

David Edmonds, Chair of the Legal Services Board

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OVERVIEW

The speech I have been asked to give has the admirably broad yet anodyne title of 'the role of the Legal Services Board'.

I hope you will be pleased to hear that I have no intention of sticking to my brief – I have always much preferred to talk about the goal of the Legal Services Board rather than our role.

So what I want to do this morning is three things:

- to tell you about the aims and aspirations of the LSB in approaching our role as oversight regulator of the legal services market;
- to reflect on the first year of the LSB's life, our achievements and observations;
- to look ahead to the full implementation of the Act and the agenda we believe we need to deliver to ensure that the will of Parliament in passing the Act is given full effect.

HISTORY

First, though, a reminder of why the Act was passed in the first place.

This is not intended to be an exercise in ancient history.

I believe it makes our approach to the future that much clearer if we keep in mind the problems of the past.

It is an important discipline in helping to avoid being sidetracked into regulatory cul-de-sacs at the expense of the bigger picture.

So, why reform?

Well, for better or for worse, public confidence in wholly self-contained self regulation was long gone and it was gone for a number of reasons.

The headlines being:

Competition: If we go back a decade, there was broad agreement in public policy terms that reform to the legal services market was needed.

The Office of Fair Trading, in 2001, published its report criticising the barriers to entry to the market – opportunities both for lawyers and for consumers were being missed.

Independence in regulation: As with any number of professions, many observers could not reconcile how ‘professional bodies’ that would pride themselves on being a strong voice for their members could simultaneously regulate and represent.

The model no longer convinced – the lack of lay involvement was seen as enabling restrictive practices to go unchallenged and there was not obvious focus for consumer interests.

Ineffective complaints handling: Whilst primarily a problem faced by the solicitors' profession, the problems – which arose for many reasons – which led to delays in handling and ineffective consumer redress and accusations of professional bias were an obvious cause of public and political concern.

Scope: Less obvious perhaps, I would also say that the regulatory regime was starting to look like it was not fit for purpose.

Unlike many other sectors, regulation remained focussed on the individual – rather than firms – which simply seemed inappropriate for a £20bn plus industry.

And of course, the oft cited '**regulatory maze**'.

I won't spend time dwelling on the process that delivered the Legal Services Act 2007 – deftly and inspirationally led by Sir David Clementi – suffice to say that his legacy is something that any public servant would be rightly and justifiably be proud of.

And the previous speaker has already provided a clear exposition of the Act itself.

But why the model it enshrines?

LEGAL SERVICES BOARD

The first thing to say is that Government resisted the apparently more simple solution of creating a single regulator on the basis of Ofcom or the FSA.

The market for legal services was – quite rightly – seen as different in kind to those other markets because of its unique balance of citizen and consumer issues.

A single super-regulator would run a far greater risk of impinging on the independence of the legal profession from Government than the structure we have ended up with.

So we have an oversight regulator – the LSB – with a staff approaching 35 and a budget of around £4.5m.

I'm a lay chairman – I have a lay Chief Executive – and a small but perfectly formed board of eight members with a broad skills and career mix.

The Act requires a mix of lawyer and lay membership – with a lay majority – but all are there to regulate in the public interest: not to represent sectoral interests.

I think it is to our credit that an observer of our meetings would be unlikely to spot the professional lineage.

As you will know, we don't regulate individual law firms or individual lawyers: we regulate eight - soon to be ten – Approved Regulators, who in turn have day-to-day responsibility for direct regulation.

Our starting point in approaching our work is as follows:

- The Legal Services Act sets out clear regulatory objectives. These objectives will provide a strategic underpinning for all of the work of the LSB and we will always map our proposals back to them.
- The better regulation principles are enshrined within the Act – so our activities will always be transparent, accountable, proportionate, consistent and targeted.
- We expect that the approved regulators will act in accordance with the regulatory objectives, as required by the Act, limiting the need for us to use our direct regulatory powers, and reducing to a minimum any requirement for us to duplicate work undertaken competently by others. However, we will not hesitate to do what is necessary, should the need arise.
- We will set out the anticipated impact on consumers and the professions of alternative regulatory options in our consultation papers and seek views from others about whether we have made the right assessment.
- We will develop strong working relationships with key stakeholders including the MoJ, the approved regulators, citizen and consumer groups, the professions, firms and partnerships across the sector, potential new entrants to the market, other regulators and redress providers and the academic community.
- Above all, the public interest will guide us in our work. Our touchstone will be what works best for the citizen and the consumer, (including small business and corporate clients), not any particular interest group.

