

Chris Kenny at the Legal Practice Management Association Friday 26 February

Introduction

Firstly I want to thank the LPMA for inviting me to address the conference this afternoon.

The work of practice managers is a real area of interest for me, as well as being an important part of capacity in the sector.

In the, just over, 18 months of David Edmonds' Chairmanship of the Legal Services Board, we have seen major steps forward in terms of both our own capacity and the structures and governance of the regulators in the sector.

For the LSB itself, we reached a major milestone in January this year when the new regulatory regime enacted by the Legal Services Act 2007 came into effect. Building the organisation and forging our very strong links with our partners in delivering the shared reform programme - the frontline regulators – has been a major priority. Now that these are in place, we can get on with the business of delivering.

Today I want to concentrate on some of the implications for the businesses you manage and the opportunities the changing environment presents for them. There are, I think, at least three areas of mutual interest:

1. New commercial opportunities to shape the legal services offering;
2. Measuring quality; and
3. The workforce

To begin with, the changing landscape.

On Tuesday we announced that the first Alternative Business Structures (ABS) will be able to apply for licences in mid 2011 – which will see the first ABS able to begin trading during October of next year.

ABS will have a major impact on how services are delivered. And these are changes that have been long in the making. They were initially identified as a solution to barriers to competition in the Office for Fair Trading report a decade ago. Following this, they

were framed by Parliament as a key part of the Legal Services Act in 2007.

The job of a regulator is not to pro-actively shape the market, but to remove barriers to innovation whilst ensuring consumer protection. Therefore we make no predictions on market shape, bar one: That is that these changes will be felt by everyone in this room either directly or indirectly. The lifting of ownership restrictions will mean that, as part of long-term planning, you will need to think both about how your own businesses are structured and – importantly - how competitors and new entrants to the market might exploit the opportunities to get one step ahead.

The announcement of the timeline shows the degree to which plans have developed. What is certain is that we have moved beyond ‘whether’ to ‘how’ for ABS. However, reminding ourselves briefly of the policy can help define how those opportunities will look, both for your businesses and those new entrants to the market that will become new competitors.

The overall driver is to ensure that regulation keeps pace with changes we have already seen in the environment.

Commercial opportunities will be the reward of practices that recognise those changes.

So what are they?

Firstly, consumers’ expectations.

Technology has brought new ways for consumers to make choices over legal service providers – creating an impact not only on the delivery of services but also on the face presented by lawyers and their firms.

Consumers’ understanding, although it is rising from a fairly low base, is increasing as they are trying more and more to form a view on their situation *before* engaging a lawyer. Of course this doesn’t just apply to the law: how many of us have Googled our symptoms before a visit to the GP?

Expectations are rising as people have become more time-poor – demanding that services are delivered at times that suit *them* rather than when it suits suppliers. Alongside this, consumers are also becoming more conscious of price and value for money – they want to know how much they are going to pay and what they are going to get in return.

Higher expectations will mean that it will be the more commercially-savvy firms and chambers that find new business opportunities in meeting them.

Secondly, technological advances are a major change in themselves.

The technology that sits behind the delivery of legal services has changed dramatically over the decade.

As colleagues here today will know all too well, increasingly we are seeing the development of sophisticated IT solutions to support better case management and workflow planning. Even the way that time is being recorded is changing and we are seeing a move away from billable hours. You've just heard Tim Potts say that you will need to go further and decide what you give away for free.

Thirdly, the modern sector is already seeing new models for service delivery.

Driven both by changing technology and consumer expectations has been a raft of new models for engagement. While face-to-face contact is still dominant, we are increasingly seeing telephone and online service provision.

Alongside this, we can already see some parts of the legal services offer being outsourced and off-shored. As systems and communication links improve I predict that this will increase the pace of change in this area.

So, change is happening, whether people like it or not. What does this mean for us?

Some suggestions:

Firstly, the fast changing environment will need a workforce that is built to handle the changing demands of the modernised market.

I will come back to workforce issues shortly, but I want to reiterate now that the successful legal businesses will be those that can identify and keep the talented, multi-skilled and commercially-savvy people they need. This means people in this audience taking on commercial leadership – not simply enhanced administrative - positions within organisations.

Secondly, we need a new framework that can recognise and properly regulate the

changes that have already taken place around us.

