



## The latest developments from the Legal Services Board

### Ark Group risk and compliance event

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### Introduction

I am extremely pleased to be with you here today and to have an opportunity to speak directly to practitioners on behalf of the Legal Services Board. My thanks also to Ark Group for inviting me along to speak.

They say that no news is good news. I'd disagree with that, when it comes to hearing from your oversight regulator. You are paying for the Legal Services Board through your practising certificate fee – the PCF. It is fair and reasonable to ask why the LSB is needed, what it does and how much it costs. What are you getting for your money? What are the next big developments on the horizon?

That's why I am particularly grateful to be here today to have an opportunity to talk to you about the Legal Services Board and what's coming up from our point of view.

I appreciate that many of you – and indeed, I hope, most of you - do not have day-to-day interactions with your regulator, let alone your oversight regulator. That's why, before getting on to the future, it may be helpful to talk about where we are now, and why.

### Where we are now

The Legal Services Act 2007 (the Act) was introduced in response to Sir David Clementi's 2004 legal services report. Amongst other things, the Act set up:

- The Legal Ombudsman Service, which currently resolves about 7.5 thousand consumer complaints each year
- The influential Legal Services Consumer Panel, representing the interests of users.
- And last but not least, the Legal Services Board, the independent body that oversees the regulation of legal services in England and Wales. We hold to account regulators for the different branches of the legal profession (for example, the Solicitors Regulation Authority) and the Office for Legal Complaints, which administers the Legal Ombudsman scheme. The LSB also approves any changes to the regulatory rules that the various regulators want to make and the level of practising certificate fees, including the one that you pay each year.

The Act has had a significant, and we believe positive, impact on the way legal services are provided in England and Wales. Our research shows the quality of legal services has improved in most areas since the Act was passed, with more complaints being resolved by the provider and a smaller number of misconduct cases. We have also undertaken an analysis which shows that changes to regulation over the past five years have been largely pro-competition – and permit a greater variety of business models and services than ever before. For example, there are now over one thousand alternative business structures (ABSs) and a growing number of direct access barristers are giving consumers more choice.

This has all been achieved without a negative impact on quality and standards, as some originally feared. In fact, on the contrary, our surveys show that alternative business structures are more innovative and better at handling complaints than traditional firms. Providers are offering unbundled services and working jointly with other professions, and there has been an increase in the use of fixed fees – up from 38 percent to 46 percent.

On the other hand, there is no doubt that more needs to be done.

Research undertaken each year over a number of years by the Legal Services Consumer Panel shows that less than half the public has said that they trust lawyers to tell the truth. In 2017, the figure was 45%. Our research shows that only 13% of small businesses regarded lawyers as cost effective. Our research also shows that the benefits from innovation have mainly come in the form of tailoring services rather than reducing cost and charges to customers. Prices have risen in real terms with one hour of litigation now being charged at almost half the average weekly wage.

Stepping back from the details, the Act itself is not without its problems. It is some 400 pages long and it is exceptionally complex. It is additional to and overlaps with other related legislation going back to the Ecclesiastical Licences Act of 1553. The split between reserved

and unreserved legal activity in the Act is not risk-based. This may result in too much regulation where it's not needed and some high-risk activities falling beyond the reach of regulation – for example, will-writing. A further problem is the complexity of the regulatory landscape with nine legal regulators – this is cumbersome and expensive.

Against this background, what has the LSB been doing?

### Six key developments

There are six recent developments that I'd like to talk about today.

These developments are:

1. In June, we consulted on improvements to our framework for holding the frontline regulators to account for their performance.
2. In July, we published our costs statement for 2016/17, setting out in a readily accessible format our key financial information. This is part of our work reviewing the cost of regulation. We are working with the frontline regulators to make sure that they also publish accessible costs statements. We think this can help provide some assurance around whether the regulators are providing value for money.
3. In November, we launched a consultation on our internal governance rules – the IGR. These vital rules help secure regulatory independence, in a world where bodies with representative functions like The Law Society are named as approved regulators under the Legal Services Act.
4. Also in November, we published the findings of our latest research into the prices of commonly used legal services. Findings from an earlier wave of this research were a key source of evidence for the Competition and Markets Authority (CMA), in its legal services market study. We are working with the frontline regulators to implement the CMA's recommendations on improving transparency of information for consumers, to make the sector work better for individual consumers and small businesses.
5. The LSB – like nearly every other organisation in the country - has been considering the impact of Brexit and the role for the LSB as the UK leaves the European Union.
6. Earlier this week, the LSB published its draft 2018-2021 strategy alongside its draft 2018-19 business plan for consultation. In these documents, we set out our proposals for what we will prioritise over the coming years. We are very keen to hear the views of as many stakeholders as possible on these proposals.

Let me now turn to each of these developments in more detail.

