



The New Regulatory Framework

and how it affects in-house lawyers

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Agenda

- What led to the Legal Services Act?
- Key themes in the Act
- The Legal Services Board – structure and powers
- Core priorities
- Milestones
- In-house lawyers and the LSB
- Conclusions

What led to the Legal Services Act?

- *March 2001:* “[Competition in Professions](#)”: Office of Fair Trading: open competition
- *July 2002:* “**In the Public Interest?**”: Lord Chancellor's Dept.: competition to give best consumer service
- *July 2003:* **Conclusions on “In the Public Interest?”**: lets have a consultation
- *December 2004:* “[Clementi](#)”(Report of the Review of the Regulatory Framework for Legal Services in England and Wales)
- *October 2005:* “[Putting Consumers First](#)” (Dept for Constitutional Affairs)
- *May 2006:* [Draft Legal Services Bill](#)
- *July 2006:* [Joint Report](#) (both Houses of Parliament) on the draft Bill
- *October 2006:* **Full Bill published**
- *October 2007:* **Royal Assent**
- *January 2009:* [Legal Services Board formally created](#)
- *January 2010:* Activation of new regime and start of **full powers** for the LSB

The Legal Services Board – Structure and Powers

The new regime

- Oversight regulation of current and future Approved Regulators
- Approved Regulators regulating “their” lawyers
- New reserved legal activities
- New complaints-handling processes
- Allowing for non lawyer owned and/or managed law service providers

LSB structure

- Established by the Legal Services Act
- A non-executive statutory independent non departmental public body
- Sponsored by the Ministry of Justice - Memorandum of Understanding
- Paid for by Levy on lawyers
- Mandatory powers over the Approved Regulators – within scope of Act

The Legal Services Board – Structure and Powers

Powers

- Exactly what the Act says
 - subject to better regulation principles
 - if it says it we do it, if it does not we do not!
 - England and Wales only
- Regulatory Objectives
 - principles for achieving them, risks to principles

Regulatory Objectives

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties;
- Promoting and maintaining adherence to the professional principles.

The Legal Services Board – Structure and Powers

Professional principles

- that authorised persons should act with independence and integrity,
- that authorised persons should maintain proper standards of work,
- that authorised persons should act in the best interests of their clients,
- that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- that the affairs of clients should be kept confidential.

Milestones

- **May 2008** LSB Chair David Edmonds appointed
- **July 2008** LSB members in place
- **December 2008** Appointment of Elizabeth France as chair of OLC
- **January 2009** Board “goes live” with power to make rules
- **March 2009** Major consultation on independence
- **May 2009** First ABS discussion document
- **September 2009** Consumer Panel appointed
- **November 2009** ABS: Approaches to Licensing
- **January 2010** Board goes “fully live” with enforcement powers
- **April 2010** Full staffing in place

Core priorities

- Better and more independent regulation
- Opening up the market and increasing competition
- Better consumer redress when things go wrong (any consumer of legal services including business ones)
- Deciding what activity should and should not be regulated as legal activity and why
- Creating a framework for non lawyer owned and/or managed law service providers

In-house lawyers and the LSB

Putting consumers and the public interest at the heart of regulation

- In-house lawyers are thought to control or influence at least half of legal services spend

(The Lawyer survey 2008; PLC 2009 Benchmarking Survey; IRN Research: The UK Legal Services Market 2008)

- 26% of solicitors and 25% of barristers are In-house
– but not that “%share of voice with regulators

source: Bar Council website & Law Society Annual Statistical Report 2008

In-house lawyers and the LSB

- **Regulation can support the in-house community through:**
 - Impact on law department structure and flexible methods of working (i.e. ABS, LPO)
 - Offering options through ABS for your employers to provide legal services as part of their business model
 - Opportunities as purchasers
 - Facilitating more options for getting value for money and flexible working from suppliers
 - Impact on legal professional privilege
 - Impact on training requirements and needs for the in house team
 - Signposting quality

In-house lawyers and the LSB

Developing excellence in legal services regulation

- Scope of regulation
 - International firms and enforceability in English courts
 - English law is common currency
- Regulation could change the rules relating to:
 - In-house lawyers individually – personal certification, training, liability
 - Legal department structures (will an ABS department maintain legal privilege?)
 - The business models you want to run – especially if you have a consumer market

Conclusions

- IHLs have a consumer relationship with law firms that should be protected by regulation
- IHLs are subject to and can benefit from or be harmed by regulation – as departments and personally
- A changing landscape – regulation evolving to reflect
- Getting your voices heard by the Approved Regulators , the LSB and your own Boards