



Navigating through turbulence

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I gave my first speech on legal services just six months ago. It addressed legal services in the broadest sense and from a 'whole system' point of view. The main themes included problems of access to justice, the limitations of the 2007 Legal Services Act and the case for radical reform.

Six months on, many things remain unchanged. I am still surprised by the extremes which exist within the legal sector. For example, the sector continues to grow and our legal system is admired around the world, but I know that many of you share my worry that there is significant unmet legal need in society. There are many people and small businesses with legal problems who decide, usually for reasons of cost, to attempt to solve them alone. This is a lost opportunity for consumers and providers.

Today, however, I want to concentrate on progress made since September last year. More has happened than I expected! I am able to report on encouraging developments over the last six months and to speculate, once again, about the future. If there is a common theme to my presentation today it is that we can expect further turbulence in the legal services sector over the next few years and we have a collective responsibility to navigate our way through this in the best interests of consumers and practitioners.

A LOOK AHEAD TO 2020

As a starting point, I would urge everyone to read the report published last November by the LSB's Consumer Panel called '2020 Legal Services'. The LSB set the Panel a challenge of identifying the future developments which are most likely to have an impact on the consumers of legal services. The Panel's carefully prepared report gives us the best possible idea of what both regulators and the providers of legal services can expect over the next five years.

Many of you will recognise the four major themes identified by the Panel:

- First, the concept of **Self-lawyering**. The Panel predicts that the cost of legal services, legal aid reductions and the availability of other sources of advice will all combine to reduce the involvement of lawyers. Consumers will seek alternatives to lawyers or use them in different ways. The panel uses the term self-lawyering to reflect citizens' greater use of lower cost online services, the services offered by unregulated businesses and by other professions diversifying into law. They suggest that demand will grow for more radical solutions which cut lawyers out, such as an inquisitorial style of justice, mediation and online dispute resolution.

- Second, the impact of **technology**. We can readily agree with the Panel when it says that technology will change how disagreements are resolved, the way consumers choose providers and how legal services are delivered. It is claimed that an artificial intelligence system can now pass the 'Turing Test' of being indistinguishable from a human being in a two-way conversation. Whilst IT has the potential to greatly enhance access to justice, it cannot substitute for the human touch and brings with it the risk of 'digital detriment' – which has arisen in other sectors.

Other influential voices are also calling for greater use of technology. The Civil Justice Council's recent call for Online Dispute Resolution for low value civil claims is just one such example. Professor Richard Susskind, the principal author of the CJC report, has recommended that people with problems should be able to access resources for dispute avoidance, before getting as far as dispute resolution. Susskind has long advocated the greater use of technology and believes that Online Dispute Resolution could be used in many thousands of civil claims, family disputes and tribunal cases.

- The Consumer Panel's third theme relates to changes in **Consumer behaviour**. The Panel's annual tracker survey suggests consumers shop around more and are becoming more empowered. They are increasingly likely to negotiate fixed fees, compare lawyers and change their lawyer. These trends are expected to be reinforced by a growth in comparison websites and an emergence of 'intermediaries' that can help consumers make choices. The consumer champion 'Which?' has recently ventured into this arena.
- **Market changes** are referred to by the Panel as the fourth key development. The blurring of the differences between branches of the legal profession is expected to continue and unregulated businesses will increase their market share. Alternative Business Structure (ABS) development will lead to more consolidation, specialisation, brands and investment in profitable markets.

Some in the profession are already responding to these trends; innovating and adapting their business models. Others will find these trends challenging. Despite the sector as a whole continuing to grow, some lawyers and barristers are facing a tough economic outlook.

A CLEAR STRATEGY FOR THE LSB

The Consumer Panel's work has provided an essential backdrop to the preparation of the LSB's own Strategic and Business Plans. Also, we have welcomed the views of many of you who took the time to respond to our consultation exercise. Thank you.

I'm keen that as the oversight regulator, the LSB does its bit to navigate the sector successfully through a period of further change. We expect to publish our detailed plans in a couple of weeks. But let me give you some of the headlines now. Having reflected on the consultation feedback we have received, you can expect our strategy to be based on three clear and inter-related programmes.

- First, **overseeing the performance of the eleven legal services regulators**,
- Second, **meeting the need for legal services**, and
- Third, **breaking down regulatory barriers**.

These three programmes are all critical to successfully meeting the Regulatory Objectives in the Legal Services Act, including encouraging an independent and effective legal profession.

Moreover, it is in both consumers' and the public interest for there to be a vibrant pool of legal services providers. We will not meet peoples' needs unless and until the legal services market is truly open.

