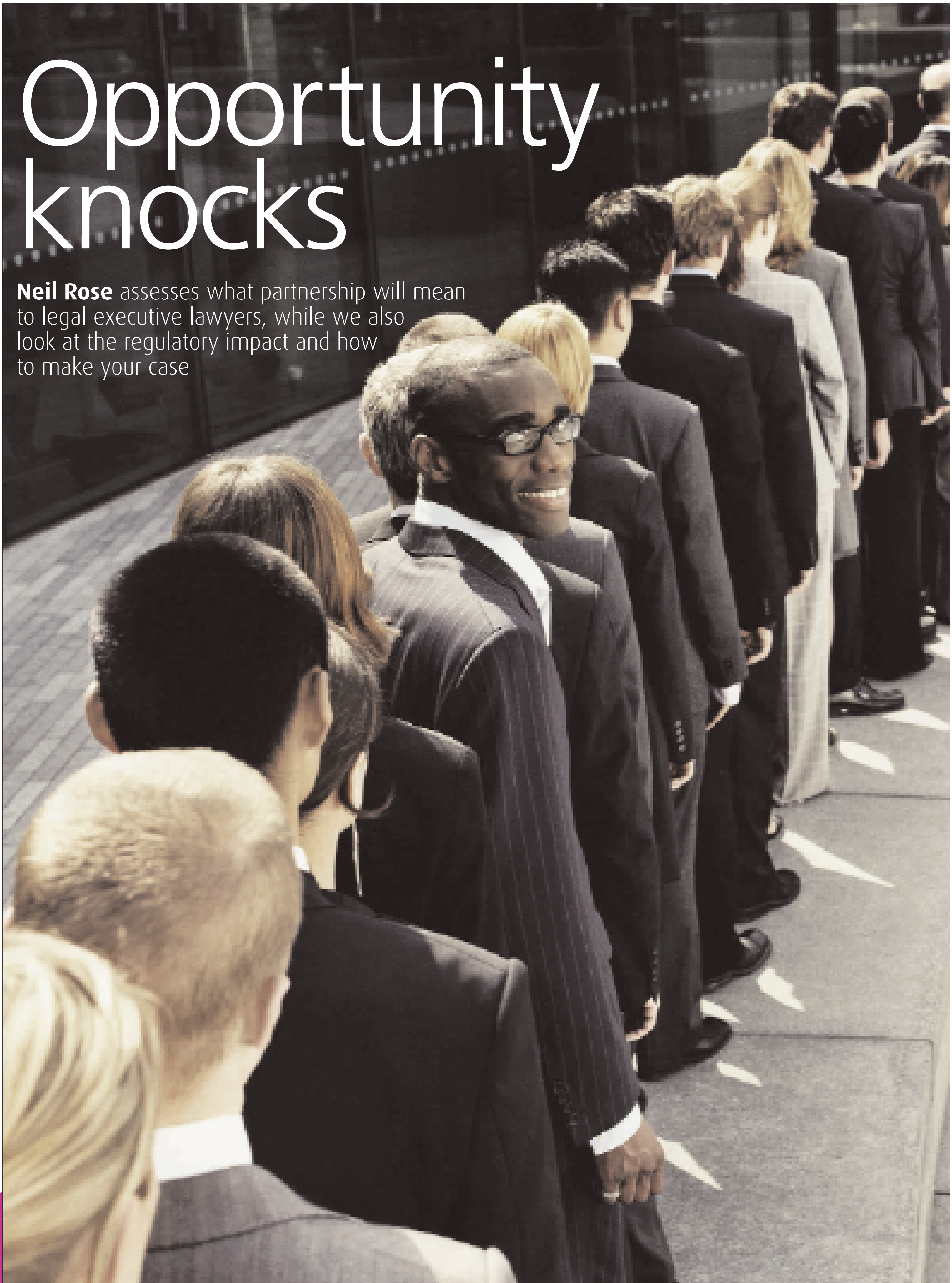

Opportunity knocks

Neil Rose assesses what partnership will mean to legal executive lawyers, while we also look at the regulatory impact and how to make your case

P-Day is coming up fast – the day when Fellows will be able to throw off the various titles that have been handed to them, such as 'partner status', 'partner equivalent', 'director' and the like, and take their place as equals around the partnership table.

The Solicitors Regulation Authority (SRA) is currently knee deep in consultation papers about how it will introduce the regulatory regime created by the Legal Services Act 2007. Ultimately this will be alternative business structures and so-called Tesco Law, but more immediate will be the introduction of legal disciplinary practices (LDPs), which it hopes to bring into being on 1 March 2009 (subject to government approval of the rules).

