



Key developments in legal services regulation

Notary Training conference

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Many thanks to Sanjay and the team at Notary Training for inviting me along to speak today.

Regulation is a vital part of legal services. But you might not have much day-to-day contact with regulators. I think I might be concerned if you did! And the LSB doesn't have a great deal of day-to-day contact with practitioners – and that very much includes notaries. So I am very grateful for this opportunity to meet you all today.

I'd like to talk today about the Legal Services Board – what it is and what it does, what the latest developments are and how these are relevant to notaries in particular. But before I do that, I thought it might be interesting to set out a few key facts about notaries from a recent LSB research report.

As part of its research work, the LSB aims to evaluate how the legal services market is changing. In particular, we look every three years at outcomes in the market, to see what progress is being made towards the regulatory objectives in the 2007 Legal Services Act. In July this year, we published our latest market evaluation report. The full report and summary are on the LSB's website.

First, some key headlines about the sector as a whole:

[First slide: growth of the legal services sector]

LSB's market evaluation report

I. The sector has GROWN

£32bn
UK wide turnover
(2015, ONS)



- Substantial growth since 2007.
- Recovered from the effects of recession in 2008; turnover of £32bn in 2015 – an all-time high.
- No. of authorised persons has grown – from 143k in 2009/10 to 162k in 2015/16 (↑13%).

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- The legal services market has grown, as you can see on this chart. It is now has a turnover of £32bn, an all-time high.
- The number of authorised persons has grown, up 13% since 2009/10 to 162k in 2015/16.
- New business models have gained significant market shares: LDPs and ABS account for 33% of the total turnover of SRA regulated entities. There are now around 700 ABS, and our research has found that they are more innovative than traditional law firms.
- Legal services remain costly. One hour of litigation costs 47% of an individual's average weekly earnings. Fixed fee deals and firms who advertise their prices are associated with lower prices. But only 17% of firms advertise their prices.
- Some good news about complaints: there has been a 12% increase in the proportion of first tier complaints being resolved by SRA regulated entities (from 13/14 to 14/15). I know this is something that the Legal Ombudsman, who is due to talk to you later on today, will be pleased to hear!

But what did our report reveal about notaries in particular?