AIMS AND ASPIRATIONS OF THE LSB

But as I said at the start, I would much rather talk about what we want to achieve.

People who have heard me speak before will know that I am unashamedly convinced that this is an incredibly exciting time.

We are on the brink of some historic changes to a sector of society that has been delivering public good for centuries.

We now have the tools at our disposal to remove unjustified and historic constraints on the way lawyers choose to practice, but where their rightly respected tradition of the highest standards of professional ethics still remains. And we are duty-bound to hear the 'quiet voices' – those who need to exercise their rights and rely on lawyers to help them do so.

So our goal at the LSB is simple and clear – we will reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales.

Our vision for the way we want the legal services market to deliver for consumers and lawyers alike by 2013 has six simple components:

- Greater competition in service delivery and the development of new and innovative ways of meeting consumer demand;
- A market that allows access to justice for all consumers, in particular bridging the divide for those whose incomes exceed legal aid thresholds but fall below the level required to purchase essential legal services;
- Empowered consumers receiving the right quality of service at the right price;
- An improved customer experience with swift and effective redress if things go wrong;
- Legal services professions which are as diverse as the community they serve and which constantly strive to improve standards of practice, quality and education; and
- Certainty and confidence in the regulatory structures underpinning the market.

As you can see, we intend to seize the opportunities afforded by the Act to drive an agenda for change, we have no intention of being solely a reactive policeman!

This is not an agenda that can be achieved in one year, by one organisation and by making small changes at the margins.

It is an agenda for the long-term, it requires co-ordinated and complementary activity by us, by approved regulators, by training providers and by those who provide and use legal services of all kinds.

And by that yes I do mean will-writers, paralegals, advisors of all kinds whether regulated or not.

Everyone has a role to play.

As an oversight regulator, we recognise that our levers for delivering this vision are somewhat different to those at the disposal of, for instance, economic regulators or front-line professional regulators.

Direct regulatory impact on service providers is within the approved regulators – not the LSB.

We still have much to do to ensure the regulatory environment in which legal services are provided is able to find a new consumer-focused competitive equilibrium.

But we are starting to see a glimmer of the legal services market place of the future.

The significant changes announced by the Bar Standards Board last week are but one example of that.

OUR FIRST YEAR

So how has our first year in operation been?

I think it's fair to say that it has been a year characterised by intense activity, robust debate and almost continuous change.

I have no doubt that our second year of operation – our first with our full suite of statutory powers and duties – will be of a similar hue.

We've been able to focus on three key areas:

- **Building our organisation**

As I have mentioned, we have now created a small, lean organisation comprising colleagues, drawn from an impressively broad range of career backgrounds and who share a passion for the consumer-focussed reforming agenda of the LSB.

We remain on track to deliver our 2009/10 programme of work within budget.

We have sought to minimise our overheads by entering into shared service agreements with another non-departmental public body, the Competition Commission to secure a working environment that is both cost-efficient and supportive of our working style with modern and efficient IT, and finance processes.

We have developed HR policies and processes that both reflect best practice and support our desired organisational culture.

- **Preparing to take on our full statutory powers and duties**

Alongside the practicalities of building a new organisation, we have also had to spend a considerable amount of time working with the Ministry of Justice (MoJ) and others to ensure that the demanding timetable for full commencement of the provisions of the Act which ‘switch on’ our full powers and duties can be met.

This has involved an unavoidable round of consultation as we endeavour to put in place the suite of policies and rules required by the Act before we can ‘go live’.

This has included developing rules to govern:

- the internal governance of approved regulators to ensure the principles of independent regulation are in place in both theory and practice;
- the setting and approval of the practising certificate fees charged by approved regulators and paid by authorised persons;
- the setting and collection of the levy on approved regulators to recover the costs associated with the LSB and Office for Legal Complaints (OLC);
- applications to become designated as a new approved regulator;
- applications by approved regulators to change their regulatory arrangements;
- processes for giving evidence and making representations on the scope of reserved legal activities.

In any sector, this quantity of consultation would represent a demanding addition to the ‘day job’.

When taken alongside the other developments in the sector – legal aid reforms, the civil litigation review, the reform and issuing of new legislation, change to court rules and procedures to name but a few – it is not hard to appreciate why some stakeholders may have felt overwhelmed and ill-equipped to cope.

