

Legal Services Board

Chairman's address to Lincoln's Inn

The new regulatory landscape

The Legal Services Board is the new body charged with overseeing the regulation of lawyers in England and Wales.

We were created by the Legal Services Act 2007, the aim of which was to put the consumer interest at the centre of legal services.

To do this, the statute set about modernising the regulation of legal services.

It also created the LSB to oversee the work of the frontline regulators, including the Bar Standards Board for barristers.

In delivering on this, we set out three early priorities. I'll start by giving you a sense of progress against each of them:

- ***Firstly, opening up the legal services market.***

The Act sets out to give consumers more choice - and lawyers new business opportunities - through opening up the market. This will allow new types of legal business to emerge.

These new 'Alternative Business Structures' will arise from removing anti-competitive restrictions over how legal businesses can be owned and run.

The result of this will be to give lawyers much more freedom over how they choose to organise.

They will be able to work in different ways with each other - and with other professional service providers.

- Going hand-in-hand with this is the modernisation of regulation itself. This is to make the rules more focused on good outcomes rather than just compliance with process (or 'box-ticking').

The background to these moves is that practice has changed.

Protecting and empowering consumers is about modernising regulation to address our changed understanding of risk in the market.

It's not about unnecessarily restricting lawyers to act in certain ways – ways which were driven by historical practice rather than modern conditions.

- ***Secondly, we prioritised getting the institutional landscape right in the sector.***

Our oversight role has meant an early focus on making sure the structures of regulation in the sector are capable of bearing scrutiny.

A priority has been to reassure the public about the rigour of the regulators themselves.

We have needed to be sure that the frontline regulators have a common baseline of independence and competence.

- ***The third of those early priorities has been that of ensuring effective redress for consumers when things go wrong.***

Historically, complaints-handling in the legal services market has been poor. This has damaged public confidence.

Too little was done to enable proper recourse for consumers to an independent arbiter when the service had fallen short.

Alongside this, too little was done to make sure we learn from what complaints are telling us about gaps in regulation.

A major milestone in the delivery of this agenda was the opening of the new Legal Ombudsman last year.

This new body will hear complaints involving practitioners from all strands of the profession – including those relating to members of the Bar.

Its mission is to ensure fair, effective and rapid resolution for everybody concerned.

Two years into the creation of my Board, we are at a key time in the reforms.

Much of what was envisaged by Parliament in the Act will soon be a reality for lawyers and consumers.

With this in mind, the focus is now on moving to the next steps of modernisation.

This will mean putting the spotlight onto quality, workforce development and the scope of regulation itself.

I'm grateful for the opportunity to come and speak to you - the next generation of practitioners.

Perhaps the first generation to live out practice in the changed landscape of these reforms.

I'm grateful also to have the opportunity to address you within the Inns of Court. The Inns have much to be proud of when it comes to sharing experience between generations of barristers – as well as a great deal to continue to offer in the future.

Barristers and the rule of law

Whilst there are certainly forces of change at work in the legal services market, in several important respects there is continuity as well.

An enduring value which is enshrined at the heart of the reforms is supporting the constitutional principle of the rule of law.

Lawyers play a critical role in ensuring that the rights of all citizens under the law are protected at all times.

In delivering the reforms, Parliament intended that the upholding of the rule of law be one of the Regulatory Objectives.

As future practitioners, you will play a privileged role as custodians for that principle.

As we deliver our work programme in modernising legal services in England and Wales, this constitutional principle remains timeless.

Going hand-in-hand with the rule of law is the independence of lawyers.

The LSB is independent both of Government and the profession, with our independence being a key priority for ensuring the public interest.

It is this independence which insulates approved regulators from state encroachment into the regulation of individual lawyers and their practices.

It also ensures the continued separation of executive and judiciary, with some amongst you going on to become the judges of the future.

In ensuring that this is the case in practice, a number of checks and balances were built into the 2007 Act as it passed through Parliament.

These included the role of the Lord Chief Justice in the appointment of my Board.

This ensures that we cannot become an agent of government.

Our creation as an independent organ ensures that the executive has no direct role in regulating the legal profession.

As one of the Regulatory Objectives, ensuring that all of our work is consistent with upholding this principle will continue to be a major priority.

Professional ethics

Another enduring value is that of professional ethics. Ethics teaching must continue to be embedded in education and training across all strands of the profession.

The reason for this is clear: as you know, the lawyer is held in a special position of trust by the client.

Public confidence in the profession is dependent on high standards of ethical behaviour at all times.

I am aware that the BPTC and Inns put a premium on ethical dimensions of legal problems throughout training.

This is to be welcomed, with future practitioners being tested with ethical issues that might emerge through situations in practice.

There is currently a debate over whether this form of testing ought to reach back to the undergraduate stage as well.

This is something that we need to look into as part of the wider fitness of education and training.

Ethics needs to be about giving barristers a practical toolkit they can use to protect their personal integrity and build public trust.

Transparency is a big part of this.

A major development in the regulation of legal services has been a move towards that more outcomes-based approach to the rules.

This has less concern with the letter of the rules and greater emphasis on the spirit of compliance.

I would argue this interacts well with the need to embed professional ethics across the board.

Some have raised concerns that opening up the legal services market to new providers, whilst allowing lawyers to organise themselves differently, threatens professional ethics and the rule of law.

We don't accept that business structures in any way alter professional obligations.

We also believe that these ethical principles are so strong that they should not be threatened by the commercial context in which law is practiced.

That said, work has gone into ensuring the licensing of new business models is built on checks and balances.

These will enshrine good governance at the heart of legal practice in all contexts.

