



**Implementing The Legal Services Act  
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**Chief Executive Legal Services Board**

Compliance for Law Firms 2 June

## Agenda



- Why?
- What?
- How?
- So what?

### Slide 1

Thank you for the invitation to speak at the conference. The invitation initially went to Bridget Prentice, the Minister of State at the Ministry of Justice who piloted the Legal Services Act through its parliamentary stages. She apologises that she couldn't be here today. You have the implementation monkey rather than the political organ grinder. But that is no bad thing because the debate about the Legal Services Act is now all about how, not about whether.

I am going to look at four distinct questions. First of all Why? – What led Government and Parliament to the big changes we face, the bigger changes in legal services regulations for a century?

Second, what are those changes?

Third, how will they be implemented in reality? and

Fourth, the \$64,000 question so what? What does it mean for me in my firm and for the proverbial man and woman on the top of the Clapham omnibus?

I am going to argue that the impact on both cannot be overstated.

## Why?



- “Pure” self-regulation outmoded
- Collapse in confidence in complaints handling
- Changing consumer needs, expectation and environment
- No clear relationship between restrictions on business models and public interest

### Slide 2

I believe there were four main reasons for the introduction of the Act Boil down all the work done by the OFT in 2001, by Sir David Clementi in 2004, by Lord Hunt of Wirral and his committee scrutinising the Act in 2006. The same themes emerge.

First “pure” self-regulation is definitively past its sell-by date. No matter how well it works in reality, the public simply do not believe that they can or should rely on a paternalistic profession telling them what is good for them. They don’t believe it in medicine. They don’t believe it in financial services. They don’t believe it in their parliamentarians. And they don’t believe it of lawyers and, if we look at the most egregious examples of professional conduct in the miners’ compensation claims, for example, why should they?

Second, and related, there was a general lack of confidence in the professions’ ability to handle complaints. Some of that was down to lack of independence. Some of it was doubts about pure customer service and timeliness. Some of it was about making everything focus on professional discipline instead of addressing precise customer service complaints there and then.

Third, there was a general sense that the law was simply not keeping up with the 21<sup>st</sup> century. Consumers needs have changed, their expectations have changed and the environment in which they operate has changed. Doing things in terms of formal written submissions doesn’t make sense to those who live in a 24/7 wired world.

And finally, the environment was changing for firms as well. There was no longer any clear relationship between regulatory restrictions and business models, the public interest and the competitive environment in which firms found themselves.

## What?



- Legal Services Act 2007
- Legal Services Board – new oversight regulator
- Office for Legal Complaints – new Ombudsman
- Alternative Business Structures – new business models

### Slide 3

From that Legal Services Act 2007 was born. There are three big changes.

First, the creation of the Legal Services Board, a new oversight regulator, charged with supervising the Law Society, Bar Council and six other bodies.

Second, the creation of the Office for Legal Complaints, which in turn will create a genuine modern Ombudsman service, focussed on rapid dispute resolution when firms have not solved problems themselves, sweeping away the professional machinery that sits between consumers and the current ombudsmen.

Third, the introduction of the regulatory regime for Alternative Business Structures, allowing new business models, new forms of investment and new forms of partnership.

## **What? – Regulatory Objectives**



- Protect and promote the public interest;
- Support the constitutional principle of the rule of law;
- Improve access to justice;
- Protect and promote the interest of consumers;
- Promote competition in the provision of legal services;
- Encourage an independent, strong, diverse and effective legal profession;
- Increase public understanding of the citizen's legal rights and duties; and
- Promote and maintain adherence to the professional principles.

### Slide 4

But they are not an end in themselves. The Act is far more radical than that. It is there to provide new ways of securing vital objectives. These are:

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- Promote and maintain adherence to the professional principles.

## What? – Professional Principles



- acting with independence and integrity;
- maintaining proper standards of work;
- acting in the best interests of clients;
- complying with practitioners' duty to the Court to act with independence in the interests of justice;
- and keeping clients' affairs confidential

### Slide 5

In turn those professional principles are:

- acting with independence and integrity;
- maintaining proper standards of work;
- acting in the best interests of clients;
- complying with practitioners' duty to the Court to act with independence in the interests of justice;
- and keeping clients' affairs confidential

It is important to emphasise these. The Legal Services Act is about “as well as” regulation, rather than “instead of”. Nobody is removing professional principles. Indeed I assert strongly that the greater competition introduced by the Act will help their delivery not obstruct them.

## What? – Key Changes



- Promoting public and consumer interest, not just protecting public
- Common objectives for all regulators
- Holistic duties

### Slide 6

What does that mean in terms of the key changes to regulation?

First one important word is promoting public and consumer interest. Previously, legal regulation has been about minimal protection. This is an Act which moves regulation from passive to active, from protection to promotion.

