LEGAL SERVICES FORUM

KEYNOTE ADDRESS

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WIDENING ACCESS TO THE LEGAL MARKET

“Widening access to the legal market” - what does that mean?

What does it mean for the supplier?

What does it mean for the consumer?

What does it mean for the citizen?

What does it mean for quality?

What does it mean for value for money – yes, and price too?

For me, widening access is a key concept at the heart of the Legal Services Act 2007.

And to my mind the question has a simple answer.

the answer starts with the consumer.

Widening access is about intervention in the market place to encourage suppliers to make available services that people want and need at prices that they can afford.

I would argue that effective access to justice is at the heart of the concept of a society that rests on a commitment to the rule of law. That means access to the courts, access to routine services like conveyancing, access to high quality advice – civil or criminal - when things go wrong and access to quick and effective redress when it's the legal system itself which gets things wrong.

Parliament clearly believed this when it gave the Legal Services Board a range of duties, with a new responsibility to promote new ways of delivering legal services.

The consultation document that is being published today on alternative business structures is the first stage in bringing reality to some of the debates in recent years about what that means.

It is the next decisive stage in a debate about new ideas, innovation, and turning the focus from the provider to the consumer.

If access to justice is so key to the running of our society, why for so many people is it unaffordable?

Why – at times in their lives when there is real stress and pressure – are consumers so often presented with costly solutions by people who often seem to be speaking a different language and steering them through a process that they - the suppliers - have devised and for which they - the suppliers - control the way in which new entrants might compete?

Why is there so much apparent resistance to new ways of providing effective help to people who need it?

Why have the great institutions who represent the suppliers not taken the lead in looking for new ways of providing services that the community of which they are a part can afford and which would

help to secure both the commercial viability of the suppliers and their standing in the community in the long run?

Why is it wrong for new ways of working to be developed by institutions that make their living from giving consumers services that they need at prices that they can afford?

The answer is - it is not wrong: if we are to make access to justice, to legal redress, to give the same opportunity for all in our society to see that the rule of law applies to them too, new and cheaper and simpler ways have to be developed.

Citizens – who are consumers too – need a legal system that is rooted in high quality.

But they need to be able to afford it.

So I would argue that widening access to the legal market means liberalisation of that market.

It means a degree of de-regulation.

It also means consolidation, and commoditisation - and various other opaque words that seem to be 'management speak'.

But those words essentially express the same movement, the same momentum, towards a more efficient, more transparent, legal market.

I'm talking about liberating law firms and the consumer.

What do I mean by that?

I mean liberating law firms from unnecessary, regulatory restrictions.

From outdated rules on how lawyers practise.

From outmoded fetters on the service delivery options and funding available to them.

Regulation is not about a single business model.

It has to be designed around outcomes for consumers.

Legal services still need to be regulated.

I'm not suggesting a free-for-all.

Often consumers need expertise, and quality assurance.

Legal advice has a big impact on lives and people.

And lawyers carry out a "public good".

No one would deny the importance of lawyers' ethics, their duty to the public, and their duty to justice above all.

But changes are happening to make the regulatory landscape more proportionate, more targeted and more investor-friendly.

What else do I mean when I talk about such liberalisation?

I mean liberating consumers from a state of incomprehension about how the law operates.

Clients often form relationships with their lawyer in a state of complete dependence.

There are many times when we, as consumers, are completely blind as to what the law is about and what options we have.

The 2007 Act provides an opportunity.

We can improve our experience of the law, and the legal profession.

But are these changes a revolution?

Well, I hope it's the beginning of a revolution – it certainly seems a revolutionary idea to some lawyers.

So, let me tell you what I, and the Legal Services Board, envisage in the next few years.

Let me tell what we see happening, and why we see it happening. And then let's talk about how it's going to happen.

And what the challenges are.

The Legal Services Board's business plan describes our vision in a very clear way

To highlight some of its key themes:

first, opening the market is a top priority for the LSB.

We need to scale back outdated restrictions on ownership, management and financing.

Second, our business plan makes it clear that we need to include consumers at the forefront of all our thinking.

Consumers are our raison d'être

They're our higher purpose.

If we do that, consumers of all types will benefit – whether they be individuals on low-incomes – or in-house Counsel in large companies.

We are here to make the entire market work better, not just the High Street.

