



Maybe our eight-strong rainbow of regulators is a tad indulgent, muses our eye on ABS, **Stuart Bushell**

The chairman of the Solicitors Regulation Authority, Charles Plant, appeared to be swimming against the tide recently when he called for a single regulator to replace the current eight front-line bodies approved by the Legal Services Board. He was careful not to suggest that the SRA should be the sole regulator, though given that the SRA regulates about 85 per cent of legal professionals, it seems perverse in the extreme if any of the others were considered eligible for the role. Nor did Plant call for the abolition of the LSB. So what might his thinking have been?

The idea of a single legal regulator is not in fact new. In 2004-05, one of the three models for the future of legal regulation discussed was something along the same lines – an all-embracing Legal Services Authority. This was shortly after the introduction of the Financial Services Authority in 2001, which successfully replaced seven existing regulators of financial services; and for all its failings in relation to prudential regulation the precedent set by the FSA in respect of principles-based regulation is sufficiently well respected to have been followed by the SRA (and approved by the current Legal Services Board) in what it prefers to describe as outcomes-focused regulation.

“The regulatory maze”

In 2002, the then legal services complaints commissioner, Ann Abraham, made a sound case for arguing that the legal world was overly complex, to the point of being incomprehensible to consumers. She coined the phrase “the regulatory maze” to describe the situation, and her voice was prominent among the legal luminaries expressing the view that “something must be done” about how the regulatory bodies, in particular the Law Society, should be allowed to operate. This was the background to the Clementi report and

eventually to the Legal Services Act itself, and although Sir David acknowledged the issue of the regulatory maze he was disinclined to recommend much to cut it down.

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It could be argued that, from the consumer perspective, things are actually more complex now than they were in 2002. The creation of the LSB has added a new layer to regulation; there are two new legal regulators which are actually accountancy bodies; and old regulators have been split into their regulatory and representative functions. All of this is quite curious at a time when, in the government’s eyes, consumer interests and cost minimisation are paramount. Charles Plant was not slow to point out that having eight legal regulators does lead to a significant amount of duplication in resources.

One of the three main options which Clementi put forward was that of a Legal Services Authority, which would take the place of the professional bodies in delivering their regulatory functions. However, the broad consensus was that this would be going too far and smacked too much of ‘big brother’, and, in the event, the Legal Services Board was set up with the intention that it should be a relatively small oversight regulator, concentrating on policy work – a brief to which it has kept pretty well, with its fewer than 40 staff.

However, the LSB also has the power to be a front-line regulator and threatened to use this power if the Law Society dragged its heels over the timetable for the

introduction of ABS. This may have contributed to the restlessness among front-line regulators as to the LSB’s proper value and role. In addition, the ‘smaller’ regulators (everyone but the Bar Standards

Board and the SRA) appear to be apprehensive that the LSB favours their larger brethren, and it has also been pointed out that the Scottish version of post-ABS legal practice contains no LSB equivalent.

Consumer-friendly and less complex

A Legal Services Authority could avoid many of the current problems. It could present itself as avowedly neutral and not hindered by inter-regulator turf wars, or carrying the baggage of the old professional bodies. It would be cheaper, less complex and more consumer-friendly. It would eliminate consumer suspicions of partiality on the part of the professional bodies, which Charles Plant also mentioned (in the context of the ongoing disagreements between the Law Society and the SRA).

The creation of LeO as a single body for all legal complaints may also be viewed as setting a precedent for the LSA. Given all of these advantages, it seems obvious that the creation of a Legal Services Authority represents the way forward, doesn’t it?

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