

Law Society Breakfast 25 September 2008

Remarks by David Edmonds - Chairman of the Legal Services Board

Since my appointment, I have spent a lot of time talking to the leaders of the profession – across the full range of approved bodies, large and small – as well as to Ministers and consumer groups.

They're all helping to shape our emerging thinking.

But I increasingly want to talk to practitioners directly about their hopes and fears for the new regulatory regime.

I welcome this event as the start of that process.

I want to say, first of all, that the scale of the task we face – Board and profession together - is great.

The 2007 Act is arguably the greatest shake-up of legal regulation for over a century.

It's a very modern piece of legislation. The principles of better regulation – transparency, accountability, proportionality, consistency and targeting – are included in terms.

It's an Act which about helping the profession, helping the market to get things right, not doing things to them for the sake of it.

But it's also an Act about creating a regulator to drive progress on a new framework, on redress and on competition and a regulator with the power to make a difference when things go wrong.

The Board has only met once to review progress in setting up our organisation and to look at the forward agenda.

A lesser Board would be daunted at the prospect of so much formal rule-making, at picking up the baton on ABS and at the task of establishing a proper high volume Ombudsman Scheme in the legal services world.

We're not.

We're energised by it.

We're energised because we have a very strong Board.

We have an ex-President of the Law Society, Mike Napier, a leading thinker at the Bar, David Wolfe and two strong General Counsels, Andrew Whittaker of the FSA and Rosemary Martin who was at Reuters.

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

One of our first tasks is to prioritise all the issues we have on our plate.

We have to get the detail right.

I won't spell it all out now.

But you can be assured that we will work with all our partners to create our first business plan at the turn of the year.

A word about timing.

There are quite a few areas in the Act, not least in relation to ABS, where I want to explore whether we can force the pace of progress.

I understand David Clementi's wise words about walking before we run.

But I do expect that walk to start quickly and I do expect to break into a canter pretty quickly.

The debates about ABS are now about “how”, rather than “whether”.

We can see our colleagues north of the border acting quickly to catch up – my Transition Team Director is in Glasgow today to keep up with progress – and there are interesting developments in Australia and Spain to learn from.

I don't want to see consumers in England and Wales losing out on the benefits while we get lost in academic debates.

Making progress on opening up new way of doing business to the advantage of the consumer is a key priority.

I want to focus today on the importance of independence in regulation.

That will be crucial in making progress in all the areas I have mentioned.

Why does it matter?

First – and particularly important in relation to the law – it's a guarantee of independence from Government.

Regulation is about getting the framework right for the medium - to longer-term, not about placing burdens on businesses to meet short-term political agendas – from any party in power.

Only an independent regulator can guarantee that.

That doesn't mean that we ignore government.

You'll hear me talk a lot about the links between the Access to Justice agenda and ABS.

There are lots of areas in the Act where we need approval from the Lord Chancellor – and that's right to ensure Parliamentary accountability.

But we're setting the pace – Jack Straw hasn't given me a list of orders.

Independent regulation is also about moving at market speed, not about bureaucratic pace.

We will consult openly and transparently.

We will give people the time to get their views properly formulated and we'll take thoughtful decisions.

But we're not going to be locked in a perpetual post-graduate seminar while the world changes around us.

Nor are we going to be diverted from our task .

Only an independent regulator can bring the degree of focus and momentum needed to ensure that regulation remains relevant in a market place that is changing quickly and where change will accelerate.

That may be challenging to some of the Approved Regulators' structures for decision-making. But that's the world in which their members live – and that's absolutely the world where their potential competitors in an ABS world live as well.

Independent regulation is also about credibility with the public.

“Regulatory capture” – regulators who are so mindful of the interests of their stakeholders that they forget the public they are there to serve – is a real and present danger.

The LSB won't fall into it.

We have a lay majority.

As I have said, we have professional members – individuals not representatives - at the cutting edge of professional thinking.

And above all, we have clear statutory duties and a clear sense of purpose, not least of which is to “support the constitutional principle of the rule of law”.

So keeping the independence I've talked about means that we we won't accept the profession's and Approved Regulators' image of themselves uncritically.

We have a statutory objective to challenge discrimination and promote equality. Specifically, we must "encourage an independent, strong, diverse and effective legal profession".

We have responsibilities "to promote and maintain adherence to professional principles" and to help in developing standards and education and development.

Those tasks are integral to our process of setting up the new body.

And we take them as seriously as independent regulation and developing competition.

New entrants should not be under any illusion that LSB-approved licensing authorities will have any incentive to achieve market entry by somehow "dumbing down" consumer or CPD standards.

Quite the reverse.

But the standards must be relevant to the user of the service, not the profession alone.

So you have my absolute commitment to a properly independent LSB.

But independence in regulation is also vital for the Approved Regulators themselves.

Proper clarity about the separation of representative and regulatory functions lies at the heart of the Act.

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.

There's a real incentive for everybody to get this right – if the LSB get the framework right and if the ARs implement it properly, the need for detailed intervention and target setting by the LSB will be significantly reduced.

But, if not, then not.

That's why one of the tasks my transition team put in hand early was to gather information from the bodies we oversee about their current regulatory arrangements.

We're interested to see how regulators are appointed, how they get their budgets, how they communicate with the profession and the public, whether anybody can intervene in their rule-making and disciplinary activities.

We want to know what kind of dispute procedures and intervention powers exist for the formal Approved Regulator in the event of disagreement with its regulatory arm.

And it goes without saying that we'll be as interested in the reality of how well these arrangements work in practice as in the theoretical questions of whether the governance arrangements are optimal on paper.

I'm not, at this early stage, going to pre-empt the Board's thinking on any of these areas.

You should not under-estimate the amount of importance that the Board will give to ensuring the reality of separation – and the clear appearance and communication of the fact.

Some have said that fact that the Act did not compel full legal separation of functions was a vote of confidence in current systems.

Frankly, that's complacent.

If current systems were incapable of improvement, Parliament wouldn't have given us the powers and duties we have – not least the pretty draconian range of intervention powers if things go wrong.

Good progress has been made – but we won't hesitate to force the pace further where we're convinced that the evidence justifies this.

I want to underline that independence for both LSB and the Approved Regulators independence brings responsibilities, not the freedom to let rip.

It brings a commitment to evidence-based decision-making, not headline grabbing initiatives. It brings a commitment to genuine engagement with all stakeholders.

It means that we are committed to intellectual excellence in researching and resolving the full complexity of the tasks we face.

It means that we have to learn from other sectors and from international experience.

We have to evaluate our own actions carefully when we're the ones setting the pace.

That means that both 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.

But cheap and cheerful regulators are much more likely to produce cautious and expensive regulation on the ground than properly professional ones.

I want finally to stress that I'm genuinely open-minded about how separation of roles is achieved.

What is appropriate for the big battalions of Law Society and Bar Council may not be appropriate for smaller bodies – and vice versa.

Our approach will be proportionate, pragmatic and principle-based, rather than theoretical or prescriptive.

But you should be clear that, while we are happy to debate means, there is no room to compromise about the end – and that in turn means that the debate can't be endless.

In conclusion, I want to underline our determination to work constructively with all parties.

Our aim is to bring constructive challenge, not confrontation.

The LSB will practice what it preaches – regulators will be right to take us to task if we ask of them things we don't do ourselves.

We want to co-operate.

But that doesn't mean that we'll go slow in pursuing our statutory objectives.

We've started independently.

We'll continue independently.

And we expect others to follow us in adhering to that principle.