New entrants to the market, new business models and new products all help to hold prices down and improve access for those on limited budgets. It is vital that regulation encourages enterprise and does not stand in the way of change, and it is the job of the LSB and the regulators to balance freedom of the market against the need to protect consumers. We intend to work across the regulated and unregulated landscape and to continue to make the case for change, backed up by a targeted programme of research.

THOUGHT PROVOKING RESEARCH

In this respect, two significant LSB research projects are coming to fruition and I would like to thank those practitioners who provided us with first hand evidence and gave willingly of their time. Reports will be published shortly and today I can share with you some of the preliminary findings.

The first is a study into attitudes towards the cost of legal services regulation based on a survey of nearly one thousand legal service providers. This survey will be followed up by around 50 in depth interviews and financial analysis. The study as a whole will be the first of its type undertaken across the whole of the legal sector – something the LSB is uniquely well placed to do.

When I talk to members of the profession, they support the case for regulation and value being part of a regulated sector. However, our research shows that:

- attitudes towards value for money vary. Single practitioners and entities with less than 50 employees tend to regard Practising Certificate Fees as poor value for money, compared with larger employers who are less concerned.
- secondly, when asked to consider what counts as regulation, respondents list both the mandatory cost of legal services regulation and the cost of the wider statutory requirements that apply to any business in the UK. There is an understandable tendency to conflate under the general heading of regulation the costs of the Practising Certificate Fee (PCF); Professional Indemnity Insurance (PII); Compliance Officers (COLP and COFA); other forms of compliance such as money laundering; and even some discretionary costs.

The study is of considerable importance. Once it is complete, it will help all practitioners to better understand how the costs of regulation arise and help all of us ask questions about where the priorities for further analysis and changes might lie.

The second research project reaching its conclusions examines the experiences of just over 180 couples petitioning for divorce; comparing an online product with a traditional face-to-face service. Even after adjustments have been made to take account of the varying complexity of individual divorces, the results are very interesting! For example:

- Online divorces were significantly more likely to be amicable (86%) compared to those using a traditional lawyer (56%).
- There are good levels of satisfaction across all providers (79% for traditional providers and 83% for online providers).
- Online applicants go through the process faster than those seeking face-to-face advice – on average 83% of online petitioners received their decree nisi within eight weeks compared to 65% of face-to-face divorces and these users reported that things progressed more quickly than they had initially expected.
- Users felt that the online process was easier than they anticipated and involved less effort than those using a traditional provider. And over 50% of online users would recommend the process to a friend or family member compared with 38% using traditional services.

I will leave you to ponder the significance of these results! But let me be clear that I'm not advocating that all divorcing couples should seek an on-line solution. Far from it, the point I want to make is that consumers' needs are diverse even within a standard legal process, and by allowing for a range of services to meet those diverse needs the market works better for the public as a whole. Online services are a growing feature of a modern society. Legal service providers can choose whether to embrace them, but they cannot afford to ignore them!

MAKING THE MOST OF THE LEGAL SERVICES ACT

I want to return to the eight Regulatory Objectives that are on the face of the Legal Services Act and that the LSB and all legal services regulators have a duty to promote. Although my talk today focusses largely on the future, the LSB has an important on-going day job of overseeing the legal services regulators.

Broadly speaking, good progress has been made by the regulators since 2007. They have maintained a steady flow of applications to the LSB designed to improve their regulatory arrangements and, whenever possible, the LSB has given its support and approval. The legal services landscape now is a marked improvement over what it was.

COLLABORATIVE WORKING

We have come a long way since the Legal Services Act received Royal Assent and the world is now a different place. In 2007, the Consumer Panel's 2020 report, which I referred to earlier, might have seemed like a work of fiction – now it's 'when' not 'if' these changes will happen. But the demands that citizens legitimately make of the legal sector also need action. Regulators, representative bodies and service providers alike have to be willing to adapt, lead and help shape the future of the sector.

I believe the will is there. Recent concrete examples of joint working give confidence that the difficulties with the current framework for legal services regulation can be addressed. There has to be a willingness to stand back and consider the bigger picture; placing public interests ahead of self-interest.

Many of you will remember the June 2013 'Call for Evidence' from the Lord Chancellor on the future of legal services regulation. And you will also remember its conclusion - that new legislation was unlikely to be a priority owing to a lack of consensus. Instead, Ministers pressed for greater deregulation and called a Regulators Summit in July 2014 to see what scope existed for greater collaborative working on reducing the regulatory burden.

Perhaps the most surprising aspect of the Summit was the strength of feelings expressed by the LSB and regulators about the Legal Services Act itself. Delegates made clear to Ministers the need for reform, and their concerns about the limitations and bureaucratic nature of the Act.

