



The Future of Legal Services Regulation

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Sir Michael Pitt

Chairman, Legal Services Board

On the 1st May I began my time as the Legal Services Board's Chair. Other than one or two minor public comments, I have avoided speaking out on regulation whilst waiting for the pieces to fall into place. Today is my first presentation as Chair and my first opportunity to promote and build on the work of the LSB.

I arrived convinced that there is an important job still to be done, quite simply, by improving access to justice and the quality of people's lives through effective regulation.

As you know, being a lawyer would disqualify me from doing this job. I cannot quote hard examples from a career as a lawyer in the City, on the high street or at the Bar. On the other hand, my views are impartial. A perspective shaped by experience as a big consumer of legal services and a long career in the public, private and voluntary sectors.

The Legal Services Act 2007 (the Act) will feature strongly in this talk. It provides the LSB with statutory backing and a unique vantage point, overseeing all aspects of the profession. The LSB is unfettered by vested interests and I intend to speak, without feeling intimidated by criticism or fearing a backlash. And the LSB is in the unusual position of anticipating its own demise once the job is done. I'm here to make change happen, not to have a job for life.

So today provides an opportunity to share some first impressions of the legal sector and to set out future direction. Hopefully, the views you will hear are balanced, reflecting both the strengths, weaknesses and potential of the legal sector in England and Wales. They are informed by many conversations over the last four months and a significant body of evidence gathered by the LSB and others.

The Extremes – Positives

I have been surprised by the extremes which exist within the legal sector:

There are many positives. We enjoy an international reputation for the quality of our courts and legal services which are second to none. This reputation is one of the reasons that this country is a great place to do business.

Over the last six years the number of regulated lawyers increased by 11% to 166,583. Last year, the UK legal services sector grew to an annual turnover of £29 billion; up 15% in six years. Over the same period exports of legal services grew by 18%. Amongst the 'magic circle' and in the City more generally, it appears that the good times are back. Mergers, acquisitions, disputes resolution, property deals and worldwide activity are all contributing to significant growth in revenues and profits.

Alternative Business Structures are having an impact. Research indicates that ABS organisations are winning a bigger market share. Generally, they make greater use of IT, have higher levels of turnover per fee earner and better rates of complaint resolution.

Above all, the latest results from the Legal Services Consumer Panel annual tracker survey suggest that individual consumers are becoming more active and enjoying better relationships with their lawyers. They are going on line, doing more for themselves, unbundling, using mediation and making use of less traditional providers. Compared with 2012, customers shop around more (+3%), are happier with the choices available to them (+3%), are more likely to enter a transaction with a fixed fee (+8%) and more satisfied with value for money (+6%).

The Extremes – Negatives

However, not everything is positive. Many aspects of the legal sector are still far from perfect and both lawyers and consumers face challenges:

I find the legal sector to be highly confusing and illogical. The division between regulated and unregulated services is a product of history and it would be a well-informed purchaser of legal services who could describe the differences or their implications. In addition to this confusion, the structure of regulating bodies is surprisingly complex and expensive.

Perhaps even more troubling are the numbers of people and small businesses who, despite knowing they need legal advice, decide not to make use of a lawyer. LSB research shows that, over a three year period, about half of individual citizens experienced at least one legal problem, but one in three did not get the legal help that they need. LSB research also shows that 54% of SMEs see law as very important for doing business, but fewer than 20% get legal advice when they have a problem.

When it comes to complaints, a high proportion of people who have a problem with their lawyer decide not to pursue their complaint or seek redress. Last year, almost half of dissatisfied consumers did nothing. Research indicates that people are confused about what to do. They are overwhelmed by jargon, believe they won't get a fair hearing and fear that upsetting their lawyer could have repercussions for their case.

From the lawyers' point of view, it depends on the job you do. Many are struggling. One need hardly say more about the impact of reductions in government spending, the Jackson reforms and tax changes. Competition is increasing and lawyers are working across boundaries, with Solicitor Advocates appearing in court, Barristers transacting directly with the public and in due course new firms consisting entirely of legal executives.