The Council for Licensed Conveyancers also plans to be a regulator for LDPs that offer conveyancing services, and possibly probate services too. As well as dual qualified legal executives, there has been a trickle of solicitors requalifying as licensed conveyancers in recent years because the council already has a more progressive regulatory regime, but post LDPs they will be able to benefit from the council's regulation without having to give up being solicitors.

One dispute that LDPs will resolve once and for all is that of whether legal executives are 'lawyers'. The SRA papers make it clear that it intends to use the word 'lawyer' (which has no formal meaning) to describe the various legal professionals who can make up LDPs – that is, solicitors, barristers, legal executives, licensed conveyancers, patent agents, trade mark attorneys, notaries and costs lawyers. This is in part to distinguish them from the 25% of non-lawyers that LDPs will be allowed to have in their partnerships.

What the consultations also show is that the SRA has decided that it should treat all these legal professionals equally. The key policy decision it had to make in relation to amending the Solicitors Accounts Rules was who should be entitled to sign client account cheques or other authorities. The proposal is that a Fellow should be allowed to sign as an employee (as at present) and also as a 'manager' (partner), but that in both cases the requirement for three years' standing should be removed. The reason for this is that all Fellows have had training in the accounts rules.

Similarly, the SRA had to consider amendments to the Solicitors Code of Conduct and whether non-solicitor lawyers should be 'qualified to supervise' the practice for the purposes of rule 5. This currently requires each firm to have one manager so qualified, meaning that they must have had the relevant training and have been entitled to practise as a solicitor for 36 months. 'We see no problem with other lawyers being allowed to be "qualified to supervise" as they will have had a background of working in the same, or a similar, professional and regulatory environment and will be able to fulfil the requirements in 5.02,' said the SRA.

Equality street

'My view is that it is a great opportunity for both law firms and also individual legal executives to tap into a resource that to now has been denied access to partnership,' says well-known law management consultant Andrew Otterburn, echoing the views of many. 'The key to success in all firms is to be able to make the most of the people you have and I can think of several of my clients over the years where it has been one of the legal executives who has been a star. They have sometimes had partnership equivalent status, but now they can have equality.'

> "I can think of several of my clients where it has been the legal executive who's the star"

One Fellow who already has that is Amanda Glover, a partner-equivalent in the personal injury arm of regional firm Shoosmiths, although the firm has yet to commit formally to becoming an LDP. She had considered converting to become a solicitor, but discounted it now that she is at a firm where a person's qualification is not seen as particularly important – it is their contribution that matters.

Ms Glover recounts that it has taken her 'a long time to find a firm open-minded enough' to regard her this way, and says that, if partnership does happen, little will change internally, where she is already treated as though a full partner. It will, however, make a difference externally; no longer having to explain to clients that they are dealing with a partner, but not quite, will clearly come as a relief to her: 'To be able to say [I'm a partner] without having to qualify it will make my job easier because it will give me more credibility.'

Shoosmiths' HR director, Louise Hadland, explains that when she introduced the partner-equivalent role a few years ago, there was no resistance from the solicitors. 'Everyone in the firm recognises the contribution these people make,' she says. 'We've long embraced the notion to reward and promote those who are adding value regardless of their status.' Everyone seeking a promotion to associate or partner (or equivalent) goes through the same process of being assessed against objective competencies and having to make a business case.

Healthy appetite

Quentin Poole, the senior partner of top Birmingham and London law firm Wragge & Co, says his firm is 'very up' for LDPs and the idea of legal executive partners in future. 'I'm 100% for the notion that we should have the flexibility to appoint barristers, legal executives, accountants and even marketing people to the partnership,' he says. 'The rules are catching up with the appetite [among firms to do this].'

As at Shoosmiths, his firm's focus is on the fee-earner's competence, ability to advise clients and so on – not the letters at the end of their name, and all aspiring partners at Wragges will undergo the same process of being sponsored by a part of the business and then through an application and interview process.

It is a similar story at leading Manchester firm Pannone, although again the partners there have yet to make a formal decision on whether to embrace the LDP concept. But HR head Rachel Dobson does not expect it to be a controversial issue – the firm already has non-solicitors with salaried and equity partner status. 'As a matter of principle, we've recognised that people who aren't solicitors add value to the organisation,' she explains, adding that there is 'nothing magical' about being a solicitor.

