



Moving the goalposts

The aim of recent regulatory change was to protect consumers, encourage competition and introduce flexibility into compliance. Paul Widdup, in conversation with Barry Wilkinson, considers whether it has achieved that goal, and the impact of the changes on the profession

Barry: The recession, increasing competition and the rising influence of consumers are often cited as the reasons for the substantial changes taking place within the profession. What role do you think the regulatory regime established by the Legal Services Act (LSA) has had in driving change?

Paul: Economic pressures have certainly been important in driving change. This is particularly evident in the decline in traditional practice structures, as firms seek to put more effective management in place.

However, it is also clear that regulators are attempting to bring about wider structural change through regulation. Most obviously, alternative business structures were introduced to promote greater efficiency and innovation by exposing the profession to external influence and investment. More fundamentally, the LSA's regulatory objectives to protect and promote consumer interests and promote competition have provided regulators with a focus to deliver change; outcomes-focused regulation (OFR) was introduced to give firms more flexibility to achieve compliance in a more competitive and consumer-focused business environment.

Barry: Do you think the way in which regulation is being exercised is achieving those results?

Paul: It's still too early to say. Many larger firms, as well as all those with Lexcel accreditation, already had very effective risk management and compliance structures in place. More generally, I think that the recession, coupled with reduced demand for legal services, has had a negative effect on firms, masking any wider underlying structural changes which may be taking place.

Overall, however, I think that the burdens of compliance currently exceed the perceived benefits for many firms. Newly introduced online systems have not been trouble-free, changes have been costly to introduce, and further administrative burdens have been hitting firms hard at a time of increased financial pressures. Firms have also had to channel resources and capacity, leaving less time for business development.

Moreover, despite the increased emphasis on outcomes, there is still inflexibility in some of the provisions in the new SRA Code of Conduct. The Law Society has raised several examples of this in response to recent Solicitors Regulation Authority (SRA) consultations. The lack of consistent standards between regulators – such as the differences in the treatment of conveyancing conflicts of interest between the SRA and the Council for Licensed Conveyancers – also creates tensions.

I do, however, think that for many firms, longer-term benefits will arise from the implementation of more effective and efficient business structures, better management of risk and improved governance. Law Management Section member firms are at the leading edge of this; its financial benchmarking surveys have showed increased turnover and profits, despite current economic pressures.

Barry: Standards, quality and ethics have also been mentioned in the context of the new regulatory environment. What further challenges for the profession do you foresee arising out of regulatory initiatives in these areas?

Paul: There is increasing regulatory emphasis, particularly from the Legal Services Board (LSB), on a liberalised market in which regulatory restrictions on how legal businesses are structured, innovate and compete

are reduced. This gives the impression that high ethical standards and explicitly articulated values are inhibitors of competition and innovation, and therefore barriers to progress.

This is evident in the LSB's consultation on the regulation of will-writing and estate administration. A very different approach from the current regulatory model is envisaged, with the express intention of liberalising the market. The link between the professional title and values of the solicitor, and the authorisation to carry out reserved activities will be broken if these proposals are implemented.

Barry: The regulator appears to be focused on transaction-processing rather than on professional relationships. Reduced regulatory restrictions plus increased competition will surely place pressure on professional standards and quality of work.

Paul: I agree. The focus on competition is creating an imbalance in the way in which the LSB promotes its regulatory objectives. Little mention is made of the need to promote and maintain adherence to professional principles or to encourage an independent, strong, diverse and effective profession, both of which are enshrined within the LSA's objectives.

In my view, high ethical standards and a strong professional culture play a vital role in the legal profession. We cannot disregard our wider obligations to act in the public interest and preserve the rule of law. These core values provide a framework to act with integrity and maintain trust in a changing world. This is of equal importance at entity level. Firms may vary in their structure and focus, but transparent core values, lawyer-client relationships based on trust, and high quality work will always remain the foundation stones for business success.



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