Second, note that the objectives are shared by all the regulators. This is something the LSB will be doing with the Law Society, the Bar Council and others, not to them. But we will get it done – and we can compel compliance if others do not rise to their challenge.

Also, note the scale of ambition in the Act. There are lots of important things in there, as well as urgent and pressing ones. We want to work across the Board to address them all.

## How? – LSB will ensure....



- Wider Access
- Better Value
- Strong Protection

### Slide 7

Above all, the LSB will work to secure three things.

First, wider access to justice – we are not talking about a safety net in the form of legal aid, but changing the market structure to help those on average incomes and just above to truly access the legal advice they need when they need it. That in turn means

Better value – striking the right balance between price, inputs, personalisation when it is needed and commoditization when it is not; and

Third, strong protection, giving people the right guarantees so they know that everybody is working consistently in their interest to high standards.

If you follow our website, you will spot that those three bullets give us the title of our document about ABS. And that's right. ABS isn't an add on. It's integral to all that we do.

And, equally, our values and objectives aren't irrelevant to the introduction of ABS. They are integral to the way we want new services to be delivered and the outcomes achieved from them.



## **What? – The LSB’s Vision**



- Greater competition in service delivery and the development of new and innovative ways of meeting consumer demand;
- A market that improves access to justice for all consumers, in particular for those whose incomes just exceed legal aid thresholds;
- Empowered consumers receiving the right quality of service at the right price;
- An improved customer experience and redress;
- Legal services professions which are as diverse as the community they serve and which constantly strive to improve standards of practice, quality and education; and
- Certainty and confidence in the regulatory structures underpinning the market.

### **Slide 8**

Let me set out our vision in more detail. Here is a quote from our Business Plan, setting out what we want to achieve in terms of innovation, better access, more aware consumers, better customer experience, a strong and effective profession and industry and clear regulatory certainty. If a market is going to work well, it must achieve all of these.

## How? – Legal Services Board - Priorities



- Putting consumer and public interest at the heart of regulation
- Widening access to the legal market
- Improving service by resolving complaints effectively
- Developing excellence in legal services regulation
- Securing independent regulation
- Promoting access to a diverse legal profession
- Developing research and public legal education strategies

### Slide 9

Our Business Plan also sets out our priorities, above all putting the consumer and public interest centre stage at the heart of regulation. We will also widen access for different supply models. I will say more about ABS later.

We will get the OLC moving as quickly as we can to put things right when things go wrong – but also to make sure that more firms get complaints right first time and that the lessons learnt by the OLC are fed back to the market to improve service.

We will raise all the approved regulators up to the level of the best. We want to identify best practice within and beyond the sector and make sure that all the bodies we oversee are applying it and that we are too.

We will make sure that the public have confidence that the regulatory and the representative functions of those regulators who combine them are properly separated. That gives clarity of role, greater public confidence – and better public performance of both functions.

We will work with all approved regulators on securing a diverse legal profession. There is a lot of good work at entry level, which we want to consolidate. We also want to work to address questions of progression and retention. There will be more challenges coming from the work of Alan Milburn's panel on social mobility. That isn't, in my book, an ideologically driven exercise. It's about good business sense – ensuring that a modern industry has access to the widest range of talent.

And finally, we will lay foundations for delivery of strong research and public education programmes, advised on both by our Consumer Panel.

### **How? – Legal Services Board - Style**



- Be independent and act with integrity in all our dealings
- Strive for excellence by being challenging, bold, robust and accountable for our work and costs
- Be open, accessible and clear about our role and how it relates to consumers and citizens and to our other stakeholders
- Be passionate, reforming and innovative about the pursuit of the consumer interest in our work and the legal services sector

### **Slide 10**

That's the what. What about the how? Here is the statement of our style. We will be:

- Be independent and act with integrity in all our dealings
- Strive for excellence by being challenging, bold, robust and accountable for our work and costs
- Be open, accessible and clear about our role and how it relates to consumers and citizens and then to our other stakeholders
- Be passionate, reforming and innovative about the pursuit of the consumer interest in our work and the legal services sector

## **How? – Legal Services Board – Partnership Working**



- providing constructive critical challenge;
- identifying relevant learning from legislation and regulatory practice in other sectors and in other jurisdictions and ensuring its dissemination;
- acting as a fulcrum on matters of legal services research, education and training to assist the development of standards; and
- ensuring that we identify, celebrate and communicate best practice from each of the ARs.

### Slide 11

We cannot do this alone. We need to work with not just the approved regulators we oversee, but all players in the market and we want partnership with individual firms and practitioners, quite as much with their representatives.

We will provide constructive critical challenge to you. We want you to do the same to us.

We will identify lessons from other sectors. We want you to tell us what is already happening, what it makes sense to adopt and what would be more difficult to translate.