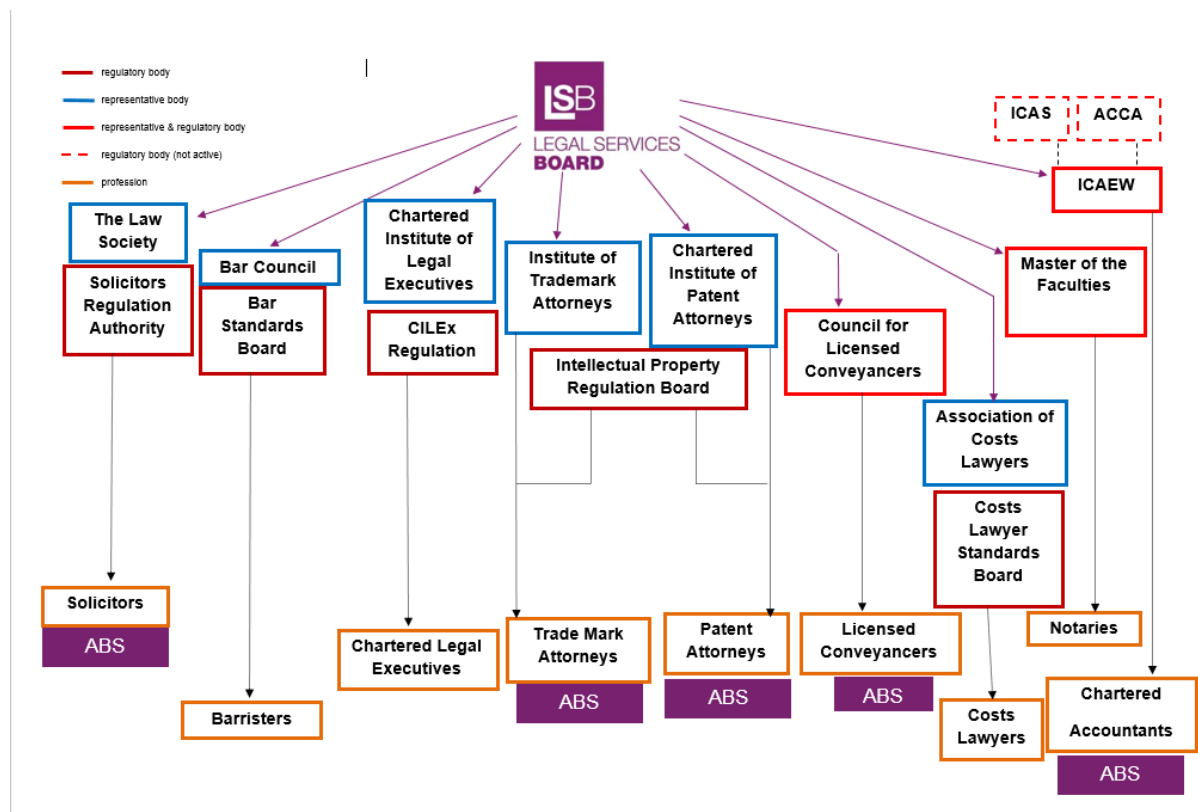
- The total number of notaries and scrivener notaries is down: from a high of 870 in 2010/11 it was down to 794 in 2015/16.
- Most notaries will also be qualified as a solicitor (and therefore regulated by the SRA), but the majority of notaries only undertake notarial activities.
- Some more good news about complaints, specifically in relation to notaries this time:
 - o there were 19 first tier complaints about notaries in 2011, compared to just 8 in 2015, suggesting improvement over time
 - o notaries are under-represented in complaints accepted by the Legal Ombudsman – reflecting the type of work undertaken and the type of consumers to whom services are provided.

I hope that gives you a feeling for what is happening out there in the market – both for legal services as a whole, and for notaries in particular. I'd like to talk now about the Legal Services Board, who we are and what we do.

As I said earlier, you may not have come across us very often, if at all. So I will start from the beginning, but aim to go through the key points reasonably swiftly, for those of you for whom this is old hat! The LSB is the independent body that oversees the regulation of legal services in England and Wales. We were set up by the 2007 Legal Services Act. We hold the frontline regulators – like the Solicitors Regulation Authority and the Master of the Faculties (your regulator) - to account. There are eight frontline regulators, and it is our responsibility to make sure they are up to the job and that they are independent of their professional bodies (where applicable – I'll come back to this). We also seek to drive change in the legal services sector, so that sector functions in the interests of consumers and the public more generally.

The LSB is small: I have around 30 colleagues and our budget for the 2016-17 financial year is £3.84 million. We are funded through a levy on authorised practitioners. The levy forms a component of the practising certificate fee that you pay to the Faculty Office each year. In 2015-16, the cost of the LSB amounted to less than £22 per authorised person.

[Second slide: the regulatory architecture]



And here is a slide that shows how all of this works in practice. Our Chairman, Sir Mike Pitt, likes to call this ‘the spider diagram’ and you can see why! The diagram shows that the ‘approved regulator’ named in the Legal Services Act is in many cases actually the professional representative body itself, like the Law Society and the Bar Council. They were required by the Act to set up independent regulatory arms, such as the Solicitors Regulation Authority and the Bar Standards Board. And each regulator has typically regulated one of the traditional legal professional groups – solicitors, barristers, legal executives etc.

As you can see, there are several approved regulators that do not combine representative and regulatory functions, including the Master of the Faculties and the Council for Licensed Conveyancers. For such bodies, the issue of independence of regulation from representative functions does not arise – as I mentioned earlier.

The purple boxes on the diagram show that some of the frontline regulators are also able to license alternative business structures – ABS. Non-lawyers can own, invest in and manage these firms which are authorised under the Legal Services Act. You may be aware that the Bar Standards Board is in the process of becoming a licensing authority.

