

# Regulator faces corporate rebellion

City solicitors say they are ill served by the SRA. Proposals of two reports may be the last chance to retain its authority, reports **Jonathan Ames**

Do the big corporate law firms want to be policed alongside their high street counterparts? And is such dual regulation even possible? As two ends of the profession become increasingly differentiated, so the task of regulating both becomes harder. Now, the Solicitors Regulation Authority (SRA) is facing a rebellion in the City, where leading global practices say that the two-year-old body cannot regulate the profession's top end.

Calls for significant reform come in advance of two studies into the regulation of corporate solicitors, by the Law Society and by the College of Law. A compliance officer at one top City law firm sums up the mood. "If one were being radical, one would say we in the City all regulate ourselves

specific department to deal with corporate regulatory issues.

City solicitors at leading global law firms measure carefully their criticism of the SRA. But that they are even contemplating the issue is significant. Chris Perrin, general counsel responsible for global conflict management and professional standards with Clifford Chance, says: "The large firms feel that they aren't being regulated. Some of the issues that the large firms have to deal with are quite complex in terms of whether or not they are admissible under the regulatory regime."

The firm did not feel able to ring the SRA and "talk through the issues and get a view from somebody who clearly understands the problems". There was a "whole host of issues that you can't expect them to understand because they've never worked in these markets."

Corporate lawyers are particularly concerned that in the banking and finance sectors — in which new methods of doing business are constantly being unleashed — several difficult conflict issues arise on which the SRA is unqualified to advise. Perrin says: "You ring up the SRA and you get someone who can understand conveyancing conflicts but that's about it. So we don't feel that we've got a helpful and supportive regulator behind us."

The Law Society — the trade union for solicitors since the creation of the SRA — is also probing regulation. Late last year it launched a review by the solicitor Lord Hunt of Wirral into the regulation of the entire profession, with a sub-review of corporate regulation being conducted by Nicholas Smedley, the former civil servant. That report, expected next month, may also be highly critical of the SRA.

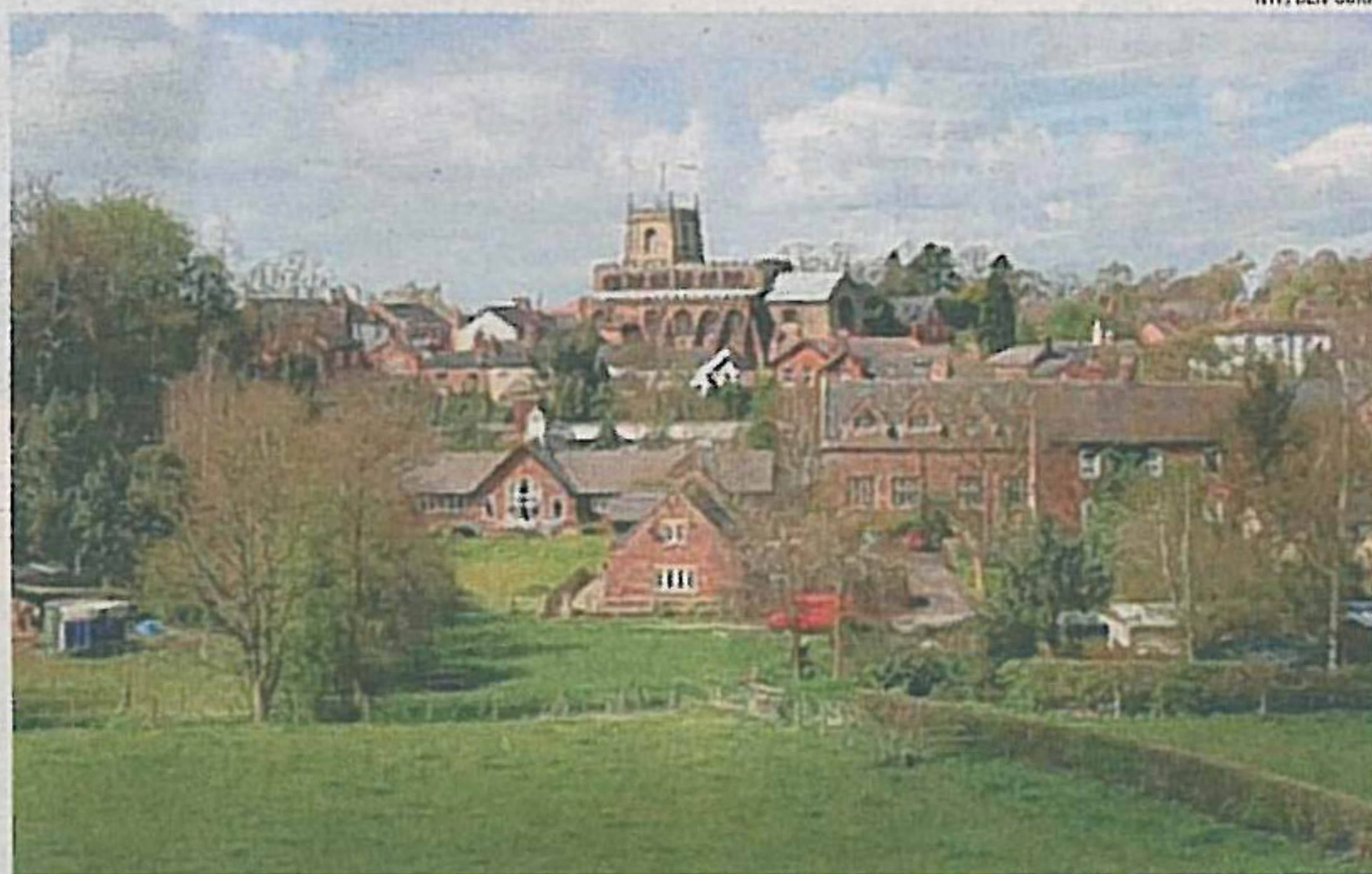
In the City, many see the SRA's reaction as a last chance for it to maintain its authority in the corporate sector. McIntosh says: "If the SRA can differentiate and provide knowing people to work with the [corporate] firms, and if it adopts a sensible, proportionate approach to enforcement, then it ought to be able to continue fulfilling its function for City-type firms. If the SRA does not respond in this way, then as night follows day there will be a focus within the City firms on the need for a regulator who can provide this."