And in this new world of ours, we <u>are</u> talking about "consumers" rather than "clients".

The "commercialisation of law" is changing the lawyer-client relationship and as regulators we seek to make that change a positive one.

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That's what the Legal Services Board is about.

That's not to say it's like every other run-of-the-mill consumer relationship.

I would stress that it is important that lawyers retain their sense of duty to the public, the concept of vocation and the idea of serving justice above all.

But that doesn't make the consumer less important.

We, the members of the civil society, expect an efficient, responsive, consumer service just as we would expect from other professions

As a PLC Chairman, I expect excellent business-to-business services – just as I would from any other supplier.

I expect that the companies that I work for to respond quickly to changes in the marketplace; to search for new funding routes when cash is short; to ask the customer what they want and when and what can they afford to pay for it.

I expect those businesses to produce goods and services in a genuinely competitive environment.

That leads to efficiency in capital allocation and quality at the level that the customer demands – not at a level that the producer thinks is right.

The fact that the law is "more" than most services in many profound ways does not mean that it can be "less" in what it offers as a business.

So I fail to see why this "commercialisation of law" is so feared.

It brings opportunities for law firms too, as well as the lawyers who embrace those changes.

It's potentially a win-win situation.

Consumers benefit and the most entrepreneurial of lawyers – those who address the needs of their consumers - benefit.

Third, our Business Plan recognises that we need to think about not just widening access to the market, but widening access to justice.

That's something which requires a lot of thought and which we will address through consultation with stakeholders.

When will we see the fruits of these changes?

The changes willed by Parliament and enacted in the Legal Services Act 2007 will come fully into force within two years.

The market will be opened in mid-2011.

ABSs – Alternative Business Structures – will be up and running by the second or third quarter of 2011, and we – the LSB as new oversight regulator – will be held to account if it isn't.

Our discussion paper on Alternative Business Structures does not pretend to have every single answer

That paper invites responses from stakeholders.

It's a positive document with a vision.

It's one which moves the debate to the next level, practical implementation not economic theory.

That debate will, in turn, identify the key opportunities and unique risks posed by Alternative Business Structures.

The discussion paper also sets out the timetable in more detail, and I urge you to read it and consider it.

We are co-ordinating our efforts with those of the Ministry of Justice so that all the legislation is switched on, and licensing authorities can receive the first applications from bodies wishing to become ABSs, by mid-2011.

Last week Bridget Prentice, was asked in Parliament, how we were progressing with rolling-out ABSs.

She affirmed her support for this timetable.

Inside the LSB we are now building our own capacity.

We now have a second tier directorate team in place and we appointed a Director of Regulatory Practice Fran Gillon –who will help us realise this project.

Our little team is growing exponentially.

And it's growing, because we need to develop this regulatory framework as quickly as we reasonably can.

A vast amount of work will need to be done by the approved regulators - the SRA and the CLC – to get the licensing framework in place, on time.

I mention those two, because they're among those who've told us they want to become licensing authorities and are furthest advanced in their thinking.

If those approved regulators are, in fact, to become licensing authorities, they need to, quite critically, examine themselves.

They need to examine their practices.

The SRA, in particular, needs to think about how this regulation is different from what it's done in the past.

They need to think about what it means to regulate businesses – corporate entities - as opposed to individual people.

<u>They</u> need new skills, and new structures, to deal with new regulation.

And I'm pleased that they have started this process.

I know that they have their own document due out shortly setting out their own plans.

But what I'm saying isn't new.

And I think those approved regulators recognise the task ahead of them.

They know what needs to be done.

And they know when it needs to be done by.

Our business plan states that by the end of March 2010 we will have established the process for approved regulators to seek designation as Licensing Authorities.

By the end of that period, we will also have assessed the impact on the sector and on consumers of opening the market to Legal Disciplinary Practices.

And on top of that, we will have started to consider the structural and resource implications for the LSB in the event that it has to become a direct licensor of ABS firms.

To be clear: that event would only happen if one of the approved regulators failed to implement the necessary changes to become a licensing authority, or if a body seeking to become an ABS fell through a regulatory gap.

The LSB's objective is about helping the existing approved regulators get where they need to get.

It's not about seeking to become a direct licensor of ABSs.

But the LSB does need to be ready so that new entry is not delayed.

