



“The Legal Services Board and the Notarial Profession”

Notary Training Cambridge Conference 2014

Innovation in the legal services market – growth, skills and emerging business models

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Introduction

I should begin today by introducing myself. I am the LSB’s new strategy director, and I have been in post for just over four months now. My background is largely in economic regulation, at the Competition Commission, Ofcom and, before that, Oftel. In moving to the LSB, it has been fascinating to take on a role with a broader regulatory remit, where public and consumer interests have to be balanced more explicitly with competition concerns. My initial high-level goal at the LSB is the production of the LSB’s strategic plan for 2015-18 – of which more later. But first, it may be helpful to set the scene.

LSA / LSB background and activities to date

I’d like to start with a short description of the regulatory regime in legal services. As an aside, I would note that the regime in question covers England and Wales. All the referendum drama of the last 24 hours, interesting as it has been, will not have an impact on the extent of the LSB’s jurisdiction.

Many of you will be familiar (I hope) with the 2007 Legal Services Act (the Act) and what it has delivered. The Act had its genesis in a report written by Sir David Clementi in 2004. Clementi in turn responded to three issues:

- a report on competition in the professions by the OFT in 2001 which saw restrictions on external ownership of legal businesses as a barrier to entry;
- a significant collapse in public confidence in the Solicitors' disciplinary scheme as a result of scandal about access to Government funding in mining compensation cases; and, finally,
- persistent problems in the handling of service complaints in relation to solicitors which, at its worst, saw routine cases taking more than two years to resolve as a matter of course.

Clementi concluded that a pure self-regulatory system (in which representative bodies like The Law Society also acted as regulators) was no longer operating in the public or consumer interest, as opposed to that of the profession.

In legal services, that response was to leave the primary responsibility for regulation of individuals and entities with the self-regulatory bodies – The Law Society, The Bar Council, The Institute of Legal Executives and five others. But they were compelled to make a clear separation between their professional/lobbying/"trade union" activities on the one hand and their regulatory functions on the other. Thus the 'arms' length' (and, it was hoped, independent) regulators were born

A new statutory body, the Legal Services Board, was created to oversee that settlement.

Alongside that, an independent Office for Legal Complaints was established to run a Legal Ombudsman scheme to ensure faster redress for individual consumers.

The LSB is a non-departmental public body of the Ministry of Justice (MoJ), but one over which the MoJ has no material powers of direction. The LSB has to have a lay Chair and a lay majority and is funded from a levy which it places on the regulatory bodies which it oversees. The Lord Chancellor gives formal consent to the budget as a check to make sure that the LSB does not engage in gratuitous empire building.

The LSB, like many of the frontline regulators is undergoing a changing of the guard. We have a new Chair, Sir Michael Pitt who was previously Chair and Chief Executive of the

Planning Inspectorate. Our Chief Executive Chris Kenny is also stepping down later this year. His replacement will be announced next month.

LSB and notary profession

Turning now to the notary profession... the reason I am here after all!

The statutory regulation of notaries is the oldest of the professions that the LSB has responsibility for.

The LSB can cite the *Clementi review* for an account of why it was set up. But, the Faculty Office can point to the two Booker prizes awarded to Hilary Mantel for its background. I am sure we need not count the royalties to guess which sold more.

The Ecclesiastical Licences Act 1533 (passed in 1534) was one of the products of King Henry VIII's marital troubles. Under the guidance of Thomas Cromwell, as Chancellor of the Exchequer, the third session of the English Reformation Parliament passed (amongst other things) the legislation necessary for the Archbishop of Canterbury to regulate Notaries.

It is fair to say then that the statutory regulation of Notaries was born at a time of change and change has been fairly constant in the nearly 500 years since.

Concerns about new entrants are nothing new. In 1749 the scriveners in the City of London were highlighting the rigour of the training and the value of the qualification of scriveners over and above that of mere attorneys and solicitors. Well times change and now nearly 80% of notaries are also practising solicitors.

Since 2007 there has been significant change in the regulatory requirements facing notaries. Notaries now have:

- New complaints handling rules
- An Ombudsman scheme
- New continuing professional development requirements
- New supervisory arrangements; and
- A new code of conduct.

These changes are not without cost and the practicing certificate fee has increased. I will come on to the cost of regulation in a moment. But it is worth pointing out in this context that poor notarial conduct can cost people a lot of money (as shown by a disciplinary decision by

the Court of Faculties earlier this year). And a lot of money is also spent on the services offered by notaries and regulated by the Faculty Office – we estimate £10m-£18m annually. Therefore proper risk based regulation is necessary.

