

'I'm right, you're wrong'

Susanna Heley has always had concerns about the SRA's approach to solicitors working outside private practice. And despite what it may think, not everyone who disagrees with it is wrong



I have always had concerns about the way the SRA dealt with the application of the handbook to international practitioners and those working in-house. Replacing specific chapters dealing with these matters in the old code with a note at the end of every chapter in the 2011 version was inevitably going to be contentious.

Although many important elements of the handbook are not relevant to those working outside of private practice in England and Wales, it can be difficult to discover exactly what does apply and with what (if any) modifications.

The SRA has taken on board the issues raised by international firms and practitioners and has consulted on amendments to the code which include a new chapter focusing on international practice. To me, this is clearly a step in the right direction although the more technical issues affecting international practitioners (such as changes to the Authorisation Rules) will not occur until renewal in 2014.

It is encouraging that the SRA has been making progress with both this issue and with certain issues which have come to light following the consultation on the 'Red Tape Initiative', phase two of which is currently under consultation. Sadly, there is no sign of a change in approach as regards in-house lawyers as yet.

These steps are, in the main, reasonably encouraging. They seem to demonstrate a willingness to tailor the handbook to deal with specific problems which have (as predicted by pretty much everyone) arisen since the advent of outcomes-focused regulation. There are still questions as to how far the SRA's policies are influenced by responses to consultations and concerns have been expressed about some consultations which have very short return deadlines and many of the profession still

require a lot of convincing as to the motives of the SRA.

It is disheartening when these positive steps are overshadowed by decisions and reports which reflect a less transparent or informed approach to regulation. Take, for example, the case of Mr Bellchamber, prosecuted by the SRA before the tribunal in March of this year. It seems that Mr

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Bellchamber had refused to pay the SRA's costs pursuant to an adjudicator's decision under the SRA (Costs of Investigation Regulations) on the basis that he did not believe he was liable for the costs which were, in any event, excessive.

Instead of issuing small claims proceedings, the SRA authorised disciplinary proceedings alleging a failure to co-operate with the regulator. Part of the SRA's case was that it would only be able to recover fixed costs if it used the small claims procedure to pursue the solicitor.

In the circumstances of the case, the tribunal was able to find that there was no case to answer since Mr Bellchamber had clearly and openly set out his position.

The SRA could not therefore make out the various elements of the allegation which were conjunctive meaning that

the SRA would have to show a lack of openness, promptness and co-operation. The tribunal very carefully did not comment on the merits of Mr Bellchamber's position.

This case leaves an unfortunate aftertaste; demonstrating an apparent willingness to pursue disciplinary proceedings when it cannot be claimed that the respondent has engaged in serious misconduct. Was it really in the public interest to bring such proceedings? Does this case encourage the profession to have confidence in its regulator?

It seems that the SRA still has some way to go in developing its thinking and, in particular, in avoiding an automatic assumption that those who disagree with it must be doing something wrong.

Now is the time for the SRA to demonstrate that its policies and procedures are working effectively in the public interest, particularly in light of the Ministry of Justice's call for evidence on the regulation of the legal profession.

The call for evidence reportedly arises in part out of comments made earlier this year on behalf of the LSB that the legal profession needs only one regulator.

While many assume that the SRA, as the largest legal services regulator, is best placed to become that one regulator in the event the politicians select that route, backsliding in its endeavour to rebuild a relationship of trust and confidence with those it regulates is not an ideal starting point.



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