So that's the timeline.

And that's the philosophy.

The mission statement, if you will.

But to cover ground that many of us are familiar with by now: <u>what</u> exactly are Alternative Business Structures – ABSs – and Legal Disciplinary Practices - LDPs?

<u>How</u> do they articulate this philosophy and how do they fit into widening access to legal services?

<u>Why</u> do we need them?

As you know, Alternative Business Structures allow lawyers and non-lawyers to own and manage the same business.

Previously this wasn't allowed.

Now it is, but such ABSs need to be licensed.

Those ABSs will be subject to licensing rules which will be developed by their regulators and approved by the Legal Services Board.

ABSs will also be subject to numerous other restrictions in the Legal Services Act which seek to protect the consumer.

Such restrictions ensure, for example, that criminals don't own law firms and that there are proper systems in place to stop lawyers sacrificing their principles for a quick profit.

There will be different types of ABS – with less burdensome regulation for businesses which we – or the legislation – deem to be less risky.

Legal Disciplinary Practices will also exist but will probably be confined to partnerships of different types of lawyers.

Currently LDPs have some ABS features in that they allow a limited amount of external capital from non-lawyers to finance their

operations, and because they allow different types of lawyer to practise together.

Some may want to keep this model, others may want to go further.

So what immediately becomes obvious is that this new landscape of ABSs and LDPs will be varied and textured.

Let's de-bunk some of increasingly popular myths.

ABSs are not a euphemism for Tesco-law.

Tesco gets a lot of free press with that phrase, so in the interests of fairness to the rest of the consumer-focussed retail world I won't use it again.

It is possible that one of the big brands will pick up on the opportunities offered by liberalisation of the market, but it is nonsensical to suggest that <u>all</u> law advice will be provided by major business enterprises.

We shall <u>not</u> be replacing one anti-competitive market with another anti-competitive market of a different type.

And, in a similar vein, why should ABSs be the end of the independent Bar ?.

Some barristers say these changes are the end of the self-employed referral bar.

Which begs the question: do they really not have confidence in their own ability to attract work, based on quality?

I do.

And yet others say that no-one would ever go to an in-house advocate in an ABS, given the immense quality of the referral bar.

The truth cannot be at either extreme.

The referral bar will clearly survive.

The difference will be that the referral bar will have to become more effective, more efficient.

Purchasers of its services will have other options to consider. And the consumers on whose behalf they purchase, will be better informed of the options available.

It's healthy competition.

The Bar will be afforded new opportunities, and it's for barristers to identify their strengths, and to identify where they can innovate within the new opportunities given to all.

But that myth, isn't the worst.

I think the greatest myth of them all is that ABSs are a pipe-dream.

Regulators are under a duty to realise these changes - to them happen.

In part, the Legal Services Board will measure its success against those changes happening.

Ultimately, it's for the market to innovate and define the new models of service delivery.

Perhaps we'll intervene directly in the interests of access to justice, or invite the OFT to do so in the interests of healthy competition, but the starting point, is not to stifle competition.

We will let the market identify the opportunities.

And it should be obvious: where there are inefficiencies in a market, investors will exploit those inefficiencies.

And investors' interests are, more often than not, aligned with the interests of consumers – that's how they make their money.

We're aware that investors are interested in brand value.

We know that's hard to build but easy to destroy.

Because of that, investors will be passionate about professional standards.

They will be obsessive about compliance.

They will be upright – and uptight - about propriety.

So not only will the Head of Legal Practice, and the Head of Finance and Administration, have enormous statutory responsibilities - . to report back to the licensing authority if lawyers' professional ethics are being compromised in an ABS.

But their responsibilities will be bolstered by enormous commercial leverage which can only ensure that they fulfil their duties.

So, given all of that...

if all the regulators are on the same wavelength and we have a statutory obligation to see these changes happen...

if we regulators are supportive of the needs of investors, as well as consumers...

if we are interested in de-regulation – not more regulation...

if all of those ifs are true – and they are - then lawyers need to start thinking: how can I make this work for me?

How can I provide a more competitive service?

Consumers are becoming and will become more educated.

It's one of our regulatory objectives to help in this.

Many of us as citizens and consumers need help at the very least on those transactions most of us come across – lease agreements, conveyancing, will writing, insurance disputes – and I'm sad to say, increasingly., relationship breakdowns.