#### 1. Regulatory performance

Overseeing the performance of the legal services regulators is a central part of what the LSB does. We think this is an important issue not just for us, but for practitioners such as yourselves as well. You fund the regulators through your practising certificates fees and you rely on proportionate, fair, transparent and efficient regulation to enable you to practise.

We are in the process of reviewing our framework for regulatory performance. We have, for example, found that we could be more systematic about gathering information and evidence about the regulators' performance on an ongoing basis. We will implement the revised framework in the new financial year.

But we haven't forgotten about holding the regulators to account in the meantime. In July we reviewed and reported on the progress made by each regulator against their action plans under our existing regulatory standards process. Overall, we found that significant progress had been made by the regulators in implementing the improvements promised in their action plans, but they all also had a number of ongoing actions on which we will continue to keep an eye.

## **2. The cost of regulation**

The LSB has previously conducted two pieces of primary research into the cost of regulation: an attitudinal survey of nearly 1000 providers exploring perceptions of value for money and areas where regulation could potentially be scaled back; and qualitative in-depth research with 64 providers.

We found that there was a lack of awareness amongst practitioners about what is paid for by the practising certificate fee and that there was dissatisfaction with the cost of regulation. We believe that increased transparency by regulators about their costs could help to address low awareness among providers about how the PCF is spent and offer some assurance around value for money.

In May 2016, we published reports which analysed not only the costs of the each of the legal services regulators, but our own costs as well. We found that levels of financial transparency amongst the regulators were mixed. At that time, some regulators published comprehensive and clear financial data, others did not. However, I am pleased to say that all the regulators have, since then, given commitments to publish financial information annually which includes a common set of core metrics. We're continuing to monitor their progress to make sure they 'make good' on their commitments.

We recognise that we have a leadership role in this area, as we do in many other areas. As part of our drive for greater transparency around regulators' costs, in July this year we

published our own statement of costs for 2016/17 which sets out key financial figures and compares them with previous years. One figure I'd particularly like to highlight from this costs statement is that, in 2016/17, the LSB cost £18.83 per authorised person. This is nearly 13% lower than in 2015/16.

### **3. Regulatory independence**

Regulatory independence is a cornerstone of public confidence in the legal profession. It is our firm belief that regulation should be structurally, legally and culturally independent of both the professions and government. This would ensure consumers have the confidence to use legal services, safe in the knowledge that their interests will not be overridden by professional or commercial interests, in an environment in which most consumers are unable to judge for themselves the value or quality of what is being provided. We think it would also allow representative bodies to represent the profession more effectively, as they would not have to worry about whether they might be unduly influencing or prejudicing their regulatory functions. Regulatory independence would provide confidence to providers and investors to grow their businesses and innovate without fear that politically-motivated interventions or the interests of incumbent providers will undermine their investments. And regulatory independence would also give confidence to society more broadly, that regulation affecting vital public interest outcomes such as the rule of law is transparent, accountable, proportionate and consistent, and is targeted only at cases in which action is needed.

However, the Act does not create a framework in which all approved regulators (AR) are structurally separate from representative bodies, and does not permit the LSB to require this. Rather, the Act requires the LSB to make rules – the internal governance rules (IGR) - which set out requirements that ARs must meet to ensure the independent exercise of regulatory functions. The IGR first came into force in 2010 and were subsequently amended in part in 2014.

The IGR have not been reviewed in their entirety since they were first introduced. There is evidence to suggest that there are issues with the IGR, including the steady stream of disagreements between ARs and their regulatory bodies that are raised with the LSB. Many of these issues appear to stem from a lack of shared understanding about what residual functions remain with an AR when it has delegated the discharge of its regulatory functions to another body. And every one of these issues takes management time at the AR and the regulatory body, the cost of which is ultimately passed through to practitioners.

For these reasons, the LSB launched a consultation on the future of the IGR in November.

While we are consulting on whether the IGR remain fit for purpose, we remain committed to ensuring that there is compliance with the IGR as they currently stand. In February this year, we opened a formal investigation into the governance arrangements between The Law Society and the SRA. Our investigation is looking at whether aspects of those arrangements impaired the independence or effectiveness of the performance of the SRA's regulatory functions, in breach of the LSB's internal governance rules. The investigation is ongoing and for very obvious reasons you will understand if I don't go into it in any more detail.

#### **4. Research into the price of legal services**

Research is essential to the work we do because we are committed to being an evidence based regulator. We regularly undertake surveys on the legal needs of individuals and small businesses, as well as on innovation, the prices of legal services and other issues.

In November, we published our second survey of the prices of some commonly used legal services in the areas of conveyancing, family law and wills, trusts and probate. This research highlights an ongoing lack of transparency in pricing for these legal services - only 18% of firms display prices on their website. There also continues to be substantial variation in the prices charged for the same service, showing that shopping around really pays – savings to consumers range from £80 to over £2,000 comparing the lower and upper quartile quoted prices. For example, for a freehold sale and purchase, a consumer could save £500 by using a conveyancer on the lower quartile rather than on the upper quartile of the price distribution.

