

Review - Charon QC

<http://www.charonqc.co.uk/2015/12/11/the-law-of-legal-services-john-gould-a-review-by-professor-stephen-mayson/>

It is probably a measure of our times that this book is necessary. Here is pretty well all a practitioner needs to know about the law relating to his or her professional activities in delivering legal services.

It is a big book, but it covers a lot of ground. And as the President of the Supreme Court, Lord Neuberger of Abbotsbury, rightly reminds us in his foreword: "The function of lawyers is to deal with legal issues, and they therefore have nowhere much to hide if they fail to know of or observe their own regulatory rules". My own experience is that there are too many lawyers who 'fail to know of', so this book should be welcomed by them, their clients and their regulators.

Although the book is not structured in this way, its 13 chapters can be grouped into three parts: the regulatory framework; professional matters; and business.

The chapters on regulatory framework look at the overall 'superstructure', and then explore authorisation for practice, regulatory codes and compliance, misconduct, supervision, enforcement, and disciplinary tribunals. The treatment is largely descriptive and even-handed. However, there is the occasional judgement, such as that the current framework is "labyrinthine", an "unsatisfactory compromise", and "more complex and, in some respects, less effective than the previous arrangements".

The law relating to professional matters is covered in some very helpful chapters on a lawyer's contact with clients, fiduciary and other duties, negligence, indemnity insurance and compensation arrangements. There is an interesting observation in this part of the book that "many regulatory requirements are derived from fiduciary obligations imposed by the law independently of codes or rules". The current regulatory mission to simplify professional regulation and reduce burdens on practitioners might then count for little if the law nevertheless imposes greater fiduciary obligations on them than the rule-book.

The chapters on business matters again very usefully look at the protection of lawyers' goodwill in their firms (including the thorny issue of restrictive covenants), at lawyers' fees and charging arrangements, and at the structures, liabilities and insolvency of the business forms in which they choose to practise.

The book is comprehensive, and any gripes are limited and minor. It is surprising that there is no mention of insolvency practice in the section on 'other activity-based statutory schemes'. And what drove the decision not to include chartered legal executives in the chapter on profession-based regulation? It is also surprising (and possibly somewhat frustrating) that the book's index does not refer to the authorisation process for alternative business structures set out in chapter 2.

Inevitably, a book of this scope and complexity will not record later developments, such as the SRA's revised approach to the separate business rule. But it is at least possible that, in announcing in July that legal services regulation would be reviewed in the lifetime of this Parliament, the Lord Chancellor was mindful of the book's judgement that "regulators are struggling to define their role within the constraints of various statutes", and that "Arguably, the framework is struggling to keep pace with commercial realities".

In this context, it is disappointing that the promoted link in the Preface to an updating website for the book does not currently lead to any updates! At the time of writing (10 December),

nothing has been updated – even though some updates have been flagged as ‘due September 2015’.

In sum, a welcome and valuable book which – although some might be tempted to think that its price puts it out of reach – should in fact be within an easy arm’s length of every practitioner and compliance office for legal practice.

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