Engineers

Inevitably, this encourages observers to consider the possibility of a new legal services act and a structural '*quick fix*'... something I too have thought about. I can't help making mental comparisons of the law with my own profession which, in many ways, is at least as complex and vital to the national economy. Engineers have simplified regulation to just about everyone's satisfaction, without direct governmental involvement or any special Acts of Parliament. In this respect, Engineers subscribe to the words of former US president Ronald Reagan who said '*There's no problem on earth that's so bad that it can't be made worse by government involvement!*'

The regulation of Engineers is two tier: the Engineering Council has 235,000 members and through Royal Charter protects the internationally recognised titles of 'Chartered Engineer' (CEng), 'Incorporated Engineer' (IEng) and 'Engineering Technician' (Eng Tech). In addition

there are 36 professional institutions with membership standards, representing the interests of overlapping disciplines, such as civil, electrical and mechanical. Rulebooks are brief and Engineers are free to practise wherever they please so long as they uphold the relevant professional standards. The sector is fiercely competitive and no activities are reserved.

Comparing one profession with another stimulates debate but structures and arrangements may not be wholly transferable. The legal sector is a cornerstone of our democracy and holds a unique constitutional position. Misjudged regulation or ill-considered legislation could do irreparable harm. It is understandable that the LSB and regulators move forward with care and it is equally understandable that any government will seek a degree of consensus and a strong evidence base before promoting radical change. The sector is cautious and there are powerful forces at work. When it comes to new legislation, we should be careful what we wish for.

The Legal Services Act – What has been achieved

So perhaps we should give more credit to the parliamentarians who, with cross party support, passed the 2007 Act into law. It made provision for a series of relatively modest incremental changes spread over several years which, when taken together, are amounting to a sea change. Lawyers and their regulators have had time to adapt and absorb the changes... or face the consequences!

So what has the Act delivered so far? Many people predicted that the Act would bring serious harm to the legal sector but this turned out to be far from the truth. There has been considerable progress:

- the creation of the LSB during 2009 to be the agent of change across England and Wales
- nine months later the LSB established the Office for Legal Complaints. The Legal Ombudsman now routinely deals with approaching 8,000 complaints a year relating to reserved legal services
- the Legal Services Consumer Panel provides independent advice about the interests of users of legal services to the LSB and also came into being in 2009. The Panel commissions an annual tracker survey and publishes its findings including, for example, its excellent report on fee-charging McKenzie Friends

- the LSB has enforced greater separation of the frontline regulators from their professional bodies. Regulators now have lay majorities on their Boards and lay Chairs.
- there has been a steady improvement in regulatory arrangements, with 56 requests for changes receiving LSB approval over the last three years alone, and
- the LSB has awarded three regulators approval to license ABS. There are now well over 300 licensed ABSs driving change.

Without doubt, the UK legal services market has become more dynamic, innovative and competitive. There is interest from abroad. For example, the Canadian Bar Association states that ABS in England and Wales are having a positive impact and good evidence *‘that non-lawyer ownership need not cause harm to client representation or the public interest’*.

The next few years will be about channelling the energy that now exists within the frontline regulators and within the legal sector as a whole. The SRA is bringing forward a major programme of reform. The LSB may take issue with some of the detail but I welcome the commitment being shown and the direction of travel. Lawyers are responding to the market and entrepreneurs are developing new services and business models with the benefit of the new freedoms.

Importantly, there are signs that consumers are getting a better deal.

The Legal Services Act – Future Potential

Moreover, the Act has not yet reached its full potential... and I want to emphasise this point.

Following the Call for Evidence, Government Ministers have made it clear that new legislation is unlikely to be a priority. The reason they give is the lack of consensus as to what might replace it. Instead, Ministers are calling for more deregulation now.

The LSB welcomed the holding of a Regulator’s Summit during July, attended by the Lord Chancellor and Minister Vara. It was a significant event, bringing together in one room Ministers, MoJ officials, the LSB and eight front line regulators. A strong view was expressed at the meeting that the Summit should be followed up by a Chair level meeting of the LSB and the eight regulators:

- to identify where even more progress may be made under the existing Act; and
- to develop a longer term strategy which regulators would wish to support.

Deregulation is LSB core business and consistent with our drive to deliver a more competitive market and improved VFM.

One of this year's LSB priorities is research into the cost of legal regulation (both direct and indirect). The ultimate objective is to reduce the burden of regulation by ensuring that what remains is more tightly targeted. Very shortly we will be asking for your help with a major survey requiring direct input from practising legal professionals¹. This evidence will allow the LSB to understand costs in detail and contribute towards the development of proposals for deregulation.