Since the Ministerial Summit, the LSB and the legal services regulators have been working closely together on lightening the regulatory burden, sharing knowledge and, in particular, discussing possibilities for legislative reform. The work has been a real test of whether the regulators could reach agreement whilst addressing fundamental and seriously challenging questions.

I am delighted to be able to say that good progress has been made... so far! Acting in our favour has been the arrival of many new people holding influential positions in the legal sector. At the end of a period of just 12 months there are nine new Chairs and Presidents, creating an opportunity for fresh thinking and building positive relationships, unencumbered by history.

As of today, we are collaborating in four main areas:

1. Regulatory reform since the Legal Services Act 2007

First, Ministers and other audiences may not be fully aware of just how much the regulators have already delivered. A report will summarise changes driven through by each of the legal services regulators including the deletion of unnecessary rules, the move towards outcome-focused regulation, revisions to codes of conduct, new routes to qualification and the introduction of alternative business structures.

2. Assembling ideas around alternatives to handling client money

Secondly, misuse of client money is one of the biggest regulatory risks. It is a risk to clients and to the public's confidence in the legal profession. To use solicitors as an example, in 2013 – the last year for which complete data has been published:

- There were over 140 reports of misuse of client money or assets each month, and
- 1,233 claims were made against the compensation fund, to a total value of over £29m, with a majority of claims relating to misappropriation of client funds.

The legal services regulators are working together with the aim of identifying arrangements to avoid the handling of client money. We are particularly interested in the French experience (where lawyers are prevented from holding client money) and BARCO, organised by the Bar Council to offer escrow-type services in this country. The outcome of our joint working will be a document that can be used as a resource by regulators and providers seeking to understand the advantages and promote change.

3. Amendments to the current legislative framework.

Thirdly, the Legal Services Act successfully shook up the legal sector and there is more that can be done within existing legislation. However, the Act is exceptionally complex and there are aspects of the Act which defy logic. To replace the Act would require a major investment on the part of politicians and government. In the absence of an appetite for change, the legal services regulators have been considering a handful of relatively minor amendments to the Act to resolve some of its shortcomings which might be piggybacked on other government legislation.

So far, six firm proposals have been identified, discussed and provisionally agreed by the legal services regulators for submission to Ministers. They include proposals to:

- bring the regulation of ABS more closely into line with the regulation of other providers; and

- simplify and reduce the time taken to make orders under the Act.

4. Options beyond the current legislative framework.

Finally, the most challenging topic is to rethink the Legal Services Act itself!

It is not a task for a single organisation to undertake. Our aim is to channel the energy of all of the regulators who, day in – day out, deal with the consequences of the Legal Services Act and other related legislation. We are working constructively with partners by drawing on the best available evidence from the legal services sector in the UK and abroad.

Is there a single unifying solution that will be embraced by all? I doubt it!

Rather, this work is about identifying a range of realistic possibilities so that incoming Ministers can make an informed choice and more fully understand the options open to them.

We are returning to first principles and asking fundamental questions about:

- the case for sector-specific regulation of legal services
- the definition of ‘legal services’ and consideration of the role and nature of the regulatory objectives
- when a customer confronts a legal problem, what needs to be regulated in the public interest before, during and after the event
- the extent to which future regulation should be built around reserved activities, individuals, titles or entities, and
- regulator independence and funding.

What matters less is the precise organisation design of the regulator or how many regulators there should be. In my view, form must follow function.

AND FINALLY

I’m conscious that in setting out our future plans we shall need to retain some flexibility because in just a few weeks’ time we will have a new government and the possibility of new Ministers. I dare say that legal services regulation will not occupy much space in the various party manifestos, but we can expect to see a continued period of limited funding.

In this economic climate, it is more important than ever that the LSB and the regulators ask ourselves what we can do to make the legal services sector work better. Although some of

the consumer, technology, and economic changes I mentioned are beyond the remit of the regulators, we all have a collective responsibility to navigate the legal services sector through a period of uncertainty and turbulence.

In such times it is tempting to seek protection and comfort. But I hope I have convinced you that the changes we can expect will require responsiveness and innovation from practitioners and leadership from regulators. It pays us all to remember the famous misquote attributed Charles Darwin: *it is not the strongest of the species that survive, nor the most intelligent, but rather the one most adaptable to change.*

And on this subject of adapting to a new environment, I suspect that sooner or later, Ministers will turn their attention towards the weaknesses within the legal services sector and the limitations of the Legal Services Act. It's vital, when that time comes, government has available to it evidence and balanced argument to help inform decisions. It is for this reason the LSB, in addition to ensuring we continue to get the best out of the Legal Services Act, is also committed to making the case for reform. We may not always be able to agree on the answers, but I hope we can all agree that something must be done.