But we need to be mindful of the difference between two things: on the one hand, proper protection of the constitutional independence of the profession - such as in regard to duties to the court – and, on the other hand, illegitimate protection of specific business models.

Education and training reform

We have a Regulatory Objective to *‘encourage an independent, strong, diverse and effective legal profession’*.

We also have a specific duty to assist in the maintenance and development of standards in relation to the education and training of authorised persons.

Reforming the market is not enough by itself to ensure consumer protection.

Alongside this, a workforce that is properly prepared for practice – and which is built on standards of continuous improvement – has a crucial role in ensuring quality.

I'd like, here, to pay tribute to the important role played by the Inns of Court in education and training.

This is particularly felt when it comes to exposing students and pupils to the influence and experience of practitioners and Benchers.

A major part of workforce development is making sure that education and training keeps pace with changes in the nature of practice.

Also it needs to keep step with changing expectations amongst consumers.

Modern practice involves much more fluid boundaries between strands of the legal profession, as well as between lawyers and other professional service providers.

Alongside this, we are seeing a more globalised legal services market that crosses between jurisdictions.

New technologies have meant that legal services are being delivered in different ways, with face-to-face contact with clients playing a diminishing role.

Consumers themselves have become less deferential to lawyers, expecting to know more about the nature and quality of the service they are receiving.

They also want more information to 'shop around' for the right provider.

These are the ways in which the legal practice environment has changed.

Yet the structure and content of education and training has not changed alongside.

This risks a failure to properly prepare practitioners for the new landscape and those commercial pressures.

This is why it is right to look again.

In doing this, it is a question of content – what are the key skills and how are they taught? – and also one of structure.

On the latter, one of the major questions facing us is when is the right point at which to specialise.

This becomes a more pressing question as professional boundaries are becoming more blurred.

On this area, Baroness Deech's suggestion that forcing students into major decisions about specialising at 21 - before they understand the demands of different parts of the profession - has some force.

We welcome the review of education and training that is currently underway.

This is led by the frontline regulators - including the BSB and its partners the SRA and ILEX Professional Standards.

Its challenge is going to be in setting out the shape of an education and training system that is both modernised and more nuanced.

As we see greater plurality in the way legal services are being delivered, it may be that multiplicity of approach is also needed in the way we train future practitioners.

This may span both traditional legal education and also 'on the job' training methods.

On this, we may have much to learn from the professions, such as the structure of the accountancy qualification.

We expect to see thinking emerge before the year is out.

The way forward must identify different ways of achieving a more modern training experience, whilst delivering the same high aspirations of professionalism and ethical behaviour as we have always expected.

This is, in no way, about 'dumbing down'.

It's about protecting consumers through modernising to achieve better preparedness to practice.

There is nothing for the cause of protecting consumers to be found in diluting the timeless standards that I have already identified.

Quality and continual improvement

The regulation of education and training must be just the beginning of ensuring competencies.

LSB research indicates that consumers struggle to assess the quality of the service they are getting from lawyers.

There is an appetite amongst clients for more information on the service they are getting and how it compares across other factors including costs.

The education and training review will consider how continuing competence to practise should be assessed beyond qualification.

Quality assurance processes must form a part of a seamless continuum of professional development.

This process would have started with the more effective education and training regime for prospective practitioners.

Approved regulators will also need to consider how information about quality can be made more readily accessible to consumers.

We have recognised a more immediate need to strengthen safeguards to ensure minimum quality standards in some areas of the market – beginning with advocacy.

This is why we began the process of establishing a Quality Assurance for Advocates scheme.

This will be based on a common assessment framework for advocacy delivered by different lawyers.

This process is being led by a Joint Advocacy Group comprised of representatives from the approved regulators.

It has been worked up through close cooperation with members of the judiciary, who have a major role to play in ensuring advocacy is of a high enough standard to ensure consumer protection.

In this area, we recognise the important role played by the Inns as a vehicle for delivering specialist advocacy training by distinguished practitioners.

We want to see that interaction between senior and new members of the profession continue long into the future.

Diversity and social mobility

A few words on the profile of lawyers.

Widening access to the profession to practitioners from non-traditional backgrounds has long been an area in which this sector has struggled.

Both the last and the current Government have called for the professions to do more to drive social mobility.

There are commercial imperatives here, too, as public confidence in lawyers can be raised through a profession which better resembles the communities from which it is drawn.

Alongside this, there are international competitiveness arguments. The Bar and the wider legal profession need to unlock the potential of the brightest and best from all backgrounds rather than just the traditional schools and Universities.

Over recent years, at entry level the legal profession has achieved some traction, with a number of initiatives run by the Bar having a beneficial effect.

However, evidence demonstrates that, as you look to the higher levels of the profession, including the judiciary, stubborn inequalities remain.

Whether it's a starker focus on working conditions, more family-friendly flexibilities, or other measures to improve progression and retention, we need to do more.

A major part of this will be measuring the impact of reforms to date.

We need to be able to track progress between one cohort of barristers and the next as they escalate through the profession.

Conclusions

I believe this is the right audience for this kind of talk.

This in-take of prospective practitioners will be last in the pre-ABS world.

The commercial imperatives and opportunities that will become drivers at the end of the year will have a major impact on the structure of practice.

Even if chambers remain passionately committed to the self-employed model, the world in which you will operate will change around you.

The emergence of ProcureCo models, a growth in direct access and other changes are just some changes for which the Bar Council itself has lobbied.

These may well call for a broader range of skills to previous generations.

More senior member of chambers will be looking for those who can demonstrate an ability to engage with the changing world – as they too will need to – in an increasingly packed and diverse market.