A linked issue is 'open data' and comparison websites. Opening up data is an essential step in providing consumers with the information they need to compare providers. Only 12 months ago this proposal was stuck in the 'too difficult' pile. The LSB and the Consumer Panel took a tough line and regulators are increasing the pace of change. I expect to see even more positive movement in the near future.

Looking Forwards – The Longer Term

Before finishing, I want to focus on the longer term. We are tackling deregulation and making further improvements, but there is a marked reluctance for regulators to address jointly the more fundamental weaknesses in the legal system. Grid-lock and fear of change are holding us back. The best ideas will come from the regulators, not government – and a simple defence of the status quo won't do. We cannot move at the speed of the slowest!

In my view the 2007 Act is a job half done. Yes; it successfully shook up the legal sector and real progress has been made. Also, as mentioned earlier, there is much more that can be done within the existing legal framework.

But the time is now right for taking a long hard look at legal services and adopting a 'whole system' approach from the consumer's perspective. In a recent blog Elisabeth Davies, the Legal Services Consumer Panel's Chair, opens up the debate by inviting the question; '*What happens when a typical member of the public has a legal problem?*' They are likely to choose from a wide variety of sources of advice. In addition to a high street solicitor, these might well include a mediator, McKenzie Friend (paid or unpaid), the voluntary sector, DIY, on-line or a mixture of the above. But what about risk and what happens if our member of

¹ See *reviewing the cost of regulation* page on LSB website for more information:
http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/index.htm

the public receives a poor service? In my view, consumer interest, risk and a focus on evidence should now be our highest priorities.

The Legal Services Act – Weaknesses

As already mentioned, many aspects of our legal system are world-class and need nothing more than encouragement and freedom to flourish. But other aspects challenge our sense of justice and fair play. The weaknesses in the Act and their consequences need to be discussed and addressed. For example:

- the Act is exceptionally complex. I doubt whether we still need 400 pages, 214 sections and 24 schedules to govern the legal system
- it is impossible to defend the illogical split between reserved and unreserved legal activities. The debate over will-writing highlighted this anomaly
- similarly, it is impossible to defend the fact that customers who wish to complain may (or may not) have a right of redress depending on this split and who provides the service. There is a case for reviewing the jurisdiction of the Legal Ombudsman and breaking the link between regulation and redress
- we should challenge the way regulation is organised, learn from other sectors and test a range of possibilities, including the case for replacing the LSB and eight frontline regulators with a single body.

This possibility was described in the LSB's Blueprint Report last year and it is significant that recently a single Legal Services Regulator was mentioned by both the Lord Chief Justice and the President of the Supreme Court.

But I emphasise it is but one of many options we need to look at.

Joint Working

Political priorities tend to shift unpredictably and, sometimes, at considerable speed in response to 'events'. Eventually, when the attention of politicians returns to the legal system we ought to be prepared. The lack of a consensus creates a risk of missing an opportunity or others, less experienced than ourselves, filling the vacuum.

The period between now and the next general election provides an opportunity for the regulators to exercise leadership, to share their experience of what works and to plan for the

longer term future. In fact this is a particularly good time. There is a considerable degree of churn amongst the most influential top people in the business.

Recent and impending changes at the SRA with Enid Rowland replacing Charles Plant and Paul Philip succeeding Antony Townsend;

- Sir Andrew Burns due to succeed Baroness Deech at the BSB
- Catherine Dixon moving into Des Hudson's position at the Law Society
- Mandie Lavin taking over at CILEx, and
- Chris Kenny's impending departure at the LSB.

We pay tribute to our predecessors and all their good works. However, new leadership will bring new ideas and, hopefully, a willingness to be brave and think the unthinkable. Bar Catherine, I have met all of these newcomers and feel excited by the potential of positive relationships and joint working.

Above all, more needs to be done to tailor legal services and reduce their costs to meet the needs of small business and people who are neither wealthy nor eligible for legal aid. Historically that hasn't been the agenda for legal regulators, who have focussed far more on individual standards and the public interest. But the public interest is woefully ill-served if the market fails to serve such a large proportion of the population – and if regulation gets in the way of attempts to broaden access to justice. That's why I want to simplify and to help to find more and better ways for people to solve their problems.

That's why I want change. We owe it to the people we serve to make this effort.