing documents for freelancer solicitors. In November and December, I am expecting to see solicitors moving away from firms suddenly, especially parents of young children and older practitioners reducing their workload.

How would your firm cope if you lost staff in this way? If someone is going to compete with you, do you get them to work their notice or put them on gardening leave and try and build a rapport with the client?

One thing to think about now is flexible working. Do you have a culture of flexible working? If so, does it really work for your team? Check in with key personnel now, before they can simply go freelance.

WHEN A FREELANCER IS ON THE OTHER SIDE OF A MATTER

If your team is asked to make a payment to a third-party managed account (TPMA), do they know what one is and how it works?

If accepting an undertaking from a freelancer, you may wish to consider the limitations arising from the fact they cannot hold client funds, so will not be able to offer an undertaking to make a payment, as they will not be in funds. The use of TMPAs means you may need to amend the wording of standard undertakings. As with any other solicitor, a freelancer's undertaking is a binding commitment and thus enforceable, but you need to make sure the payment obligation reflects the TPMA, and this means that clients – potentially their client or yours – needs to control those funds jointly with the freelancer.

Right now, you should be looking at the following:

- reviewing staff knowledge of the freelance model and the client funds restrictions
- reviewing undertakings routinely sought – what would be needed to make those work without a client account for the other solicitor
- ensuring your systems and processes are updated so that payments are not made to freelancers who are not entitled to hold those funds
- establishing a system to including checking the status of solicitors prior to making any payments to them.

CONCLUSION

The Law Society Practice Note on freelance solicitors was published on 11th September. I was instructed on developing this and it is intended as a must read for anyone looking at the freelance option. The personal liability risk will put many off, but many sole practitioners and former partners coped with such risks for decades, as do barristers. Instant coffee is still coffee so it is time for a coffee with those staff and partners to whom this new model might appeal.

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