

Law Society Council

7 October 2008

Speech by LSB Chair, David Edmonds

Good afternoon. I'm delighted to be here.

Let me start by saying that I very much welcome the cooperation I've had from Law Society Officers – especially from Andrew Holroyd at end of his Presidency and Paul Marsh now. Chris Kenny and our team are working closely with Des Hudson, Russell Wallman and colleagues.

I want this to continue and intensify as we implement. And I welcome links with the Council as part of that process.

I'm delighted with my Board. We have an ex-President of the Law Society, Mike Napier, a leading thinker at the Bar, David Wolfe, and two strong General Counsel, Andrew Whittaker of the FSA and Rosemary Martin of Reuters.

Our lay members – Stephen Green, Bill Moyes, Terry Connor, Nicole Smith and Barbara Saunders - bring long experience of regulation, of industry, of consumer affairs and of public engagement.

And now have a CEO who I've worked with in past.

Our aim is to produce a business plan around turn of the year, with priorities spelt out. Expect to hear more at that stage about ABS, the OLC and securing regulatory independence.

But also expect to hear more about apparently “softer” issues – diversity, professional standards, public education. Won't led urgent crowd out important.

It's difficult to over-estimate scale of change caused by 2007 Act – impacts on your governance as a Society, how you handle complaints as businesses, who your competitors and partners will be.

The Law Society has done a lot already.

The Council has taken some bold steps in the last few years, often before other regulators in the filed and certainly ahead of the introduction of the Government's draft Bill, let alone its Royal Assent.

The Law Society deserves to be congratulated for its foresight here. But we all need to keep on our toes.

Press reporting says I want to force the pace. I do.

Regulatory uncertainty helps nobody. But nor does cutting corners. We'll go as fast as we can, consistent with proper consultation and evaluation of the evidence.

As I said here a fortnight ago “I don't want to see consumers in England and Wales losing out on the benefits while we get lost in academic debates”.

I also said that independence in regulation is vital for the Approved Regulators themselves. I expect that the LSB will want to take early action to define the rules which Section 30 of the Act commits us to make in this area.

My Board's work is at its earliest stages. But useful if I set out embryonic thinking, so that there's no doubt about our future direction.

As I understand it, the Legal Services Act is clear. My Board is here to oversee Approved Regulators. And you (the Law Society) are one of the Approved Regulators.

That is how Clementi envisaged things. And it is how they are. But this should not mask the true meaning of provisions like sections 28 and 30.

Regulatory independence – mandatory under section 30 – demands demonstrable independence and the *appearance* of demonstrable independence.

It will be the job of regulators – by which I mean the regulatory arms of Approved Regulators – to stand-up to their representative bodies as and when necessary.

But regulators cannot do that effectively, and without fear of consequence, unless truly independent.

One area we must focus on is appointments to regulatory bodies.

Here, Board members (including the chair) and all employees must be free from undue influence – or the appearance of such – from the 'representative' side of Approved Regulators.

We cannot have the person ultimately responsible for deciding whether a regulatory chairman is to be re-appointed for a successive term being intrinsically linked with the representative functions of an Approved Regulator.

Appearance can often mean just as much as substance here.

Nor would it be appropriate for line management chains for any employees to cross the regulatory-representative boundaries.

Similarly, it would be unacceptable for arrangements to bring undue interference – or the appearance of undue interference – by the representative bodies on the day-to-day decision-making of regulatory bodies.

There can be no second-guessing of decisions made by the regulatory body.

Section 28 of the Act applies both to the Approved Regulator as a whole and in particular to its regulatory arm.

It says, in terms, that the Approved Regulator must, so far as is reasonably practicable, act in a way that is consistent with the regulatory objectives, and which ensures compliance with the better regulation principles.

First, the regulatory objectives.

A clear and effective split between the regulatory and representative functions of the Approved Regulators is part of complying with the objectives.

That split is now widely accepted as being in the public, consumer and professional interest. The principle of impartial regulation is itself an embodiment of the rule of law.

That's the overarching responsibility of the Approved Regulator. So it's the duty of an Approved Regulator to establish an independent regulatory body.

After that, compliance with the objectives in the regulatory context is for the regulatory Board.

And as to the principles of better regulation, there is little point setting a body up if you expect it to fail.

Anything other than occasional strategic overviews by the overarching Approved Regulator would amount, in whatever degree, to two regulators doing the same job.

That's expensive and confusing. It's not in the public interest.

Regulation Boards are now in place and must be made to work. This is the principle that the LSB relates to the Approved Regulators themselves.

My Board has specific and highly interventionist powers to use if things go wrong. But close working should ensure those powers are rarely, if ever, deployed formally.

LSB and Approved Regulators need the right staff and skills in place in the necessary volume to do the job.

I believe in fitness for purpose, not gold-plating. That goes for the LSB and the Approved Regulators.

We'll be proportionate, pragmatic and principle-based, rather than theoretical or prescriptive. I'm sure you will be too.

In conclusion, thank you again for invitation. Looking forward to questions now and further discussion over dinner.