That's what the licensing regime for ABS is about. There are already a number of entities up and running across the market that might will be brought into the scope of regulation through the licensing regime for ABS.

In developing the rules for ABS, we are moving purposefully away from detailed and burdensome rules and towards outcomes as the key guarantor of the professional principles. I don't accept that new business models of themselves threaten professional principles. Instead, a shift to very clear statements of principles will create a renewed focus on what being within a profession is all about and will enable Approved Regulators to clearly police the spirit of the law, rather than being constrained by an overly-detailed rulebook.

For you and your practitioner colleagues, there is the opportunity to do things differently and more imaginatively. Lawyers are sometimes known as a cautious breed. But from my travels across the country meeting practitioners in modernised firms and chambers, I also know them to be some of the most creative and innovative. By relaxing ownership restrictions and allowing synergies with other professionals, that imagination can reshape the offer to clients. As commercial experts, you will not fear competition that comes alongside new opportunities, and neither should your practitioner colleagues.

I am pleased that you have heard from Baroness Deech and Nick Green QC here today. Of our partnership in delivering on this agenda, let me say this: At the end of 2009, the Bar Standards Board, supported by the Bar, took a set of historic and far-sighted steps to allow barristers to play on a level playing field with other arms of the profession.

As a result, my Board is currently considering the BSB's formal application to change the Bar Code of Conduct to allow barristers to act as partners in new entities, either with solicitors or with non-lawyers. The application has been on our desk since early February and we will do all we can to see that it completes as quickly as possible: I'll be disappointed if the application is still on our desk at Easter. These changes will play a major role in allowing barristers to take advantage of the opportunities of the new landscape. We hope that this is just the first step and that the Bar will take the same approach to the opportunities on offer through ABS.

It's a nice example of where the LSB and Approved Regulators work together. We have the same objectives and we very often agree about the means to these ends as well. That's co-regulation in practice. But we have to learn to make the new model work.

Approved regulators are, in the new world, regulated as well as regulators. The LSB is there to hold the ring and meet its own statutory responsibilities: co-regulation doesn't mean no regulation. But alignment of objectives means that much – in fact most – matters can be resolved by dialogue.

The next major capacity issue: Measuring quality

One of the major priorities of the Board is to improve consumers' understanding of what makes a quality service.

I've talked already about an increasing appetite amongst consumers for information. To date, progress in meeting this appetite has not lived up to potential. The results of consumer research undertaken by the LSB over Christmas showed that as many as 4 in 10 people (so almost half) would not feel confident in judging the quality of service they receive from their lawyer – a greater gap in understanding than the results show in relation to public sector service providers, including GPs, teachers and police officers.

To some degree this is unsurprising. Lawyers perform a specialist and technical role in supporting their clients through often highly complicated litigation. Yet this only does more to underline why transparent quality measures right across the spectrum are crucial in supporting consumers and procurers.

That's why the Board has made it a major priority to develop a Quality Assurance Scheme for Advocacy, initially focusing on criminal work. In doing this we will work with our partners amongst the frontline regulators, including the BSB, the SRA, and the Institute of Legal Executives, as well as with the LSC.

Clearly it's important to reaffirm our recognition that the vast majority of advocates are delivering a high-quality service for their clients in court – advancing their cases fearlessly while providing good client care. However, signposting the various facets of what makes a quality service will better empower consumer to make choices and to tailor the service to their specific needs. Alongside this, it offers new opportunities for practitioners and practice managers to market various high-performing elements of their service in a targeted way.

The arguments for the introduction of such a scheme are well rehearsed:

- Many Judges have complained about the quality of advocacy in criminal courts;
- The CPS has highlighted inconsistencies in the quality of advocacy;
- Alongside this, different arms of the profession have raised concerns – with some barristers questioning the quality of solicitor-advocates and the latter complaining

of perceptions that they are regarded unfairly as delivering a lower quality service;

- Whilst this has all been going on, both self-employed barristers AND solicitor advocates have questioned the quality the level of service provided by CPS lawyers;
- As the LSC has sought to push down the price of criminal advocacy, new pricing structures have been introduced that have led to a greater use of employed advocates (be they solicitors or employed barristers) by solicitors' firms.