...continued

Again, it is about the fee-earner's contribution to the practice. Ms Dobson explains that a potential Pannone partner has to demonstrate a certain level of experience and technical expertise, 'billing at a very good level', and 'something else in addition'. This could be an ability to develop new business, management expertise or some other special skill. The lawyer would need the support of their department, and to fill out an application form. Ms Dobson says unsuccessful candidates are told the areas they need to improve with a view to reapplying in future years. 'The route is open to everyone,' she emphasises.

The rules are changing

Of course, not every law firm has as enlightened an attitude as these practices in the way they treat legal executives, and some legal executives the Journal spoke to preferred not to take part so as not to rock the boat. There remain crusty solicitors who might be rather sniffy at the prospect of bringing a non-solicitor into the partnership. But the rules of the game are about to change. 'It will be case of "what can you offer me?", rather than just the other way round,' says Ms Glover. 'It will have quite an impact on retention.'

If legal executives have the choice of moving to firms that offer partnership, it will put a lot of pressure on their existing employer to follow suit. There could be some kind of domino effect. Tony Williams, founder of law firm consultancy Jomati, points out that firms which are sniffy are under no obligation to become an LDP – 'but don't be surprised if that [non-solicitor] goes and leaves for somewhere that is'. Firms should also expect partnership prospects to be 'part of the conversation' during recruitment exercises.

For Fellow Derek Larkin, an associate specialising in criminal law Rose Williams & Partners in Wolverhampton and a former ILEX President, 'it's all about options' for legal executives – options that he could not have dreamed of when he began practising in the early 1970s, or maybe even just ten years ago. 'There are many firms out there which will welcome us into partnership... the barriers have come down,' he says, pointing out that as well as reaping the benefits of partnership, legal executives will in future also have to bear the headaches too.

Like Ms Glover, he is aware of the importance of the status: 'It will show the outside world that you have reached a particular status in the firm.' He recognises, however, that there may be some resistance. 'I accept that there will be concerns among some solicitors, but legal executives aren't there to dumb down solicitors – we're there to enhance their practices.'

Status symbol

Law firm consultant Simon Young, formerly managing partner of Exeter firm Veitch Penny, reckons that there will 'not be huge rush' to make up legal executives as partners, recalling the experience of the medical profession when doctors were able to bring in non-doctors as partners. There was an initial spurt to appoint practice managers, for example, but it tailed off.

While those firms which already employ senior legal executives to run departments may well use partnership as a way to reward and retain such staff, Mr Young says the current economics of many practices mean 'it's not likely they will want to cut the equity cake that much thinner' than it already is.

At the same time, the vital thing for many is simply having 'partner' on their business card – the outside world does not know whether they have an equity share on not. And this could simply feed the inexorable rise of the salaried partner at firms of all sizes: there is plenty of evidence that the largest law firms are maintaining their huge headline profits per equity partner figures (by which they are often judged in the legal press and elsewhere) simply by holding or even cutting the number of equity partners with their hands in the pot.

Mr Williams, a former managing partner at Clifford Chance, recalls how the world's largest law firm only introduced salaried partner status in 1998, in common with many other practices. Now there are some partnerships where the salaried outnumber the equity by as much as three or four to one. 'Across the market firms are holding the equity tighter and tighter,' he says.

Though the pressures at small firms are to some degree different, the end result could be the same. The squeeze is on. Last year's annual law firm benchmarking survey from the Law Society's law management section, which mainly features smaller practices, reported the median revenue per fee-earner increased just 3% in the previous 12 months, compared to 8.2% in the 2006 survey, with little change in profits per equity partner. In an ever more competitive market, firms are going to be careful about opening up their partnerships.

But despite this, opportunity is knocking. Partnership will take legal executives up to a new level. Writing recently on the blog of leading legal education provider Consilio, editor Richard Ramsay made the case for students without a first from Oxford and guaranteed City career to go down the legal executive route rather than take the risks of training as a solicitor, especially once partnership is on offer to Fellows and there is 'no hassle about having to do a tedious LPC later and re-qualifying'.

Putting it yet more pithily, he said: 'Legal execs are where it's really at; they're the sexy part of the legal profession.'

SRA, LDPs and all that

Alison Crawley outlines the mechanics of partnership for legal executives

The Legal Services Act 2007 amends statutory powers of the Solicitors Regulation Authority (SRA) – the independent regulatory organisation of the Law Society – to enable it to regulate legal disciplinary practices (LDPs), that is firms in which solicitors can join with other types of lawyers and have up to 25% of non-lawyers as managers.