We have been at pains throughout the past year to be as open, flexible and available as possible in gathering the views of those with an interest in the reform agenda.

Whilst formal written consultation responses remain the backbone of regulatory engagement, we have sought to hold as many face-to-face meetings with individual and groups of stakeholders as we can, to get under the skin of points at issue at the start and throughout the policy development process.

Like all regulators, we know that we can do more to ease this process and will be looking to do so during 2010/11, whilst always being conscious that our statutory obligations will often dictate both process and timetable.

- **Laying the foundations for market-reforming policy initiatives**

The final strand of our activity over the past year has been to start the process of engagement and debate around the more strategic and long-term issues facing the legal services market.

Whilst most public focus has been on our work to facilitate the introduction of new forms of service delivery and the removal of unnecessary barriers on practice, in practice we have undertaken work across a much broader waterfront.

We have started the process of drawing together the many impressive and varied strands of activity already underway across the professions to address concerns about access and diversity.

A standing forum, attended by most of the organisations most able to influence change, has been established and is already beginning to identify where activities can best be streamlined to deliver maximum impact.

The appointment of our independent Consumer Panel, chaired by Dr Dianne Hayter, is already having an influence on our work.

It is invaluable to have a body dedicated to asking the hard questions about consumer impact and involvement at our shoulder.

We positively welcome the challenges the Panel will pose not just the LSB, but also the OLC, the approved regulators and lawyers themselves, over the coming years.

And yes, we have also sought to drive the debate around the regulation of new forms of business practice.

We are already starting to see the first effects of the reform agenda with the development of Solicitor Regulation Authority (SRA) regulated Legal Disciplinary Partnerships (LDPs) and a wide range of legal services professionals becoming partners in law firms.

And we were pleased to see the Bar Standards Board also reach its own decision to allow barristers to take advantage of the market liberalisations ahead.

We do not underestimate the difficulty of those decisions.

It is through change and reform in all of these areas that lawyers, consumers, businesses and society as whole stand to benefit the most.

REFLECTIONS ON THE YEAR

As I look back on the year a number of points stick in my mind.

Most heartening, has been the seemingly endless forms of practice that are brought to my attention by admirably innovative lawyers, committed to providing services to the public and to business in ways that are mutually beneficial and which are critical to supporting the rule of law.

Even if, on the latter, I have occasionally found myself unsure whether to applaud or despair at the ways in which current restrictions on practice have had to be creatively circumvented to allow such non-traditional service provision to take place.

Intriguingly, through reports such as Lord Hunt's, the development of ideas about the potential for representative bodies, now no longer constrained by regulatory responsibilities, to re-focus and re-prioritise to meet their members needs and to re-assert their role as advocates for professional excellence.

I'm not sure much thought was given to the benefits that might accrue from this re-balancing of position – my view is that the profession will be the better for it.

And - whilst we may occasionally mutter under our breath at the super-tanker-like length of time it seems to take to effect change – in fact, we have managed to introduce a radical new regulatory architecture in little over a year.

It's in this vein that I have also been delighted with the progress made by Elizabeth France and her Board in establishing the Office for Legal Complaints (OLC), and the Ombudsman scheme for legal services which they, under the stewardship of Adam Sampson, Chief Ombudsman, will administer.

The impact we expect the OLC to have on the experience of consumers and lawyers alike who find themselves caught up in dispute is hard to over estimate.

We are confident that when they open their doors to their first case – before the end of 2010 – we will all see the benefit of an efficient and cost-effective dispute resolution service.

An outcome I know the independent Consumer Panel, chaired by Dr Dianne Hayter, will also be watching closely.

It is the combination of all of these factors:

- New ways of delivering legal services
- Regulation independent of professional interests
- Swift, effective, independent dispute resolution
- A more concerted focus on hearing consumers voices at the heart of policy-making

that will contribute to the delivery of a more consumer-drive legal services market.

As we look to 2010/11, cognisant of the economic and financial pressures facing individual consumers, commercial users and lawyers themselves, we know that we must find ways of working with all of our partners that does not detract from their ability to 'do the day job'.

We believe we have laid solid foundations for this work.

We all have a role to play in this.

Not just as lawyers or regulators – but as members of a society underpinned by the rule of law.

I encourage all of you here today to embrace the change ahead. It might bit be big, it might be tough, it might be demanding – but I can assure you that it will be coming.

Come with us.