Against this highly complex backdrop, the lack of uniform quality measurements just can't go on.

To restart progress, my Board has now set a mandate and governance structure that has been agreed with the LSC, the CPS, senior figures in the Judiciary and the front-line regulators.

This new framework brings together the regulatory arms for all relevant parts of the profession - so barristers, solicitor advocates and legal executive advocates – into a Joint Advocacy Group.

It is this group that will be accountable for delivering a credible scheme for all elements of criminal advocacy by mid 2011 and setting the competencies and assessment mechanisms of the scheme. Currently, they are already consulting on what those competency standards will involve and I encourage you to work with your practitioner colleagues to develop a response. It is important that the standards are informed both by consumers' expectations and by the realities of practice.

Once delivered, the benefits of the QAA programme will extend beyond just consumers and purchasers. There's a lot in it for providers too. For your colleagues in practice the scheme will create a level playing field to help good advocates to compete for work.

More than anything, we must not miss the opportunity to demonstrate that the profession can commit to and develop this scheme as a key strand of consumer protection. Your colleagues across each arm of the legal profession need to work together to deliver it. You will all know that quality assurance for advocates has been a long time in the making. A failure to turn good intentions into real action will not help us to sustain confidence in the profession and its regulation.

And finally, that most key part of capacity-building – the workforce.

The Regulatory Objectives, in which the reform programme is grounded, do not just focus on the structure of the sector and professional ethics. A key Objective is focused on the workforce itself. The LSB and the Approved Regulators are tasked with encouraging an independent, strong, diverse and effective legal profession. I would suggest that this is both an end in itself and an important means tool to delivering on other key outcomes - including access to justice and better consumer protection.

I'm sure there's no doubt in any of our minds over the moral value of supporting diversity, as well as its value as part of social capital. Embedding fair access to the professions is a crucial part of social justice and of working towards a fairer society.

But it is also at the core of a *credible* legal workforce that inspires confidence amongst consumers. It must be right that the profession, at all levels, reflects the society that it serves. That underlines why this is not just a key part of ensuring consumers' interests, but also of meeting wider citizen and public interest concerns. Confidence in the entire system (particularly amongst vulnerable consumers) rests on advisors, advocates and – yes – the Bench all reflecting diverse communities. The recent *No Bar to the Bar Report* did much to set out the steps that the Bar considers that it is taking on some of these issues.

This means diversity across the equality strands, but it also means creating a major focus on social mobility – encouraging aspiration amongst prospective lawyers from non-traditional backgrounds.

I am pleased that this is widely recognised and appreciated by colleagues, and that the need for a step change has been recognised across the sector.

I'm also pleased to say that there is a lot of good work going on. I am thinking particularly of the thinking generated by Lord Neuberger and his group focusing on entry to the Bar. Following on from this, there have been many worthy initiatives put into place to provide a range of new opportunities. These include placement schemes, school visits, careers conferences and mentoring. It also has meant bursary programmes to support people financially. All of this is welcome.

Similarly, I am encouraged by progress made by the SRA on its equality and diversity agenda in response to Lord Ouseley's review findings. I particularly welcome Lord Ouseley's own positive comments on how much has been achieved in the time since his initial report.

All this adds up to the fact that the profession, in some respects, has a positive story to tell. One dimension has been increasing numbers of women and ethnic minorities.

However, in certain key respects, much more must be done:

Firstly, we need to do more to widen the focus from the traditional diversity strands onto social mobility.

In doing this, we need to work with Universities, schools and BVC/LPC providers to ensure that fewer non-traditional entrants to the profession drop out as they move from one stage of training to the next. This isn't just about raising aspirations – although that is essential – but it means also looking at financial support, tuition fee repayment and maintenance.

The recent findings of the Milburn enquiry into Access to the Professions threw down the gauntlet to our profession, among others, in addressing the gap in opportunity and aspiration that has made the profile of professionals in this country far too narrow. In taking action following those findings we have been pleased to welcome the new Gateways to the Professions Collaborative Forum and the participation of many of the bodies we oversee in its work. This is also why I have been pleased to accept the chairmanship of a sub-group of the Forum that will examine how regulators can embed diversity into their strategy and reporting. In view of the priority placed on the role of strategic planning in ensuring access to a diverse legal profession, this is an area in which the legal profession will have experiences to share.