We need to be educated and we will demand more from lawyers.

Many consumers are already demanding more.

That's why investors, and lawyers, and consumers, will all be pushing and pulling the legal services market down new paths and down new alleys which were previously dead ends.

The structures that will be adopted, will be multiform.

The partnership model – which has always been preferred by lawyers, although one may doubt the benefits it provides for consumers – may become less common.

I say that with an eye to developments in Australia, where their legal market has been subject to some de-regulation for several years now.

Down under, corporate legal practices have proliferated, with two law firms even floating on the Australian Stock Exchange.

In New South Wales I am advised that there is real innovation and entrepreneurship.

There are franchise models of service delivery, referral models of service delivery, LLPs and around 800 other incorporated legal practices.

These are companies where management and ownership have been separated.

These are companies where, despite the challenges, and with the help of regulators who seek to educate the lawyers and understand their business, the vast majority have been successful.

They incorporated practices include several Alternative Business Structures – known over there as Multidisciplinary practices.

It's the same idea of non-lawyers working with lawyers and getting outside capital into the law firms.

Indeed, it's worth looking at some of the particular benefits reaped by Slater and Gordon as well as Integrated Legal Holdings Limited – the two law firms that floated.

Slater and Gordon was the first in May 2007, and its brand has become extremely well known as it has grown – although it was well known even before flotation.

It seems that the external capital was a prime benefit for that business– it enabled the company to pursue a very aggressive growth strategy.

An impressive fact, I am told, is that despite market volatility, at 10th October of last year – hardly the best time in the economic cycle - the firm had maintained a premium over its listing price of more than 30%.

Integrated Legal Holdings Limited was the second law firm to float in Australia.

It's actually a holding company for a number of law firms.

They have noted several benefits for law firms that have joined Integrated Holdings.

Partners have a more liquid interest in their business now that they have an equity stake.

More than that, they can receive an ongoing, passive income through potential dividends.

They have pointed to employee share schemes which are – quite reasonably – believed to help increase staff retention and hiring.

Many firms here are aware of the difficulties of staff retention and hiring – there is at least anecdotal evidence to suggest that the traditional offer of partnership is less appealing to the younger generations.

Then there is the huge benefit of new capital injections.

This, of course, is particularly true where a firm floats and makes its first IPO.

On top of citing these benefits, there are obvious economies of scale.

These are just two case studies of perhaps the extreme end of how law firms might evolve.

Our friends in the Commonwealth see many other benefits in these new business structures – not just in terms of better management and retention - but in terms of better service delivery.

New combinations of products and more efficient services can really help the consumer.

It's no secret that where the consumer benefits – with good management - the law firm benefits too.

Such justifications are important.

They are a reminder of the enormous opportunity presented to the legal profession within England and Wales, and to consumers and the public more generally.

We are following in the footsteps of several countries with limited forms of ABS – Australia is currently the most developed - but we are taking new strides and breaking new ground.

If this is done right, our legal profession could gain that competitive edge in the global economy.

The importance of this profession to the health of our economy is massive.

When the Legal Services Act was going through Parliament, legal services represented no less than one point seven per cent of the UK's GDP.

That's big - nearly as big as the shrinkage of the UK economy this first quarter – which was one point nine per cent.

The profession employs some one hundred and thirty thousand qualified individuals and has an annual turnover of over twenty three billion pounds.

So the 2001 OFT report and Clementi's 2004 review, which both pointed to unjustified regulatory restrictions on the legal profession, have far-reaching implications.

It's been over four years since Clementi's report, and it's time to get on with it.

It's unnecessary to dig into his particular justifications yet another time.

It's been justified.

The Act's there.

This is happening.

It's no longer about whether we should do it.

It's about how we should do it.

Removing regulatory restrictions on the structure, on the ownership and on the management of firms that are able to offer legal services can benefit consumers.

It offers the potential to increase competition and choice which reflects one of our regulatory objectives – and one of the regulatory objectives of the approved regulators.

We're subject to all the same regulatory objectives now.

And promoting competition is one of them.

It offers the potential to improve law firm management.

It offers the potential to foster innovation.

And it offers the potential to provide better value and reduce prices.

We see current market conditions adding to the case for early action to achieve these benefits.

