

# ASSOCIATION OF COST LAWYERS

## SPEAKING NOTE

### Congratulations

- Let me first offer my thanks – and those of all the guests – to the ACL for this excellent event in such magnificent surroundings. We know that organising this kind of thing takes a great deal of effort. And I know from personal experience how much more effort it takes to build a new organisation. So my thanks and appreciation go to Matthew, Ian, Victoria and Andy and all their colleagues for the effort they have made around their day jobs to get the ACL off the ground. And can I echo the best wishes of others to Sheila Chapman. All of us at the LSB send our thoughts for a speedy recovery.
- We have a particular selfish reason to welcome the ACL. We opened for business in January 2009, working daily with the Bar Council (founded 1894), the Law Society (1845), the Inns of Court whose history stretches to the Middle Ages and, perhaps most impressively, the Master of Faculties, the regulator of notaries, established by statute in 1535 and still discharging the majority of his original functions. So it's really heartening not to be the newest kid on the block any more.
- Of course, the ACL has the proud history of the ALCD to draw on. The history of renaming exercises isn't always happy. If, like me, you grew up in the late '60s, an *Opal Fruit* will always be an Opal Fruit and never a Starburst. And the word *Snickers* refers to the noise made by Dick Dastardly's dog, Muttley, rather than the chocolate bar formerly – and properly – known as *Marathon*.
- But, often, renaming can create a sense that really resonates with people – who preferred shopping for *Blue Ribbon Sports* rather than *Nike*? And we might draw a lesson from history somewhere closer to home in the legal services sector. I made a deliberate mistake earlier. What was founded in 1845 wasn't the Law Society, but *'The Society of Attorneys, Solicitors, Proctors, and others not being Barristers,*

*practicing in the Courts of Law and Equity of the United Kingdom*. It took 60 years for Edward VII to sign a Charter renaming this rather long-winded organisation 'The Law Society.' They haven't looked back. The ACL has made this change in half the time and I am sure you won't look back either.

- The new name is clearer for consumers, clearer for practitioners, and better conveys the specialist professional service delivered by the members of your strand of the legal profession. It blows away the dust from the name of "Draftsmen" – and makes clear that many of your most distinguished members are female!
- And it's a very timely change. Costs and costs control are more important in legal policy debate than ever. So it's vital that the expert voice of the cost lawyer is heard as part of that. I think that this new identity will be a major step in helping you achieve this.

### **The importance of costs lawyers**

- Costs have for too long been considered to be ancillary to the resolution of legal disputes, yet advice in this area should be thought of as a legal service as much as any other. The work of costs lawyers is important for both the administration of justice and the health of the legal services industry. They contribute to business profitability, help to drive down the costs of litigation and so help to ensure that the courts are accessible for all with a good case.
- Alongside the legal services reform agenda, we are likely to see significant changes to the administration of justice in England and Wales over the next few years. The Government's response to Lord Justice Jackson's proposals and to the legal aid green paper will be very important aspects of these changes. Today is not the day to debate all the implications, but the ACL has to be part of those debates.
- But it's not simply about government policy. Across the economy, in both the public and private sectors, value for money and accountability for spending is at an unprecedented premium – with legal services certainly not being immune to this level of scrutiny. Costs lawyers are uniquely positioned to help meet some of these

challenges, with the expertise to work with firms to identify and manage legal costs, inform budget-setting and resolving disputes.

- As all lawyers become – indeed have no alternative to become - more business-like, costs lawyers have a head start on some other parts of the profession.
- So costs lawyers are a good investment for firms to make. In any service showing the value of your work in pounds saved and efficiency gained will make you money. In common with, for example, hiring a good accountant ‘investing to save’ is quite a good motto.

## **Regulation**

- Everything I’ve said about the importance of costs lawyers has relevance for my specific area of regulation. Costs are of relevance to many of the regulatory objectives – promoting competition, acting in the interests of consumers and securing access to justice. Indeed one can go even wider – it’s not clear that a system in which costs are out of control really is one in which the rule of law is paramount.
- As you know, the Legal Services Board is the oversight body for ten different organisations that directly regulate legal services providers, of which the Association of Costs Lawyers is one. These frontline regulators vary dramatically, both in terms of the number of the individuals they regulate and the type of activities undertaken by these individuals.
- However, the shared Regulatory Objectives passed into statute by the Legal Services Act 2007 apply equally to each of these bodies – and to the LSB itself – and it is our responsibility to oversee regulation in the sector to make sure that each is being delivered on.
- But we understand that the needs, circumstances and means vary across different parts of the profession. Our aim is to understand better the particular conditions faced by the smaller Approved Regulators in operating in their specific parts of the legal services sector to ensure that we are proportionate in what we ask of them.
- Whilst we need to be sure that each has the ability to deliver regulation that is compatible with the regulatory objectives and capable of ensuring consumer

protection, we also need to make sure that our own approach supports and engages those smaller bodies. That's why we have a specific project underway, informed by advice from Nick Smedley who has done ground-breaking work for both the SRA and Law Society in recent years, looking at how we can best work with the ARs in the light of their specific risks.

- One of the earliest priorities for legal services reform was separation of the representative and regulatory arms of the Approved Regulators. The perception of a conflict between these roles had been one that had undermined public confidence in the independence of legal services regulation. Whether that conflict existed in fact or just in suspicion, it was rightly considered by Parliament that perception and public confidence that regulation is being carried out in the interests of consumers was as important as fact.
- Because of this, the LSB made it one of its core early priorities to reassure the public about the rigour of regulation ensuring the frontline regulators have a common baseline of independence and competence.
- To meet these requirements we are delighted that the ACL is setting up the Costs Lawyer Standards Board and are pleased to see Lynn Plumbley their Chief Executive here today. The organisation, still in its start-up phase, promises a great deal when it comes to reassuring the public about the independence and robustness of regulation for Costs Lawyers. I look forward to its own formal launch in the reasonably near future. (It also means that the ACL won't be the newest kids on the block for long!)
- The institutional separation through the creation of regulatory arms was a key first step, but one which must be backed by systems, process and the development of a culture which is genuinely independent. Consumer and public confidence relies on independence being manifest in practice as well as on paper. That's why our Internal Governance Rules set out our expectations on what independence means in practice – including on issues such as budget-setting, lay majorities on Boards, shared services and shaping strategy.

## **The future**

- But that doesn't mean that either the LSB or the CLSB will not be interested in the representative arm of the profession. On the contrary. We don't think that the regulatory objectives can be met without a strong confident profession, challenging its members to go beyond regulatory minimum standards to achieve the very highest levels of professional ethics, service and innovation.
- So getting separation right means that there is freedom for professional bodies to perform their crucial role of advocating the interests of their members and raising the bar of practice. Uninhibited by the regulatory work – and free from the questions of impartiality that dogged regulators in the past – the representative bodies can perform to the full that important 'trade body' function for their lawyers.
- The ACL now has such an opportunity and I hope that the new regulatory regime will give the organisation every chance to flourish and prosper when it comes to representing the interests of your membership. The CLSB won't have to kow tow to you – but they'd be foolish not to listen and give the fullest consideration to your expert knowledge of the market and the challenges your membership faces.
- For too long, costs lawyers have been seen by some to be concerned with an ancillary part of the legal process, acting merely as an adjunct to the work of the solicitor. This is wrong – representing, as you do, a key part of ensuring the accessibility of the justice system and the fairness of resolutions of the courts.
- Tonight you begin a new period in your organisational life and the LSB wishes you every success in making the best of it.