



# Simplifying the regulatory maze

**Susanna Heley** ponders the continental system of regulation, and asks whether it's time the UK changed its approach

Lawyers in the UK are largely inured to the excessive complexity of the regulation of legal services in England and Wales. We occasionally quirk an eyebrow at the ever-increasing number of legal services regulators and get back on with our daily lives, adding a grumble or two about the increasing regulatory burden we all face. It's only when we have cause to look afresh at the system we employ that its inherent absurdities strike us.

I attended the recent meeting of the Federation of European Bars in Brussels. In addition to a fairly thorough exploration of the issues facing lawyers as a result of reliance on social media, the heads of many European bars exchanged general news and views. Sadly no actual regulators from the UK attend the federation's meetings, although Law Society representatives do attend the more formally recognised CCBE meetings.

As always, our continental colleagues were keen to receive news of the situation in the UK, particularly as regards the development of the regime for alternative business structures. Trying to explain the interrelationship between our various regulators, the move to firm-based regulation and attempting to define 'legal services' was sometimes entertaining but more frequently depressing. The sheer incredulity with which more detailed explanations of our regulatory system was met was telling.

## The continental way

Generally speaking, the continental system of regulation remains heavily reliant on the local bar system. There is still a great deal of pride in the peculiar role that lawyers occupy in the administration of justice and I get the impression that lawyers are regarded as more than just business people or mouthpieces for their clients. Regulation is simpler and it seems that there is a greater

sense of professional identity. Perhaps that is a sheer numbers issue; local bars simply do not regulate anywhere near the number of lawyers that the SRA is responsible for.

Simpler regulation has been the clarion call for successive governments. It is ironic that all attempts to simplify the 'regulatory maze' have only led to further complexities and all moves to cut red tape succeed only

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in creating more. Those of us working in the system no longer see its absurdities. I am afraid that luxury is reserved for external observers such as consumers – who, according to the LSB, fail to understand the regulatory system and its implications – and our continental colleagues.

Of course there are problems abroad. In Turkey, for example, it seems that are some lawyers who have been arrested and jailed for several months simply for trying to represent clients at risk of incarceration. The heads of at least two Turkish bars have pleaded for international assistance in the face of persecution. In Belarus, lawyers are also under threat. Further afield, there are such severe problems facing human rights lawyers in Colombia that a charity has been set up to raise awareness of their plight and the sadly frequent murder of lawyers for no other reason than that they have tried to do their job.

## Maintaining reputation

Turning back to the position here in England and Wales, the challenges we face are perhaps less immediate but are nevertheless

important. The LSB has publicly indicated that it would like to see the titles of 'barrister' and 'solicitor' etc. replaced with 'approved persons'. While being an 'approved person' may be an accurate description, it fails to account for professional pride and the importance of maintaining the reputation of the professions. Solicitors have been struck off the roll because there is a public interest

in maintaining professional reputations. Removing our professional identity undermines that goal.

Since the advent of the Legal Services Act, it has been predicted that the legal services regulators will ultimately merge and/or disband so that we are left with one regulator – possibly the SRA for all legal services providers. This may be good news. It would certainly remove much of the regulatory maze and ensure consistent standards. It would also mean that there is little point in having an oversight regulator to ensure consistency – particularly as that role really ought to remain in the hands of the court. So we would be left with the Law Society regulating the entire legal profession through the SRA... I'm sure our foreign counterparts would recognise that system without too many difficult explanations.



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