Secondly, we need to go much further in developing retention and career progression strategies that build upon the progress finally being made at entry level.

The drop-off rate amongst those from non-traditional backgrounds from progressing through to the highest levels of the professions is of grave concern. The report released by Baroness Neuberger and her team yesterday, focusing on the barriers to progression to the Bench, did much to shine the spotlight on issues around the challenges to diversity at the top of the profession – particularly on the Bench.

Thirdly, we need to do more to develop a measurement framework that gives us more of a handle on how much progress is being made.

This needs to be cross-sector and it needs to stretch across the entire spectrum from entry level to the highest stages of progression.

These are the next steps but leadership is also needed to ensure that momentum created so far is built on. The Approved Regulators are playing their part and my Board will continue to help create the space for people to think strategically and in a way that drives cross-sector change. This means sharing good practice where we can and also

thinking about how to join-up initiatives to maximise impact.

However, a key point I wish to make today is that this is not a task that can be left to regulators, professional bodies or even the Government alone. The main impetus must come from the profession itself.

I welcome the increased prevalence of Equality and Diversity strategies and the appointment of E & D officers across the sector and the work they do should not be underestimated. I also welcome the increase in equality and diversity training that we have seen. But to create the step change we need we need to see a major leadership role performed by those who manage practices.

That means colleagues present today.

You can play a major role both in evaluating the equality and diversity credentials of your practices and in raising standards.

Can you be confident that summer placements, work experience, mini-pupillages, and pupillages are accessible to the most able candidates - irrespective of whether or not they come from traditional backgrounds?

That recruitment looks beyond just the age-old routes to reach the widest pool of talent?

That the different perspectives of those within the business are fully understood and that work allocation, career opportunities and working practices support diversity?

It is critical that the culture of equality and openness can be felt from the top right across all levels of business. That it is embedded within the organisational culture. Something my team has found repeatedly is that those from non-traditional backgrounds who give up on the profession often do so on account of a bad experience that happened some time prior to the introduction of formal policies on equality and diversity.

What this tells us is that rules and policies and statements, although valuable, are not, by themselves, enough. They need to be brought to life through the leadership of the organisation.

This means the way colleagues are treated.

It means the way briefs are distributed.

And, yes, it means on issues such as flexible working and family friendly hours. Businesses right across the rest of the economy are thinking about the role that home working and flexi-time has in supporting people to balance work with parenthood. This is

particularly important for the increasing numbers of single parents. Chambers are not exempt and they need to start doing the same.

How workforce and the changing landscape fit together

I spoke about the strong moral and social drivers for change. But you, as managers of the business, will see that it also makes sense commercially and by way of supporting planning.

The most successful legal businesses will be those who can identify and keep the talented workforce they need to compete in a wider playing field.

Furthermore, there are obvious business benefits in improving retention rates. These include reducing the need for recruitment and training, providing continuity for repeat clients and - at the extremes - a reduction in the costs and upheaval of unfair treatment claims.

In summary, the importance of making sure that you have the best and most able workforce in an increasingly competitive market hardly needs spelling out. But what does this mean in the changing legal services landscape?

It means more than just attracting the sharpest academic minds from the oldest and most established universities.

It means making the most of modern and diverse perspectives and skills to drive innovation and more efficient ways of delivering services.

It means greater credibility with modern, global consumers and a more tailored service that reflects different cultures and markets.

It means a diverse workforce that consumers trust more and relate to better.

It means showing a commitment to diversity – backed by transparent workforce data - that procurers increasingly demand – particularly bulk purchasers of services such as the LSC and the CPS.

It's not just righteous and socially just – it's a key driver for your commercial future in the new landscape.

I've covered a lot here. And I have been grateful for the chance to do so.

In summary, my message is that – although we know that change can sometimes be discomfoting – there is a lot of opportunity and flexibility in the new landscape to be taken advantage of. In thinking about how you engage with that I encourage all of you to

take a 'glass half full' perspective. Despite a challenging environment for public spending, new opportunities for innovation will mean that there's a lot of potential out there to support that perspective. The LSB and the Approved Regulators will turn the tap on. But to get a piece of the action t you need to make sure you put your glass underneath it. And, far from being half full, your glass may runneth over.