



The Law Society

Legal Regulation Review

Terms of reference and brief

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SUPPORTING
solicitors

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The Law Society wishes to commission a major review of modern regulatory practice.

The regulatory system governing lawyers is changing rapidly. The old system whereby the professional bodies were solely responsible for regulation of their members is long gone. The professional bodies have appointed ring-fenced bodies with independent powers to undertake their regulatory work. These will be overseen by the new Legal Services Board. Other professions which have, in the past, been entirely self-regulatory are considering how to manage the needs and expectations of consumers in a modern, more questioning environment. In addition, proposals for 'Alternative Business Structures' (ABSs) – essentially organisations where lawyers are offering legal services along with non-lawyers or other professionals – will bring new challenges.

These changes have taken place in the context of increasing suspicion of professionals from the public and Government. Concerns arose particularly over standards of service, competition and complaints and discipline. Government's response has tended to be to seek to reform the system for regulation of professionals, ensuring independence and lay involvement on the regulatory bodies often combined with independent supervisory bodies.

Whilst Sir David Clementi's report and the Legal Services Act have led to reform of the structure for dealing with regulatory decision-making in future, there has been no similar study of what good modern regulation means in the context of legal services.

In other contexts, considerable work has been done to define 'good regulation'. The Government's Better Regulation Executive has identified a number of principles of good regulation and has written individual reports on particular issues. In respect of the bodies governing the legal professions, legislation requires them to take account of these principles. Nevertheless, there remain major concerns about:

- The extent to which the regulatory regime is effective in ensuring acceptable standards of conduct
- The burdens that regulation places on businesses, particularly the costs;
- The extent to which such burdens are proportionate; and
- A 'one-size fits all' approach.

In the professional field, and particularly within the law, there is a move away from the focus of regulation being almost entirely on an individual practitioner, towards also regulating the entity within which that individual practises. Within the profession, there is also an increasing divergence between providers whose clients tend to be individual consumers who are often one-off 'distress' purchasers on the

one hand and those who serve a very sophisticated, well-informed commercial, indeed global, market on the other. The risks associated with each type of provider are very different.

The Legal Services Act may also result in the likelihood of a number of different regulators in the field often regulating similar activities. This raises obvious questions about whether it is appropriate for those regulators to apply different rules or different standards on those they regulate, and the potential confusion that may arise as a result of this.

Moreover, a number of practitioners, particularly in areas of law affecting vulnerable clients are paid from public funds at a very low level so that it becomes difficult for them to sustain a practice. There is a real fear that there will be a loss of service if regulatory constraints make it impossible for them to do so.

It is also important to note that comparatively few activities in the legal field are restricted to those who practise as a solicitor or other regulated lawyer (these are: conducting litigation – that is, dealing with the courts in litigious matters; appearing as an advocate in the courts; preparing conveyancing documents; applying for probate; and providing immigration advice). Furthermore, all of these apart from appearing in court do not have to be undertaken by a lawyer personally – they can be undertaken under the supervision of a solicitor or other regulated lawyer. This raises important questions the position of solicitors vis a vis other unregulated providers (such as will-writers).

There are also significant international questions. Many law firms practise internationally and globally and are continually seeking rights to practise in overseas jurisdictions. They contribute significantly to the invisible earnings of UK PLC. A number of jurisdictions had considerable concerns about the recent reforms and the effect they would have on lawyers' independence. They will be watching developments here with interest and concern.

The Law Society believes that it is time to look at these issues to establish what constitutes good regulation for legal services; whether the existing philosophy and structures of regulation remain suitable; and whether any changes in approach are desirable.

The Law Society is currently also undertaking work to identify the extent to which the existing regulatory regime is appropriate for firms serving corporate clients. This will be of direct relevance to this review and it is envisaged that the reviewer will sit on the steering group for that project to ensure that he or she is aware of the thinking and can influence it.

The Law Society therefore wishes to commission an individual of the highest calibre with substantial regulatory knowledge to advise and report on good modern regulatory practice. The report should address the issues in the terms of reference below and should constitute a major contribution towards thinking on regulatory issues which should be of relevance beyond the legal profession.

The terms of reference are:

‘In light of current and forthcoming changes in the Legal Services market, the differing needs of different types of client, current regulatory debates and the need to promote equality and diversity, to consider the appropriate regulatory rules, monitoring and enforcement regime to ensure high standards of integrity and professionalism for solicitors and their firms in all sectors, and to make recommendations.’