The LSB is very pleased with the progress the Faculty Office is making in delivering more risk based regulation by focusing on practitioners that provide services with higher risks such as probate and conveyancing. We are pleased at the level of transparency of its new website, its moves towards making data openly available and its efforts to modernise its approach and seek to deliver the outcomes consumers and providers need.

We know that change is not an easy process and with change comes costs - but also opportunities. The LSB wants to give providers of legal services, whether existing or new, the opportunity to grow and innovate should they wish to.

Cost of regulation

And now, back to the cost of regulation. The cost of regulation is something which affects everyone in the legal profession. But not just practitioners – consumers as well, as higher costs of regulation ultimately get passed on to consumers in higher fees charged for services.

In 2013, the LSB committed to investigate the cost of legal services regulation and its impact on the regulated community. This however had to be delayed by the MoJ review of legal services regulation which took place last year. We have decided to come back to this issue and address it this year and next.

The ultimate objective is to produce a set of recommendations for reducing unnecessary regulatory burdens, which can be implemented across the regulatory community in the future. But before we can tackle the cost of regulation we need to understand exactly what it is.

We are going to focus on the following areas:

- The direct regulatory costs imposed on practitioners. That is, how much they have to pay in monetary terms for regulation (including for the LSB's oversight regulation and for the Legal Ombudsman).
- The indirect regulatory costs faced by practitioners. That is, the costs to them of complying with legal services regulation.
- The costs of the regulators themselves, including the LSB.

Why am I telling you this?

I'm telling you this because to accurately identify what the costs of regulation are we are going to need the help of legal practitioners such as yourselves and your fellow notaries.

We will be launching a survey at the end of this month which we hope will provide an idea of the costs faced by practitioners in complying with regulation.

I would encourage you to have a look at and participate in this survey. There will be a link to it on the LSB website www.legalservicesboard.org.uk

The future and the LSB's strategic plan

Before I finish I want to turn to the future.

At the start of this month the Chairman of the LSB Sir Michael Pitt spoke at a Westminster Legal Policy Forum on the future of legal services regulation.

Sir Michael's belief, as expressed at that event is that the Legal Services Act has not yet reached its full potential. This is a point which he emphasised and which I would like to re-emphasise here today.

This is good because the Government has made it clear that new primary legislation is not a priority – so we must live with the Legal Services Act for the time being.

There have been many positive developments, for example:

- the LSB has enforced greater separation of the frontline regulators from their professional bodies. Regulators now have lay majorities on their Boards and lay Chairs.
- there has been a steady improvement in regulatory arrangements, with 56 requests for changes receiving LSB approval over the last three years alone, and
- the LSB has awarded three regulators approval to license ABS. There are now well over 300 licensed ABS driving change.

Overall, the UK legal services market has become more dynamic, innovative and competitive.

But Ministers are also calling for more deregulation now.

So these issues are all at the front of our minds at the LSB as our thoughts turn to the LSB's new strategic plan, to cover the period from 2015-18. We will launch a public consultation on a draft strategic plan later this year, and we will publish our final plan in March next year, ready for the new financial year in April.

Appropriate regulation is LSB core business and consistent with our drive to deliver a more competitive market and improved value for money. So our work in this area is likely to feature prominently in our strategic plan.

But the LSB also believes that the time is now right for taking a long hard look at legal services and adopting a 'whole system' approach from the consumer's perspective. Consumers are likely to choose from a wide variety of sources of advice.

In addition to a high street solicitor, these might well include a mediator, McKenzie Friend (paid or unpaid), the voluntary sector, DIY, on-line or a mixture of the above. Our strategic plan is therefore likely to consider how consumers navigate through this landscape of regulated and unregulated services to obtain access to justice. And ways in which access to justice and affordability can be improved to meet what we know is a large unmet demand for legal services will also be part of our plan.

We also want to take the time to think about the way regulation is organised, to learn from other sectors and to test a range of possibilities for how regulation in this sector is structured, including the case for replacing the LSB and eight frontline regulators with a single body.

Political priorities tend to shift unpredictably and, sometimes, at considerable speed in response to 'events'. Eventually, when the attention of politicians returns to legal regulation, we ought to be prepared.

Concluding remarks

I have covered a lot of ground today, from the origins of the regulation of notaries and the current legal regulatory framework, to the LSB's cost of regulation project and our strategic plans for the future. But, in conclusion, I would just like to say that in 2014, it is clear that notaries and scriveners remain a vital and respected part of the legal services sector in England and Wales.

Thank you.