Fellows of the Institute of Legal Executives will be 'authorised persons' under the Act and so will be able to become a partner (director/ shareholder in a company or member in an LLP) in an SRA-authorised firm, as will barristers, licensed conveyancers, notaries, patents and trade mark agents and law cost draftsmen. The Council for Licensed Conveyancers already has more flexible statutory powers than the SRA, but its powers have been amended in broadly the same way as those of the SRA.

The SRA is currently consulting on the many changes to rules and regulatory procedures that will have to be in place before LDPs are possible. The regulatory system provided for in the Act requires the SRA to further develop firm or entity-based regulation in order for it to be able to authorise and regulate LDPs.

Our first paper setting out the SRA strategy for dealing with these changes was published in November 2007 and is still on the SRA website (www.sra.org.uk). In that paper we said that we were aiming to be able to introduce the new forms of practice in early 2009, and 1 March is currently the target date.

What does this mean for a Fellow?

The SRA is aware that many firms depend on Fellows to run branch offices and departments, and some are keen to ensure that they can retain such key staff by offering partnership or equivalent. So what will the changes mean to a Fellow who has been offered a partnership in an SRA-regulated firm?

Firstly, it will not be possible to take up that partnership until the date that the relevant commencement order sets for the introduction of the amendments to the Solicitors Act 1974 and the Access to Justice Act 1985 – currently targeted to be 1 March 2009.

While non-lawyers will not be able to become a partner (or equivalent) until they have been accepted as 'suitable' by the SRA, the same process is not required for other authorised persons, such as Fellows. The SRA is currently considering whether it would be appropriate to require some form of prior notification in relation to authorised persons taking on such roles, or simply notification within a set time period after taking up such a role. If the character and suitability test for entry to a legal profession is broadly the same as that applied to solicitors, then notification after the event should be sufficient. However, if a regulator, for example, would have made no checks relating to previous criminal convictions, then some prior notification process may be necessary in order to allow the SRA to make such checks.

Once a Fellow is a partner in an SRA-regulated firm, he or she will be subject to the same rules and regulations as solicitors and will be subject to the same disciplinary processes and sanctions. A key principle underlying the Act is that entities which provide legal services are regulated as an organisation. While firms may in the future have some choice as to who may be their regulator, the rules that apply to the entity are those of the entity regulator. That does not mean that, for example, if the SRA is a regulator of a firm with a Fellow who is partner, it can take away that Fellow's right to practise – only ILEX can do that.

Can a Fellow own an SRA-regulated firm?

The SRA's initial policy, now replicated in the draft rules and regulations, is not to create any additional barriers or restrictions to those that are set out in the Act unless necessary in the public interest. Therefore, it would be happy to regulate any firm meeting the basic requirements for an LDP regulated by the SRA laid down in the Act. This means:

- There must be at least one solicitor or registered European lawyer (REL) 'manager' in the firm;
- The firm must be providing 'solicitor services'; and
- At least 75% of the firm's managers must be legally qualified.

Therefore, it would be possible, subject to the outcome of the consultation, for a Fellow to be the sole owner of an SRA-regulated company provided at least one solicitor or REL is a director. Equally, a Fellow could be a director with no shares, and there could be a variety of models in between.

Alison Crawley is a consultant to the SRA

Partnership: SRA targets 1 March 2009 introduction

The conveyancer's view

Simon Blandy explains how the CLC will regulate going forward

The Legal Services Act 2007 presents exciting opportunities which could only have been dimly dreamt about when the first licences were issued to licensed conveyancers in 1987. Among the original licensees were ILEX Fellows, who were able for the first time to apply the training and skills they had learnt in solicitors' firms to set up in business on their own.

From the outset, licensed conveyancers have been able to provide conveyancing services through business models which until now have not been available to other lawyers. The Council for Licensed Conveyancers (CLC) provides the framework for the regulation of licensed conveyancers and already permits licensed conveyancers to enter into partnership with non-licensed conveyancers. The Recognised Bodies Rules 2000 allow non-licensed conveyancers (whether or not they are lawyers) to be directors of recognised bodies, provided that the chairman and not less than half the directors are licensed conveyancers. More radically, there is no restriction on the ownership of recognised bodies.

In addition, the CLC is expecting imminently to receive concurrence from the Ministry of Justice to its Limited Liability Partnership Rules 2008, which permit licensed conveyancers to set up limited liability partnerships with other licensed conveyancers, lawyers and non-lawyers. And later this year the CLC plans to start regulating licensed conveyancers in the provision of probate services (subject to the implementation of the necessary statutory instruments). It is also able to apply to regulate advocacy and litigation services.