## You want a view from someone who will understand the issues

very well. We all invest in risk management and compliance with our regulatory obligations and therefore we don't need external people to regulate us. But I don't think anyone would buy that in the current climate."

The charge against the SRA is that its expertise is too focused on high street general practice firms and its staff are woefully ignorant of the type of big-ticket deals and client issues that corporate lawyers encounter. "There is dissatisfaction because there is no differential in the rule or in the approach regarding very different firms," David McIntosh, chairman of the City of London Law Society, says. "There is a general view that one size does not fit all. What regulation is required for the firm that advises my mother is not going to be the same as the regulation required for the firm that advises IBM or ICI."

His comments come as the College of Law's Legal Services Policy Institute fuels the debate with the publication this week of proposals for three alternative models for regulating City law firms. The most radical suggests creating a body as an approved regulator under the Legal Services Act 2007; while the other two propose a modified SRA that would include a



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City lawyers say there is a general view that one size does not fit all

The creation of an entirely separate regulator for City firms would be a last resort, he says, and "a position we hope we will not reach". His preferred outcome is one in which the SRA creates a division within its current framework, including "suitably experienced and qualified people who understand the nature of commercial law firms and their clients, to provide a knowing regulatory contribution". Such a sub-department should be modelled on the City Takeover Panel, which is staffed by secondees from law firms and others involved in the financial services area, he suggests.

Perrin also veers towards gradual evolution rather than wholesale radical reform — at least initially. "We don't want a separate regulator," he says. "It would be far too complicated and too expensive." He too favours a separate division within the SRA, staffed by

people with corporate law experience and who have a more collaborative and open relationship with the firms they are regulating.

For its part, the Law Society is keeping its powder dry until its own commissioned review is published. Nonetheless, Chancery Lane's director of policy, Mark Stobbs, acknowledges that there is substantial concern in the City. "It is clear that a regulatory regime that is primarily based on protecting individual consumers may not be most appropriate for the different risks that arise in corporate work. The risks and regulatory theory have moved on substantially in recent years."

Likewise, the SRA itself is keeping its head down. It says only: "We are awaiting the full Hunt-Smedley report."

The author is editor of *The European Lawyer* and *The Brief*