We want to know what is happening in Academia, in the Business Schools as well as the Law Faculties and in the best Training Firms.

We have common targets, let's work to them together.

## So What? – Changing the Market



- Technology
- Commoditization
- Recession
- Expectation
- Regulation
- Your choice – shape or react?

### Slide 12

Turning specifically to ABS and changes to the market. ABS isn't the only driver. There are at least four others:

First, technology – you will increasingly deliver the customer experience by the web, rather than relying on it purely as a research tool.

Second, commoditization. It is a peculiarly ugly word, peculiarly useful commercial concept. If you can standardise, do it. You save costs and you can devote that much more resource to where you really need to deliver a personalised service.

Third, the recession. You don't need me to tell you the challenges you face day-to-day. Keeping your head down and muddling through doesn't look a safe option for anybody. Fortune favours the brave.

Fourth, consumer expectation.

Fifth, regulation. It is not about piling more pain on top of all the challenges I have already listed. It is about making sure that the legal framework is responsive enough to give you the tools to adapt to them.

Your choice is whether you rise to that challenge and try to shape your own destiny or whether you are consent to let others do it and simply react in the changing marketplace. The second doesn't seem to me any less risky than the first.

## So What? – ABS and Consumers



- Value
- Choice
- Information and innovation
- Service combinations
- More flexible delivery

### Slide 13

ABS is ultimately about benefits for consumers, not the interests of firms. It is about providing greater value and greater choice, enabling specialist firms to build their brand and compete, maybe against brand names from other sectors.

It's about providing better information and better incentives for innovation. That might mean different service combinations for both the individual consumer and the small business and more flexible delivery.

You only have to look at NHS Direct. People relate to the Health Service in many different ways, compared to the way they did 8 or 9 years ago. And the fact of NHS Direct has led to transformations at the way GPs deliver their services in terms of accessibility. And in turn, as GPs do more, so hospitals do things differently as well.

ABS is about starting the revolution that will cascade up the legal system no matter where it starts.

### So What? – What ABS mean for law firms



- Greater flexibility in terms of:
- Investment models
- Business forms/services offered (new synergies from new partnerships)
- Ownership
- New insights from non-lawyer managers – and better retention of non-legal brains
- New marketing strategies
- Greater focus on internal governance, compliance and QA mechanisms – for commercial benefit as well as regulatory purposes

#### Slide 14

I have said before on public platforms that, in many ways, how law firms organise themselves is absolutely irrelevant to consumers. What they care about is outcomes, not inputs.

But the implication for firms are great. ABS will give greater flexibility in terms of investment models or business models of ownership models.

Greater involvement of external finance and non-lawyer managers will help improve both – and the scope for ownership will mean that those insides are retained for longer and used more effectively.

There will be new marketing strategies, if people build brands.

And, particularly for this audience, greater focus on governance, compliance and quality assurance – not because the SRA or the LSB tell you to do it, but because that's the way good business works.

So we all face the challenge of developing momentum in this world and turning the challenges of the current business environment into genuine opportunities.

## So What? – ABS Timetable



- 14 May LSB Discussion Paper
- Sept/Oct Guidance on licensing rules
- Spring 2010 Licensing Authority applications
- Mid 2011 First ABS Licences issued

### Slide 15

Let me stress the momentum. We have set the ball rolling on ABS implementation with the discussion paper we published on 14 May – Wider Access, Better Value, Strong Protection.

Later this year, we will set out what we expect to see in the licensing rules which ABS licensing authorities will develop.

We will take applications from existing regulators – and indeed others – to become licensing authorities in Spring 2010.

We expect the first ABS licences to be issued by the middle of 2011.

That's a rapid timetable, but it's more than 10 years since the issue was first raised, so I make no apologies for it.



## So What? – for Compliance Managers



- Shape the debate
- Spot the baby!
- Think governance, principle, culture
- Not just rules
- Industry and profession

### Slide 16

What does it mean for this audience?

First, help us to shape the debate. We are clear about direction, we are clear about speed, we have a lot of work to do to get the detail right.

Above all, help us to spot the baby amidst the bathwater. We do want to remove restrictions, we do want to give you new opportunities. We absolutely do not want to compromise public protection or create regulatory uncertainty.

Third, this is a great world for Compliance Managers because, as I said, it is no longer just about rules. It is about governance, it is about principle and outcome focussed regulation, it's about getting the right culture. You are moving to the heart of your firms, rather than being a regulatory overhead on them.

Because finally what this is about is 100% protection of the professional principles I talked about and ensuring that the law becomes a great industry as well as a great profession. Great industries and great professions both serve the public. They do it excellently, they do it ethically. They don't have to choose which they are.

Good regulators set the framework for that to happen and then leave them to get on with it. That's what we aim to do.