And we will act accordingly. It's for lawyers to recognise these opportunities and to seize the day.

But I'm not just talking about widening access to legal services.

A point I mentioned earlier and want to come back to is that broader concept of widening access to justice.

Improving access to justice is another one of our regulatory objectives.

Our discussion paper notes that the concept of access to justice is broader than geographical availability of legal services.

ABSs may help open up new ways of delivering services to consumers but for some vulnerable groups, like the elderly, certain ABS models could be more of a hindrance than a help.

We need to explore this area and understand what the implications are.

Certainly there are interesting ideas out there.

For example, at least two law professors – Professors Regan and Boon – argue, quite passionately, that pro bono work encourages a professional culture in the face of commercial pressure and should be promoted more.

They think it helps lawyers in the big firms adhere to their professional principles when they're surrounded by huge pressures to 'make the deal'.

Such ideas raise interesting questions for ABSs and access to justice. I welcome novel, structured responses to the hard problems we face.

Points like these need serious thought, and we want to start the debate on them sooner rather than later.

Much of the discussion paper published today aims to open up debate and asks for input on how some of these more difficult concepts should be defined and tackled.

How policies should be formulated.

We will be consulting again later in the year on the detail of the licensing regime for ABSs but for now we need to expose some of these more fundamental issues.

And I really do believe that there are some difficult questions to ask.

There are tough questions on who should be allowed to own ABSs.

The legislation says that an owner whose interest in the ABS exceeds a certain amount, has to be subject to a test to ensure he's 'fit to own'.

But how are such owners to be approved?

How much of an interest – how big a shareholding - should they be allowed to have in the law firm?

Should a limit be placed on the proportion of shares offered to outside ownership in the event of the law firm floating?

Where there are 'special bodies' – that is, bodies that are low risk because they're not-for-profit or because they're a trade union or a community interest company – how should we license them?

What are the extra bits of regulation required?

What are the bits of regulation that aren't required?

How will ABSs impact on diversity?

There's another one of our regulatory objectives tied up in that question – we and the approved regulators have to promote a strong, independent, diverse and effective profession.

And the LSB is set to drive strategy and co-ordinate the approved regulators to make progress in this area.

But such an issue needs to be explored in relation to ABSs.

I can easily see that if consolidation occurs in particular areas of legal practice, or in geographical areas where ethnic minorities tend to practise, diversity of the profession will be affected.

Who knows how?

These big questions don’t necessarily need big answers.

But we do need structured responses.

We do need responses from as wide a stakeholder group as possible which provide the necessary evidence and the pertinent insights to make the regulation work.

We do need responses that will help to identify the opportunities that the reforms in legal services provide.

If our discussion paper on ABSs provokes those responses, then the ball will be rolling and it will have achieved its purpose.

There’s a theme in that discussion paper which really gets to the heart of how the LSB will change the regulatory landscape.

The paper looks at what it means for regulators to shift from regulating individuals to regulating entities.

That change in approach reflects the need to better understand the business as opposed to the individual.

The paper also explores the approaches to risk-based regulation. Whether regulators should adopt a prescriptive approach or a detailed approach or a mixture of the two.

But part of that theme, is the idea that the approved regulators need to be more mindful of their attitudes.

And here I think the LSB can set the tone.

First, we want regulators to help educate law firms and lawyers, as well as the public.

It's better to encourage compliance and prevent a breach of the law than to punish someone after the fact.

Second, we want a proportionate and targeted approach to regulation – to pick out two of the so-called Hampton principles of good regulation.

And to put it plainly that means we want to help investors realise the opportunities the market presents and we want an attitude from regulators that reflects that.

We are here to ensure that change happens. We'll work with investors, but investors will have to work with us – and regulators have to work with them.

There's a lot there to digest.

If you have to take three things away with you today, let me suggest the following.

There is momentum.

These changes will happen by mid-2011, and our mission statement and philosophy is clear.

There are opportunities.

For lawyers, for law firms, and most importantly the consumer.

And finally, there are challenges.

And our discussion paper will trigger the debate on how best to regulate those challenges.

But the title of our discussion paper really says it all: "Wider access, Better value, Strong Protection".

We're the oversight regulator.

The initiative, the clever thinking, the identification of opportunities.

That’s your job.

And when you’ve worked out how to do it, we’ll get it done together.