So as well as overseeing regulatory standards and independence and seeking to drive change in the sector, what else does the LSB do? Well, our statutory duties include:

- Approving requests for changes to regulatory arrangements. For example, when the Master of the Faculties wanted to amend his Conduct and Discipline rules last year (which amongst other things introduced a single disciplinary regime for both scrivener and non-scrivener notaries), the LSB had to approve those changes.
- Approving practising certificate fees, including the one that you pay each year to the Master of the Faculties.
- We also have responsibilities in relation to the Office for Legal Complaints. In particular, we must be assured that the OLC administers the Legal Ombudsman scheme appropriately.
- Designating new regulators and licensing authorities for ABS. For example, from 2014, and as you can see on this slide, the Institute of Chartered Accountants in England and Wales has been a legal services regulator in respect of probate activities.

Which brings me on to the discussion of the different legal services regulators and which reserved activities they regulate.

[Third slide – regulators and the reserved activities]

Market segments	All	All	All	Conveyancing, Probate	Intellectual Property	Other (Costs litigation)	Conveyancing, Other (Notarial), Probate	Probate	
Reserved Activities by Profession	Solicitors	Barristers	Legal Executives	Licensed Conveyancers	Patent Attorneys	Trademark Attorneys	Cost Lawyers	Notaries and scriveners	Accountants
1. Right to conduct litigation	X	X	X		X	X	X		
2. Right of audience in the courts	X	X	X		X	X	X		
3. Probate services	X	X	X	X				X	X
4. Reserved Instrument Activities	X	X	X	X	X	X		X	
5. Notarial services							X		
6. Acting as a commissioner for oaths	X	X	X	X	X	X	X	X	
Nature of regulation									
Individual regulation	✓	✓	✓	✓	✓	✓	✓	✓	✓
Entity regulation	✓	✓	✓	✓	✓	✓			✓
ABS licensing	✓	✓		✓	✓	✓			✓

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On this table, we have the different regulators along the top, and the reserved activities down the side. So we can see for example that the Solicitors Regulation Authority regulates individuals and entities for all of the reserved activities except notarial services. The boxes in grey on this slide indicate changes to the scope of regulation since the 2007 Act. In general, I think we can say that the individual regulators are expanding their scope of regulation, and that there are increasing overlaps between the different regulators.

One thing I am sure you will all have noticed on this slide is that there is currently only one regulator for notarial services. But, as many of you will know, in July this year, the ICAEW applied to the LSB to become an approved regulator and licensing authority for all the other reserved activities over and above probate.

Now there is a limit to what I can say about this application, as it is under active consideration by the LSB. But I know it is something many of you are interested in so I thought I would mention it. The ICAEW's application is a matter of public record and has been published on the LSB's website, so that anyone with an interest can view it.

The ICAEW is seeking to be able to accredit both firms and individuals to carry out notarial activities. However, although it intends to authorise individuals to carry out notarial services in an ICAEW accredited firm, the ICAEW also intends that such an individual would need to be a qualified notary i.e. a duly certified notary within the meaning of the Act. In other words, as is the case with, for example, solicitors working in ICAEW regulated firms, the ICAEW application envisages that notaries would be individually regulated by their own profession's regulator, the Master of the Faculties, in relation to their conduct. The ICAEW notes in its application that it has surveyed its member firms and found that there is considerable interest from firms in applying for accreditation to provide notarial services.

The LSB must (under the Act) make a decision on the ICAEW's application by 19 July 2017 (which can be extended by four months if necessary).

What else has the LSB been doing recently?

Well, as I mentioned earlier, one of the LSB's core responsibilities is to make sure the frontline regulators are up to the job. We do this through our regulatory performance work. As some of you may know, in May this year, we published our overall regulatory standards report alongside individual performance reports for each of the regulators. In this report, we consider the regulator's performance against a set of key regulatory standards agreed in 2011. We also ask each regulator to grade its own performance against these standards. Our key findings were that:

- there has been substantive progress by the regulators since our initial reports in 2012/13;
- the regulators are using a more outcomes-focussed approach, they have risk-based approaches to supervision in place and they have maintained, and in some cases improved, their enforcement performance;
- they are better able to judge how they are performing against the standards.