This evidence continues to point to a market with lower levels of competition than might be in the public interest. This conclusion formed a substantial element of the analysis by the CMA in its market study report, which contained significant recommendations for increased price transparency - something for which the LSB has been arguing for a number of years.

The CMA found that competition in the legal services sector is not working well for individual consumers and small businesses. The CMA made recommendations to remedy the failures it identified. These included:

- **recommendations to legal services regulators** to increase provider transparency of price and quality information, to facilitate the development of comparison websites and to develop a consumer information hub based on the existing Legal Choices website;
- **recommendations to the Ministry of Justice**, including:
  - to review the case for extending redress to consumers using unregulated providers

- to undertake a review of the independence of the legal services regulators
- in the longer term, to undertake a review of the regulatory framework, and
- **recommendations to the LSB** relating to monitoring and reporting on the progress of the legal services regulators in implementing the recommendations directed to them, and taking appropriate action where regulators fail to address information gaps.

We have accepted the recommendations directed to the LSB and are moving forward with them. In October, we published our assessments of the sufficiency of regulators' action plans to increase the transparency of price and quality information for consumers. I am pleased to say that we found that all the action plans provided a sufficient starting point from which transparency reforms can be delivered. We think that the regulators are collaborating well to make progress, and to deliver a coherent approach in parts of the market where multiple regulators operate.

The key now is for the regulators to follow through on these action plans so that there can be real change in the sector, with much greater levels of transparency for consumers to help them choose and use legal services.

The regulators are consulting on proposals to improve transparency at the moment and I'd encourage you to make your views known.

## **5. Brexit and the LSB**

It is impossible to avoid talking about Brexit in a speech about 'latest developments'.

The LSB has been giving considerable thought to the implications of Brexit, from the LSB's perspective as the oversight regulator of legal services. The LSB, as an independent regulator, needs to take its own view on its role in this area.

We recognise that the impact of Brexit on legal services providers who compete in the international market may have implications for others in the sector. This is because the success of different parts of the sector is inter-linked. All parts of the sector rely on the effective application of the rule of law and the high professional standards that make the England and Wales legal jurisdiction attractive to businesses outside those countries. It is more critical than ever that the legal services sector is as productive and competitive as it can be, both domestically and internationally.

Effective regulation plays an important role in ensuring the overall success of the legal services sector, so regulation will need to respond to changes in the sector and the economy more broadly.

For example, it is possible that the LSB may have to deal with a spike in Brexit-related rule change applications from the frontline regulators, and we are considering how we can streamline how we deal with these, in the interests of making best use of our own and the frontline regulators' resources.

We agree with the Justice Select Committee's findings on the implications of Brexit for the legal services sector – there is cause for concern, but not hyperbole. Most of the sector's strengths will remain firmly in place, and sensible discussions between the UK and EU ought to protect many of the advantages of their existing cooperation.

#### **6. The LSB's next three year strategy**

We have just published our draft strategy for the next three years, and the consultation closes on 19 February 2018. Please could I encourage you to take a look at what we are proposing and let us have your views?

In developing our draft strategy, we spoke informally to a large number of stakeholders, including legal regulators, representative bodies, consumer groups, providers, academics and regulators in other sectors. We wanted to understand trends in the sector, progress with our previous strategy and views on where we should focus our attention over the next three years.

We are proposing to focus on three objectives during 2018-21:

1. Promoting the public interest through ensuring independent, effective and proportionate regulation
2. Making it easier for all consumers to access the services they need and get redress
3. Increasing innovation, growth and the diversity of services and providers

The sharp-eyed amongst you will detect significant continuity between these proposed objectives and our existing strategic objectives. This is no coincidence. The progress over the last three years is significant and we believe that it has secured important improvements for consumers, providers and the public more broadly. However, in relation to all three of our strategic objectives, there remains significant scope for outcomes to improve.

It is clear that, in a period of change and uncertainty, we are going to have to be agile, flexible and responsive. Our strategy consultation is an opportunity for you to help shape future developments in regulation.

### Conclusion

In closing, I'd like to note that the LSB continues to believe that significant reform of the legislative framework for legal services regulation is needed. However, this seems unlikely in the near term, however necessary we think that might be. The government has other things on its mind.

All of which means the current regulatory system will continue to apply and we all will continue to be governed by it. So we at the LSB are clear that we must strive to make the most out of what we have. We will continue to undertake our oversight role and discharge our statutory functions as needed. And we will continue to seek to drive improvements in legal services regulation under the current legislative framework. In this context, I hope the six developments that I have discussed today have given you a useful insight into the work we do.

Thank you.

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