Welcoming the opportunities the Legal Services Act 2007, the CLC is amending its rules (which it aims to have finalised by autumn 2008) to enable licensed conveyancers to bring other lawyers into practice with them. In addition, amendments will permit licensed conveyancers, if they choose, to practise with other lawyers in entities regulated by other legal regulators, such as ILEX and the Solicitors Regulation Authority.

In order to address the risks which arise where there are external managers or owners, the CLC has been able to successfully apply its existing regulatory framework for the regulation of licensed conveyancers. Many practices (whether or not they are recognised bodies) already have, if not in name, a head of legal practice who ensures that there is regulatory compliance and acts as the conscience of the business. Equally, they have a head of finance and administration. Since it already makes standard enquiries when new practices are set up, the CLC sees the 'fitness to own' test as an extension of the processes already in place.

Whilst, of course, it takes account of rules governing the practice of other lawyers, the CLC aims to be flexible in its approaches provided it is satisfied that the interests of the consumer are protected. In addition to different provisions for the ownership of their trading vehicles, licensed conveyancers can also act for both parties in a conveyancing transaction provided there is no conflict of interest, and pay and accept referral fees provided they advise clients of such arrangements.

The CLC was heartened by Sir David Clementi's acknowledgement in his report published in December 2004 that 'some degree of choice in the type of provider, and the regulatory rules under which they operate, is to be welcomed, subject to a minimum standard being met'.

Planning for the full implementation of the Legal Services Act, the CLC has already indicated informally to the Ministry of Justice that it will make an application to be a licensing authority for alternative business structures. It aims to use the experience it has gained over the last seven years to ensure that the framework proposed for the such structures provides the appropriate level of regulation so that businesses can continue to develop the ways in which legal services are delivered for the benefit of consumers.

The existing regulators are already in discussions to ensure that the changes introduced are consistent with the principles of good regulation and clearly, there needs to be extensive discussions between the Legal Services Board (as soon as it is established) and the frontline regulators, such as the CLC and ILEX, to work through the important policy issues which arise. The CLC will welcome the opportunity of working in partnership to deliver responsive and proportionate regulation.

Simon Blandy is director of standards and legal services at CLC

How to do it

Ronnie Fox explains what law firms look for in potential partners

Soon legal executives will be able to become partners in firms of solicitors. Wondering how to make partner and its implications?

The first question is whether you really want the stress and pressure associated with becoming a partner. Partnership confers status.

A partner has a measure of control over his day-to-day working life and is in a position to influence the business strategy and management of his firm. If all goes well, there should be worthwhile financial rewards.

The next step is to find out what your firm looks for when deciding whether to appoint a new partner. Some firms publish formal criteria for admission to partnership. Others have unwritten expectations.

In practice, I see the same requirements again and again.

Work: A partner must be technically proficient and able to run transactions without supervision, driving them forward to a successful conclusion on his own initiative.

People: Partners need to develop and lead others – to mentor, motivate and delegate. They are not only good team members, but also good team leaders, with an ability to build teams. They establish relationships with clients and win their loyalty.

Money: The individual performance of a partnership candidate is likely to be well over target in terms of hours worked, bills rendered and profit generated. He/she will manage client expectations about fees and recover the time he/she spends in a way which adds to the firm's profits whilst enhancing the client relationship. Every new partner wants a slice of the cake. That's fine if he/she is making the cake bigger.

Developing business: The ability to generate work for him/herself and others is essential. A partner is expected to play a part in building the firm's business and adding to the firm's goodwill.

Individuals' strengths differ. Most firms would normally require a legal executive or assistant solicitor to have demonstrated some ability in each of these areas before being considered for partnership.

Different firms have different cultures. If you are aiming for partnership, you need to find out whether there is a barrier which is too high to climb. Many firms would rule out an expert technical lawyer who has failed to generate any significant work for the firm either from existing or new clients; an assistant who works long hours but whose clients leave the firm never to return; and a generator of large fees who cannot get on with his/her colleagues.

On the other hand, most firms are seeking:

- Partners who act as ambassadors for the firm both in and out of the office.
- Partners who show support for others, through good times and bad.
- Partners who commit to self-development on a continuing basis.
- Partners who place the interests of the firm in front of their own.

The final question is whether becoming a partner in your firm makes good commercial sense. Seek advice if you are not confident in answering that question.