Now I am sure you will be wondering how the Master of the Faculties got on. I am very conscious that Stephen Borton from the Faculty Office will be speaking immediately after me, and I really don't want to steal his thunder. But I am very pleased to be able to say that the LSB found that the Faculty Office has improved across all the regulatory standards since 2012/13 and work is at least 'well underway' (to use the language of our grading system) or better against all the standards.

[Fourth slide – web links]

Regulatory performance and cost

- Master of the Faculties' regulatory performance report
http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/1605_MOF_PERFORMANCE_REPORT.pdf
- Master of the Faculties action plan
http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/20160725_Action_Plan_FO_For_Publication.pdf
- Master of the Faculties cost transparency report
http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/PDF/20160523_Cost_Of_Regulation_Transparency_Of_Reporting_TFO.pdf

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You can find our report on the Master of the Faculty's regulatory standards on the LSB's website. Each regulator submitted an action plan in responses to the LSB's reports, and these are also published on the LSB's website.

Now, a good question to ask is how much all this regulation costs you. As it happens, the LSB has undertaken a review of the cost of regulation. We surveyed nearly 1000 practitioners about their perceptions of the cost of regulation and we also undertook some in depth research work with 64 practitioners to try to quantify the costs more precisely. In May, we published the results of our research work alongside a report for each regulator (including the LSB) analysing its costs and how these have changed over time. We looked at the PCF and contingency fund contributions, the regulator's expenditure and finally we calculated the unit cost of the regulator by dividing the total expenditure by the number of authorised individuals regulated. The Master of the Faculties' cost report is on the LSB's website and I'd encourage you to take a look at it.

Our work on the cost of regulation is not finished. We think the regulated community and the public more broadly need greater clarity about the costs of legal services regulation – otherwise it is hard to assess whether value for money is being delivered. We are working with all the regulators to improve the transparency of their costs.

To finish off today, I'd just like to take a step back and look at the bigger picture.

Many of you will know that in January this year, the CMA launched a market study into the supply of legal services in England and Wales. The focus of the study is individual and small business consumers. According to the CMA's Interim Report in July this year, legal services markets are not functioning as well as they might. The CMA believes that lack of transparency of price and quality is stopping consumers driving more competition in the market. But another core theme of the CMA's study is the impact of regulations and the regulatory framework on competition. In the report, the CMA states that (i) the CMA is open to the possibility that moving to an alternative regulatory model may generate longer term benefits to competition; (ii) there may be merit in a systematic review of which legal services or activities should be regulated and how; (iii) a key principle should be to ensure full independence of the regulator from the providers it regulates; and (iv) reducing the number of regulators may be beneficial.

You may also know that just a few weeks ago, the LSB published a paper setting out its vision for legislative reform of legal services regulation. Our paper picked up a number of points made in the CMA's interim findings. Our paper describes the problems with the current legislation in terms of competition, consumer protection and the wider public interest. It proposes a single overarching regulatory objective, namely safeguarding the public interest by protecting consumers and ensuring the delivery of outcomes in the interests of society as a whole. Our paper calls for an independent review of what activities should be regulated, followed by new primary legislation to focus regulation on activities rather than

titles, to ensure full independence of regulation from both government and the professions, to maintain an independent voice for consumers of legal services and to create a single regulator for all legal services.

I don't want to dwell too much on this today - not least because time is limited - but also because I know that, while regulation is obviously a fascinating subject, it may not be something you analyse in great detail on a daily basis! But I hope I have given you a flavour of the LSB's efforts to drive change to improve the market for consumers and the public more generally.

On that note, I'd like to bring my comments to a close and repeat my thanks to the team at Notary Training for the opportunity to talk to you all today. I believe there may be some time now for questions, and of course you can catch me in the margins of the event today if you'd like to continue the discussion over coffee.